

**AGREEMENT FOR
DESIGN CONSULTANT SERVICES**

BETWEEN

**DURHAM COUNTY, BY AND THROUGH ITS AUTHORIZED AGENT
THE DURHAM PUBLIC SCHOOLS BOARD OF EDUCATION**

hereinafter referred to as the Owner

AND

hereinafter referred to as the Design Consultant

PROJECT:

OWNER'S PROJECT NO:

DATE:

AGREEMENT FOR DESIGN CONSULTANT SERVICES

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**AGREEMENT FOR
DESIGN CONSULTANT SERVICES**

This Agreement is made this [redacted] day of [redacted] 2020 by and between the Owner **Durham County, by and through its authorized agent the Durham Public Schools Board of Education**, and the Design Consultant: [redacted], for Professional Services in connection with the Project known as:

[redacted]

The Owner and the Design Consultant agree as set forth below:

ARTICLE 1

DEFINITIONS

The following words and phrases where appearing in initial capitalization, shall for the purposes of this Agreement have the following meanings:

1.1 [redacted] Project. The objective is to design and construct a [redacted].

1.1.1 [redacted] school with enrollment of [redacted] students, the approximate square footage for the facility would be approximately [redacted] square feet maximum.

1.1.2 Project Parameters

1.1.2.1 The physical parameters are: the school is to be designed to accommodate [redacted] students. The school will be built at [redacted] in Durham County.

1.1.2.2 Overview of Design Consultant's Scope: The Design Consultant's fee includes the complete design of a new facility including all architectural, sitework, extensions of utilities, off-site roadway improvements, traffic impact study, civil, structural, mechanical, plumbing, electrical, landscape, fire suppression, food service, Technology infrastructure, structured cabling, phone system, paging system, data systems, intrusion detection system, video surveillance system, audio systems, video distribution system, and any other work required for a complete set of design documents. The Design Consultant shall assist in the development of the Building Program and Educational Specifications. The fee also includes coordination with Owner provided vendors for furniture and equipment to design the spaces.

1.2 Design Consultant. Design Consultant as used herein shall mean the architect or engineer identified above.

1.3 Subconsultant. Subconsultant as used herein shall mean any consultant or sub-consultant retained by or on the behalf of the Design Consultant for the performance of any Services pursuant to this Agreement. The Design Consultant's use of a subconsultant shall not relieve the Design Consultant of any responsibility for providing the Services outlined in this Agreement.

- 1.4 Services. The Services to be performed by the Design Consultant under this Agreement shall consist of the Basic Services described in Article 3, any Additional Services under Article 7, and any other obligations of the Design Consultant included in this Agreement.
- 1.5 Construction Contract. The Construction Contract shall consist of the plans and specifications prepared by the Design Consultant, and any addenda and change orders thereto, and the Owner-Contractor Agreement, and all General Conditions, Amended Conditions, and Supplemental Conditions thereto, all of which shall be compatible and consistent with this Agreement.
- 1.6 Construction Contract Award Price. The amount established in the Design, Construction and Equipment Budget, attached as Exhibit A, for the total cost of the work to be performed by the Contractor pursuant to the Construction Contract shall be referred to as the Construction Contract Award Price or CCAP.
- 1.7 Contractor. The Contractor is the person or entity which enters into an agreement with the Owner to perform the construction of or any construction on the Project, including, without limitation, the providing of labor, materials, and equipment incorporated or to be incorporated into the Project. The term "Contractor" means the Contractor or its authorized representative.
- 1.8 Program of Requirements. The Program of Requirements or "Program" is the detailed written summary of the requirements of the facility which sets forth the Owner's design objectives, constraints and criteria, including space requirements and relationships, quality levels, flexibility and expandability, special equipment and systems and site requirements, as described in Exhibit B.
- 1.9 Management Plan. The Management Plan is the description and definition of the phasing, sequencing and timing of the major project activities for design, construction procurement, construction and occupancy as described in Exhibit C. The Management Plan shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for the approval of submissions by authorities having jurisdiction over the Project. The Management Plan shall generally adhere to the following anticipated dates and construction milestone dates:
- | | | |
|--------------------------------------|---|-------|
| Completion of schematic design | - | _____ |
| Completion of construction documents | - | _____ |
| Notice to Proceed date | - | _____ |
| Substantial completion date | - | _____ |
- 1.10 Design Phase Change Order. A Design Phase Change Order is the form of documentation from the Owner approving and authorizing a modification to Exhibits A, B and/or C attached hereto, or previously approved Design Phase documents.

ARTICLE 2

RELATIONSHIP OF THE PARTIES

- 2.1 Design Consultant Services. The Design Consultant shall provide professional architectural/engineering services for the Project in accordance with the terms and conditions of this Agreement. The Design Consultant's performance of the Services shall be as professional consultant to the Owner to carry out the activities of Project design and construction administration and to provide the technical documents and supervision to achieve the Owner's Project objectives. The Design

Consultant may employ subconsultants to provide discreet portions of the Services pursuant to this Agreement. The Design Consultant shall ensure that all services provided by a subconsultant are provided in accordance with the terms and conditions of this Agreement. The Design Consultant shall coordinate the services of any Owner provided professional consultants and any vendors for furniture and equipment to design spaces.

- 2.1.1 The consultants retained at the Design Consultant's expense include the following:
[Choose all applicable and insert name of consultant]

Structural: _____
Plumbing: _____
Mechanical: _____
Electrical: _____
Civil: _____
Landscape: _____
Other: _____

- 2.1.2 The Design Consultant shall require each of its consultants to execute an agreement similar to the agreement attached as Exhibit D certifying that the consultant has read and is thoroughly familiar with the terms of this Agreement and that the pertinent provisions of this Agreement shall govern the work performed by the consultant.

- 2.2 Owner Representation. The Owner shall employ and assign a Project Manager from the Durham Public Schools to serve as the Owner's Representative on the Project ("Owner's Representative"). The Owner's Representative has no design responsibilities of any nature. None of the activities of the Owner's Representative supplant or conflict with the design, budget or any other services and responsibilities customarily furnished by the Design Consultant or subconsultant in accordance with generally accepted architectural/engineering practices except as otherwise modified by this Agreement. Instructions by the Owner to the Design Consultant relating to the Services will be issued or made by or through and in accordance with procedural, organizational, and documentation standards established by the Owner's Representative. Communications and submittals of the Design Consultant to the Owner and Contractor shall be in writing and issued or made in accord with similar procedural and documentation standards established by the Owner's Representative. The Owner's Representative shall have the authority to establish procedures, consistent with this Agreement, to be followed by the Design Consultant and Contractor and to call periodic conferences to be attended by the Design Consultant, and its subconsultants, throughout the term of this Agreement.

- 2.3 Other Consultants. The Owner may provide drawings, consultation, recommendations, suggestions, data and/or other information relating to the Project from other consultants under separate contract with the Owner, including but not limited to: Land Surveying Consultant, Geotechnical Consultant, and/or Materials Testing Consultant.

- 2.4 Design Consultant Representation.

- 2.4.1 The Design Consultant shall provide a list of all subconsultants which the Design Consultant intends to utilize relating to the Project prior to commencing work on the Project. The list shall include such information on the qualifications of the subconsultants as may be requested by the Owner. The Owner will review the subconsultants proposed. The Design Consultant shall not retain a subconsultant to which the Owner has a reasonable objection. The Design Consultant shall be and

use only individuals or firms that are properly licensed in North Carolina and regularly engaged in the fields of expertise required for this Project. In addition, the Design Consultant shall use an individual or firm with specific expertise in roofing certified by licensure as a Registered Roofing Consultant for any projects containing any roofing work.

- 2.4.2 The Design Consultant shall provide to the Owner a list of the proposed key project personnel of the Design Consultant by position, including subconsultants, to be assigned to the Project. This list shall include such information on the professional background of each of the assigned personnel as may be requested by the Owner, through the Owner's Representative. Such key personnel and consultants shall be satisfactory to the Owner and shall not be changed except with the consent of the Owner unless said personnel cease to be employed.
- 2.4.3 The Design Consultant shall include normal structural, plumbing, mechanical, electrical and other engineering services necessary to produce a reasonably complete and accurate set of Construction Documents. All consultants who will perform services required by this Agreement shall execute an agreement with the Design Consultant with terms not inconsistent with this Agreement.
- 2.4.4 The Design Consultant represents and warrants that at the time of execution of this Agreement he has and will retain all licenses and certifications required of him to perform the services and other work identified in this Agreement and associated contract documents. The Design Consultant further represents and warrants that it is lawfully licensed to practice architecture in the jurisdiction where the project is located. The Design Consultant shall keep this licensure in good standing without lapse throughout the term of this Agreement. The Design Consultant shall provide proof of this licensure to the Owner and/or Contractor upon request.
- 2.5. Division of Responsibilities/Services. The Design Consultant understands and agrees that should the Owner's Representative or consultant retained by the Owner provide the Design Consultant with any estimating assistance, cost or time control recommendations or other consultation, recommendations or suggestions, any or all such activities on the part of the Owner, or any other representative of the Owner shall in no way relieve the Design Consultant of the responsibility of fulfilling its obligations and responsibilities under this Agreement.

ARTICLE 3

BASIC SERVICES

- 3.1 Scope of Services. The Basic Services, as defined in this Article, to be provided by the Design Consultant shall be performed in the phases described hereinafter and shall include architectural, landscape architectural, civil engineering, structural engineering, mechanical engineering, electrical engineering, roofing engineering, and all other services customarily furnished by an architect/engineer on similar projects in accordance with generally accepted architectural and engineering practices consistent with the terms of this Agreement. The Design Consultant shall utilize an individual or firm with specific expertise in acoustics for any middle or high school auditorium or music room. The Basic Services to be performed by the Design Consultant consist of professional tasks which have as their objective design, production of technical documents and construction administration to provide the Owner with a complete and properly functioning facility. The Basic Services shall be performed in accordance with the standard of care set forth in this Agreement. The facility shall be suitable for the Owner's purposes, be structurally sound, satisfy the Owner's requirements, comply with all applicable

codes and laws, and be completed on a timely basis and within the approved construction budget. To provide the optimal constructed value, the Design Consultant shall analyze alternative materials and building systems at the appropriate phases throughout the Basic Services phases.

- 3.1.1 This Agreement describes the Design Consultant's Basic Services in seven phases. Each of these phases (Design Narrative, Schematic Design, Design Development, Construction Contract, Permitting and Bid/ Negotiation, Construction, and Post Construction) may be divided to facilitate bidding of separate trade contracts or phased construction activities. The Owner shall have the right to determine early, late and other separate contract awards and may modify the Management Plan to change the number and times of issue of various contract document packages at no additional compensation to the Design Consultant so long as there are no more than two bid packages for the various portions of the Project (which package is exclusive of individual material purchase orders, bid package alternates and rework by the Design Consultant of documents already completed).
- 3.1.1.1 The Services described below are under the Project phases in which they customarily occur. This order is for convenience only and does not necessarily reflect the sequence in which a service will actually be performed, or necessarily limit the Project, or a designated portion of the Project, to one of each phase. The Owner reserves the right to designate the phasing of segregated portions of the Services and to modify the Management Plan, within the terms and conditions of this Agreement.
- 3.1.1.2 The Design Consultant agrees that time is of the essence and that failure to perform duties on the Project within the time limits established in the Management Plan may result in damages to the Owner.
- 3.1.2. Design Narrative Phase.
- 3.1.2.1 The Design Consultant shall examine and analyze available information provided by the Owner and shall advise and recommend as to additional information necessary to begin specific design work on the Project.
- 3.1.2.2 Upon analysis of all available information and prior to initiating any design tasks, the Design Consultant shall participate in a pre-design Project analysis on the dates specified in the Management Plan contained in Exhibit C or as may subsequently be approved. The Design Consultant shall have in attendance the individuals who will represent the primary architectural and engineering disciplines on the Project and others as may be requested by the Owner's Representative. The Design Consultant shall take and transcribe minutes of the sessions.
- 3.1.2.3 Upon conclusion of the pre-design Project analysis and in accordance with the Management Plan, the Design Consultant shall prepare a report to the Owner (hereinafter referred to as the Design Narrative) which is the Design Consultant's interpretation of the Project requirements, design parameters and objectives, and results of the pre-design Project analysis. To the maximum extent possible, the Design Narrative will contain diagrammatic studies and pertinent text relative to: design concept; Program of Requirements; analysis of alternatives; internal functions; human, vehicle and material flow patterns; general space allocations; detailed review of operating functions; studies of adjacency, vertical and horizontal affinities; and outline descriptions of major building components and systems.
- 3.1.2.4 Upon written authorization from the Owner to proceed, and based on the approved Design Narrative, the anticipated construction cost, Program of Requirements, and the Management Plan (Exhibits A, B and C), the Design Consultant shall prepare Schematic Design studies consisting of drawings and other documents illustrating

the design concept, scale and relationship of the Project components for approval by the Owner.

3.1.3 Schematic Design Phase.

3.1.3.1 The Design Consultant shall periodically provide the Owner's Representative with copies of Schematic Design studies for the Owner's Representative's review during the Schematic Design Phase. At the end of the Schematic Design Phase, the Design Consultant shall provide the Owner's Representative with up to four (4) full size complete sets of the drawings and other documents for approval by the Owner.

3.1.3.2 The Design Consultant, and the relevant subconsultants, shall participate as requested in meetings with Owner's staff to review the project, receive the Owner's input and provide responses to input.

3.1.3.3 The Design Consultant shall prepare the necessary documents and make presentations as scheduled to the Board of Education and/or its committees as determined by the Facility Planning & Construction Department. Documents required for presentation shall include mounted and colored site plans, floor plans and elevations.

3.1.3.4 Documents prepared by the Design Consultant for final Schematic Design Phase submittal shall include drawings and a written report. The drawings shall include, but not be limited to, a proposed site utilization study of the property of the Project, schematic plans of all floor plan conditions, and simplified elevations indicating the fundamentals of the architectural concept. The report shall include the status of the work in accordance with the Management Plan, a summary of programmed versus actual square footage by room or area and net to gross comparisons in a format defined by the Owner; such discussion of design factors, if any, as are pertinent in the opinion of the Design Consultant; and descriptions of proposed engineered systems, proposed construction methods, proposed materials and proposed work to be included in the construction contracts. Further, the report should include any minutes from meetings or telephone conferences with, or letters from review agencies with responses, and responses to all review comments from Owner from previous reviews. The Design Consultant shall submit an estimate and breakdown of the anticipated construction cost no later than two (2) business days in advance of the scheduled Schematic Design review meeting. The Design Consultant shall prepare such estimates in the form prescribed by the Owner to assure that the Project cost is within the CCAP.

3.1.3.5 A statement from the Design Consultant with the final Schematic Design Phase submittal shall be included that acknowledges that Design Consultant has reviewed all of the applicable Design Guidelines and Educational Specifications and confirms that they have been incorporated in the documents unless specifically noted in writing.

3.1.3.6 The Design Consultant shall submit a written statement indicating that local governing authorities are aware of the Project, and the necessary requirements of such agency will be met.

3.1.3.7 To be considered acceptable for final Schematic Design Phase submittal, the documents shall contain all of the following unless otherwise agreed in writing:

3.1.3.7.1 Architectural

- (i) Plans (at 1/8" scale) showing complete building layout, and identifying areas, room by room, showing square footage with comparisons to program standards, and core areas and their relationships.

- (ii) Preliminary building section and elevations indicating location and size of fenestration.
- (iii) Preliminary furniture layouts of critical spaces (i.e. dining area, media center).
- (iv) Site plan(s) with building located and an overall grading plan with a minimum of 1'-0" contour lines. All major site development such as orientation, access road paving, walls and outside support buildings, structured parking facilities, programmed play areas, and paved parking lots, along with preliminary stormwater management and erosion control features should be shown.
- (v) Gross and net area calculations separated to show conformance with the Program of Requirements.
- (vi) Preliminary Building Code Summary.

3.1.3.7.2 Structural

- (i) Narrative of structural system (precast, structural steel with composite deck, structural steel with bar joists, etc.).
- (ii) Identification of foundation requirements (fill requirements, piles, caissons, spread, footings, etc.).

3.1.3.7.3 Mechanical

- (i) Block heating, ventilating and cooling loads calculations including skin versus internal loading.
- (ii) Single-line drawings of all mechanical equipment spaces, duct chases and pipe chases.
- (iii) Location of all major equipment in allocated spaces.
- (iv) Location of all service entrances.

3.1.3.7.4 Electrical

- (i) Lighting fixtures outlined in the plan and roughly scheduled showing types of fixtures to be used.
- (ii) Major electrical equipment roughly scheduled indicating size and capacity.
- (iii) Complete preliminary one-line electrical distribution diagrams with indications of final location of service entry, transformers and emergency generator, if required.
- (iv) Description of specialized electrical systems (fire alarm, intercom, voice/data, MATV).
- (v) Legend showing all symbols used on drawings.
- (vi) Projected energy use.

3.1.3.8 Documents not complying with Subparagraph 3.1.3.7 shall be returned to the Design Consultant for correction at no additional charge to the Owner and with no change to the overall Project design schedule.

3.1.3.9 Upon Owner acceptance and approval of the Schematic Design, the structural bay sizes, floor elevations and exterior wall locations (building "footprint") may not be changed except by a design phase change order. Interior wall locations shall not be changed unless approved in writing by the Owner.

3.1.4 Design Development Phase.

3.1.4.1 The Design Consultant shall prepare from the approved Schematic Design Studies, for further approval by the Owner, the Design Development documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to structural, mechanical and electrical systems, materials and such other essentials as may be appropriate.

3.1.4.2 Design Development documents prepared by the Design Consultant shall include drawings and a written report in more detail than the Schematic Design documents and shall take into account the Owner's comments on the previous submittal. The report shall include the status of the Services in accordance with the Management Plan, a summary of programmed versus actual square footage by room or area in a format defined by the Owner, such discussion of design factors, if any, as are pertinent in the opinion of the Design Consultant; and outline descriptions of proposed engineered systems, construction methods, materials and work to be included in the construction contracts. Drawings shall include dimensioned site development plan, floors plans, elevations, and typical sections indicating proposed construction. Drawings shall also include information on major finishes as well as diagrammatic drawings illustrating fundamentals of major engineered systems, i.e., structural, mechanical and electrical. The Design Consultant shall submit an estimate and breakdown of the anticipated construction cost no later than two (2) business days in advance of the scheduled DD review meeting. The Design Consultant shall prepare such estimates in the form prescribed by the Owner to assure itself that the project cost is within the CCAP.

3.1.4.3 A statement from the Design Consultant with the final Design Development Phase submittal shall be included acknowledges that Design Consultant has reviewed all of the applicable Design Guidelines and Educational Specifications and confirms that they have been incorporated in the documents unless specifically noted in writing. The Design Consultant shall not incorporate asbestos-containing materials in the Project.

3.1.4.4 The Design Consultant shall submit the final Design Development package, meeting minutes, etc. to show how review comments made in Schematic Design have been addressed. It should be clear from the notes where the specific item was incorporated into the Design Development submittal or an explanation if it was not incorporated.

3.1.4.5 The Design Consultant shall provide the Owner's Representative periodically with copies of in-progress Design Development documents during the Design Development Phase. At the end of the Design Development Phase the Design Consultant shall provide the Owner's Representative with up to four (4) full size complete sets of the drawings and design phase report for approval by the Owner. The documents for this final Design Development Phase submittal shall contain all of the following unless otherwise agreed in writing:

3.1.4.5.1 Architectural

- (i) Project phasing plan.

- (ii) Building Code Summary Sheet.
- (iii) Life safety plans showing all fire walls and egress calculations.
- (iv) Site plan(s) with building located and an overall grading plan with a minimum of 1'-0" contour lines. All major site development such as orientation, access road paving, walls and outside support buildings, structured parking facilities, programmed play areas, and paved parking lots, along with preliminary stormwater management and erosion control features should be shown.
- (v) Floor plans (at 1/8" scale) with final room locations including all openings.
- (vi) Roof plan (at 1/8" scale) indicating structural slope, drainage areas and drain locations.
- (vii) Wall sections showing final dimensional relationships, materials and component relationships.
- (viii) Identification of all fixed and loose equipment, furniture, and furnishings.
- (ix) Room inventory data sheets showing locations of furniture and equipment for each room. Owner will provide lists of furniture and equipment and format to Design Consultant. Hard copies and digital formats (if desired) will be provided to the Design Consultant.
- (x) Finish schedule identifying all finishes.
- (xi) Preliminary door and window and hardware schedule showing final quantity plus type and quality levels.
- (xii) Virtually complete site plan including grading and drainage.
- (xiii) Preliminary development of details, including millwork details and large scale blow-ups.
- (xiv) Legend showing all symbols used on drawings.
- (xv) Outline specifications of materials to be specified in the Construction Contract Phase.
- (xvi) Reflective ceiling development including ceiling grid and all devices that penetrate the ceiling (i.e., light fixtures, sprinkler heads, ceiling register or diffusers, etc.).

3.1.4.5.2 Structural

- (i) Plan drawings with all structural members located and sized.
- (ii) Final building elevations.
- (iii) Outline specifications of materials to be specified in the Construction Contract Phase.
- (iv) Foundation drawings.

3.1.4.5.3 Plumbing

- (i) Piping, fixtures and equipment substantially located and sized.
- (ii) Outline specifications of materials to be specified in the Construction Contract Phase.

3.1.4.5.4 Mechanical

- (i) Heating and cooling load calculations for each space and major duct or pipe runs sized to interface structural.
- (ii) Major mechanical equipment scheduled indicating size and capacity.
- (iii) Ductwork and piping substantially located and sized.
- (iv) Above ceiling and/or mechanical room layouts to verify all, structural, mechanical, plumbing, electrical and fire protection systems fit in available spaces.
- (v) Location of devices in ceiling.
- (vi) Legend showing all symbols used on drawings.
- (vii) Outline specifications of materials to be specified in the Construction Contract Phase.
- (viii) Completed life cycle cost analysis in a format acceptable to the Owner and Design Consultant.

3.1.4.5.5 Electrical

- (i) All power consuming equipment and load characteristics.
- (ii) Total electric load.
- (iii) Major electrical equipment (switchgear, distribution panels, emergency generator, transfer switches, UPS system, etc.) dimensioned and drawn to scale into the space allocated.
- (iv) Preliminary site lighting design coordinated with the power company.
- (v) Outline specifications of materials to be specified in the Construction Contract Phase.
- (vi) Lighting, power, telecommunications and office automation devices and receptacles shown in plan.
- (vii) Preliminary light fixture schedule.
- (viii) One line diagram of specialized electrical systems (fire alarm, intercom, voice/data, MATV) showing location of control equipment/panels and devices.
- (ix) Interior electrical loads estimate for systems furniture, receptacles, lighting, food service equipment, and any other special use areas, etc.

3.1.4.5.6 Fire Protection

- (i) Provide flow test information

- (ii) Provide narrative of proposed fire protection system.
- 3.1.4.6 Documents not complying with Subparagraph 3.1.4.5 shall be returned to the Design Consultant for correction at no additional charge to the Owner and with no change to the overall Project design schedule.
- 3.1.5 Construction Contract Phase.
 - 3.1.5.1 Upon written authorization from the Owner to proceed, the Design Consultant shall prepare from the approved Design Development documents, working drawings and specifications setting forth in detail the requirements for the construction of the entire Project. The Owner will provide a form contract between the Owner and Contractor, general conditions, some supplemental conditions and form payment and performance bonds which the Design Consultant shall incorporate into the Construction Contract Documents. The Design Consultant shall prepare the advertisement for bids, instructions to bidders, time control specification provisions, and bid forms which the Design Consultant shall also incorporate into the Construction Contract.
 - 3.1.5.2 Construction Contract documents shall be completed within the time prescribed in the Management Plan.
 - 3.1.5.3 Detailed drawings shall cover all work included in the Project or designated portion thereof. It is the responsibility of the Design Consultant to assure that the Construction Contract requires that no asbestos-containing materials are to be incorporated in the Project.
 - 3.1.5.4 Single or multiple contracts shall be as stated in the Management Plan, and the detailed drawings for each contract shall be prepared by the Design Consultant with appropriate designation noted thereon.
 - 3.1.5.5 Specifications shall be prepared using the Construction Specifications Institute 33 division format. Specifications for products, materials and equipment shall be written in full compliance with N. C. Gen. Stat. § 133-3 and all other relevant laws and building codes. Brand names may be used to specify a particular product to be bid as an alternate only in accordance with North Carolina law.
 - 3.1.5.6 The Design Consultant shall update room data sheets to show furniture and equipment layouts as needed and requested by the Owner for each room. Owner will provide lists of furniture and equipment and format to the Design Consultant. When completed, final hard copies and digital information (if possible) will be provided by the Design Consultant to the Owner.
 - 3.1.5.7 The Design Consultant shall provide a color board with exterior and interior color selection for review, approval and use by the Owner. The approved color board shall be submitted for use by the Owner with, or before, the 60% Construction Contract documents submittal.
 - 3.1.5.8 The Design Consultant shall provide the Owner's Representative periodically with copies of in-progress Construction Contract documents during this phase. Additionally, and in accordance with the Management Plan, the Design Consultant shall submit for approval by the Owner up to four (4) full size complete sets of preliminary Construction Contract documents at the stage of 60% completeness along with the design phase report for approval by the Owner. The report shall incorporate the status of the Services in accordance with the Management Plan and a summary of programmed versus actual square footage in a format defined

by the Owner by room or area. The Design Consultant shall submit an estimate and breakdown of the anticipated construction cost no later than two (2) business days in advance of the scheduled 60% Construction Contract documents review meeting. The Design Consultant shall prepare such estimates in the form prescribed by the Owner to assure that the project cost is within the CCAP. The documents for this 60% Construction Contract submittal shall, at a minimum, satisfy all of the requirements of the Design Development Phase, plus all of the following unless otherwise agreed in writing:

3.1.5.8.1 General

- (i) Complete index of drawings
- (ii) Vicinity plan
- (iii) Building Code Summary
- (iv) Life safety plans
- (v) Energy data
- (vi) Accessibility summary
- (vii) U.L. details
- (viii) Outline specifications of materials to be specified in the Construction Contract Phase

3.1.5.8.2 Civil / Landscaping

- (i) Copy of the Site Survey
- (ii) Site plan satisfactory for site plan approval
- (iii) Site demolition plan
- (iv) Staking plan
- (v) Erosion control plan
- (vi) Grading plan
- (vii) Site utility plan
- (viii) Storm drainage plan, details and schedule
- (ix) Paving plans and details
- (x) Landscaping plans and details, plant schedule
- (xi) Outline specifications of materials to be specified in the Construction Contract Phase

3.1.5.8.3 Architectural

- (i) Demolition plans

- (ii) Key plans with final room numbers as approved by Owner
- (iii) Critical sections and details identified and drawn
- (iv) Roof plan with all penetrations
- (v) Kitchen layout and equipment schedule
- (vi) Exterior elevations with control joints located
- (vii) Enlarged toilet room layout with all fixtures and dimensions
- (viii) Toilet room elevations
- (ix) Reflected ceiling plan with all fixtures located and ceiling height identified
- (x) Bulkhead and lintel details
- (xi) Finish plan and schedule
- (xii) Door and hardware schedule, elevations, and head and jamb details
- (xiii) Masonry details
- (xiv) Roof details
- (xv) Stair details
- (xvi) Elevator sections and details if applicable
- (xvii) Furniture layout
- (xviii) Casework elevations
- (xix) Air Barrier System details for all penetrations and terminations
- (xx) Outline specifications of materials to be specified in the Construction Contract Phase

3.1.5.8.4 Structural

- (i) Demolition plans
- (ii) Footing plans and details
- (iii) Reinforcing steel plans
- (iv) Structural steel plans
- (v) Outline specifications of materials to be specified in the Construction Contract Phase

3.1.5.8.5 Plumbing

- (i) Demolition plan
- (ii) Fixture schedule

- (iii) Plumbing plans
- (iv) Enlarged toilet room plans
- (v) Riser diagrams for waste and vent, water, storm drainage, and gas
- (vi) Plumbing site plan
- (vii) Plumbing details
- (viii) Outline specifications of materials to be specified in the Construction Contract Phase

3.1.5.8.6 Mechanical

- (i) Demolition plan
- (ii) Ductwork and piping completely located and sized
- (iii) Complete equipment schedules
- (iv) Mechanical room enlarged plans and sections
- (v) Schematic control diagrams
- (vi) Mechanical details
- (vii) Outline specifications of materials to be specified in the Construction Contract Phase

3.1.5.8.7 Electrical

- (i) Demolition plan
- (ii) Fixture schedule
- (iii) Electrical site plan
- (iv) Power plan with panels located and identified
- (v) Lighting plan
- (vi) Complete plans for auxiliary systems including but not limited to, fire alarm, voice/data, intercom, MATV, and security
- (vii) Riser diagrams for all systems
- (viii) Panel schedule
- (ix) Outline specifications of materials to be specified in the Construction Contract Phase

3.1.5.8.8 Fire Protection

- (i) Demolition plan

- (ii) Fire protection plan with location of all hose and valve cabinets identified
 - (iii) Preliminary fire protection design calculations
 - (iv) Outline specifications
- 3.1.5.9 Documents not complying with Subparagraph 3.1.5.8 shall be returned to the Design Consultant for correction at no additional charge to the Owner and with no change to the overall Project design schedule.
- 3.1.5.10 After review and approval of the 60% Construction Contract documents by the Owner, the Design Consultant shall continue with preparation of final Construction Contract and bid documents, including final specifications for all authorized work on the Project and shall incorporate in those final documents the comments and any modifications and changes desired by the Owner and any modifications required for compliance with all applicable codes, regulations, standards, the approved program, and prior written approvals and instructions of the Owner. The resulting final Construction Contract submittal is to be a complete, fully coordinated, integrated package, suitable for bidding distribution, without any significant addenda or further significant clarification required. If the Project is a prototype that has been previously constructed, the Design Consultant shall verify that all applicable change orders from previous projects have been incorporated into the bidding documents.
- 3.1.5.11 The Design Consultant, and any relevant subconsultants, shall participate in such reviews and meetings as are necessary to ensure that the Project design conforms to all applicable codes and all requirements of responsible agencies and will make any changes to the Construction Contract which are required for issuance of all permits and legal authorizations needed to construct the Project.
- 3.1.5.12 The Design Consultant shall submit all relevant applications for all required building permits within a reasonable time to receive final comments in time to issue any required addenda to the bidding documents.
- 3.1.5.13 At the completion of the Construction Contract Phase, the Design Consultant shall submit to the Owner up to four (4) full size complete sets of the drawings and design phase report of 100% complete documents prepared by the Design Consultant for final Construction Contract Phase submittal which shall include the final working drawings and specifications.
- 3.1.5.14 A statement from the Design Consultant with the final Construction Contract Phase submittal shall be included that acknowledges that Design Consultant has reviewed all of the applicable Design Guidelines and Educational Specifications and represents that they have been incorporated in the documents, and that the actual versus programmed square footage has not changed from the approved Schematic Design and 60% Construction Contract submittals unless specifically noted in writing.
- 3.1.5.15 The Design Consultant shall submit with the final Construction Contract package, meeting minutes, etc. to show how review comments made in Design Development have been addressed. It should be clear from the notes if the specific item was incorporated into the Construction Contract submittal or not (with an explanation).
- 3.1.6 Permitting and Bidding/Negotiation Phase.
- 3.1.6.1 After receiving written authorization from the Owner, the Design Consultant shall proceed with the Permitting and Bidding/Negotiation Phase. There may be more

than one Permitting and Bidding/Negotiation Phase, depending upon the Management Plan.

- 3.1.6.2 The Design Consultant shall coordinate and document the reproduction, distribution and retrieval of the bidding documents. Further, the Design Consultant shall coordinate and document the collection and return of deposits or payments. In addition to the bidders, documents shall be issued to all required code authorities, contractors, plan room, services, and others, as the Owner designates.
- 3.1.6.3 The Design Consultant shall facilitate the filing of applications, endeavor to expedite and coordinate obtaining all necessary permits, licenses and approvals, including paying any associated fees or assessments, required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities, unless otherwise agreed in writing. Copies of all correspondence and applications shall be provided to the Owner. The Owner shall reimburse the Design Consultant for the actual cost of any fees or assessments paid by the Design Consultant pursuant to this subparagraph.
- 3.1.6.4 The Design Consultant shall prepare such clarifications and addenda to the bidding documents as may be required. The Design Consultant will provide these to the Owner for review prior to issuance to all holders of bid documents.
- 3.1.6.5 The Design Consultant will schedule and conduct Pre-Bid Conferences with prospective bidders to review the Project requirements. The Design Consultant shall provide knowledgeable representatives, including subconsultants, to participate in these conferences to explain and clarify the bidding documents. Within two (2) days after the Prebid Conference the Design Consultant shall deliver to the Owner, if needed, an addendum, incorporating any changes required from the Prebid Conference. The Design Consultant shall issue any required final addendum at least three (3) days prior to the bid date.
- 3.1.6.6 The Design Consultant shall assist the Owner in obtaining bids.
- 3.1.6.7 The Design Consultant shall prepare a certified bid tabulation and recommendation to the Owner concerning the award of the construction contract.
- 3.1.6.8 Should first bidding or negotiation produce prices in excess of the approved CCAP, the Design Consultant shall participate with the Owner's Representative in such re-bidding, re-negotiation, and re-design, at no additional expense to the Owner, as may be necessary to obtain price(s) within the approved CCAP or price(s) acceptable to the Owner. The Owner will assist in re-design decisions. All re-design must be approved by the Owner.
- 3.1.6.9 Should the Design Consultant re-design or conduct re-bidding under its responsibilities set out in the preceding paragraph, its' Construction Phase and Post Construction Services shall be extended to take re-design/re-bid delays into account at no additional expense to the Owner.
- 3.1.6.10 At the conclusion of bidding, the Design Consultant shall provide a copy of the conformed bid drawings and specifications (not 100% review set or bid set), in a source file format, with file names consistent with the Owner's requirements, for the Owner's use in updating its property accounting drawings for the Project
- 3.1.6.11 The Design Consultant shall assist the Owner's Representative in the preparation of the Agreement(s) between Owner and Contractor(s) for the Owner's execution. If requested by the Owner, the Design Consultant will prepare notice of contract award(s) and Notice(s) to Proceed for the Owner to forward to the Contractor(s).

3.1.7 Construction Phase.

- 3.1.7.1 The Construction Phase of the Project will commence with the award of the Construction Contract to the Contractor and will terminate when the Contractor achieves final completion of the Project.
- 3.1.7.2 The Design Consultant shall consult with the Owner and participate in all decisions as to the acceptability of subcontractors and other persons and organizations proposed by the Contractor for various portions of the work.
- 3.1.7.3 The Design Consultant shall review and approve shop drawings, samples, and other submissions of Contractor(s) for conformance with the design concept of the Project and for compliance with the Construction Contract. The Design Consultant shall prepare one final color board for the use of the Owner and one to be kept on the jobsite containing the Owner approved submittal samples. The review and return of submittals shall be accomplished by the Design Consultant within fourteen (14) calendar days from date of receipt except when otherwise authorized by the Owner's Representative.
- 3.1.7.4 The Design Consultant shall provide necessary Project drawings, in electronic format, to the Contractor and subcontractors for use on this Project.
- 3.1.7.5 The Owner's Representative will establish with the Design Consultant procedures to be followed for review and processing of all shop drawings, catalog submissions, project reports, test reports, maintenance manuals, and other necessary documentation, as well as requests for changes and applications for extensions of time.
- 3.1.7.6 The Design Consultant shall, when requested by the Owner's Representative, prepare documentation related to change orders to the Owner-Contractor Agreement.
- 3.1.7.7 The Design Consultant shall render to the Owner's Representative, within two (2) working days unless otherwise authorized by the Owner's Representative, interpretations of requirements of the Construction Contract. The Design Consultant shall make all interpretations consistent with the intent of and reasonably inferable from the Construction Contract. The Design Consultant's decision in matters relating to artistic effect shall be final if consistent with the intent of the Construction Contract.
- 3.1.7.8 Should errors, omissions or conflicts in the drawings, specifications or other Construction Contract documents by the Design Consultant be discovered, the Design Consultant will prepare and submit to the Owner's Representative, within two (2) working days unless otherwise authorized by the Owner's Representative, such amendments or supplementary documents and provide consultation as may be required, for which the Design Consultant shall make no additional charges to the Owner.
- 3.1.7.9 The Owner's Representative shall be the point of contact for the Owner, except when the Owner shall direct otherwise by Board policy or in writing. All instructions to the Contractor(s) shall be issued by the Design Consultant except when is directed otherwise by the Owner's Representative.
- 3.1.7.10 The Design Consultant, including subconsultants, will have access to the Project site at all times. All site visits, observations and other activities by the Design

Consultant shall be coordinated with the Owner's Representative and written report of such visits made promptly to the Owner's Representative.

- 3.1.7.11 The Design Consultant, including subconsultants, shall make such periodic visits to the Project site as may be necessary to familiarize themselves generally with the progress and quality of the construction and to determine in general if the construction is proceeding in accordance with the Construction Contract. On the basis of such on-site observations, the Design Consultant, including subconsultants, shall take reasonable steps to guard the Owner against defects and deficiencies in the construction of the Contractor. If the Design Consultant or a subconsultant observes any construction that does not conform to the Construction Contract, the Design Consultant shall immediately make an oral and written report of all such observations to the Owner's Representative. The Design Consultant and its subconsultants shall not be required to make exhaustive or full-time on-site observations to check the quality or quantity of the Contractor's work, but shall make as many observations as may be reasonably required to fulfil their obligations to the Owner. The Design Consultant shall not be responsible for construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the construction.
- 3.1.7.12 Periodic visits by the Design Consultant shall be not less than once weekly. Each subconsultant shall make periodic visits not less than once every two weeks, during the course of the Project applicable to its discipline. During critical construction phases, each subconsultant may be required to make periodic visits weekly. The subconsultants shall prepare and submit a report on each visit, submitted via the Design Consultant to the Owner's Representative within three (3) working days of the visit.
- 3.1.7.13 The Design Consultant shall render written field reports relating to the periodic visits and observations of the Project required by Subparagraph 3.1.7.11 within three (3) working days to the Owner's Representative in the form required by the Owner's Representative.
- 3.1.7.14 The Design Consultant shall hold weekly construction progress meetings attended by the Owner's Representative and representatives from the Contractor and any relevant subcontractors and subconsultants. The Design Consultant shall render written minutes of this meeting within three (3) working days to all participants in a format acceptable to the Owner's Representative.
- 3.1.7.15 Based upon observations at the site and upon the Contractor's applications for payment, the Design Consultant shall determine the amount owing to the Contractor(s), pursuant to the terms of the Construction Contract, and shall issue certificates for payment to the Owner in such amounts. The Design Consultant's signing of a certificate of payment shall constitute a representation by the Design Consultant to the Owner, based upon the Design Consultant's observations at the site and the data comprising the application for payment, that the construction has progressed to the point indicated, that to the best of the Design Consultant's knowledge, information and belief, the quality of the construction appears to be in accordance with the Construction Contract (subject to: an evaluation of the Project for conformance with the Construction Contract upon substantial completion, as defined in the Construction Contract; the results of any subsequent tests required by the Construction Contract; minor deviations from the Construction Contract correctable prior to completion; and to any specific qualifications stated in the certificate for payment), and that the Contractor is entitled to payment in the amount certified. By signing a certificate for payment to the Owner, the Design Consultant shall not be deemed to represent that it has made any examination to ascertain how and for what purpose the Contractor has used the monies paid since

the previous pay application, except the Design Consultant shall inquire into and notify the Owner of the status of any payment issues of which it is aware.

- 3.1.7.16 The Design Consultant and the Owner shall have authority to reject the Contractor's work when in the Owner's or the Design Consultant's opinion the work does not conform to the Construction Contract. Whenever in the Owner's or the Design Consultant's reasonable opinion it is considered necessary or advisable to enforce the proper implementation of the intent of the Construction Contract, the Owner shall have the authority to require special inspection or testing of any of the Contractor's work in accordance with the provisions of the Construction Contract whether or not such work is fabricated, installed or completed.
- 3.1.7.17 When the Contractor notifies the Design Consultant that it considers the construction or a designated portion of the construction substantially complete, the Design Consultant and its subconsultants, after notice to the Owner, shall review and evaluate the construction and prepare and submit to the Owner and the Contractor a punch list of the construction which is not in conformance with the Construction Contract. When the Design Consultant on the basis of an inspection determines that the construction or designated portion thereof is substantially complete, the Design Consultant will then prepare a certificate of substantial completion which shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the construction and insurance. Should the Design Consultant determine that the construction or a designated portion thereof is not substantially complete after the Contractor notifies the Design Consultant that it considers such construction to be substantially complete, the Design Consultant shall provide the Contractor with written notice stating why the construction or designated portion is not substantially complete. The Owner may request that the Design Consultant review and evaluate the construction and prepare a punch list on any portion of the Project.
- 3.1.7.18 The Design Consultant shall obtain governing agency occupancy approval if any exceptions arise related to the design or specified materials.
- 3.1.7.19 The Design Consultant shall review requests by the Owner or the Contractor for changes in the Project including adjustments to the Construction Contract sum or time and shall promptly make a recommendation to the Owner who may authorize such changes in writing.
- 3.1.7.20 The Design Consultant shall render initial decisions on claims, disputes or other matters in question between the Owner and the Contractor as provided in this Agreement and the Construction Contract.
- 3.1.7.21 The Design Consultant shall be a point of contact with any and all Contractors, except when the Owner shall direct the Design Consultant otherwise. All instructions to the Contractor(s) shall be issued by the Design Consultant, except when directed otherwise by the Owner.
- 3.1.7.22 The Design Consultant and the relevant subconsultant shall review test data to determine that equipment is performing in accordance with the requirements of the design. In addition, the Design Consultant and the relevant subconsultant will witness the Contractor's demonstration to the Owner of all such systems.
- 3.1.7.23 The Design Consultant and the relevant subconsultant shall provide assistance in the original operation of any equipment or system such as initial start-up, testing, adjusting and balancing.

- 3.1.7.24 The Design Consultant and the relevant subconsultant shall observe, review test data, and certify the original operation of any equipment or system such as initial start-up testing, adjusting and balancing to make sure that all equipment and systems are properly installed and functioning in accordance with the design and specifications.
- 3.1.7.25 The Design Consultant and its subconsultants shall conduct up to two (2) comprehensive final completion inspections pursuant to the Construction Contract. If more than two (2) final completion inspections are required, through no fault of the Design Consultant, the additional inspections shall be deemed Additional Services.
- 3.1.7.26 The Design Consultant shall make a recommendation in writing to the Owner regarding liquidated damages as may be applicable. If requested by the Owner or the Contractor, the Design Consultant shall certify in writing the date that the building is enclosed as defined in the Contract Documents.
- 3.1.7.27 Upon correction of the deficiency reports (punch lists), and acceptance of all other close-out submittals and certificates of the Contractor, the Owner's Representative and the Design Consultant shall review and approve the application for final payment and forward it to the Owner for execution. In addition, the Design Consultant shall confirm in writing that the Project conforms to the Construction Contract.
- 3.1.7.28 The Design Consultant shall obtain from the Contractor drawings, prints, and other data necessary for the accurate preparation of the record drawings.
- 3.1.8 Post Construction Project Phase.
- 3.1.8.1 The Design Consultant and the relevant subconsultant shall review and confirm the adequacy of the Contractor-furnished maintenance and operating instructions, schedules, guarantees, bonds, and certificates of inspection as required by the Construction Contract and forward within two weeks of receipt of approved materials, all approved copies to the Owner's Representative for use by the Owner. In addition, the Design Consultant and the relevant subconsultant shall conduct such observations as necessary to confirm all material and equipment warranties are in compliance with applicable specifications.
- 3.1.8.2 Educational Commissioning
- 3.1.8.2.1 The Design Consultant shall produce two or more presentation boards (approximately 24" x 36", full-color, with hanging apparatus) for each project for use by the Owner. Boards will include photos, floor plans, elevations, and written documentation related to sustainable design features, community use, site development, flexibility of educational spaces, etc. These boards will be left at the school to be shared with students, parents, faculty/staff, school visitors, etc., for the first year of operation, at a minimum.
- 3.1.8.2.2 The Design Consultant shall provide input/review for development of PowerPoint presentation. The PowerPoint presentation will be used to educate faculty & staff about the special features available in their new school facility, specifically including the items in section 3.1.8.2.1. Both the original PowerPoint presentation (Source File) and a pdf version will be delivered electronically and on CD. The CD will be left with the school principal for future use with PTA, new faculty/staff, etc.

3.1.8.2.3 The Design Consultant shall provide input on signage to be posted in and around the school facility to point out various design features that support sustainability, facility efficiency, energy conservation, learning and teaching.

3.1.8.3 The Design Consultant shall prepare and deliver three (3) printed sets, one (1) pdf set, and one (1) AutoCAD set of record drawings and all related files, including the design specifications (project manual) and all addenda. The electronic files shall be delivered in PDF, AutoCAD.DWG, and Source File formats via electronic file delivery and CD. These files will reflect and certify significant changes in the Project made during the construction process, based on marked-up contract drawings, prints, and other data furnished by the Contractor and the applicable addenda, clarifications, and change orders which occurred during the Project for delivery to the Owner within thirty (30) days after final completion of the Project. All electronic file names shall be consistent with the name of the sheet(s) they represent in accordance with the Owner's criteria.

3.1.8.4 The Design Consultant will report the use of subconsultants, their function, contract amount and MBE classification to the Owner at the conclusion of the Project.

3.2 Design Consultant's Professional Responsibility and Standard of Care.

3.2.1 The Design Consultant shall perform its services, including but not limited to the Basic Services and any Additional Services authorized in writing by the Owner, consistent with the professional skill and care ordinarily provided by design consultants practicing in or around the Research Triangle Park, North Carolina area under the same or similar circumstances. The Design Consultant shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

3.2.1.1 By execution of this Agreement, the Design Consultant warrants that (a) it is an experienced and duly licensed firm or individual having the ability and skill necessary to perform all the Services required of it under this Agreement in connection with the design and construction of a project having the scope and complexity of the Project contemplated herein; (b) it has the capabilities and resources necessary to perform its obligations hereunder; and (c) it is familiar with all current laws, rules and regulations which are applicable to the design and construction of the Project (such laws, rules and regulations including, but not limited to, all local ordinances, requirements of building codes of city, county, state and federal authorities which are applicable to the Project, local sanitary laws and rules and regulations, and all orders and interpretations by governing public authorities of such ordinances, requirements, codes, laws, rules and regulations in effect at the time of commencement of Services on the Project), and that all drawings, specifications and other documents prepared by the Design Consultant shall be prepared in accordance with and shall accurately meet, reflect and incorporate all such applicable laws, rules and regulations.

3.2.1.2 The Design Consultant shall ensure that any subconsultants: (a) are an experienced and duly licensed firm or individual having the ability and skill necessary to perform the requested services; (b) have the capabilities and resources necessary to perform its obligations; and (c) are familiar with all current laws, rules and regulations which are applicable to the work of the subconsultant (such laws, rules and regulations including, but not limited to, all local ordinances, requirements of building codes of city, county, state and federal authorities which are applicable to the subconsultant's work, local sanitary laws and rules and regulations, and all orders and interpretations by governing public authorities of such ordinances, requirements, codes, laws, rules and regulations in effect at the time of commencement of services on the Project and relevant to the subconsultant's

work), and that all drawings, specifications and other documents prepared for the Project shall be prepared in accordance with and shall accurately meet, reflect and incorporate all such applicable laws, rules and regulations.

- 3.2.2 The Design Consultant hereby represents and agrees that the drawings, specifications and other documents prepared pursuant to this Agreement shall be complete and functional, except as to any deficiencies which are due to causes beyond the control of the Design Consultant and its subconsultants, and that the Project, if constructed in accordance with the drawings, specifications and other documents, shall be structurally sound and a complete and properly functioning facility in accordance with the terms of this Agreement. Any suggestions, recommendations or review comments by the Owner shall not reduce or diminish the Design Consultant's responsibilities pursuant to this Agreement.
- 3.2.3 The Design Consultant shall be responsible for damages to the Owner that are a result of errors, inconsistencies, and/or omissions in the drawings, specifications, other documents or other Basic Services. The Design Consultant will correct at no additional cost to the Owner any and all errors and omissions in the drawings, specifications and other documents prepared by the Design Consultant and its subconsultants. The Design Consultant further agrees to render assistance, at no additional cost to the Owner, in resolving problems relating to the design or specified materials. If errors, inconsistencies, and/or omissions in the Construction Contract documents are discovered, which are the result of negligence by the Design Consultant or any of his employees, agents, or subconsultants, the Design Consultant shall be responsible for damages to the Owner, including but not limited to, any additional costs to correct deficiencies in the construction caused by said errors, inconsistencies, and/or omissions.
- 3.2.4 It is the responsibility of the Design Consultant to make certain that, at the time the Project is bid, all drawings, specifications and other documents are in accordance with applicable laws, statutes, building codes and regulations and that appropriate reviews and approvals are requested and obtained from federal, state and local governments.
- 3.2.5 It shall be the responsibility of the Design Consultant and its subconsultants throughout the period of performance under this Agreement to exercise the abilities, skills and care customarily used by Design Consultants and subconsultants of the training and background needed to perform the Services who practice in Durham County, Research Triangle Park, North Carolina or similar communities.

3.3 Project Requirements.

- 3.3.1 A component of Exhibit A - Design, Construction and Equipment Budget is the CCAP. The CCAP for this Project is: Dollars, (\$). The CCAP for this Project, or designated portion thereof, may be modified in writing only in the form of a Design Phase Change Order, executed by the Owner and Design Consultant. The Design Consultant shall prepare drawings, specifications and other documents necessary so that the construction contract bid from a responsive, responsible bidding contractor, acceptable to the Owner, will be within the CCAP.
 - 3.3.1.1 During all phases of the Project the Design Consultant shall prepare such estimates as it deems necessary, at no additional cost to the Owner, to assure itself that the estimated Project cost is within the CCAP and shall supply such data, information or estimates as the Owner may require to substantiate the Design Consultant's contention that the Project cost is within the CCAP.

- 3.3.1.2 With each Design Phase submittal and each interim, revisionary or subsequent design submittal of the Design Consultant to the Owner, the Design Consultant shall make the following statement in writing:

"The drawings, specifications, and other documents submitted herewith, in my/our professional opinion, fulfill the Program of Requirements and the Project indicated by them may be purchased by the Owner in a construction contract or contracts, the total price of which will not exceed the CCAP, which is _____ Dollars (\$ _____) (based on bid date of no later than _____) for this Project, and may be constructed completely within said CCAP and the in-progress contingency fund of _____ % of said price. Further, in my/our professional opinion, the above mentioned documents submitted herewith have been prepared in accordance with the Agreement for Design Consultant Services."

With each Design Phase submittal and each interim, revisionary or subsequent design submittal of the Design Consultant to the Owner and with his certification of the final payment to the contractor, the Design Consultant shall make the following statement in writing:

"No asbestos-containing building materials have been specified and to the best of my/our knowledge and belief none have been incorporated into this Project."

- 3.3.2 Incorporated herein and made a part of this Agreement as Exhibit B is the Program of Requirements which defines the physical and environmental parameters for the Project and establishes the design objectives and criteria. No deviations from the Program of Requirements shall be allowed without written approval for change, in the form of a Design Phase Change Order executed by the Owner and Design Consultant.
- 3.3.3 Incorporated herein and made a part of this Agreement as Exhibit C is the Management Plan for the Project which defines the sequence and timing of the design and construction activities. The Management Plan is the schedule to be adhered to by the Design Consultant. No deviation from the Management Plan shall be allowed without written approval for a change in the Management Plan, in the form of a Design Phase Change Order executed by the Owner and Design Consultant. Should the Owner determine that the Design Consultant is behind schedule due to the fault of the Design Consultant, the Design Consultant shall expedite and accelerate its efforts, including additional manpower and/or overtime, to maintain the approved design schedule at no additional cost to the Owner.

3.4 Project Conferences.

- 3.4.1 Throughout all phases of the Project, the Design Consultant and its subconsultants shall meet periodically with the Owner when reasonably requested. Participants shall be as determined by the Owner. As a minimum, regularly scheduled meetings which the Design Consultant will attend include:
- 3.4.1.1 Design Consultant orientation.
 - 3.4.1.2 Predesign conferences on a biweekly basis.
 - 3.4.1.3 Predesign project analysis sessions.
 - 3.4.1.4 Design conferences on a monthly basis.
 - 3.4.1.5 Prebid conference for each bid package.

- 3.4.1.6 Preconstruction conference for each bid package.
- 3.4.1.7 Construction progress meetings on a weekly basis for each bid package.
- 3.4.1.8 Substantial completion, final completion and completion of warranty period inspections for the Construction Contract.
- 3.4.2 The Design Consultant shall be responsible for scheduling and attending any meetings necessary to properly coordinate the design effort including, without limitation, meetings with governing agencies, code officials and applicable utilities.
- 3.4.3 The Design Consultant shall be responsible for preparing accurate and complete minutes of all Project conferences and distributing same to all participants.
- 3.5 Serving As Witness.
- 3.5.1 The Design Consultant, and any required subconsultant, shall prepare for and provide testimony or otherwise participate in public hearings, and legal proceedings, including as necessary to secure governmental approval of zoning or land use clearances, for the Project as part of Basic Services, unless said testimony or participation is requested by the Owner and consists of expert testimony not related to this Project or the Contractor's work.
- 3.6 Construction Warranty.
- 3.6.1 The Design Consultant and its subconsultants shall assist the Owner in resolution of warranty issues as may be required to determine responsibility for deficiencies.
- 3.6.2 The Design Consultant and its subconsultants shall conduct an inspection of the project one (1) month prior to warranty expiration and provide to the Owner a written report specifying any warranty deficiencies which may exist.

ARTICLE 4

COMPENSATION

4.1 Basic Services Compensation.

The Owner shall compensate the Design Consultant in accordance with the terms and conditions of this Agreement, including the following:

- 4.1.1 For the Basic Services of the Design Consultant, compensation shall be in the amount of \$, plus approved reimbursable expenses ("Basic Services Compensation").
 - 4.1.1.1 For the purposes of Subparagraph 4.1.1, no amount is to be included within the scope of the CCAP for the cost of land, rights-of-way or other non-construction costs which are the responsibility of the Owner.
 - 4.1.1.2 For the purposes of Subparagraph 4.1.1, no labor and materials furnished by the Owner for the Project shall be included with the scope of the CCAP.
 - 4.1.1.3 For the purposes of Subparagraph 4.1.1, should the Owner request additions to the Project which would cause a change or changes in the scope of the Program of Requirements or previously approved designs or design criteria, the CCAP shall be increased by the estimated aggregate amount of such change(s).

4.1.1.4 In the event the Owner requests changes to the Project or elects not to complete the Project or any portion thereof, which would decrease the most recently approved CCAP, compensation due the Design Consultant, as to such deletion or decrease, shall be adjusted downwards for remaining Services to be performed but not for Services already performed to the date of receipt by the Design Consultant of the written requested change or notice of the intent not to complete part or all of the Project, in accordance with the basic payment schedule set forth in Paragraph 4.2 hereof. Unless otherwise agreed in writing by the parties, the reduction in the Design Consultant's fee shall be calculated by multiplying the dollar amount of the reduction in the CCAP by the fee percentage noted in 4.1.1 above and then multiplying that dollar amount by the percentage of design work not completed.

4.1.2 The Basic Services Compensation stated in Paragraph 4.1.1 includes all compensation and other payments due the Design Consultant (manpower, overhead, profit, direct costs, travel, copies, postage, telephone and facsimile service, etc.) in the performance of the Basic Services.

4.2 Payments to the Design Consultant.

Payments on account of the Design Consultant shall be made as follows:

4.2.1 Payments for Basic Services, including any design phase change orders, shall be made monthly in proportion to services performed so that the compensation at the completion of each Phase shall equal the following percentages of the Basic Services Compensation. Payment shall be made monthly upon presentation of the Design Consultant's statement of services, fully supported by invoices, time cards, and certifications that all subconsultants have been paid, and other documentation as requested by the Owner.

Design Narrative Phase	5% (\$_____)
Schematic Design Phase	10% (\$_____)
Design Development Phase	20% (\$_____)
Construction Contract Phase	30% (\$_____)
Permitting and Bidding/Negotiation Phase	5% (\$_____)
Construction Phase	25% (\$_____)
Post Construction Services Phase	5% (\$_____)

4.2.2 No deductions shall be made from the Basic Services Compensation on account of penalty, liquidated damages, retainage or other sums withheld from payments to Contractor.

4.2.3 Deductions may be made from the Basic Services Compensation on account of errors and omissions in the drawings, specifications and other documents prepared by the Design Consultant or in the Design Consultant's performance of its obligations under this Agreement.

4.2.4 Payments due the Design Consultant under the Agreement shall bear interest at the legal rate commencing forty-five (45) days after the date the billing is received

by the Owner, unless the Owner has a good faith basis to believe it is entitled to withhold payment. If the Owner disputes the Design Consultant's claim for compensation, the Design Consultant, unless otherwise directed by the Owner, will continue to perform as required hereunder until final resolution of such dispute. The Design Consultant is required to continue with the work in the event of a dispute, without waiver of any claims.

4.2.5 Reimbursable expenses shall include such reasonable, actual expenditures made by the Design Consultant, its employees or subconsultants, in the interest of the Project, limited to the following: the reasonable expense of transportation and living when traveling from the Design Consultant's or subconsultant's office to a location outside of Durham County, North Carolina in connection with the Project; and expense of reproductions, postage and handling of Drawings and Specifications, beyond those for the Design Consultant's and subconsultants' use and those required as the phase submittals ("Reimbursable Expenses"). Before incurring any Reimbursable Expenses, the Design Consultant must request and receive written authorization from the Owner. Reimbursable Expenses incurred while performing Basic or Additional Services shall be computed at a multiple of 1.10 times actual cost.

4.2.6 Notwithstanding Section 7.1, the Parties agree that the Design Consultant is authorized to proceed with the printing and delivery of the following documents, but that said reimbursable cost shall not exceed \$ [REDACTED] without the express written permission of the Owner:

- (a) Agency Submittals;
- (b) Bid Documents, including plan rooms; and
- (c) Various design phase submissions to the Owner.

4.2.7 If the Project is suspended for more than six months or abandoned in whole or in part by the Owner, the Design Consultant shall be paid compensation for services performed prior to receipt of written notice from the Owner of such suspension or abandonment. If the Project is resumed after being suspended for more than twelve months, the Design Consultant's Basic Services Compensation shall be equitably adjusted.

4.3 Additional Services Compensation.

4.3.1 With respect to any Additional Services, as described in Article 7 herein, performed by the Design Consultant hereunder, the Design Consultant and Owner shall negotiate an equitable adjustment to the Basic Services Compensation ("Additional Services Compensation"). However, if negotiations are not successful prior to the time the Additional Services are needed, the Owner may direct the Design Consultant to proceed with the Additional Services on a time spent basis with compensation to be computed as follows:

4.3.1.1 Design Consultant time shall be at the fixed hourly rate included in the fee schedule attached hereto as Exhibit E and made part of this agreement.

4.3.1.2 Subconsultant time shall be at an hourly fixed rate agreed to between the Design Consultant and the Owner prior to the subconsultant performing any Additional Services.

4.3.1.3 Reinspection and resubmittal review time that is billable to the Contractor shall be reimbursed to the Design Consultant as noted in 4.3.1.1 and 4.3.1.2, except the total compensation shall not exceed the amount attributable to the Contractor.

- 4.3.2 Payments for Additional Services of the Design Consultant shall be made monthly upon presentation of the Design Consultant's statement of services, fully supported by invoices, time cards, and other documentation as requested by the Owner.
- 4.4 Accounting Records.
- 4.4.1 Records of the Design Consultant with respect to Additional Services and payroll, and subconsultant and other expenses (including Reimbursable Expenses) pertaining to the Project, shall be kept according to generally accepted accounting principles and shall be available to the Owner or its authorized representative for inspection and copying at mutually convenient times.
- 4.4.2 At the request of the Owner or its authorized representative, the Design Consultant will supply in a timely manner and certify as accurate, unaltered copies of all time sheets, invoices, and other documents to substantiate and document any and all Additional Services and Reimbursable Expenses.

ARTICLE 5

PERIOD OF SERVICE

- 5.1 Specific dates relating to the period of services are set forth in Exhibit C - Management Plan.
- 5.2 Unless earlier terminated as provided in Article 10 hereof, this Agreement shall remain in force for a period which may reasonably be required for the Basic Services and Additional Services hereunder. However, the provisions of the Agreement relating to Professional Responsibility (Paragraph 3.2); Professional Liability coverage (Article 9); and Ownership of Documents/Confidential Information (Article 12) shall remain in effect after termination of the other provisions of the Agreement.
- 5.3 If the Project is delayed through no fault of the Design Consultant, all specific dates noted in the Management Plan that are affected by the delay will be adjusted by the number of calendar days of the delay.
- 5.4 If the Owner materially revises the Project, a reasonable time extension or reduction shall be negotiated between the Design Consultant and the Owner.
- 5.5 Time is of the essence in this Agreement.

ARTICLE 6

OWNER'S RESPONSIBILITIES

- 6.1 The Owner shall provide full information regarding the requirements for the Project.
- 6.2 The Owner shall examine documents submitted by the Design Consultant and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Design Consultant's Services.
- 6.3 If required for this Project, the Owner shall furnish a certified land survey of the site, giving as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and data pertaining to existing buildings, other improvements and trees; and full information

concerning available service and utility lines, both public and private, above and below grade, including inverts and depths.

- 6.4 The Owner shall pay for the services of a soils engineer or other consultant, when such services are deemed necessary by the Design Consultant or Owner's Representative, to provide reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests and other necessary operations for determining subsoil, air and water conditions, with appropriate professional interpretations thereof.
- 6.5 The Owner shall pay for environmental, hazardous material, chemical and other laboratory tests, inspections and reports as required by law that are not otherwise called for in this Agreement.
- 6.6 The Owner shall furnish such legal, accounting, and insurance counseling services as the Owner may deem necessary for the Project, and such auditing services as it may require to ascertain how, or for what purposes, the Contractor has used the moneys paid to it under the Construction Contract.
- 6.7 All services, information, surveys and reports required of the Owner shall be furnished at the Owner's expense and the Design Consultant shall be entitled to rely upon their accuracy and completeness.
- 6.8 The Owner shall furnish information and approvals required of it expeditiously, for orderly progress of the construction.
- 6.9 The Owner shall reimburse the Design Consultant for any fees or assessments paid by the Design Consultant pursuant to Article 3.1.6.3.
- 6.10 The Design Consultant shall coordinate the services of the Owner's consultants listed below in the section with those services provided by the Design Consultant. Upon the Design Consultant's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided. If in the opinion of the Architect a particular consultant or engineering service is needed to produce a reasonably complete and accurate set of Construction Documents or to satisfy the Owner's Program requirements based upon the information available to the Design Consultant as of the date of this Agreement and said consultant or engineering service is not listed as being provided by the Owner below, it is the responsibility of the Architect to provide that service at not additional cost to the Owner.

The Owner shall furnish or provide the following services only if specifically designated:

- .1 Geotechnical
- .2 Surveying
- .3

ARTICLE 7

ADDITIONAL SERVICES

- 7.1 If any of the following Additional Services, as defined in this Article, are authorized in advance by the Owner in writing, the Design Consultant shall furnish or obtain from others the authorized services. If authorized in advance, in writing, by the Owner, the Design Consultant shall be paid for these Additional Services by the

Owner pursuant to Article 4.3 to the extent they exceed the obligations of the Design Consultant under this Agreement.

- 7.1.1 Providing fully detailed presentation models or presentation renderings, not included in Basic Services.
- 7.1.2 Providing financial feasibility or other special studies, not included in Basic Services.
- 7.1.3 Providing planning surveys or alternative site evaluations.
- 7.1.4 Providing design services relative to future facilities, systems and equipment which are not intended to be constructed as part of the Project other than general and master planning for future work as indicated by the Program of Requirements.
- 7.1.5 Providing acoustical services by an individual or firm with specific expertise in acoustics for an elementary school project.
- 7.1.6 Making major revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given by the Owner.
- 7.1.7 Preparing supporting data and other services in connection with an Owner-initiated change order if the Basic Compensation is not commensurate with the services required of the Design Consultant.
- 7.1.8 Providing operating and maintenance manuals, training personnel for operation and maintenance, and consultation during operations other than initial start-up, and coordinating with the Contractor(s) to provide in electronic format, as designated by the Owner's Representative, detailed product and warranty information for input to the Owner's facility management computer system.
- 7.1.9 Providing soils sampling, classification and analysis; however, analysis of existing soils information and soils analysis during the Design Phase and recommendations needed during the Construction Phase of the Project are not considered Additional Services.
- 7.1.10 Providing services of interior furnishings not included in Basic Services or otherwise authorized by this Agreement.
- 7.1.11 Providing professional services made necessary by major defects in the Contractor's work which were not preventable by the Design Consultant or a subconsultant in the performance of its Services pursuant to this Agreement.
- 7.1.12 Providing surveying services such as platting; mapping; subdivision agreements or recording subdivision plats.
- 7.1.13 Providing Services prior to actual substantial completion of the Project made necessary by delays or defects in the Contractor's work by more than ninety (90) days from the date agreed to for substantial completion, which delay the Design Consultant could not reasonably have prevented through the performance of its services pursuant to this Agreement.
- 7.1.14 Providing Services made necessary by delays or defects in the Contractor's work for more than sixty (60) additional days for the time period between the scheduled substantial completion and final completion dates, which delay the Design Consultant could not reasonably have prevented through the performance of its services pursuant to this Agreement.

- 7.1.15 Providing extensive assistance in the initial start-up and test operations of equipment or systems which is beyond the scope of that normally required to insure proper operation in accordance with the design and specifications.
- 7.1.16 Providing services necessitated by out-of-town travel required by the Design Consultant and approved by the Owner other than visits to the Project and other than for travel required to accomplish the Basic Services.
- 7.1.17 Providing consultation concerning replacement of any of the Contractor's work on the Project damaged by fire or other cause during construction, and furnishing professional services of the type set forth in Basic Services as may be required in connection with the replacement of such work.
- 7.1.18 Providing services after the Owner makes final payment to the Design Consultant other than services required by this Agreement.
- 7.1.19 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural and engineering practices consistent with the terms of this Agreement.
- 7.1.20 Providing services in response to the Owner's request for additions to the original Project scope.

ARTICLE 8

NOTICES

- 8.1 Any notice required by this Agreement or other communications to either party by the other shall be in writing and deemed given when delivered personally or when deposited in the United States Post Office, first class, postage prepaid, addressed as follows, or to such other address as shall be duly given by notice meeting the requirement of this Article.

To Owner: Durham Public Schools Board of Education
511 Cleveland Street
Durham, NC 27702

To Design Consultant:

ARTICLE 9

INSURANCE

- 9.1 The Design Consultant shall purchase and maintain insurance for protection from claims under workers' or workmen's compensation acts; claims resulting from negligent acts or omissions for damages because of bodily injury, including personal injury, sickness, disease or death of any of the Design Consultant's employees or any other person; claims for damages because of injury to or destruction of personal property including loss of use resulting therefrom; and claims arising out of the performance of this Agreement and caused by negligent acts or omissions for which the Design Consultant is legally liable. Minimum limits of coverage shall be:

- a. Workers' Compensation:
Statutory
- b. Employer's Liability:
\$1,000,000.00 Each Accident
\$1,000,000.00 Policy Limit
\$1,000,000.00 Each Employee
- c. Commercial General Liability
(Standard ISO Occurrence Form)

Combined Single Limit for Bodily Injury, Property Damage or Personal General Aggregate Injury of:

\$2,000,000.00 (Except Products Completed Operations Limit)
\$2,000,000.00 Products Completed Operations Aggregate Limit
\$1,000,000.00 Personal & Advertising Injury Limit
\$1,000,000.00 Each Occurrence Limit
- d. Commercial Automobile Insurance including coverage for owned, non-owned and hired vehicles:

\$1,000,000.00 Combined Single Limit for Bodily Injury and Personal Damage
- e. Professional Liability:

\$2,000,000 Each Claim
\$2,000,000 Policy Aggregate
- f. Umbrella Liability Insurance to "pay on Behalf of the Insured":

\$1,000,000.00 Limit

- 9.2 Evidence of such insurance shall be furnished to the Owner, and the Owner shall receive thirty (30) days prior written notice of any cancellation, non-renewal or reduction of coverage of any of the policies. Upon notice of such cancellation, non-renewal or reduction, the Design Consultant shall procure substitute insurance so as to assure the Owner that the minimum limits of coverage are maintained continuously throughout the period of this Agreement. All insurance companies providing the above insurance shall be licensed by the Insurance Department of the State of North Carolina and maintain a rating by AM Best or similar rating company of at least an "A".
- 9.2.1 The Design Consultant shall deliver to the Owner a certificate of insurance for its professional liability coverage annually, so long as it is required to maintain such coverage under paragraph 9.4.
- 9.3 The Owner shall be added as an additional named insured on all policies, except the professional liability, commercial, automobile and worker's compensation policies. All insurance policies, except the professional liability policy, shall contain a waiver of subrogation against the Owner.
- 9.4 The Design Consultant shall maintain in force during the performance of this contract and for six (6) years after final completion of the Project, the professional liability insurance coverage referenced above.

- 9.5 The Design Consultant shall require its subconsultants to maintain all types of insurance as mentioned in this Article 9 and shall provide to the Owner certificates of insurance as described in Article 9.2 for all subconsultants.
- 9.6 The Owner shall be under no obligation to review any certificates of insurance provided by the Design Consultant or to check or verify the Design Consultant's compliance with any or all requirements regarding insurance imposed by this Agreement. The Design Consultant is fully liable for the amounts and types of insurance required herein and is not excused should any policy or certificate of insurance provided by the Design Consultant not comply with any or all requirements regarding insurance imposed by this Agreement.
- 9.7 Should the Design Consultant or a subconsultant fail to provide and maintain in force any insurance or insurance coverage required by this Agreement or by law, or should a dispute arise between Owner and any insurance company of the Design Consultant or a subconsultant over policy coverage or Limits of Liability as required herein, the Owner shall be entitled to recover from the Design Consultant all amounts payable, as a matter of law, to Owner or any of its agents, had the required insurance or insurance coverage been in force. Said recovery shall include, but is not limited to interest for the loss of use of such amounts of money, plus all attorney's fees, costs and expenses incurred in securing such determination and any other consequential damages arising out of the failure of the Design Consultant or a subconsultant or insurance company to comply with the provisions of this Agreement, or any policy required hereby, or any other requirements regarding insurance imposed by law. Nothing herein shall limit any damages for which Design Consultant is responsible as matter of law.

ARTICLE 10

TERMINATION OF AGREEMENT

- 10.1 If: (a) the Owner abandons the Project or the Project is stopped for more than six (6) months due to actions taken by the Owner, or under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable through no act or fault of the Design Consultant or its agents or employees, or (b) the Owner has failed to substantially perform in accordance with the provisions of this Agreement due to no fault of the Design Consultant and such non-performance continues without cure for a period of thirty (30) days after the Owner receives from the Design Consultant a written notice of such non-performance (including a detailed explanation of the actions of the Owner required for cure), the Design Consultant may, upon fifteen (15) days additional written notice to the Owner, terminate this Agreement, without prejudice to any right or remedy otherwise available to the Owner, and recover from the Owner payment for all Services performed to the date of the notice terminating this Agreement. The recovery of this payment shall be the sole and exclusive remedy of the Design Consultant as a result of termination under this paragraph. The Owner shall not be liable to the Design Consultant for any special or consequential damages as a result of the termination of this agreement.
- 10.2 Upon the appointment of a receiver for the Design Consultant, or if the Design Consultant makes a general assignment for the benefit of creditors, the Owner

may terminate this Agreement, without prejudice to any right or remedy otherwise available to the Owner, upon giving three (3) days written notice to the Design Consultant. If an order for relief is entered under the bankruptcy code with respect to the Design Consultant, the Owner may terminate this Agreement by giving three (3) days written notice to the Design Consultant unless the Design Consultant or the trustee: (a) promptly cures all breaches; (b) provides adequate assurances of future performance; (c) compensates the Owner for actual pecuniary loss resulting from such breaches; and (d) assumes the obligations of the Design Consultant within the statutory time limits.

- 10.3 If the Design Consultant persistently or repeatedly refuses or fails, except in cases for which an extension of time is provided, to supply sufficient properly skilled staff or proper materials, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority jurisdiction, or otherwise substantially violates or breaches any term or provision of this Agreement, then the Owner may, without prejudice to any right or remedy otherwise available to the Owner, and after giving the Design Consultant seven (7) days written notice, terminate this Agreement.
- 10.4 Upon termination of this Agreement by the Owner under Article 10.2 or 10.3, the Owner shall be entitled to furnish or have furnished the Services to be performed hereunder by the Design Consultant by whatever method the Owner may deem expedient. Also, in such cases, the Design Consultant shall not be entitled to receive any further payment until completion of the Project; and the total compensation to the Design Consultant under this Agreement shall be the amount which is equitable under the circumstances. If the Owner and the Design Consultant are unable to agree on the amount to be paid under the foregoing sentence, the Owner shall fix an amount, if any, which it deems appropriate in consideration of all of the circumstances surrounding such termination, and shall make payment accordingly.
- 10.5 The Owner may, upon thirty (30) days written notice to the Design Consultant, terminate this Agreement, in whole or in part, at any time for the convenience of the Owner, without prejudice to any right or remedy otherwise available to the Owner. Upon receipt of such notice, the Design Consultant shall immediately discontinue all Services affected unless such notice directs otherwise. In the event of a termination for convenience of the Owner, the Design Consultant's sole and exclusive right and remedy is to be paid for all work performed and to receive equitable adjustment for all work performed through the date of termination. The Design Consultant shall not be entitled to be paid any amount as profit for unperformed Services or consideration for the termination of convenience by the Owner.
- 10.6 Should the Owner terminate this agreement as provided for under this Article, the Owner will acquire such drawings, including the ownership and use of all drawings, specifications, documents and materials relating to the Project prepared by or in the possession of the Design Consultant. The Design Consultant will turn over to the Owner in a timely manner and in good unaltered condition all original drawings, specifications, documents, materials, and computer files.
- 10.7 The payment of any sums by the Owner under this Article 10 shall not constitute a waiver of any claims for damages by the Owner for any breach of the Agreement by the Design Consultant.

ARTICLE 11

SUCCESSORS/ASSIGNMENT

- 11.1 This Agreement shall inure to the benefit of and be binding on the heirs, successors, assigns, trustees and personal representatives of the Owner, as well as the permitted assigns and trustees of the Design Consultant.
- 11.2 The Design Consultant shall not assign, sublet or transfer its interest in this Agreement without the written consent of the Owner, except that the Design Consultant may assign accounts receivable to a commercial bank or financial institution for securing loans, without prior approval of the Owner.
- 11.3 If the Owner requests the Design Consultant to execute consents reasonably required to facilitate assignment to Durham County or Durham County's lender, the Design Consultant shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Design Consultant for review at least 7 days prior to execution. The Design Consultant shall not be required to execute consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

ARTICLE 12

OWNERSHIP OF DOCUMENTS/CONFIDENTIAL INFORMATION/MARKETING

- 12.1 The Project drawings and specifications are instruments of service that shall remain the joint property of the Design Consultant and the Owner whether the Project for which they are made is built or not. The Owner shall retain reproducible copies of the Project drawings and specifications for information and reference and use in connection with the Owner's use and occupancy of the Project and for the Owner's future requirements of the Project facilities, including without limitation any alteration or expansion in any manner the Owner deems appropriate without additional compensation to the Design Consultant. The Owner shall indemnify and hold harmless the Design Consultant in connection with the Owner's use of the Project drawings and specifications on a new project without the Design Consultant's consent.
- 12.2 In order for the Design Consultant to fulfill this Agreement effectively, it may be necessary or desirable for the Owner to disclose to the Design Consultant confidential and proprietary information and trade secrets pertaining to the Owner's past, present and future activities. The Design Consultant hereby agrees to treat any and all information gained by it as a result of the Services performed hereunder as strictly confidential. The Design Consultant further agrees that it will not disclose during the period of this Agreement or thereafter to anyone outside of the authorized Project team (1) Owner's trade secrets or (2) Owner's confidential and proprietary information.
- 12.3 The Design Consultant shall have the right to include photographic or artistic representations of the design of the Project among the Design Consultant's promotional and professional materials with the prior written consent of the Owner. The Design Consultant shall be given reasonable access to the completed Project to make such representations. However, the Design Consultant's promotional materials shall not include the Owner's staff, students, or confidential or proprietary information. This section shall survive the termination of this Agreement, unless the Owner terminates this Agreement for cause pursuant to Article 10.

ARTICLE 13

ADDITIONAL PROVISIONS

- 13.1 The Design Consultant acknowledges receipt of all Board policies through the Board's website (<http://www.dpsnc.net>) and agrees to comply with their provisions. The Design Consultant shall ensure that its subconsultants comply with all Board policies. The Design Consultant and its subconsultants shall also comply with the Owner's site and school building access procedures when working on the Owner's property.
- 13.1.1 Use of Drones. The Design Consultant acknowledges that it must obtain a signed written consent form from the Superintendent or designee to operate any and all aerial drones on the Owner's property. Drones shall be operated in accordance with the Owner's policy and all applicable Federal Aviation Administration (FAA) regulations and North Carolina Department of Transportation (NCDOT) Division of Aviation requirements. Any request to operate a drone must be submitted to the Superintendent or designee in advance of the desired flight time and provide the following: the name(s) of the drone pilot and any individuals participating, proof of insurance coverage for the drone, proof of any required FAA permit, proof of any required NCDOT permit, and a detailed flight plan to include specific time and specific location.
- 13.2 Applicable Laws.
- 13.2.1 This Agreement and the relationship of the parties shall be governed by the laws of the State of North Carolina.
- 13.2.2 Design Consultant and its subconsultants shall comply with all applicable laws and regulations in providing the Services. In particular, the Design Consultant shall not employ any individuals who are not authorized under federal law to work in the United States. Design Consultant represents and warrants that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system for employers that employ twenty-five (25) or more employees. Design Consultant specifically represents and warrants that it is and will remain in compliance with these laws at all times while providing the Services. Design Consultant shall also ensure that its subconsultants will remain in compliance with these laws at all times while providing subcontracted services in connection with this Agreement. Design Consultant is responsible for providing affordable health care coverage to all of its full-time employees providing services to the school system. The definitions of "affordable coverage" and "full-time employee" are governed by the Affordable Care Act and accompanying IRS and Treasury Department regulations.
- 13.2.3 Lunsford Act/Criminal Background Checks. The Design Consultant also acknowledges that G.S. § 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. The Design Consultant shall conduct or arrange to have conducted at its own expense sexual offender registry checks on each of its employees, agents, ownership personnel, or subconsultants ("contractual personnel") who will engage in any service on or delivery of goods to school system property or at a school-system sponsored event, except checks shall not be required for individuals who are solely delivering or picking up equipment, materials, or supplies at: (1) the administrative office or loading dock of a school; (2) non-school sites; (3) schools closed for renovation; or (4) school construction sites. The checks shall include at a minimum checks of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry ("the

Registries”). For the Design Consultant’s convenience only, all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at <http://www.nsopw.gov/>. The Design Consultant shall provide certification on the Owner’s Sexual Offender Registry Check Certification Form (attached as Exhibit F) that the registry checks were conducted on each of its contractual personnel providing services or delivering goods under this Agreement prior to the commencement of such services or the delivery of such goods. The Design Consultant shall conduct a current initial check of the registries (a check done more than thirty (30) days prior to the date of this Agreement shall not satisfy this contractual obligation). In addition, the Design Consultant agrees to conduct the registry checks and provide a supplemental certification form before any additional contractual personnel are used to deliver goods or provide services pursuant to this Agreement. The Design Consultant further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Agreement. The Design Consultant shall not assign any individual to deliver goods or provide services pursuant to this Agreement if said individual appears on any of the listed registries. The Design Consultant agrees that it will maintain all records and documents necessary to demonstrate that it has conducted a thorough check of the registries as to each contractual personnel, and agrees to provide such records and documents to the Owner upon request. The Design Consultant specifically acknowledges that the Owner retains the right to audit these records to ensure compliance with this section at any time in the Owner’s sole discretion. Failure to comply with the terms of this provision shall be deemed a material breach of the Agreement. In addition, the Owner may conduct additional criminal records checks at the Owner’s expense. If the Owner exercises this right to conduct additional criminal records checks, the Design Consultant agrees to provide within seven (7) days of request the full name, date of birth, state of residency for the past ten years, and any additional information requested by the Owner for all contractual personnel who may deliver goods or perform services under this Agreement. The Design Consultant further agrees that it has an ongoing obligation to provide the Owner with the name of any new contractual personnel who may deliver goods or provide services under the Agreement. The Owner reserves the right to prohibit any contractual personnel of the Design Consultant from delivering goods or providing services under this Agreement if the Owner determines, in its sole discretion, that such contractual personnel may pose a threat to the safety or well-being of students, school personnel or others.

13.2.4 Restricted Companies Lists. Design Consultant represents that as of the date of this Agreement, Design Consultant is not included on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Design Consultant also represents that as of the date of this Agreement, Design Consultant is not included on the list of restricted companies determined to be engaged in a boycott of Israel created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.81.

13.2.5 Anti-Nepotism. Design Consultant warrants that, to the best of its knowledge and in the exercise of due diligence, none of its corporate officers, directors, or trustees and none of its employees who will directly provide services under this Agreement are immediate family members of any member of the Owner’s Board of Education or of any principal or central office staff administrator employed by the Owner. For purposes of this provision, “immediate family” means spouse, parent, child, brother, sister, grandparent, or grandchild, and includes step, half, and in-law relationships. Should Design Consultant become aware of any family relationship covered by this provision or should such a family relationship arise at any time during the term of this Agreement, Design Consultant shall immediately disclose the family relationship in writing to the Superintendent. Unless formally

waived by the Owner, the existence of a family relationship covered by this Agreement is grounds for immediate termination by Owner without further financial liability to Design Consultant.

- 13.3 The Design Consultant and its subconsultants shall comply with these and all applicable laws and regulations in providing the Services.
- 13.4 The Owner and Design Consultant agree to endeavor to provide written notification and to negotiate in good faith prior to litigation concerning claims, disputes, and other matters in question arising out of or relating to this Agreement or the breach thereof. The Owner and Design Consultant also agree that Board of Education Policy 9030, adopted in compliance with G.S. 143-128(f1), shall apply to disputes arising between the parties on the Project.
 - 13.4.1 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 a claim is subject to being barred by any applicable statute of limitations or repose, a party may proceed in accordance with applicable law to comply with filing deadlines prior to attempted resolution of the matter by mediation. In this situation, the request for mediation shall be made concurrently with the filing of the complaint.
 - 13.4.2 A request for mediation shall be made in writing, delivered to the other party to this Agreement.
 - 13.4.3 The parties shall share the mediator's fee equally. The mediation shall be held in Durham County, unless another location is mutually agreed upon. Agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof.
 - 13.4.4 If the parties do not resolve a dispute through mediation, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction.
 - 13.4.5 Except as specifically stated above, nothing herein contained shall be construed to require the parties to provide written notifications or engage in negotiations prior to the institution of litigation nor to submit for alternative dispute resolution by a third party or parties any such claim, dispute or other matter in question between the parties.
- 13.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Design Consultant.
- 13.6 Whenever renderings, photographs of renderings, photographs of models, photographs, drawings, announcements, or other illustration or information of the Project are released for public information, advertisement or publicity, appropriate and proper credit for architectural and other services shall be given to the Design Consultant and Owner respectively.
- 13.7 The payment of any sums by the Owner shall not constitute a waiver of any claims for damages by the Owner for any breach of the Agreement by the Design Consultant.
- 13.8 This Agreement and its Exhibits and Attachments represent the entire and integrated agreement between the Owner and the Design Consultant and supersedes all prior negotiations, representations or agreements, either written or

oral. This Agreement may be amended only by written instrument signed by both Owner and Design Consultant.

- 13.9 If y one or more of the provisions contained in this Agreement, for any reason, are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 13.10 Except where specifically stated otherwise, all periods of time stated in terms of days shall be considered periods calculated in calendar days.
- 13.11 The headings or captions within this Agreement shall be deemed set forth in the manner presented for the purposes of reference only and shall not control or otherwise affect the information set forth therein or interpretation thereof.
- 13.12 For the purpose of this Agreement unless the context clearly indicates otherwise, the singular includes the plural, and the plural includes the singular.
- 13.13 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, which shall be sufficient evidence by any one thereof.
- 13.14 The language used in this Agreement will be deemed to be the language chosen by each of the parties to express their mutual intent. In the event of an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.
- 13.15 The Design Consultant may apply for and obtain a 179d Tax Deduction for the design of the Project. The Design Consultant shall only apply for the tax deduction if the Design Consultant provides the Owner with a separate written list of all building systems, equipment, and design features included in the Project that support the application for the tax deduction. An updated list will be provided to the Owner with each design phase submission. Each list submitted shall include all building systems, equipment and design features, including a then current estimate of the additional cost each item is anticipated to add to the cost of the Project at the time the Project is bid when compared to items traditionally used on K-12 public school projects in North Carolina. The Design Consultant shall provide the Owner with any anticipated cost savings over the lift of the Project for any item supporting the 179d Tax Deduction. The Owner's consent to the Design Consultant's efforts to apply for and obtain a 179d Tax Deduction is conditioned upon the Design Consultant's strict compliance with this section.

ARTICLE 14

EXHIBITS

- 14.1 The following exhibits are incorporated into this Agreement:
 - 14.1.1 Exhibit A: Design, Construction and Equipment Budget
 - 14.1.2 Exhibit B: Program of Requirements
 - 14.1.3 Exhibit C: Management Plan

- 14.1.4 Exhibit D: Consultant Agreement
- 14.1.5 Exhibit E: Design Consultant's Fee Schedule
- 14.1.6 Exhibit F: Owner's Sexual Offender Registry Check Certification Form

In witness whereof, each individual executing this agreement acknowledges that he/she/it is authorized to execute this agreement and further acknowledges the execution of this agreement the day and year first written above.

IN WITNESS WHEREOF the Owner and the Design Consultant have executed this contract, the day and year first above written.

Mike Lee, Chair, Durham Public Schools Board of Education

Date

This instrument has been pre-audited in the manner required by the School Budget and Fiscal Control Act.

Paul LeSieur, Chief Finance Officer, Durham Public Schools

Date

Endorsement:

Executive Director
Durham Public Schools
Building Services

This contract was approved by the Board on the **xxth day of Month Year**.

INSERT CONSULTANT / COMPANY NAME

By: _____

Name/Title: _____

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

I, a Notary Public in and for the aforesaid County and State, do hereby certify that _____ personally appeared before me this day and acknowledged that he/she is _____ of _____, a _____ (state of incorporation) corporation, duly authorized to do business in the state of North Carolina, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____, sealed with its corporate seal and attested by _____ as its Corporate Secretary.

Witness my hand and notarial seal this ____ day of _____, 20____.

Notary Public (SEAL/STAMP)

My commission expires: _____