

**The Architect submitting a proposal on February 15, 2017 in response to the pertinent RFQ shall agree to all terms and conditions included in the sample agreement below. If the terms and conditions included in the sample agreement are NOT agreed to by the Architect the Township reserves the unequivocal prerogative to ignore the proposal submitted by the Architect, as though no proposal was submitted.**

**Any material changes to the sample agreement may void the Architects response, in the sole and exclusive judgement of the Township.**

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## AGREEMENT

### **ARCHITECTURAL SERVICES THE TOWNSHIP OF LYNDHURST JUNIOR HIGH SCHOOL CONSTRUCTION PROJECT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2017, by and between the TOWNSHIP OF LYNDHURST, IN THE COUNTY OF BERGEN, a Municipal Corporation having its principal office at 367 Valley Brook Avenue, Lyndhurst, New Jersey, 07071 hereinafter “Lyndhurst”, or “Township”, which shall mean one and the same; and \_\_\_\_\_, having its principal offices at \_\_\_\_\_; the “Architect”, or “\_\_\_\_\_”, which shall mean one and the same, and where reference to both entities is made, the term Parties may be used herein; and

WHEREAS, the “the Architect” o February 15, 2017 submitted a proposal to design and administer the construction of a new Junior High School located in the Township of Lyndhurst said proposal being a springing contract; and,

WHEREAS, the proposal submitted by the Architect was made pursuant to the Request For Qualifications (RFQ) issued by the Township of Lyndhurst on January 25, 2017, attached hereto as Exhibit A, with a response/submission date of February 15, 2017, with the \_\_\_\_\_ proposal being attached hereto as Exhibit B; and

**NOW, THEREFORE, AND WITH THE PREVIOUSLY STATED WHEREAS PARAGRAPHS BEING INCORPORATED INTO THIS AGREEMENT, AS THOUGH THEY ARE PART OF THE CONTRACTUAL**

**COVENANTS, and in consideration of the covenants and agreements further contained herein, the parties agree as follows:**

**§ 1.1 A.** This Agreement is based on the following Project Scope:

Known description of the Junior High School: the new Lyndhurst Junior High School has been assigned State Project #2860-N02-16-1000. The new Junior High School shall be located and built upon the property located at Block 169, Lot 3.05 and Lot 3.01 in the Township of Lyndhurst adjacent to Page Avenue and connected by a “paper” street known as Sparta Drive. The new school shall encompass approximately 158,000 square feet of educational space which may be reduced (modified) by the Township prior to June 30, 2017. This modification may be based on the work of the Architect. After the new school is constructed the site work, including all landscaping, will be installed/implemented and completed.

**§ 1.1 B. Project location:** The new school construction authorized by the Township and the purpose for this Agreement, is the construction of a new Junior High School by the Township on lands located between Marin Avenue and Page Avenue at Block 160, Lot 3.01 and Lot 3.05 and certain lands adjacent thereto, in the Township of Lyndhurst, New Jersey.

**§ 1.2** Identification of consultants retained by the Architect for project services:

1. Structural Engineer
2. Mechanical Engineer and Electrical Engineer
3. Other (Please list.)

**§ 1.3** Section 4.1 of this Agreement provides a detailed explanation of services to be included in the project scope. Notwithstanding the foregoing, the Architect’s Work shall include all design and educational elements necessary to successfully construct the project. Intentionally reserved for future use if required.

**§ 1.4** The Township hereby Agrees that these consultants, paid for by the Architect shall be granted access to the Project and property to be improved, as well as the right to work on this

Project, however, they shall be compensated by the Architect, and the scope and depth of service rendered by any consultant (identified in Sections 1.2), shall be determined by the Architect.

**§ 1.5** The Architect's anticipated dates for the Substantial Completion of the Work are set forth below:

- A. Preparation by Architect of new Junior High School construction drawings. October 31, 2017.
- B. Substantial completion date of project, subject to the Township executing a construction contract, or equivalent. May 31, 2020.

**§ 2.1 ARCHITECT'S RESPONSIBILITIES.** The Architect shall provide the professional services as set forth in this Agreement and as included in the RFQ. In general, the Architect's services may be referred to as "Work".

**§ 2.2** The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects in the practice of designing state of the art schools and preparing plans for the construction of schools. The Architect shall perform its services as expeditiously as is consistent with the attached Exhibits and with professional skill and care and the orderly progress of the Project. **The Architect shall guarantee all work based on the foregoing representation.**

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

**§ 2.4** The Architect shall not engage in any activity, or accept any employment, interest or contribution that would appear to compromise or interfere with the Architect's professional judgment with respect to this Project. To this end the Architect is expressly prohibited from and barred from making any campaign contribution to any Board of Education member, member of the Lyndhurst Board of Commissioners, any and all Bergen County elected official, and any state elected official whose district includes Lyndhurst.

**§ 2.5** The Architect shall maintain the following insurance for the duration of this Agreement.

- A. General Liability  
\$2,000,000 Annual Aggregate. \$1,000,000 per occurrence.
- B. Automobile Liability  
\$2,000,000 Annual Aggregate. \$1,000,000 Combined Single Limit.
- C. Workers' Compensation  
Statutory Limit of the State of New Jersey.
- D. Professional Liability

\$3,000,000 Annual Aggregate. \$1,000,000 per occurrence.

**§ 3.1** The SCOPE OF ARCHITECT'S SERVICES include usual and customary structural, mechanical, and electrical engineering services. Professional architecture, landscape architecture, building design and site engineering services; including building construction and building/lot design (including parking lot, ingress/egress, learning, office, lavatory, plumbing, culinary (food services) music, auditorium, and ancillary spaces) for the construction of a new Junior High School on the property hereinafter described. Also, the Architect shall provide for:

- A. The preparation of complete building plans and renderings, including but not limited to site plan(s), elevations, aerials, etc,
- B. The preparation of complete construction documents (of the highest standard), and to present documents to: 1-a professional school Plan Review Committee (PRC) for critique and revision(s) if, and, as necessary; 2-the Finance Commissioner's Junior High School Building Advisory Committee.
- C. The preparation of all construction bid documents-pertaining to the construction of a new Junior High School consistent with this document-including but not limited to, the:
- D. Preparation of construction bid specifications, with a special emphasis on the "back-end" documents (including complete school building drawings and plans) for construction work, all {construction} trades, and landscaping.
- E. The detailed services specified in Section 4.1 hereof.

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

**§ 3.1.2** The Architect shall coordinate its services, and all Work, with those services provided by the Township, including the Township's advisors/consultants, including the Township's Project Manager. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Township. The Architect shall provide prompt written notice to the Township if the Architect becomes aware of any error, omission or inconsistency in such services or information.

**§ 3.1.3** The Architect, on February 15, 2017, submitted a schedule for the performance of the Architect's services; the Township has approved this. The schedule includes allowances for periods of time required for the Township's review, including by the Project Review Committee (the PRC) and the Board of Commissioners. The time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect, or Township. With the Township's

written approval, the Architect may adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

**§ 3.1.4** Intentionally reserved for future use.

**§ 3.1.5** The Architect shall, at appropriate times, contact the government authorities required to approve the Construction Documents and coordinate with the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such government or utility authorities.

**§ 3.1.6** The Architect shall assist the Township in connection with the Township's responsibility for filing documents required for the approval of government authorities having jurisdiction over the Project.

### **§ 3.2 SCHEMATIC DESIGN PHASE SERVICES**

**§ 3.2.1** The Architect shall review the program and other information furnished by the Township, including representative plans or design concepts used by other municipalities in New Jersey and shall review laws, codes, and regulations applicable to the Architect's services.

**§ 3.2.2** The Architect shall prepare a preliminary evaluation of the Township's program, schedule, budget for the Cost of the Work, and the proposed procurement or delivery method and other Project Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Township of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project. Notwithstanding the foregoing, the Project shall be guided by the contents of Exhibits A and B attached hereto.

**§ 3.2.3** Once the Architect has presented their preliminary Project evaluation to the Township they shall discuss with the Township 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 Township regarding the requirements of the Project.

**§ 3.2.4** Based on the Project's requirements agreed upon between the Parties, the Architect shall prepare and present for the Township's approval, a preliminary and final design illustrating the scale and relationship of the Project components. Based on the Township's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan,

and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. This Section shall be subject to the review, of all technical issues, by the PRC.

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

**§ 3.2.6** The Architect shall submit to the Township an estimate of the Cost of the Work prepared in accordance with Section 6.3.

**§ 3.2.7** The Architect shall submit the Schematic Design Documents to the Township and request written approval of the Junior High School design.

### **§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES**

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

**§ 3.3.2** The Architect shall update the estimate of the Cost of the Work.

**§ 3.3.3** The Architect shall submit the Design Development Documents to the Township and advise the Township of any adjustments to the estimate of the Cost of the Work, and request the Township's approval to proceed with construction documents.

### **§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES**

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

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

§ 3.4.3 During the preparation of the Construction Documents, the Architect shall assist the Township 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 Township 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 shall include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work to complete construction of the Junior High School.

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

### **§ 3.5 BIDDING PHASE SERVICES**

#### **§ 3.5.1 GENERAL**

The Architect shall assist the Township in establishing a list of prospective contractors. Following the Township's approval of the Construction Documents, the Architect shall assist the Township 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 of the new Junior High School.

### **§ 3.5.2 COMPETITIVE BIDDING**

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

**§ 3.5.2.2** The Architect shall assist the Township in bidding the Project by:

- A. procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- B. 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;
- C. organizing and conducting a pre-bid conference for prospective bidders, if necessary;
- D. 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
- E. organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Township.

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

### **§ 3.6 CONSTRUCTION PHASE SERVICES**

#### **§ 3.6.1 GENERAL**

**§ 3.6.1.1** The Architect shall provide administration of the design elements of the construction contract to be entered into between the Township and the Contractor as set forth below.

**§ 3.6.1.2** The Architect shall advise and consult with the Township during the Construction Phase Services. The Architect shall have authority to act on behalf of the Township only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work. However, the Architect shall specify these construction elements in the construction contract as may be necessary. The Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. **The Architect shall be responsible for the Architect's negligent**

**acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.**

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

**§ 3.6.2 EVALUATION OF THE WORK**

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

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

**§ 3.6.2.3** The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Township 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. The Architect shall have the right, but not an absolute duty to stop Work on the construction site; where in their sole discretion, issues that warrant investigation are apparent.

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

**§ 3.6.2.5** Unless the Township and Contractor designate another person to serve as an Initial Decision Maker, the Architect shall render decisions on Claims between the Township and Contractor as provided in the Contract Documents.

### **§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR**

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

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

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

#### **§ 3.6.4 CONTRACTOR'S SUBMITTALS**

**§ 3.6.4.1** The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. 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.

**§ 3.6.4.2** 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.

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

**§ 3.6.4.4** Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information 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 requests for information.

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

**§ 3.6.5 CHANGES IN THE WORK**

**§ 3.6.5.1** The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Township's approval and execution in accordance with the Contract Documents.

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

**§ 3.6.6 PROJECT COMPLETION**

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

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

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

**§ 3.6.6.4** The Architect shall forward to the Township 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 Township against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Township, 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 Township to review the facility operations and performance.

§ 4.1 SERVICES. The Architect’s Services listed below are to be specifically included in the Work and Services as may be required for the Project. The Architect shall provide the listed Work and Services only if specifically designated in the table below as the Architect’s responsibility, and the Township shall compensate the Architect as provided in Section 11.2, but only upon receiving prior written authorization from the Township.

§ 4.1 A. The designated Service(s) the Architect specified to be provided is identified in the second column of the table below. The third column indicates whether the service description is included herein, as a part of this Section {4.1}, or in an attached exhibit.

§ 4.1.1	Programming	Township	4.1 B. i
§ 4.1.2	Multiple preliminary designs	Architect	Exhibit A-RFQ
§ 4.1.3	Measured drawings	N/P	None.
§ 4.1.4	Existing facilities surveys	CP Engineering and Neglia Engineering	Exhibit A RFQ-Informal Reviews
§ 4.1.5	Site Evaluation and Planning	CP and Architect	
§ 4.1.6	Building information modeling	Architect	None.
§ 4.1.7	Civil engineering	Township	
§ 4.1.8	Landscape design	Architect	4.1 B. ii
§ 4.1.9	Architectural Interior Design	Architect	4.1 B. iii
§ 4.1.10	Value Analysis	Architect	RFP-Informal Reviews
§ 4.1.11	Detailed cost estimating	Architect	4.1 B. iv.
§ 4.1.12	On-site project representation	Architect	RFP-Limited to Construction
§ 4.1.13	Conformed construction documents	Architect	None.
§ 4.1.14	As-Designed Record drawings	Architect	As-built drawings required.
§ 4.1.15	As-Constructed Record drawings	Architect	4.1 B. v.
§ 4.1.16	Post occupancy evaluation	Township	None.
§ 4.1.17	Facility Support Services	N/P	None.
§ 4.1.18	Tenant-related services	N/P	None.
§ 4.1.19	Coordination of Township’s consultants	N/P	The Township will coordinate services.
§ 4.1.20	Telecommunications/data design	Architect	4.1 B. vi.
§ 4.1.21	Security Evaluation and Planning	Architect	4.1 B. vii
§ 4.1.22	Commissioning	Architect	None-however, FF&E ordering support to be provided-see §4.1.27.
§ 4.1.23	Extensive environmentally responsible design	Township	None.
§ 4.1.24	LEED® Certification (B214™–2007)	N/P	None.

§ 4.1.25	Fast-track design services	N/P	Not applicable.
§ 4.1.26	Historic Preservation (B205™–2007)	N/P	None.
§ 4.1.27	Furniture, Furnishings, and Equipment Design	Architect	4.2.
Geotechnical Engineering Environmental Services Asbestos Inspection		CP Engineering Architect N/P	

**§ 4.1 B. Additional Services Included in this Agreement.**

The following are the definitions of the Work included in the above table, and identified as “4.1 A”, or as otherwise indicated in the table:

- i. Programming: Architect shall interview Lyndhurst School District staff occupying existing buildings to better understand their space needs, location within the building and FF&E requirements. Architects will prepare a detailed written description of their findings.
- ii. Landscape Design: Landscape architect shall provide a landscape plan, with plant selections, to meet Township requirements.
- iii. Interior Design: Architect shall select, with Township’s approval, all wall, floor and ceiling finishes, as well as integrated lighting and built-in furniture. Loose décor, such as artwork or planters, is not included.
- iv. Detailed Cost Estimating: Architect’s cost estimating or consultant shall provide cost estimates at the conclusion of Schematic Design, Design Development, and Construction Drawing Phases.
- v. As-Constructed Record Drawings: Architect shall provide drawings of the final constructed condition prepared from redlines provided by the contractor.
- vi. Telecommunications/Data Design: Architect and Electrical Engineer shall work with Township’s telecommunications vendor and provide data and telephone jacks, with empty conduit runs, throughout the building as necessary to support the functionality of the staff. Specification and purchase of telephonic and other electronic equipment is assumed to be directly by the Township, through their vendor.
- vii. Security Evaluation and Planning: Architect shall provide design as appropriate for the police department and general safety of occupants in a public building.

**§ 4.2 Furniture, Fixtures, and equipment; also referred to as “FF& E”:** Architect shall prepare the furniture location plan and specify the furniture and fabrics available through a State Contract vendor. The Architect shall obtain price quotations and assist the Township with the procurement of all FF&E directly, including instructions for shipment, delivery and placement.

**§ 4.3 Additional Services** may be provided after execution of this Agreement, without invalidating the Agreement, but only upon written authorization of the Township. Except for services required

due to the fault of the Architect, any Additional Services provided in accordance with this Section, 4.3, shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

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

- 1 Services necessitated by a material change in the Project Scope, previous instructions or approvals given by the Township, or a change in the size, quality, complexity, of the work to be performed, or an material change in the Work procurement or delivery method;
- 2 Services necessitated by the Township's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- 3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- 4 Services necessitated by decisions of the Township not rendered in a timely manner or any other failure of performance on the part of the Township or the Township's consultants or contractors;
- 5 Preparing digital data for transmission to the Township's consultants and contractors, or to other Township authorized recipients;
- 6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Township;
- 7 Preparation for, and attendance at more than six public presentations, meetings or hearings;
- 8 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 bidders or persons providing proposals, except as provided herein;
- 10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or

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

- 1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- 2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field

- conditions, other Township-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- 3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
  - 4 Evaluating an extensive number of Claims as the Initial Decision Maker;
  - 5 Evaluating substitutions proposed by the Township or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
  - 6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

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

- 1 Two (« 2 ») reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- 2 Forty («40 ») visits to the site by the Architect over the duration of the Project during construction
- 3 Two («2 ») inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- 4 Two (« 2 ») inspections for any portion of the Work to determine final completion

**§ 4.3.4** If the services covered by this Agreement have not been completed within forty-eight (48) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## **§ 5.0 TOWNSHIP'S RESPONSIBILITIES**

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

**§ 5.2** The Township and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

**§ 5.3** The Township will identify two representatives authorized to act on the Township's behalf with respect to the Project. The Township shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

**§ 5.4** The Township shall furnish title search for all properties and legal limitations for the site of the Project. The Architect shall provide a written legal description of the site, metes and bounds and shall coordinate the merger of the parcels of property upon which the new Junior High School building will be built upon..

**§ 5.5** The Township shall coordinate the services of its own consultants with those services provided by the Architect.

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

**§ 5.7** The Township shall provide prompt written notice to the Architect if the Township becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

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

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

**§ 5.10** The Township 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.

**§ 6.0 COST OF THE CONSTRUCTION WORK**

**§ 6.1** For purposes of this Agreement, the Cost of the Construction Work shall be the total cost to the Township 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, contingencies for changes in the Work or other costs that are the responsibility of the Township.

**§ 6.2** The Township's budget for the Cost of the Construction Work is provided in Initial Information, and may be adjusted throughout the Project as required herein. Evaluations of the Township's budget for the Cost of the Construction Work, the preliminary estimate of the Cost of the Construction Work and updated estimates of the Cost of the Construction Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Township 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 Township's budget for the Cost of the Construction Work or from any estimate of the Cost of the Construction Work or evaluation prepared or agreed to by the Architect.

**§ 6.3** In preparing estimates of the Cost of Construction 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 make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Construction Work to meet the Township's budget for the Cost of the Construction Work.

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

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

Construction Work, and the Township shall cooperate with the Architect in making such adjustments.

**§ 6.6** If the Township's budget for the Cost of the Construction Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest responsible/bona fide bid, the Township 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 9.5;
- 4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- 5 implement any other acceptable alternative to the Township.

**§ 6.7** If the Township chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Township's budget for the Cost of the Construction Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Section.

#### **§ 7.0 COPYRIGHTS AND LICENSES**

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

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

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

**§ 7.3.1** In the event the Township uses the Instruments of Service without retaining the author of the Instruments of Service, the Township releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Township, 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 Township's use of the License granted under this Section. The terms of this Section 7.3.1 shall not apply if the Township terminates this Agreement for cause under Section 9.4.

**§ 7.4** Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement, except, of course the Parties recognize that the Township is a government entity and the license provisions herein are of little, or nominal value.

The Township 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 Township's sole risk, if any actually may legally occur, and without liability to the Architect and the Architect's consultants.

## **§ 8.0 CLAIMS AND DISPUTES**

### **§ 8.1 GENERAL**

**§ 8.1.1** The Township and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in

accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 5 years after the date of Substantial Completion of the Work. The Township and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

**§ 8.1.2** To the extent damages are covered by property insurance, the Township 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. The Township or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

**§ 8.1.3** The Architect and Township waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

## **§ 8.2 MEDIATION**

**§ 8.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's Work or 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, pursuant to rules established in New Jersey Law.

**§ 8.2.2** The Township 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 the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If a mediation proceeding is stayed pursuant to this section,

the parties may nonetheless proceed to the selection of the mediators and agree upon a schedule for later proceedings.

**§ 8.2.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located. Agreements reached in mediation shall be enforceable as settlement agreements in the New Jersey Court having jurisdiction thereof.

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

Litigation in a New Jersey Court.

**§ 8.3 ARBITRATION IS NOT APPLICABLE AS TO THIS AGREEMENT**

**§ 9.0 TERMINATION OR SUSPENSION**

**§ 9.2** If the Township 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 services at the fee level stipulated herein, if such suspension of the Project is for forty-eight (48) months or less.

**§ 9.3** If the Township suspends the Project for more than 120 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than twenty days written notice.

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

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

**§ 9.6** In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

**§ 9.7** Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated.

**§ 9.8** The Township's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in this Agreement, including Sections 9.2 and 11.10, and as provided in general Law.

## **§ 10.0 MISCELLANEOUS PROVISIONS**

**§ 10.1** This Agreement shall be governed by the Laws of New Jersey.

### **§ 10.2 (Reserved)**

**§ 10.3** The Township and Architect, respectively, bind themselves, their agents, successors, and assigns to this Agreement. Neither the Township nor the Architect shall assign this Agreement without the written consent of the other.

**§ 10.4** If the Township 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 Township requests the Architect to execute consents reasonably required to facilitate assignment to a lender or government agency, 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 3 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

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

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

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

**§ 10.8** If the Architect or Township receives information specifically designated by the other Party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential, unless otherwise provided by Law, and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to

perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

**ARTICLE 11 COMPENSATION**

**§ 11.1 (Reserved)**

**§ 11.2** The following is the compensation to be paid to the Architect.

Schematic Design Phase	
Design Development Phase	
Construction Documents Phase	
Bidding or Negotiation Phase	
Construction Phase	
Total Contract Compensation	

**§ 11.3** The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

**§ 11.4** The hourly billing rates for services of the Architect and the Architect’s consultants, if any, are set forth below. They are NOT to be paid in addition to the above compensation. The rates shall be adjusted in accordance with the Architect’s and consultants normal review practices.

The Architect’s hourly rates are listed below:

<b>Employee or Category</b>	<b>Hourly/Rate</b>
Vice President/ Principal	
Associate/ Snr. Project Manager/PM	
Senior Arch’t/ Engineer/ Landscape Arch.	
Project Arch’t/ Engineer/ Landscape Arch.	
Project Designer/ CADD Designer	
Intern Arch’t/ Engineer/ Landscape Arch.	
Administrative/ Drafter	

## **§ 11.5 COMPENSATION FOR REIMBURSABLE EXPENSES**

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

- 1** Printing, reproductions, plots, standard form documents;
- 2** Postage, handling and delivery;
- 3** Renderings, models, mock-ups, professional photography, and presentation materials requested by the Township;
- 4** Site office expenses.

## **§ 11.5.2 PAYMENTS TO THE ARCHITECT**

**§ 11.5.3** An initial payment of ten thousand dollars, (\$10,000 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Township's account in the final invoice submitted by the Architect.

**{§ 11.6-§ 11.9 Reserved}**

**§ 11.10.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments shall commence in July, 2017 and are due and payable upon presentation of the Architect's invoice.

**§ 11.10.2** The Township may withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

**§ 11.10.3** Records of Reimbursable Expenses, expenses pertaining to Architect's Work or Services and services performed on the basis of hourly rates shall be available to the Township at mutually convenient times.

## **§ 12.0 SPECIAL TERMS AND CONDITIONS**

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

None are contemplated; however, written amendments to this Agreement may be made.

## **ARTICLE 13 SCOPE OF THE AGREEMENT**

**§ 13.1** This Agreement represents the entire Agreement between the Township 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 Township and Architect.

§ 13.2 In the event of any conflict between this Agreement and any Exhibit, memo, or other communication, the terms and conditions of this Agreement shall prevail, except scheduling and price for services. Notwithstanding the foregoing, this Agreement may be amended by the Parties in writing, if both Parties so choose.

§ 13.3 The rule of construction against the draftsman of an agreement shall not apply to this Agreement. This Agreement has been diligently prepared by the Parties. Architect and the Township of Lyndhurst stipulate that this Agreement is the product of all of their efforts, that it expresses their agreements, and that it should not be interpreted in favor of or against either the Architect or the Township merely because of their efforts in preparing it.

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

**TOWNSHIP OF LYNDHURST, NEW  
JERSEY**

**ARCHITECT**

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

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

\_\_\_\_\_  
Mayor

\_\_\_\_\_

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

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

*Witness:*

*Witness:*