

**"Total compensation paid under the terms of this contract may not exceed \$100,000 without the express authorization of the Wake County Board of Education in accordance with Board policy 8361.1."**

**AGREEMENT FOR  
DESIGN CONSULTANT SERVICES**

BETWEEN

**Wake County, by and through its authorized agent the Wake County 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

### AGREEMENT

made this \_\_\_\_ day of \_\_\_\_ in the year of **Two Thousand Fourteen**

Between the Owner: **Wake County, by and through its authorized agent the Wake County Board of Education**

and the Design Consultant:

For Professional Services in connection with the Project known as:

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 Project. The Project shall be as described above.
- 1.2 Services. The Services to be performed by the Design Consultant under this Agreement shall consist of the Basic Services described in Article 3 and any Additional Services under Article 7.
- 1.3 Construction Contract Documents. The Construction Contract Documents shall consist of the plans and specifications prepared by the Design Consultant, and any addenda and change orders thereto, and the Owner-Construction Manager Agreement, all of which shall be compatible and consistent with this Agreement. In the event of any conflict between the terms of this Agreement and the Owner-Construction Manager Agreement, the terms of this Agreement shall control.
- 1.4 Construction Manager. The Construction Manager ("CM") is the construction manager at risk hired by the Owner pursuant to N.C. Gen. Stat. Sec. 143-128.1 for construction of the Project in reliance upon the Design Consultant's Contract Documents for the Project. The term "Construction Manager" or "CM" means the Construction Manager or its authorized representative, but excludes the Owner's Representative and the Design Consultant. The Construction Manager's services shall be as stated in this Agreement and as defined in the form agreement between the Owner and CM attached to this Agreement as Exhibit A and incorporated by reference.
- 1.5 Basic Services Compensation. Basic Services Compensation shall be the lump sum fee designated in Article 4 to be paid by the Owner to the Design Consultant in connection with the performance of the Basic Services by the Design Consultant.
- 1.6 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.

- 1.7 MILESTONE SCHEDULE. The MILESTONE SCHEDULE represents the critical dates for the phasing, sequencing and timing of the major project activities for design, construction procurement, construction and occupancy as described in Exhibit C. The MILESTONE SCHEDULE shall be incorporated into the CM's construction management plan.
- 1.8 Design Phase Change Order. A Design Phase Change Order is the form of documentation from the Owner approving and authorizing a modification to the Program, Budget, MILESTONE SCHEDULE, or previously approved Design Phase documents.
- 1.9 Construction Contract Award Price (CCAP). The CCAP shall be established by the Owner. The CCAP shall include the cost of the work, CM fee, CM contingency, CM's general conditions, and bonds/insurance. The cost of the work shall be defined as the Construction contract bids received by the CM for all portions of the work.

## **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 services shall be as professional consultant to the Owner and as a cooperating partner with the Construction Manager 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.
- 2.2 Owner Representation. The Owner shall employ and assign a Project Manager from the Wake County Public School System Construction Management Department to serve as the 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 subconsultants 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 services performed by the Design Consultant 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 Construction Manager 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 Construction Manager and to call periodic conferences to be attended by the Design Consultant, and his 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 to the Owner and the Construction Manager of all consultants (and 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 consultants as may be requested by the Owner or Construction Manager. The Owner will review the consultants proposed. The Design Consultant shall not retain a consultant to which the Owner has a reasonable objection. The Design Consultant shall use individuals or firms that are licensed 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. If the project utilizes a retaining wall, the Design Consultant shall use an individual or firm with specific expertise in the selected type of retaining wall design. The proximity of the proposed walls to critical structures, and the height, topography, and constructability of the proposed walls are to be considered in design in selecting the appropriate geometry, wall types, materials, and drainage measures required. The consultant retained to design the retaining wall shall coordinate with the civil, structural, and geotechnical engineers in order to ensure that the retaining wall is properly integrated into the overall design. A global stability analysis for each retaining wall shall be performed by a geotechnical engineering consultant as part of the design. A global stability analysis shall also be performed by a geotechnical engineer as part of the approval of any changes to the location or design of the retaining wall during construction, unless the geotechnical engineer confirms in writing that an additional analysis is not required as a result of the change in location or design.

- 2.4.2 The Design Consultant shall provide to the Owner and the Construction Manager a list of the proposed key project personnel of the Design Consultant and its consultants 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 or Construction Manager. 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 in the Design Consultant's (or its consultants, if applicable) employ.
- 2.4.3 All agents and workers of the Design Consultant and its subconsultants shall wear identification badges provided by the Design Consultant at all times they are on the Owner's property. The identification badge shall at a minimum display the company name and telephone number, and the employee name and photograph.
- 2.5 Division of Responsibilities/Services. The Design Consultant understands and agrees that should the Owner's Representative, Construction Manager, or other Consultant 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's Representative, Construction Manager, Consultant, 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.
- 2.6 Design Consultant's Relationship with the Construction Manager. The Design Consultant acknowledges that the Owner shall employ a Construction Manager for the Project. The Construction Manager hired by the Owner for this Project is \_\_\_\_\_. The Construction Manager shall perform all of the Construction Manager's Basic Services outlined in the agreement between the Construction Manager and the Owner dated \_\_\_\_\_ (CM Agreement). The Construction Manager's Basic Services shall include pre-design phase, design phase, procurement phase, construction phase and post-construction phase services. During the performance of the Design Services, the Design Consultant shall cooperate and work in good faith with the Construction Manager as a cooperating partner with the Construction Manager (so long as such cooperation serves the Owner's best interests and the Owner's Project objectives) on all relevant issues including those associated with constructability, construction cost, sequence of construction, construction duration, time for construction, separation of the Project contracts for various categories of work and any other services reasonably necessary to assist the Construction Manager with the construction of the Project within the Guaranteed Maximum Price specified in the CM Agreement.

### **ARTICLE 3**

#### **BASIC SERVICES**

- 3.1 Scope of Services. The Basic Services 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, and all other services customarily furnished by an architect/engineer and its

consultants in accordance with generally accepted architectural and engineering practices consistent with the terms of this Agreement. 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, and various site 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 Documents, Permitting and Bid/ Negotiation, Construction, and Final Completion of Design Services) may be divided to facilitate bidding of separate trade contracts or phased construction activities. The Owner and/or the Construction Manager shall have the right to determine early, late and other separate contract awards and may modify the MILESTONE SCHEDULE to change the number and times of issue of various contract document packages at no additional compensation to the Design Consultant.
- 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, through its Representative and/or the Construction Manager, reserves the right to designate the phasing of segregated portions of the Work and to modify the MILESTONE SCHEDULE, within the terms and conditions of this Agreement.
- 3.1.2 Design Narrative Phase.
- 3.1.2.1 The Design Consultant shall examine and analyze available information provided by the Owner and Construction Manager and shall advise and recommend as to additional information necessary to begin specific design work on the Project. The Design Consultant shall provide written acknowledgment of receipt of Design Guidelines matching the revision referenced in subparagraph 3.3.4 and the Educational Specifications.
- 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 MILESTONE SCHEDULE 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 or Construction Manager. 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 MILESTONE SCHEDULE, the Design Consultant shall prepare a report to the Owner and Construction Manager (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 Construction Contract Award Price (CCAP), Program of Requirements, and the MILESTONE SCHEDULE (Exhibits 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 provide the Owner's Representative and the Construction Manager periodically with copies of Schematic Design Studies for their review during the Schematic Design Phase. The Design Consultant shall review any recommendations from the Construction Manager, including any recommendations regarding the constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project contracts for various categories of Work, to confirm that they are architecturally sound and do not adversely impact the scope, functionality or requirements of the Project. The Design Consultant's review of these recommendations shall not relieve or in any way diminish the Construction Manager's responsibilities pursuant to the Owner-Construction Manager Agreement. At the end of the Schematic Design Phase the Design Consultant shall provide the Owner's Representative with one (1) full-size and one (1) half-size complete set of the drawings and other documents for approval by the Owner. Refer to Exhibit D and Exhibit E for additional requirements. The Design Consultant also shall provide the Construction Manager with a complete set of prints of the drawings and other documents identical to those provided to the Owner.
- 3.1.3.2 The Design Consultant shall participate as requested in meetings with Owner's staff and/or the Construction Manager to review the project, receive the Owner's and the Construction Manager'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 Facilities 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 MILESTONE SCHEDULE, 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, construction methods, materials and 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 staff and the Construction Manager from previous reviews. The Design Consultant shall submit an estimate and breakdown of the Construction Contract(s) Award Price(s) (CCAP) no later than two (2) business days in advance of the scheduled SD 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.
- 3.1.3.5 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 with building located and overall grading plan with a minimum of 5'- 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 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 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.

#### 3.1.4 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 and the Construction Manager's comments on the previous submittal. The report shall include the status of the work in accordance with the MILESTONE SCHEDULE, 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, IN CONJUNCTION WITH THE CM, shall submit an estimate and breakdown of the Construction Contract(s) Award Price(s) (CCAP) no later than two (2) business days in advance of the scheduled DD review meeting. The Design Consultant, IN CONJUNCTION WITH THE CM, 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 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. 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 and the Construction Manager periodically with copies of in-progress Design Development Documents during the Design Development Phase. The Design Consultant shall review any recommendations from the Construction Manager, including any recommendations regarding the constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project contracts for various categories of Work, to confirm that they are architecturally sound and do not adversely impact the scope, functionality or requirements of the Project. The Design Consultant's review of these recommendations shall not relieve or in any way diminish the Construction Manager's responsibilities pursuant to the Owner-Construction Manager Agreement. At the end of the Design Development Phase the Design Consultant shall provide the Owner's Representative with one (1) full-size and one (1) half-size complete set of the drawings and design phase report for approval by the Owner. The report shall incorporate the status of the work in accordance with the MILESTONE SCHEDULE and a summary of programmed versus actual square footage in a format defined by the Owner by room or area. Refer to Exhibit D and Exhibit E for additional requirements. The Design Consultant also shall provide the Construction Manager with a complete set of prints of the drawings and other documents identical to those provided to 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) Floor plans (at 1/8" scale) with final room locations including all openings.
    - (v) Roof plan (at 1/8" scale) indicating structural slope, drainage areas and drain locations.
    - (vi) Wall sections showing final dimensional relationships, materials and component relationships.
    - (vii) Identification of all fixed and loose equipment, furniture, and furnishings.
    - (viii) 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.
    - (ix) Finish schedule identifying all finishes.

- (x) Preliminary door and window and hardware schedule showing final quantity plus type and quality levels.
- (xi) Virtually complete site plan including grading and drainage.
- (xii) Preliminary development of details, including millwork details and large scale blow-ups.
- (xiii) Legend showing all symbols used on drawings.
- (xiv) Outline of materials to be specified in the CD phase.
- (xv) 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 of materials to be specified in the CD phase.
- (iv) Foundation drawings.

#### 3.1.4.5.3 Plumbing

- (i) Piping, fixtures and equipment substantially located and sized.

#### 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) Devices in ceiling located.
- (vi) Legend showing all symbols used on drawings.
- (vii) Outline of materials to be specified in the CD phase.
- (viii) Completed life cycle cost analysis.

#### 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 of materials to be specified in the CD 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 Upon Owner acceptance and approval of the Design Development Phase, 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.

3.1.4.7 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 Documents 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 Construction Manager will provide the Conditions of the Contract (General and any Supplementary), Advertisement for Bids, Instructions to Bidders, time control specification provisions, and Bid Proposal Forms and Agreement(s) which the Design Consultant shall incorporate into the Construction Documents.

3.1.5.2 Construction Documents shall be packaged as prescribed in the MILESTONE SCHEDULE and be completed in accordance with its schedule.

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 Project Construction Documents require 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 MILESTONE SCHEDULE, 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 2004 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 State 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 and Construction Manager.

3.1.5.7 The Design Consultant shall provide to the Owner and the Construction Manager 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 the 100% Construction Documents.

3.1.5.8 The Design Consultant shall provide the Owner's Representative and the Construction Manager periodically with copies of in-progress Construction Documents during this phase. The Design Consultant shall review any recommendations from the Construction Manager, including any recommendations regarding the constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project contracts for various categories of Work, to confirm that they are architecturally sound and do not adversely impact the scope, functionality or requirements of the Project. The Design Consultant's review of these recommendations shall not relieve or in any way diminish the Construction Manager's responsibilities pursuant to the Owner-Construction

Manager Agreement. Additionally, and in accordance with the MILESTONE SCHEDULE, the Design Consultant shall submit to the Owner and the Construction Manager for approval by the Owner one (1) full-size and one (1) half-size complete set of the drawings of preliminary Construction 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 work in accordance with the MILESTONE SCHEDULE and a summary of programmed versus actual square footage in a format defined by the Owner by room or area. Refer to Exhibit D and Exhibit E for additional requirements. The Design Consultant shall submit an estimate and breakdown of the Construction Contract(s) Award Price(s) (CCAP) no later than two (2) business days in advance of the scheduled 60% CD 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. The documents for this 60% Construction Document 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

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) Global stability analysis for all retaining walls by a geotechnical engineering consultant to the Architect

3.1.5.8.3 Architectural

- (i) Demolition plans
- (ii) Key plans with final room numbers as approved by WCPSS
- (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

#### 3.1.5.8.4 Structural

- (i) Demolition plans
- (ii) Footing plans and details
- (iii) Reinforcing steel plans
- (iv) Structural steel plans

#### 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

#### 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

#### 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
- 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
- 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 Documents by the Owner, the Design Consultant shall continue with preparation of final Construction Documents 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 Document 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 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 Documents 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 at least ten (10) days prior to the bid date to ensure time to issue any required addenda to the Bidding Documents.
- 3.1.5.13 At the completion of the construction documents phase, the Design Consultant shall submit to the Owner one (1) full-size and one (1) half-size complete set of the drawings and design phase report at 100% completeness prepared by the Design Consultant for final Construction Documents Phase submittal which shall include the final working drawings and specifications. Refer to Exhibit D and Exhibit E for additional requirements. At this same time, the Design Consultant also shall submit to the Construction Manager one set of 100% complete documents identical to those provided to the Owner.
- 3.1.5.14 A statement from the Design Consultant with the final Construction Document 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 Document submittals unless specifically noted in writing.
- 3.1.5.15 The Design Consultant shall submit with the final Construction Document 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 Document 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 MILESTONE SCHEDULE.
- 3.1.6.2 The CM shall coordinate and document the reproduction, distribution and retrieval of the bidding documents.
- 3.1.6.3 The Design Consultant shall issue documents to all required code authorities, request, endeavor to expedite and obtain 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. In no event, however, shall the cost of these Reimbursables exceed Ten Thousand Dollars (\$10,000). These Reimbursables shall not be used to pay for the costs of any of the deliverables included in the fee for Basic Services. Refer to Exhibit E.
- 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 and the Construction Manager for review prior to issuance to all holders of bid documents. The Design Consultant shall review any recommendations from the Construction Manager, including any recommendations regarding the constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project contracts for various categories of Work, to ensure that they are architecturally sound and do not adversely impact the scope, functionality or requirements of the Project. The Design Consultant will incorporate into the addenda comments of the Owner and Construction Manager as appropriate and provide the Owner and the Construction Manager with final addenda for the Construction Manager's distribution to all holders of bid documents.
- 3.1.6.5 The Construction Manager will schedule and conduct Pre-Bid Conferences with bidders to review the Project requirements. The Design Consultant shall provide knowledgeable representatives, including representatives of its consultants, to participate in these conferences to explain and clarify Bidding Documents. Within two (2) days after the Prebid Conference the Design Consultant shall deliver to the Owner and Construction Manager, if needed, a final 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 Construction Manager in obtaining bids.
- 3.1.6.7 Should the bidding or negotiation produce prices in excess of the approved CCAP, the Design Consultant shall participate with the Owner and Construction Manager in such negotiation and re-design, at no additional expense to the Owner, as may be necessary in an attempt to obtain price(s) within the approved CCAP or price(s) acceptable to the Owner. The Owner and CM will assist in re-design decisions. All re-design must be approved by the Owner and CM.
- 3.1.6.8 Should the Design Consultant re-design under its responsibilities set out in the preceding paragraph, its Construction Phase and Post Construction Phase services shall be extended to take re-design into account at no additional expense to the Owner.
- 3.1.6.9 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 addition to an electronic set, with file names consistent with the Owner's requirements, for the Owner's use in updating its Property Accounting Drawings for the Project. Refer to Exhibit D and Exhibit E.
- 3.1.7 Construction Phase.

- 3.1.7.1 The Construction Phase for each portion of the Project will commence with the award of the Construction Contract(s) by the Construction Manager and will terminate when the Construction Manager achieves Final Completion
- 3.1.7.2 The Design Consultant and Owner shall consult with the Construction Manager as to the acceptability of subcontractors and other persons and organizations proposed by the Construction Manager for various portions of the work.
- 3.1.7.3 The Design Consultant shall review and approve shop drawings, samples, and other submissions of the Construction Manager's Contractor(s) for conformance with the design concept of the Project and for compliance with the Contract Documents. 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 Construction Manager for creation of data "as built" submittal and approval drawings, and for site layout/staking.
- 3.1.7.5 The Design Consultant shall adhere to the procedures established by the Owner's Representative and/or the Construction Manager 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 Change Order documentation for changes between the Owner and CM.
- 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 Contract Documents. The Design Consultant shall make all interpretations consistent with the intent of and reasonably inferable from the Contract Documents. The Design Consultant's decision in matters relating to artistic effect shall be final if consistent with the intent of the Contract Documents.
- 3.1.7.8 Should errors, omissions or conflicts in the drawings, specifications or other Contract Documents by the Design Consultant be discovered, the Design Consultant will prepare and submit to the Owner's Representative and the Construction Manager, 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. All instructions to the Construction Manager shall be issued by the Design Consultant except when is directed otherwise by the Owner's Representative.
- 3.1.7.10 The Design Consultant will have access to the Work at all times. All site visits, observations and other activities by the Design Consultant shall be coordinated with the Construction Manager and written report of such visits made promptly to the Construction Manager and Owner's Representative.
- 3.1.7.11 The Design Consultant and its consultants (including, but not limited to, the civil, structural, roofing, mechanical and electrical disciplines) shall make such periodic visits to the Project site as may be necessary to familiarize themselves generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of such on-site observations, the Design Consultant and its consultants shall take reasonable steps to guard the Owner against defects and deficiencies in the Work of the Construction Manager or its Contractor(s). If the Design Consultant observes any work that does not conform to the Contract Documents, the Design Consultant shall immediately make an oral and written report of all such observations to the Construction Manager



and Owner's Representative. The Design Consultant and its consultants shall not be required to make exhaustive or full-time on-site observations to check the quality or quantity of the 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 Work.

- 3.1.7.12 Periodic visits of the Design Consultant shall be not less than once weekly. Each engineering discipline shall make periodic visits not less than once every two weeks, during the course of work applicable to its discipline. During critical work phases, each engineering discipline may be required to make periodic visits weekly. The engineering disciplines shall prepare and submit a report on each visit, submitted via the Design Consultant to the Owner's Representative and the Construction Manager 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 and the Construction Manager in the form required by the Owner's Representative.
- 3.1.7.14 The Design Consultant shall attend construction progress meetings scheduled by the Construction Manager.
- 3.1.7.15 The Design Consultant shall review payment applications made by the Construction Manager to determine whether the Work reflected in the payment application has been satisfactorily completed as represented on the payment application. 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 Work has progressed to the point indicated, that to the best of the Design Consultant's knowledge, information and belief, the quality of the Work appears to be in accordance with the Contract Documents (subject to: an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion; the results of any subsequent tests required by the Contract Documents; minor deviations from the Contract Documents correctable prior to completion; and to any specific qualifications stated in the Certificate for Payment), and that the Construction Manager 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 CM has used the monies paid on account of the Construction Contract Sum.
- 3.1.7.16 The Design Consultant and the Owner's Representative jointly shall have authority to reject Work on behalf of the Owner when in the Owner's Representative's or the Design Consultant's opinion the Work does not conform to the Contract Documents. Whenever in the Owner's Representative's or the Design Consultant's reasonable opinion it is considered necessary or advisable to enforce the proper implementation of the intent of the Contract Documents, the Owner's Representative shall have the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract Documents whether or not such Work is fabricated, installed or completed.
- 3.1.7.17 The Design Consultant shall obtain governing agency occupancy approval if any exceptions arise related to the design or specified materials.
- 3.1.8 Final Completion of Design Services Phase.
- 3.1.8.1 When the Construction Manager notifies the Design Consultant that it considers the Work or a designated portion of the Work is substantially complete, the Design Consultant and its consultants, after notice to the designated Owner's representatives, shall review and evaluate the Work and prepare and submit to the Owner's Representative and the Construction Manager punch lists of the Work which is not in conformance with the Contract Documents. When the Design Consultant and the Construction Manager on the basis of an inspection jointly determine that the Work 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 Construction Manager for security, maintenance, heat, utilities, damage to the Work and insurance. Should the Design Consultant and the Owner determine that the Work or a designated portion thereof is not substantially complete after the Construction Manager notifies the Design Consultant that it considers such Work to be substantially complete, they shall provide the Construction Manager with written notice stating why the Project or designated portion is not substantially complete. The Owner may request that the Design Consultant review and evaluate the Work and prepare a punch list on any portion of the Work.

- 3.1.8.2 The Design Consultant shall provide assistance in the original operation of any equipment or system such as initial start-up, testing, adjusting and balancing.
- 3.1.8.3 The Design Consultant and/or its consultants shall observe, review test data, and certify the original operation of any equipment or system such as initial start-up testing, commissioning adjusting and balancing to make sure that all equipment and systems are properly installed and functioning in accordance with the design and specifications.
- 3.1.8.4 The Design Consultant shall review and confirm the adequacy of the maintenance and operating instructions, schedules, guarantees, bonds, and certificates of inspection as required by the Construction Documents 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 shall conduct such observations as necessary to confirm all material and equipment warranties are in compliance with applicable specifications.
- 3.1.8.5 Educational Commissioning
- 3.1.8.5.1 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.
- 3.1.8.5.2 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 3.1.8.5.1. Both the original Power Point 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.
- 3.1.8.5.3 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.
- 3.1.8.6 At the request of the Owner, the Design Consultant and its consultants shall conduct up to two (2) comprehensive Final Completion inspections per construction contract on the Project. 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.
- 3.1.8.7 The Design Consultant shall obtain from the Construction Manager drawings, prints, and other data necessary for the accurate preparation of the record drawings.
- 3.1.8.8 The Design Consultant shall make a recommendation in writing to the Owner regarding liquidated damages as may be applicable.
- 3.1.8.9 Upon correction of the deficiency reports (punch lists), and acceptance of all other close-out submittals and certificates from the CM, the Design Consultant shall review and approve the Application for Final Payment prepared by the Construction Manager and forward it to the Owner for execution. Simultaneously, the Design Consultant shall execute a Certificate of Final Completion in which it confirms in writing that the Work conforms to the contract documents.

- 3.1.8.10 The Design Consultant shall prepare and deliver a printed set and an electronic 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 Work made during the construction process, based on marked-up contract drawings, prints, and other data furnished by the CM and the applicable addenda, clarifications, and change orders which occurred during the Project for delivery to the Owner within 30 days after Final Completion. All electronic file names shall be consistent with the name of the sheet(s) they represent in accordance with the Owner's criteria. Refer to Exhibit D and Exhibit E for additional requirements.
- 3.1.8.11 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 By execution of this Agreement, the Design Consultant agrees and confirms 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.
- 3.2.2 The Design Consultant hereby represents and agrees that the drawings, specifications and other documents prepared by it 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 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 or the Construction Manager shall not reduce or diminish the Design Consultant's responsibilities pursuant to this Agreement.
- 3.2.3 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. The Design Consultant shall be responsible for any additional construction and material costs due to said errors, inconsistencies or omissions in the drawings, specifications and other documents. The Design Consultant further agrees, at no additional cost, to render assistance to the Owner in resolving problems relating to the design or specified materials.
- 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 throughout the period of performance under this Agreement to exercise the abilities, skills and care customarily used by Design Consultants of the training and background needed to perform the services required under this Agreement who practice in the Wake County/Research Triangle Park area or similar communities.
- 3.3 Project Requirements.

- 3.3.1 A component of the Project Construction Budget is the Construction Contract Award Price, herein referred to as 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 bids from responsive, responsible bidding contractors, acceptable to the Owner and CM, plus the CM's general conditions, 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 and/or Construction Manager, 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 work indicated by them may be purchased by the Owner in a construction contract or contracts, the total price of which (CCAP) will not exceed \_\_\_\_\_ Dollars (\$) (based on bid date of no later than \_\_\_\_\_) and may be constructed completely within said contract price 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 Design Consultant Services Agreement."
- With each Design Phase submittal and each interim, revisionary or subsequent design submittal of the Design Consultant to the Owner and/or Construction Manager and with his approval of the Final Payment to the Construction Manager and Certificate of Final Completion to the Owner, 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 by reference 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 by reference as Exhibit C is the MILESTONE SCHEDULE for the Project which defines the sequence and timing of the design and construction activities. The MILESTONE SCHEDULE is the schedule to be adhered to by the Design Consultant. No deviation from the MILESTONE SCHEDULE shall be allowed without written approval for a change in the MILESTONE SCHEDULE, in the form of a Design Phase Change Order executed by the Owner and Design Consultant. Should the Owner or the Construction Manager 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.
- 3.3.4 Incorporated herein and made a part of this Agreement by reference is the currently published revision of the Wake County Public School System Design Guidelines (Design Guidelines), or the relevant portions thereof, which establish the technical objectives and parameters for the Project. The Design Consultant shall comply with the requirements of the Design Guidelines in performing its services pursuant to this Agreement.
- 3.3.5 Incorporated herein and made a part of this Agreement by reference is the currently published revision of the Wake County Public School System Educational Specifications or the relevant portions thereof, which establish the space, furniture and equipment requirements for the Project.

The Design Consultant shall comply with the requirements of the Educational Specifications in performing its services pursuant to this Agreement.

3.4 Project Conferences.

3.4.1 Throughout all phases of the Project, the Design Consultant and its consultants shall meet periodically with the Owner and/or the Construction Manager when reasonably requested. Participants shall be as determined by the Owner and/or the Construction Manager. 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, three days maximum.

3.4.1.4 Design conferences on a weekly 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 each 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 that are not the responsibility of the CM and distributing same to all participants.

3.5 Serving As Witness.

3.5.1 The Design Consultant shall provide testimony in public hearings, arbitration proceedings, and legal proceedings, and such testimony shall be provided without additional fee or charge to the Owner unless said testimony is requested by the Owner and consists of expert testimony not related to this Project or Work.

3.6 Construction Warranty.

3.6.1 The Design Consultant and its consultants 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 consultants 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, Basic Services Compensation shall be in the amount of \_\_\_\_\_ **Dollars (\$\_\_\_\_\_)** being (\_\_\_\_%) of the Construction Contract Award Price (CCAP).
- 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 aggregate amount of such change(s) and the revised and adjusted CCAP shall be the figure used in determining the Design Consultant's fee. The percentage shown in Paragraph 4.1 shall be applied to such increased CCAP.
- 4.1.1.4 In the event the Owner requests changes to the Project or elects not to complete the work or any portion thereof, which would decrease the most recently approved CCAP, basic 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 work, in accordance with the basic payment schedule set forth in Paragraph 4.2 hereof.
- 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.

	Renovation/New School	Prototype Reuse
Design Narrative Phase	5%	5%
Schematic Design Phase	15%	15%
Design Development Phase	35%	35%
Construction Documents Phase	65%	50%
Permitting and Bidding/Negotiation Phase	70%	55%
Construction Phase	95%	95%
Final Completion of Design Services Phase	100%	100%

- 4.2.2 No deductions shall be made from the Design Consultant's Basic Services Compensation on account of penalty, liquidated damages, retainage or other sums withheld from payments to the Construction Manager.
- 4.2.3 Deductions may be made from the Design Consultant's 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 withhold payment.

4.2.5 Reimbursable Expenses incurred while performing Basic or Additional Services shall be computed at a multiple of 1.00 times actual cost. Reimbursable Expenses shall include such reasonable, actual expenditures made by the Design Consultant, his employees, or his professional consultants in the interest of the Project, limited to the following: the reasonable expense of transportation and living when traveling from the Design Consultant's office to a location outside of Wake 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. Before incurring any Reimbursable Expenses, the Design Consultant must request and receive written authorization from the Owner. Refer to the Reimbursable amount in Section 3.1.6.3.

4.2.6 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.

4.2.7 Design Consultant shall indemnify Owner for delay damages incurred by the Owner arising solely out of the Design Consultant's breach of this Agreement or the negligent act or omission of the Design Consultant or anyone for whose acts the Design Consultant may be liable.

#### 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. 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 Additional Services Compensation to be computed as follows:

4.3.1.1 Principals' time at the fixed rate of \_\_\_\_\_ Dollars (\$\_\_\_\_) per hour. For the purposes of this Agreement, the Principal is: \_\_\_\_\_.

4.3.1.2 Employees' time computed at a multiple of 2.5 times the employees' Direct Payroll Expense. Direct Payroll Expense includes cost of salaries and of mandatory and customary benefits such as statutory employee benefits, insurance, sick leave, holidays and vacations, but shall not exceed 1.26 times the base hourly wage of each employee.

4.3.1.3 Reinspection and resubmittal review time that is billable to the Contractor shall be reimbursed to the Design Consultant at the rate of \_\_\_\_\_ Dollars (\$\_\_\_\_) per hour.

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 consultant 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, MILESTONE SCHEDULE.
- 5.2 Unless earlier terminated as provided in Article 11 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); Indemnification (Article 10); and Ownership of Documents/Confidential Information (Article 13) 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 MILESTONE SCHEDULE 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 and/or credit 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 structural, mechanical, 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 Work.



- 6.9 The Owner shall pay for and the Design Consultant shall request, and take all reasonable steps to expedite, and obtain all necessary permits, licenses, approvals, easements, assessments, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 6.10 The parties acknowledge that the Owner may perform all or part of its obligations pursuant to this Agreement through the Superintendent or his designee.

## **ARTICLE 7**

### **ADDITIONAL SERVICES**

- 7.1 If any of the following Additional Services in this Section 7.1 are authorized in advance by the Owner in writing, the Design Consultant shall furnish or obtain from others the authorized services. If the services in this Section 7.1 are 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 planning and Master Planning for future work as indicated by the Program of Requirements.
- 7.1.5 An individual or firm with specific expertise in acoustics shall be required for any middle or high school project involving an auditorium or music room. The services of this acoustician shall be considered additional services.
- 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 Construction Manager 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 the design contract.
- 7.1.11 Providing professional services made necessary by the default of the Construction Manager or any of its Contractor(s).
- 7.1.12 Providing services made necessary by major defects in the Work of the Construction Manager or any of its Contractor(s) in the performance of the Construction Contract which were not preventable by the Design Consultant through the performance of its services pursuant to this Agreement.
- 7.1.13 Providing surveying services such as platting; mapping; subdivision agreements or recording subdivision plats.
- 7.1.14 Providing additional services prior to actual substantial completion of the Project made necessary by delays or defects in the work of the Construction Manager or any of its Contractor(s) by more

than 90 days from the date agreed to for substantial completion in the Owner-Construction Manager Agreement which delay the Design Consultant could not reasonably have prevented through the performance of its services pursuant to this Agreement.

- 7.1.15 Providing additional services made necessary by delays or defects in the work of the Construction Manager or any of its Contractors for more than 60 additional days than are provided in the Owner-Construction Manager Agreement 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.
- 7.1.16 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.
- 7.1.17 Providing additional services and costs 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.
- 7.1.18 Providing consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing professional services of the type set forth in Basic Design Services as may be required in connection with the replacement of such Work.
- 7.1.19 Providing services after payment by the Owner of the Final Payment to the Design Consultant other than services called for in the Basic Services.
- 7.1.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practices consistent with the terms of this Agreement.
- 7.2 The Owner and Design Consultant agree that the Basic Services compensation in Section 4.1.1 does not include compensation for significant retaining wall design and the associated global stability analysis required in Sections 2.4.1 and 3.1.5.8.2 when required for the design of significant retaining walls. Compensation for significant retaining wall design and the associated global stability analysis shall be paid by the Owner pursuant to Article 4.3.

## **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: Wake County Board of Education  
Facility Design and Construction Department  
Facilities Building  
1429 Rock Quarry Road, Suite 116  
Raleigh, NC 27610

To Design Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## ARTICLE 9

### INSURANCE

- 9.1 The Design Consultant shall purchase and maintain insurance for protection from claims under the workers compensation acts; claims resulting from negligent acts, errors 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 and/or real property including loss of use resulting therefrom; and claims arising out of the performance of this Agreement and caused by negligent acts, errors or omissions for which the Design Consultant is legally liable. Minimum limits of coverage shall be:

<b>Insurance Description</b>	<b>Minimum Required Coverage</b>
a. Workers' Compensation	Statutory
b. Employers' Liability	\$100,000 Each Accident \$100,000 Disease – Each Employee \$300,000 Disease – Policy Limit
c. Commercial General Liability	Combined Single Limit
Bodily Injury and Property Damage	\$1,000,000 Each Occurrence
Personal & Advertising Injury	\$1,000,000 Each Occurrence \$1,000,000 General Aggregate
d. Automobile Liability (Symbol 1)	Combined Single Limit
Bodily Injury and Property Damage	\$1,000,000 Each Accident
e. Professional Liability:	
Original Project Value <\$30,000,000	\$1,000,000 Each Claim \$1,000,000 Policy Aggregate
Original Project Value >\$30,000,000	\$2,000,000 Each Claim \$2,000,000 Policy Aggregate

Design Consultant's Professional Liability policy shall explicitly include coverage for Bodily

Injury and/or have any Bodily Injury exclusion deleted by endorsement as necessary to provide this coverage.

Insurance required hereunder shall be maintained by insurance companies properly licensed by the Department of Insurance of the State of North Carolina and rated "A-VIII" or better by A.M. Best Company. Required limits may be met in total by any combination of primary and excess/umbrella limits. A certificate of insurance documenting evidence of such insurance shall be furnished to the Owner. The Design Consultant shall also provide a policy endorsement requiring the Owner to receive thirty (30) days prior written notice of cancellation for any statutorily permitted reason other than non-payment of premium. In addition, the Design Consultant shall provide at least five (5) business days written prior notice to the Owner's Representative at the address noted above and via email ("fdc-insure@wcpss.net") of the cancellation, non-renewal (without replacement), or the material reduction of coverage or limits of any of the policies. Upon notice of such cancellation, nonrenewal 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.

- 9.2 The Design Consultant shall deliver to the Owner a Certificate of Insurance for all of its insurance coverage for as long as it is required to maintain such coverage under this Agreement.
- 9.3 The Owner, Wake County and Wake County Board of Education, shall be named by endorsement as additional insureds on Design Consultant's General Liability policy.

- 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 consultants to maintain all types of insurance as mentioned in this Article Nine. The professional liability minimum limits of coverage for all civil, structural, roofing, plumbing, mechanical and electrical consultants shall be \$1,000,000 Each Claim/\$1,000,000 Policy Aggregate. The professional liability minimum limit of coverage for consultants such as acoustic, kitchen, landscape (not to include any civil engineering, ie., grading, storm runoff calculation and design), etc., shall be \$250,000 Each Claim/\$250,000 Policy Aggregate.
- 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 the Contract Documents. 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 the Contract Documents.
- 9.7 Should the Design Consultant fail to provide and maintain in force any insurance or insurance coverage required by the contract documents or by law, or should a dispute arise between owner and any insurance company of the Design Consultant 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, costs and expenses incurred in securing such determination and any other economic damages arising out of the failure of the Design Consultant or insurance company to comply with the provisions of the Contract Documents, 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**

### **INDEMNIFICATION**

- 10.1 Notwithstanding anything to the contrary contained herein, the Design Consultant shall indemnify and hold harmless the Owner and Construction Manager and their agents and employees from and against all claims, damages, losses and expenses arising out of or caused solely by any negligent act or omission of the Design Consultant, anyone directly or indirectly employed by the Design Consultant or anyone for whose acts the Design Consultant may be liable. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article. The parties agree that this indemnification clause is an "evidence of indebtedness" for purpose of N.C. Gen. Stat. § 6-21.2. The parties also specifically acknowledge that the Owner is a public body and it is the intent of the parties that the Owner not incur any expenses when the Contractor is solely responsible for the claims.
- 10.2 Notwithstanding anything to the contrary contained herein, the Owner shall indemnify and hold harmless the Design Consultant and its agents and employees from and against all claims, damages, losses or expenses attributable to bodily injury, sickness, disease or death, or to injury to or destruction of personal property, including the loss of use resulting therefrom, caused solely by any negligent act or omission of the Owner. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.
- 10.3 Except as otherwise set forth in this Agreement, the Design Consultant and the Owner shall not be liable to each other for any delays in the performance of their respective obligations and

responsibilities under this Agreement which arise from causes beyond their control and without their fault or negligence, including but not limited to, any of the following events or occurrences: fire, flood, earthquake, epidemic, atmospheric condition of unusual severity, war, and strikes. Owner shall not be liable to the Design Consultant for acts or failures to act by the Contractor.

## **ARTICLE 11**

### **TERMINATION OF AGREEMENT**

- 11.1 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.
- 11.2 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.
- 11.3 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.
- 11.4 Upon termination of this Agreement by the Owner under Paragraph 11.2 and 11.3 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 Work; 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.
- 11.5 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.

- 11.6 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 provided the Design Consultant has been compensated for all services satisfactorily performed by the Design Consultant and accepted by the Owner through the date of termination minus any back charges or other damages assessed by the Owner. 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.

## **ARTICLE 12**

### **SUCCESSORS/ASSIGNMENT**

- 12.1 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.
- 12.2 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.

## **ARTICLE 13**

### **OWNERSHIP OF DOCUMENTS/CONFIDENTIAL INFORMATION**

- 13.1 Drawings and Specifications as instruments of service are and shall remain the joint property of the Design Consultant and the Owner whether the Project for which they are made is built or not. While the Design Consultant shall not use the Drawings and Specifications for a project by a different owner, the Design Consultant may be permitted to use standard details and design elements that are common among different designs on other projects. The Owner shall retain reproducible copies of 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's 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 any use of the Drawings and Specifications without the Design Consultant's consent.
- 13.2 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.

## **ARTICLE 14**

### **ADDITIONAL PROVISIONS**

- 14.1 The Design Consultant acknowledges receipt of Board Policies 2212, 2302, 2305, 2306, 2307, 2308, 2321, 2334, 3225, and agrees to comply with their provisions.
- 14.1.1 The Design Consultant shall comply with the Owner's site or school building access procedures when working on any existing school campus.
- 14.2 APPLICABLE LAWS:

- 14.2.1 This Contract and the relationship of the parties shall be governed by the laws of the state of North Carolina.
- 14.2.2 Design Consultant shall comply with all applicable laws and regulations in providing services under this Contract. Design Consultant shall not employ any individuals to provide services to the Owner who are not authorized by federal law to work in the United States. The Design Consultant represents 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. The Design Consultant further warrants that it will use the E-Verify system to verify employment eligibility of all its employees throughout the term of this Contract, and that it will remain in compliance with all I-9 requirements throughout the term of this Contract. The Design Consultant shall also ensure that any subcontractors use the E-Verify system at all times while providing subcontracted services in connection with this Contract. 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.
- 14.2.3 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 contractors (“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 Sexual Offender Registry Check Certification Form 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 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.

- 14.2.4 Anti-Nepotism. The 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 Wake County Board of Education or of any principal or central office staff administrator employed by the Board. 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 of the Schools. Unless formally waived by the Board, the existence of a family relationship covered by this Agreement is grounds for immediate termination by Owner without further financial liability to Design Consultant.
- 14.2.5 Compliance with Iran Divestment Act of 2015. Provider certifies that as of the date of this Contract, Provider is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Provider understands that it is not entitled to any payments whatsoever under this Contract if this certification is false. The individual signing this Contract certifies that he or she is authorized by Provider to make the foregoing statement.
- 14.3 The Design Consultant shall comply with these and all applicable laws and regulations in providing services under this Contract.
- 14.4 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.
- 14.5 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, but the parties may by mutual agreement submit any claim, dispute or other matter at issue to arbitration in accordance with the North Carolina Uniform Arbitration Act, G.S. 1-567.1, et seq. or such other alternative dispute resolution procedure as may be mutually agreed upon between the parties.
- 14.6 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.
- 14.7 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.
- 14.8 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.
- 14.9 This Agreement shall be governed by the laws of the State of North Carolina, U.S.A.
- 14.10 If any 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.
- 14.11 Except where specifically stated otherwise, all periods of time stated in terms of days shall be considered periods calculated in calendar days.



- 14.12 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.
- 14.13 For the purpose of this Agreement unless the context clearly indicates otherwise, the singular includes the plural, and the plural includes the singular.
- 14.14 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.

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.

This Agreement executed the day and year first written above.

**OWNER:**

**WAKE COUNTY, BY AND THROUGH ITS AUTHORIZED AGENT  
THE WAKE COUNTY BOARD OF EDUCATION**

By: \_\_\_\_\_ (Seal)  
(name)  
Chair

Attest: \_\_\_\_\_ (Seal)  
(name)  
Secretary

**DESIGN CONSULTANT:**

**(name of design firm)**

By: \_\_\_\_\_  
(name, title)

North Carolina  
\_\_\_\_\_ County

I, \_\_\_\_\_, a Notary Public for \_\_\_\_\_ County, North Carolina, do hereby certify that  
\_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, personally appeared before me this day  
(name) (corporate title) (name of corporation)  
and acknowledged that he as \_\_\_\_\_ being authorized to execute contracts on behalf of and to  
(corporate title)  
bind \_\_\_\_\_ to the obligations and responsibilities in the foregoing instrument, executed the  
(name of corporation)  
foregoing on behalf of the corporation.

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

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

*(Official Seal)*