

# ARCHITECT OF RECORD MASTER AGREEMENT

» 2021 - 2022

UNION COUNTY  
EDUCATIONAL SERVICES  
COMMISSION



SOLUTIONS  
ARCHITECTURE

**AGREEMENT BETWEEN  
OWNER AND ARCHITECT  
FOR  
ARCHITECT OF RECORD – MASTER AGREEMENT**

**AGREEMENT:**

Made as of the **13th day of October** in the year **Two Thousand, Twenty One**

**BETWEEN the Owner:**           **UNION COUNTY EDUCATIONAL SERVICES COMMISSION**  
45 Cardinal Drive  
Westfield, NJ 07090

**and the Architect:**           **SOLUTIONS ARCHITECTURE, CORP. (SA)**  
96 Pompton Avenue, 2nd Floor, Ste. 200  
Verona, NJ 07044

**For the following:**

**ARCHITECT OF RECORD SERVICES** for the **Union County Educational Services Commission**  
Facilities

**1. ARTICLE 1 – INITIAL INFORMATION**

**1.1** It is understood that the Commission Facilities that may be the subject of projects in need of professional Architectural and Engineering Services consist of the following:

<b>FACILITY</b>	<b>ENROLLMENT</b>	<b>SQUARE FOOTAGE</b>
45 Cardinal Drive (Crossroads, Transitions and Board Offices)	57	26,500
1571 Lamberts Mill Road (Hillcrest Academy South, Lamberts Mill Academy, Westlake School)	213	57,500

**1.2** This document will be the overarching agreement for all Architect of Record Services and will be supplemented by individual work orders, proposals or Letters of Agreement, depending upon how extensive the work, for projects conducted during the year.

**1.2.1.** Work that is limited in nature will be documented by an “AOR Work Order” describing the task and scope of work that will be conducted hourly or hourly not-to-exceed based upon the current, approved hourly rates.

**1.2.2.** More structured work or larger projects will be documented by a proposal or Letter of Agreement detailing the scope of work to be completed and providing a specific fee for the services.

**1.3** Projects documented with Letters of Agreement (LOA) are subject to the provisions of this document. Professional Architectural and Engineering Services may be provided for a variety of projects including but not limited to: renovations, capital improvements, additions and renovations, feasibility studies, site work, pre-referendum services and other projects as requested by the Board of Education or required by a State or Local Agency having jurisdiction, with the knowledge and authorization of the Board of Education by its authorized administrative representatives.



## 2. ARTICLE 2 – ARCHITECT’S RESPONSIBILITIES

- 2.1 The Architect’s services consist of those services performed by the Architect, Architect’s employees and Architect’s consultants as enumerated in Articles 2 and 3 of this Agreement along with any other services included under Article 12 and those excluded under Article 12.1
- 2.2 The Architect’s services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the Owner, the Architect shall submit for the Owner’s approval a schedule for the performance of the Architect’s services which may be adjusted as the Project proceeds and shall include allowances for periods of time required for the Owner’s review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.
- 2.3 Solutions Architecture shall identify a representative authorized to act on behalf of the Architect with respect to projects that may arise under this agreement:

PRIMARY CONTACT	ALTERNATE CONTACT
Frank A. Messineo, AIA <i>Principal / Owner</i>	Alexis Goldman, AIA, LEED AP <i>Associate Principal</i>
OFFICE: (973) 484-4800	OFFICE: (973) 484-4800
CELL: (201) 618-0606	CELL: (201) 988-1475
E-MAIL: fm@solutions-arch.com	E-MAIL: alexisg@solutions-arch.com

- 2.4 The Architect shall cooperate with the work of consultants retained directly by the Owner. The Architect shall assist in the coordination of the work of such other consultant(s) with the work of the Architect’s consultants, and the Architect shall promptly notify the Owner that the work of any consultant is not adequate or satisfactory. The Architect shall have no obligation or responsibility to direct the Owner’s consultants in performing their tasks other than to provide information and assistance necessary for the coordination of their tasks, nor shall the Architect be responsible for delays caused by the Owner’s consultant(s) failure to meet milestones or scheduled submission dates. The Architect shall not be responsible for the certification and pre-qualification of the Owner’s consultants if it is discovered that said consultant(s) had not been qualified prior to the start of work.
- 2.5 The Architect shall maintain insurance for the duration of this Agreement of the types and limits included herein under sub-paragraph 12.3. Should any of the Owner’s requirements exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost.

## 3. ARTICLE 3 – SCOPE OF ARCHITECT’S BASIC SERVICES

- 3.1 Solutions Architecture will be available to perform services as required by the Commission for various projects that may arise. The Architect’s Basic Services entertained by the Commission shall consist of services described within the individual Letter of Agreement for each project and will include engineering services as required or requested for the scope of work.
- 3.2 **For each project,** Solutions Architecture and our Consultant Engineers (Site/Civil, Structural, Mechanical, Electrical, Plumbing, Life Safety (each as required)) will undertake similar scope related items that may be required as usual and customary. These services include but may not be limited to those noted below. Services not set forth in this Article 3 shall be considered Additional Services.
- 3.3 The Architect shall provide, in conjunction with the Owner’s other Consultants, a preliminary evaluation of the Owner’s program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Article 6. The Architect shall review with the Owner, alternative approaches to design and construction of the Project.
- 3.4 In the further development of the drawings and specifications during this and subsequent phases of design, the Architect shall be entitled to rely upon the accuracy and completeness of services and information furnished by the Owner and Owner’s Consultants;

**3.4.1.** This includes but is not limited to information pertaining to existing conditions, scope and budget. The Architect shall not be responsible for an Owner's directive, substitution or change to the scope of work made without the Architect's approval.

### **3.5 INVESTIGATION & SCHEMATIC DESIGN PHASE SERVICES:**

**3.5.1.** Existing Documentation: The Architect shall review aspects of the proposed project and evaluate previous reports and studies commissioned by the Board to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

**3.5.2.** Physical On-Site Review of Facilities: The Architect shall attend meetings with Commission Administration and appropriate facilities personnel to review the current project conditions and determine the complete scope of work.

**3.5.3.** The Architect shall review the project's compliance with the Long-Range Facilities Plan and/or prepare the required amendment for same. The Architect shall prepare, for approval by the Owner the requisite copies of the Project Application for submission to the State Department of Education for approval (and funding - if availability and eligibility requirements have been met).

**3.5.4.** The Architect will evaluate the project as to the requirements of the local codes and regulations applicable to the services rendered and shall notify the Owner if other information or consulting services are reasonably necessary for the project.

**3.5.5.** Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

**3.5.6.** The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other, more extensive environmentally responsible design services under Article 4, subparagraph 4.4.20.

### **3.6 DESIGN DEVELOPMENT PHASE SERVICES:**

**3.6.1.** Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect shall prepare Design Development Documents for review and approval by the Owner. These documents consist of drawings and specifications to fix and describe the size and character of the Project as to Architectural, structural, mechanical and electrical systems as may be appropriate.

**3.6.2.** Upon Completion of the Design Development Phase, the Architect shall provide up to date drawings detailing the current design direction for the Owner's Approval. The Design Documents shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

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

**3.6.4.** The Architect acknowledges that the project's to be undertaken will be school facilities Projects as defined in the Educational Facilities and Financing Act, P.L. 2000c.72 and represents that the firm is fully qualified with DOE and SDA to do school construction projects. All Project documentation (all plans specifications, drawings, and bid documents) related to this Project must be reviewed and approved by the Department of Education, the Department of Community Affairs (Division of Codes and Standards) or an approved and certified local authority, and appropriately licensed Code Officials.

**3.6.5.** The Architect shall design the Project and make revisions to said documents in accordance with the requirements of the authority and all other governmental authorities having jurisdiction over this project. Those comments that are reasonable and required by cited applicable codes rather than the caprice of local officials will be provided at no additional cost to the Board.

### 3.7 CONSTRUCTION DOCUMENTS PHASE SERVICES

- 3.7.1. Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, in consideration of the Updated Budget Estimates, Construction Documents consisting of Drawings and Specifications setting forth the requirements for the construction of the Project, for review and approval by the Owner.
- 3.7.2. The Architect shall advise the Owner of any adjustments to previous budget estimates of probable construction cost indicated by changes in requirements or general market conditions.
- 3.7.3. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.9.9.d) and e)
- 3.7.4. Upon completion of the Construction Documents Phase, the Architect shall provide “signed and sealed” construction documents in connection with the Owner’s responsibility for filing documents required by municipal authorities having jurisdiction over the Project. The Architect, with the assistance of the Owner, is primarily responsible for filing the documents with the State Department of Education and Department of Community Affairs for Final Approvals. The Owner shall pay all filing fees for all governmental authorities as required.
- 3.7.5. The Architect shall have responsibility for submitting the requisite documents and obtaining the approval of the State Department of Education, the Economic Development Authority/New Jersey Schools Development Authority, the Department of Community Affairs (Division of Codes and Standards), the licensed Code Officials and all other government authorities having jurisdiction over this project.
- 3.7.6. The Architect shall develop the Construction Documents with the understanding that the Owner may be in occupancy during the project. The Architect shall work with the Owner relative to sequencing and scheduling issues involving the project. The Construction Documents shall be coordinated with the Owner to provide for work sequencing and scheduling necessary minimize disruption to personnel and students in the school. The Architect shall meet with the Owner to determine the manner in which sequencing, and scheduling may best be incorporated into the Construction Documents.

### 3.8 BIDDING OR NEGOTIATION PHASE SERVICES

- 3.8.1. The Architect, following the Owner’s approval of the Construction Documents and the latest budget estimate of probable Construction Cost, shall assist the Owner in Bidding the project by hosting the project on our proprietary Bid Document Procurement / Evaluation Portal - BIDBox™
  - a) It shall be the responsibility of the Architect to promptly notify the Owner if, in the Architect’s opinion, and based upon discussions with the Owner, that the Project cannot be designed and constructed within the Owner’s budget for the Project.
  - b) Upload to BidBox™, all of the project details describing the nature and scope of the project along with the schedule and budget. We assist the Owner in the solicitation and issuance of bidding documents to prospective bidders, including those contractors with whom we have worked successfully in the past. Prospective Bidders need only access our website to review all of the details associated with the project and to procure the Bid Documents for the project.
  - c) Solutions Architecture will prepare the advertisement for bids for submission to the local papers by the Commission or Commission Personnel.
  - d) SA will preside over a pre-bid meeting to review the scope to prospective bidders and answer potential questions and prepare Addenda (as required);
  - e) We will prepare all responses to Bidder’s inquiries and necessary addenda and/or clarifications will be issued through Bid Box during the bidding process.
  - f) SA will preside over the bid opening and prepare, through Bid Box, a tabulation of the bids received along with a written analysis of those bids. If necessary, SA will conduct a bid verification meeting with the apparent low bidder to review his bid for compliance with the intended scope; depending upon the time spent, the bid verification meeting is subject to additional service fees.

- g)** SA will provide recommendations for the award of contract for construction. Such analysis and recommendations shall be prepared for review by the Board's Counsel; final determination of award shall be provided subsequent to confirmation of Board Counsel. Should the Commission decide, contrary to the recommendations of the Architect, to award or reject the project, the Architect shall not be held responsible for consequences or claims borne out of their decision.
- h)** Submit for Owner's review a standard form of AIA contract between the Owner and Contractor (This review is from the Architect's standpoint of preparation of the specifications front-end only and does not encompass any legal aspects or opinions of said Owner/Contractor contract.)

  - i.** At the time of award of contracts, and upon request by the Owner, Solutions Architecture will print out a copy of the AIA Owner/Contractor Agreement and Supplemental General Conditions and submit it to the Board's counsel for edification and supplementation and will provide administrative services to input said modifications into the AIA Software. Provided that there will be multiple contracts associated with the various projects, fees associated with the administrative portion of the contracts shall be submitted separately based upon the approved hourly rates and borne by the Board of Education.
  - ii.** Assist the Owner in connection with the Owner's Responsibility for filing documents required for the approval of governmental authorities having jurisdiction.

### **3.9 CONSTRUCTION PHASE SERVICES - ADMINISTRATION OF THE CONSTRUCTION CONTRACT**

- 3.9.1.** The Architect's Construction Phase services shall begin upon the award of the contract for construction, together with the Architect's obligation to provide Basic Services under this Agreement and will terminate sixty days after the Date of Substantial Completion of the Work unless extended under the terms of Subparagraph 11.4.2. Construction phase services are based upon the appropriate and agreed upon construction duration for each project, from Owner's authorization to proceed with construction through project closeout.
- 3.9.2.** Unless otherwise provided in this Agreement and incorporated in the Contract Documents, the Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document 201, General Conditions of the Contract.
- 3.9.3.** Services beyond the agreed upon construction duration, noted in Subparagraph 3.9.1. above shall be considered as Additional Services in accordance with Article 4 and with Subparagraph 11.4.2.
- 3.9.4.** Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect. Subsequently, the Construction Manager and Contractor shall be notified by the Owner of the provisions of said agreement.
- 3.9.5.** The Architect is an independent consultant and not the agent of the Owner. The Architect shall advise and consult with the Owner during the Construction Phase, as defined in Article 3, Subparagraph 3.9 and as an Additional Service thereafter, or as otherwise directed by the Owner during the correction period described in the Contracts for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in the Contract Documents unless otherwise modified by written instrument.
- 3.9.6.** In cooperation with the Owner's other Consultants, the Architect shall visit the site weekly to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. The Architect shall attend all bi-monthly project job meetings required by the Owner and it shall be reasonably expected that these meetings can be coordinated with the weekly site visits. However, the Architect shall not be required to make exhaustive or continuous on-site visits to check the quality or quantity of the Work. On the basis of such on-site visits as an Architect, the Architect shall tender copies of all field reports and notes to the Owner, so the Owner is apprised of progress and quality of the Work. In addition to the above services and upon notification by the Contractor that that project is ready for same, the Architect includes in Basic Services, one (1) visit to prepare punch lists, one (1) visit to assess Substantial Completion, one (1) visit to assess Final Completion and finally (1) visit to conduct an 11 Month Warranty Walk-thru. The Architect will consult with representatives of the Owner as may be required in connection with the Work during construction of the project, for the interpretation of plans when disagreements may arise and for consultation during construction in the event unforeseen

conditions arise. The Architect, Frank A. Messineo, AIA shall be the lead contact for any project and shall assign a Project Manager/Architect, who is qualified to act, in liaison capacity, and who will be available on matters pertaining to each project. The Architect shall assign a Construction Field Representative, who is qualified to act on their behalf during the Construction Phase. Site visits beyond that noted, shall be considered as an Additional Service as outlined in Paragraph 11.4.2.

- a) The Architect will attend Board/Committee meetings as requested and report to the Board on a monthly basis under Basic Services.
- b) The Architect will provide monthly reports to the Board detailing the progress and items of note or issue on the project.

**3.9.7.** The Architect shall not have control over, or charge of, and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions, safe conditions of the site or other programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract for Construction. The Architect shall not be responsible for the Contractor's schedules or failures to carry out the Work in accordance with the Contract Documents. The Architect shall not be responsible for the performance by the Owner's Consultants or of the services required by the Owner's Consultants Agreement with the Owner. The Architect shall not have control over, or charge of, acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

**3.9.8.** Architect shall at all times have access to the Work wherever it is in preparation or progress.

**3.9.9.** Except as may otherwise be provided in the Contract Documents or when direct communications have been especially authorized, communications by and with the Architect's consultants shall be through the Architect. The Architect must be copied on any-and-all communications between Contractor and Owner.

**3.9.10.** Based on the Architect's observations and evaluations of the Contractor's Application for Payment, the Architect, (in conjunction with a Construction Manager, if so appointed) shall review and advise the Owner of the amounts due the Contractor. The Architect shall participate in the payment requisition process and consult with the Owner during review of a "Pencil Requisition" through certification of payment as more particularly delineated in the supplementary General Conditions of the Contract – between Owner and Contractor.

- a) The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the site as provided in Subparagraph 3.9.5 and upon the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified.
- b) The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site visits to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences or procedures; (3) reviewed or certified job-site conditions or contractor's safety protocols, which are strictly his responsibility under the Contract for Construction; (4) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (5) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.
- c) The Architect shall have authority to reject Work which does not conform to the Contract Documents; the Architect shall notify the Owner of said non-conformance. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspections or testing of the Work in accordance



with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect, nor a decision made in good faith either to exercise or not to exercise such authority, shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

- d) The Architect shall review Contractor submittals, such as shop drawings, product data, samples and other data, as required by the Architect, but only for the limited purpose of checking for conformance with the design concept and the information expressed in the contract documents. This review shall not constitute review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, sequences, techniques, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. The Architect's review shall be conducted with reasonable promptness while allowing for sufficient time in the Architect's judgment to permit adequate review; but in no event greater than ten (10) working days, unless notification from the Architect provides adequate basis for additional review. Review of a specific item shall not indicate that the Architect has reviewed the entire assembly of which the item is a component.
- e) The Architect shall not be responsible for any deviations from the contract documents not brought to the attention of the Architect in writing by the Contractor. The Architect shall not be required to review partial submissions or those for which submissions of correlated items have not been received. When professional certification of performance characteristics of materials systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that materials, systems, or equipment will meet the performance criteria required by the contract documents.
- f) As part of basic services, the Architect shall be required to review, and check shop drawings and submittals as noted above. The Architect shall provide one additional review as required (two reviews total) under basic services; any additional submissions for re-review necessitated by the contractor's failure to make a complete and proper submission will be considered additional services as outlined in Paragraph 4.3.3.

- 3.9.11.** The Architect shall prepare Change Orders and Construction Directives after review of the initial request, discussion and negotiation, and any supporting documentation and data deemed necessary by the Architect for the Owner's approval and execution in accordance with the Contract Documents and may authorize minor changes in the work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order.
- 3.9.12.** As part of basic services, the Architect, shall make one (1) visit to prepare punch lists; one (1) visit to assess the date or dates of Substantial Completion; one (1) visit to assess the date of Final Completion and finally one (1) visit per each site to conduct an 11 Month Warranty Walk-through as provided in subparagraph 3.9.5.
- 3.9.13.** Upon Request of the Owner, but not before, the Architect shall certify a Final Certificate of Payment upon compliance with the requirements of the Contract Documents.
- 3.9.14.** As deemed necessary by the Architect, or at the written request of the Owner or Contractor, the Architect shall interpret and decide matters concerning the requirements of the Contract Documents. Such interpretations and decisions of the Architect shall be consistent with the intent of and be reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. The Architect shall not be liable for results of interpretations or decisions so rendered in good faith.
- 3.9.15.** The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents and subject to final approval of Owner. The Owner shall appoint a representative to have the authority to render such decisions in a timely manner so not to cause delay of construction or additional services for the Architect or Engineers.
- 3.9.16.** The Architect shall render decisions within a reasonable time on all claims, disputes, or other matters in question between the Owner and Contractors relating to the execution of progress of the work as provided in the Contract Documents



- 3.9.17.** If the Owner authorizes deviations, recorded or unrecorded, from the documents prepared by the Architect without written agreement of the Architect, the Owner shall indemnify and hold harmless the Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting in whole or in part from such deviations, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.
- 3.9.18.** Neither the professional activities of the Architect, nor the presence of the Architect or his or her employees and sub-consultants at a construction site, shall relieve the General Contractor and Construction Manager and/or any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. The Architect and his or her personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The Owner agrees that the General Contractor is solely responsible for jobsite safety and warrants that this intent shall be made evident in the Owner's agreement with the General Contractor. The Owner also agrees that the Owner, the Architect and the Architect's consultants shall be indemnified and shall be made additional insured as our interests may appear under the General Contractor's general liability and builders risk insurance policy.

#### **4. ARTICLE 4 – ADDITIONAL PROFESSIONAL SERVICES**

**4.1** The services described in this Article 4 are not included in Basic Services unless so identified in Article 12, but, may be required for the proper completion of the project and the Architect shall be entitled to payment in addition to the compensation for Basic Services and pursuant to Section 11.3. The Architect shall also be entitled to an appropriate adjustment in the approved schedule. The services described under Paragraphs 4.2 and 4.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Paragraph 4.3 are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner prior to commencing such services. If the Owner deems that such services described under Paragraph 4.3 are not required, the Owner shall give immediate written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services and shall have no liability to the Owner, the Owner's agents, servants, employees, or contractors for delay or damages caused because of the lack of those services.

#### **4.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES - EXTENDED CONSTRUCTION ADMINISTRATION**

- 4.2.1.** If more extensive representation at the site than is described in Subparagraph 3.9.5 and 3.9.11 is required by the Owner, the Architect shall provide an additional representative to assist in carrying out such additional on-site responsibilities at a cost as may be mutually agreed upon.
- 4.2.2.** Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefore as agreed by the Owner and Architect. The duties, responsibilities and limitations of authority of Project representatives shall as mutually agreed upon between Owner and Architect.
- 4.2.3.** The furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement.

#### **4.3 CONTINGENT ADDITIONAL SERVICES**

- 4.3.1.** Making revisions to Drawings, Specifications or other documents when such revisions are:
- a)** Inconsistent with written approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
  - b)** Requested by the Owner because of an unexpected change in the Owners Budget.
  - c)** Required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
  - d)** Required due to a difference in the interpretation of a code, law or regulation by the authority having jurisdiction or a requirement imposed by that authority that may not otherwise be required by the code, either prior or subsequent to previous review and approval; or

- e) Due to changes required as a result of the Owner's failure to render decisions in a timely manner and thereby cause unreasonable delay in the orderly progress of the Architect's services.
- 4.3.2.** Providing services required because of changes in the Project including, but not limited to, changes in size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction.
  - 4.3.3.** Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect; or providing services in evaluating more than 2 (unless otherwise mutually agreed upon) submissions by the Contractor due to the contractor's failure to provide the required data or products.
  - 4.3.4.** Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
  - 4.3.5.** Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
  - 4.3.6.** Preparing Drawings, Sketches, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives; provided such change orders and construction change directives are required by causes not the fault of the Architect.
  - 4.3.7.** Preparing Drawings, Specifications and other documentation and supporting data, for re-submission to the reviewing agency having jurisdiction based upon differences in the interpretation of a code, law or regulation by the authority having jurisdiction, the inspector on site or a requirement imposed by that authority or inspector that may not otherwise be required by the code, either prior or subsequent to previous review and approval.
  - 4.3.8.** Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting there from.
  - 4.3.9.** Providing coordination services with the Owner's Consultant, including the services necessary to adequately evaluate alternative system(s) proposed by the Consultant and, if required, making subsequent revisions to Drawings, Specifications, and other documentation resulting there from.
  - 4.3.10.** Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishings services required in connection with the replacement of such Work.
  - 4.3.11.** 3.3.11. Providing services made necessary by the default or termination of the Owner's Consultants or any Contractor. By defects or deficiencies in the Work of a Contractor, or by failure of performance of either the Owner, or a Contractor under the Contract for Construction, including preparation of additional or multiple punch lists, drawings required for corrective work, additional site visits, additional shop drawing review.
  - 4.3.12.** Providing services in evaluating more than 3 (unless otherwise mutually agreed upon) claims submitted by the Contractor or others in connection with the Work.
  - 4.3.13.** Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Architect is party thereto.
  - 4.3.14.** Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction subsequent to the completion of the Design Development Phase or providing out-of-sequence services requested by the Owner, excepting that agreed to in sub-paragraph
  - 4.3.15.** Providing services required for coordination of and meetings with the Owner's consultants and preparing changes to the Architect's documents necessitated by this effort.
  - 4.3.16.** Providing services required for correction of work completed by the Owner, Owner's forces, or local agencies including document modifications, special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

- 4.3.17.** Providing professional services of the Architect or any of his consultants required by new/additional requirements imposed by the Authority during the course of this project and thereafter, as applicable to this Project.

#### **4.4 OPTIONAL ADDITIONAL SERVICES**

- 4.4.1.** Providing Graphic Design Services including concept design, graphic production, and coordination of print and installation of graphic design materials.
- 4.4.2.** Providing Professional Photography Services to formally document the final conditions of the individual project, including the coordination, and scheduling with a professional photographer, site coordination and staging, review of final proofs and coordination and submission with the Owner.
- 4.4.3.** Providing financial feasibility or other special studies.
- 4.4.4.** Providing planning surveys, site evaluations or comparative studies of prospective sites; providing environmental engineering services other than those agreed to in Article 2, Subparagraph 2.1.
- 4.4.5.** Providing services relative to the planning of future facilities, future projects, systems and equipment.
- 4.4.6.** Providing services to investigate existing conditions of facilities or to make measured drawings thereof; other than such documentation previously recorded.
- 4.4.7.** Providing services to verify the accuracy of drawings or other information furnished by the Owner.
- 4.4.8.** Providing services to verify existing conditions based upon a discovered and otherwise known field condition.
- 4.4.9.** Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.
- 4.4.10.** Providing services in connection with the work of separate consultants retained by the Owner.
- 4.4.11.** Providing detailed estimates of Construction Cost/Services of a professional cost estimator.
- 4.4.12.** Providing detailed quantity surveys or inventories of material, furnishings, equipment and labor.
- 4.4.13.** Providing analyses of owning and operating costs.
- 4.4.14.** Providing design and other similar services required for or in connection with the selection, procurement or installation of loose furniture, furnishings and related equipment.
- 4.4.15.** Providing services for planning tenant or rental spaces.
- 4.4.16.** Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.
- 4.4.17.** Preparing a set of reproducible record drawings ("As-builts") showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.
- 4.4.18.** Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
- 4.4.19.** Providing services of consultants or consulting engineers not provided as a part of Basic Services.
- 4.4.20.** Providing services in connection with Energy Analysis, Energy Audits, Solar and Photo-voltaic Design, ESIP RFP preparation and design, LEED Accreditation Services and other Environmentally Responsible Design.
- 4.4.21.** Providing a service not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted Architectural practice that has been mutually agreed upon in writing by the parties hereto.
- 4.4.22.** Providing acoustical analysis of existing or newly designed spaces



- 4.4.23. Providing services associated with the output of Graphic Renderings, 3-Dimensional animations, models, or other representations of the proposed facilities.
- 4.4.24. Providing Services subsequent to the Architect's Construction Phase services as defined under Article 3.9.1.

**5. ARTICLE 5 – OWNER'S RESPONSIBILITIES**

- 5.1 The Owner shall provide full information regarding requirements for the Project, including a program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expendability, special equipment, systems and site requirements.
- 5.2 The Owner shall establish and update an overall budget for the Project based upon initial planning with the Architect, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.
- 5.3 If requested by the Architect, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement
- 5.4 The Owner shall designate a single representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in writing in a timely manner pertaining to any documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services. Said representative shall render equally timely decisions during the course of construction so as to avoid unreasonable delay in the progress of the work.

OWNER CONTACT	OWNER'S REPRESENTATIVE
Mr. Eric Larson <i>Business Administrator</i>	Mr. Eric Larson <i>Business Administrator</i>
OFFICE: (908) 233-9317	OFFICE: (908) 233-9317
CELL/EMERGENCY NO.: (973) 908-5248	CELL/EMERGENCY NO.: (973) 908-5248
E-MAIL: elarson@ucesc.org	E-MAIL: elarson@ucesc.org

- 5.5 The Architect understands that the Owner may decide to retain a Construction Management Firm to administer a given Project. The Architect shall assist the Owner with the selection process. The Construction Manager's services, duties, and responsibilities will be as described in the edition of AIA Document B801/CMA, Standard Form of Agreement between Owner and Construction Manager, or such other agreement as agreed to by Owner and Construction Manager; current as of the date of this Agreement and as modified between Owner and Construction Manager provided that the Architect has reviewed and has an opportunity to comment on said amendments. For a given project, the Terms and Conditions of the Agreement between Owner and Construction Manager shall be furnished to the Architect for Architect's review and shall coordinate the scope of services each as it respects the others scope of services and responsibilities. The Architect shall not be responsible for actions taken by the Construction Manager. Provided further that Owner's retention of a Construction Manager shall not relieve the Architect of performing its contractual responsibilities
- 5.6 Owner shall furnish the services so designated in this Agreement to be furnished or provided by the Owner and shall also furnish the services of other consultants or engineers when such services are not included as part of the Architect's Basic or Additional Services, are reasonably required by the scope of the Project, and are requested by the Architect.
- 5.7 The Owner shall at its sole cost and expense furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, designations, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a project benchmark.
- 5.8 The Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory/environmental tests, inspections/reports required by law or Contract Documents.

- 5.9** Unless otherwise agreed upon, it is typical and customary that the Owner shall provide at its sole cost and expense via its own forces any and all services associated with Technology, Computers, Cabling, and telecommunications. The Architect shall cooperate with and shall assist in the coordination of the work of the Owner's forces with the work of the Architect's Consultants.
- 5.10** The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require, to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.
- 5.11** The services, information, surveys and reports required by Paragraphs 4.4.1 through 4.4.8 shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.
- 5.12** Prompt written notice shall be given by the Owner to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.
- 5.13** The proposed language of documentation letters or reports requested of the Architect or Architect's consultants shall be submitted to the Architect for review and approval at least 14 days prior to execution. The Owner shall not request documentation that would require knowledge or services beyond the scope of this Agreement.
- 5.14** The Architect shall indicate to the Owner the information needed for rendering of services hereunder. The Owner shall provide to the Architect such information as is available to the Owner and the Owner's consultants and contractors, and the Architect shall be entitled to rely upon the accuracy and completeness thereof. The Owner recognizes that it is impossible for the Architect to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions which may have occurred in assembling the information the Owner is providing. Accordingly, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect and the Architect's sub-consultants harmless from any claim, liability or cost (including reasonable attorneys' fees and costs of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Owner to the Architect.
- 5.15** The Owner shall furnish the Architect copies of any communications between the Construction Manager and Contractors.

## **6. ARTICLE 6 – BUDGETED CONSTRUCTION COST**

- 6.1** The Budgeted Construction Cost shall be defined as the total cost to the Owner of all constructed or purchased elements of the Project that have been required by the Owner and designed or specified by the Architect. The Budgeted Construction Cost will have been submitted for approval by the State Department of Education under the New Jersey Educational Facilities Construction and Financing Act, PL.2000 c.72 (NJSA 18A:7G-1 et. Seq.)
- 6.2** The Budgeted Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction. Construction Soft Costs shall also include the compensation of the Construction Manager and Construction Manager's Consultants (if applicable).
- 6.3** During the schematic design, design development and construction document phase, the budgeted construction cost shall be determined from the Owner's conceived budget for the project including the total cost or estimated cost of all elements of project requested or required by the Owner and as designed by the Architect and represented by the Owner's budget for this project and as reviewed and approved by the Construction Manager.
- 6.4** During the Bidding and Negotiation Phase, Construction Costs shall be determined by the lowest responsible bid or bids, or in the absence of a responsive bid, a negotiated price. In the absence of either a responsive bid or negotiated price, the Architect's latest agreed upon construction cost estimate shall govern.
- 6.5** The Budgeted Construction Cost does not include the compensation of the Architect and Architect's consultants, the cost of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided

in Article 5.

## **6.6 RESPONSIBILITY FOR PROBABLE CONSTRUCTION COST**

- 6.6.1.** No fixed limit of Construction Cost shall be established as a condition of this Agreement.
- 6.6.2.** Having no control over the cost of labor, materials, or equipment, or over the Contractor's method of determining prices, or over competitive bidding or market conditions, the Architect's opinions of probable construction cost provided for each project are made on the basis of experience and qualifications as well as recent market trends. While the Owner will receive additional assurances of project cost on current and updated cost estimates, it must be noted that these opinions of cost represent the judgment of an Architect familiar with the construction industry. However, the Architect cannot and does not guarantee that proposals, bids, or the construction cost will not vary significantly from opinions of probable cost.
- 6.6.3.** Evaluations of the Owner's Project budget, and/or preliminary estimates of probable Construction Cost prepared by a Construction Manager are solely for the Architect's guidance in the Architect's preparation of the Construction Documents. Accordingly, the Architect cannot and does not warrant the accuracy of the estimates of a Construction Manager. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any estimate of probable Construction Cost or evaluation prepared or agreed to by the Architect.
- 6.6.4.** In as much as renovations and rehabilitation to existing structures including demolitions, modifications and evaluations of integral systems, requires that certain assumptions be made regarding existing conditions, and given the fact that some assumptions cannot be verified without expending additional money or destroying otherwise adequate or serviceable or occupied portions of the building, it is understood that unforeseeable and unintended events may occur during the course of construction that could not have been considered or planned for under the construction documents.
- 6.6.5.** In so far as the State Department of Education and Schools Development Authority acknowledge 6.6.4 and require a minimum 5% Construction Contingency for approval; The Client acknowledges this and agrees to include a construction contingency for all submitted projects and that such contingency may be required to be anywhere between 5% and 10% depending upon the complexity of the project. Such contingency is required to address any such events which will result in additional costs for construction or professional services to rectify such unforeseeable events encountered through no fault or negligence of the Architect.
- 6.6.6.** Each Construction Project is viewed as "one of a kind", The Architect bears an obligation to provide a standard of care that would be reasonably expected from others in the profession; this infers tolerance for the human element. In the event that the estimate, or the lowest bona fide bid or negotiated proposal received by the Owner, exceeds the Owner's budget for reasons other than those described in Paragraph 3.3, the modifications of the contract documents shall be the limit of the Architect's responsibility and the Architect shall be entitled to compensation in accordance with this Agreement for all services necessary to modify said documents to make them ready for re-bid.

## **7. ARTICLE 7 – USE OF ARCHITECTS INSTRUMENTS OF SERVICE (DRAWINGS SPECIFICATIONS & OTHER DOCUMENTS)**

- 7.1** The Drawings, Specifications and other documents (including Electronic Data) prepared by the Architect for this Project are instruments of the Architect's service for use solely with respect to this Project and, unless otherwise provided, the Architect shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of the Architect's Drawings, Specifications and other documents for information and reference in connection with the Owner's use and occupancy of the Project. Such copies shall be submitted to the Owner at the conclusion of the Project or termination of services of the Architect, whichever occurs, and shall be delivered to the Owner clearly marked and identified and in good order, upon payment of fees for services rendered to date.
- 7.2** Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Architect's reserved rights.



**7.3** Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

**7.4** In the event that Owner elects to utilize the Architect's Plans and Specifications on other projects, or to complete or modify the construction of the Project in question with an Architect other than Solutions Architecture, or even without an Architect, then Owner will indemnify and hold Architect, Architect's agents, employees and consultants harmless to the fullest extent allowable by law, from and against any claims, liability, cost or expense (including, without limitation, reasonable legal fees and expenses) alleging any negligent acts, error or omissions asserted by third parties in connection with or arising from such utilization of the aforementioned Plans and Specifications. Furthermore, Owner agrees to and does hereby release and discharge Architect, Architect's agents, employees and consultants, from any and all obligations, promises, covenants, and agreements arising out of Architect's preparation of the aforementioned Plans and Specifications should Owner undertake to complete construction of or modify the Project in question without using Architect's services.

## **8. ARTICLE 8 – DISPUTE RESOLUTION**

### **8.1 INTRODUCTION**

**8.1.1.** All claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be resolved as described in Paragraphs 8.2 and 8.3.

**8.1.2.** In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the Project, the Owner and the Architect agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation as set forth in 8.2 below unless the parties mutually agree otherwise.

**8.1.3.** The Owner and the Architect further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

### **8.2 MEDIATION**

**8.2.1.** The parties shall attempt in good faith first to mediate any such dispute between themselves and use their best efforts to resolve any and all matters in dispute.

**8.2.2.** If the parties are unable to resolve their differences, either party shall serve written notice of dispute under this Agreement to mediation, each party shall designate their representative and shall meet within five (5) days after the service of the notice detailing the circumstances of the dispute.

**8.2.3.** Should the parties fail to agree upon an impartial party to resolve their dispute Owner and Architect agree to submit the dispute, in accordance with the Construction Industry Mediation Rules to the American Arbitration Association currently in effect. Mediation shall proceed in advance of any further arbitration or legal or equitable proceedings in which the sole discretion of the Owner May be stayed for a period of sixty (60) days from the date of filing.

**8.2.4.** Each party shall pay the fees and expenses of the third-party mediator and such costs shall be borne equally by both parties.

**8.2.5.** Any third-party mediator designated to serve in accordance with the provisions of the Agreement shall be disinterested, shall be qualified to evaluate the performance of both of the parties, and shall be familiar with the design and construction process.

**8.2.6.** The procedure outlined in this Paragraph 8.2 is an "informal" process aimed at resolving disputes between the parties to the Agreement as expeditiously as possible. This process shall be considered as a condition precedent to moving to having this matter resolved in a court of competent jurisdiction, venued in Essex County.

## 9. ARTICLE 9 – TERMINATION, SUSPENSION OR ABANDONMENT

- 9.1 This Agreement may be terminated by either party with or without cause on (30) days after receiving written notification provided that the Architect has received payment in full for all services performed in accordance with this Agreement or incurred prior to termination, together with Reimbursable Expenses then due.
- 9.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services.
- 9.3 This Agreement may be terminated by the Owner upon not less than seven calendar days' written notice to the Architect in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Architect may terminate this Agreement by giving written notice.
- 9.4 Failure of the Owner to make payments to the Architect in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.
- 9.5 If the Owner fails to make payment due the Architect for services and expenses, the Architect may, upon seven calendar days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within seven calendar days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.
- 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for all services performed or incurred prior to termination, together with Reimbursable Expenses then due.
- 9.7 If the Architect for any reason does not complete all the services contemplated by this Agreement, the Architect cannot be responsible for the accuracy, completeness or workability of the contract documents prepared by the Architect if used, changed or completed by the Owner or by another party. Accordingly, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any claim, liability or cost (including reasonable attorneys' fees and defense costs) for injury or loss arising or allegedly arising from such use, completion or any unauthorized changes made by any party to any contract documents prepared by the Architect.

## 10. ARTICLE 10 – MISCELLANEOUS PROVISIONS

- 10.1 Unless otherwise provided, this Agreement shall be governed by the law of the State of New Jersey.
- 10.2 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion.
- 10.3 The Owner and Architect waive all rights against each other and against the Construction Manager, Contractors, consultants, agents and employees of the other for damages, but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in edition of the AIA Document A201/CMA, General Conditions of the Contract for Construction, Construction Manager-Adviser Edition current as of the date of this agreement. The Owner and Architect each shall require similar waivers from their Construction Manager, Contractors, consultants and agents and persons or entities awarded separate contracts administered under the Owner's own forces.
- 10.4 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Architect shall assign this Agreement without the written consent of the other.
- 10.5 The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials. The Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall include professional credit for the Architect on the construction sign, in the promotional materials for the Project and publicity press releases related to the Project.

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- 10.6** The Architect shall not be responsible or liable for any damages, delays, or failure of performance due to “force majeure” or any other reason beyond the control of the Architect.
- 10.7** In the event the Owner initiates a claim against the Architect, at law or otherwise, for any alleged negligence, error, omission, or other act arising out of the performance for the Architect’s services, and later withdraws such claim or an adjudication is made by a Court of Competent jurisdiction finding the Architect to be without fault, then the Owner shall pay all costs incurred by the Architect in defending themselves against the claim including but not limited to reasonable counsel fees and costs incurred.
- 10.8** Nothing in this agreement shall impose liability on the Architect for claims, lawsuits, expenses, or damages arising from or in any manner related to the exposure to, or the handling, manufacture, or disposal of asbestos, asbestos products, or hazardous waste in any of its various forms, as defined by the Environmental Protection Agency or other Federal, State, or sub-state jurisdiction’s or agency’s statutes or regulations
- 10.9** The Architect and Architect’s principals, employees, agents and consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), radon or other toxic substances.
- 10.10** Architect shall have no responsibility for identifying, handling or disposal of asbestos, asbestos products, or hazardous waste in any of its various forms as defined by the Environmental Protection Agency or other Federal, State or sub-state jurisdiction’s or agency’s statutes or regulations. Architect represents that it has been informed as to the current status of the Owner’s Approved AHERA Management Report. The information stated in the AHERA Manager Report is accurate to the knowledge of the Owner and its agents. Though Architect and Architect’s Consultants have no responsibility for the discovery, presence, handling, removal, or disposal of hazardous materials in any form on the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances in any form, in the event that the Architect and/or Architect’s Consultants become aware of hazardous materials or toxic substances, Architect’s and/or Architect’s Consultants obligation is to immediately notify the Director of Facilities, who will have the authority to stop work in the effected areas. At such time, Architect and Architect’s Consultants will take such appropriate action so as not to cause any disturbance to, or release of, such hazardous material or toxic substances. In such event Architect and/or Architect’s Consultants or [Construction Manager] are obliged to report the presence of hazardous substances or toxic materials then known, to the Owner. The Owner will be responsible for doing whatever is necessary to correct the condition in accordance with all applicable statutes and regulations. The Owner agrees to assume responsibility for any claims arising out of or relating to the presence of hazardous materials or toxic substances in the Owner’s project.
- 10.11** The Owner shall indemnify, defend, and hold harmless the Architect and the Architect’s consultants, agents, directors, officers, and employees from and against all claims, damages, losses, and expenses, direct and indirect, and consequential damages, including but not limited to fees and charges of attorneys and court and arbitration costs, arising out of or resulting from the performance of the work by Architect, or claims against Architect arising from the work of others, related to asbestos activities, to the fullest extent permissible by law, regardless of any action or omission (active, passive, or comparative negligence included) on the part of Architect.

“ASBESTOS ACTIVITIES” means any specification of a product, material or process containing asbestos, failure to detect the existence or proportion of asbestos in a product, material, or process, and the performance or failure to perform abatement, replacement, or removal of a product, material, or process containing asbestos.

- 10.12** The Owner understands and agrees that products or building materials which are permissible under current building codes and ordinances may, at some future date, be banned or limited in use in the construction industry because of presently unknown hazardous characteristics. The Architect shall endeavor, during the term of this Agreement, to inform the Owner of any product or material specified for this project which the Architect becomes aware is a known or suspected health or safety hazard. The Owner agrees that if the Owner directs the Architect to specify any product or material, after the Architect has informed the Owner that such product or material may not be suitable or may embody characteristics that are suspected of causing or may cause the product or material to be considered a hazardous substance in the future, the Owner waives all claims as a result thereof against the Architect. The Owner further agrees that if any product or material specified for this project by the Architect shall, at any future date be suspected or discovered to be a health or safety hazard, then the Owner shall waive all claims as a result thereof against the Architect.
- 10.13** In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless



from any damage, liability or cost (including reasonable attorneys' fees and defense costs) arising in any way from the specification or use of any products or materials which, at any future date, become known or suspected health or safety hazards, whether unknown to the Architect during the term of this Agreement or of which the Architect has warned the Owner, excepting only those damages, liabilities or costs attributable to the sole negligence or willful misconduct of the Architect.

- 10.14** The Architect and Architect's principals, employees, agents and consultants shall have no responsibility for the security of a facility, regardless of the work performed or the materials used. The Architect's recommendation for materials and products is based upon reasonable industry practice and information provided by third party entities. In no way does the Architect warrant or represent that any such materials installed will perform in the manner that they are intended. Further, the Architect does not represent that he is a "Security Expert", and any such recommendations being made are being done so through the consult with various third party entities and the Architect shall be able to reasonably rely upon the information presented by such experts or material suppliers.
- 10.15** With specificity to Secure Vestibules and Ballistics Film, the Commission recognizes that in spite of the measures being taken to provide a secure vestibule and ballistics film that there is no guarantee, expressed or implied for the safety of the students, staff and visitors to the facility. It has been explained to the Commission that the primary purpose of the secure vestibule is to provide a measure of control for those entering the building and allowing a checkpoint for the vetting of those visitors who wish to enter the premise. It has further been explained that there is no "film", ballistic or otherwise that can stop a bullet and the term "Bullet Proof" is a misnomer that does not exist outside of fiction. They further understand that the intent of ballistic film is to hold the glass together and prevent full breach of the system; in other-words to "buy time for first responders". The Commission further recognizes that the efforts being taken will not guarantee the safety and security of the building occupants and cannot address all of the possible events that can occur beyond their control. Solutions Architecture's design of the vestibule employs design elements that have been recognized and have been recommended by the Department of Homeland Security as a means of applying some lockability and control to an otherwise "wide-open" school facility and in no way does Solutions Architecture suggest or imply that these efforts will create a completely safe environment. In fact, to the contrary, Solutions Architecture has indicated that creating this area of security simply punctuates the fact that the remainder of the building remains vulnerable to attack. As such the Owner shall indemnify and hold harmless, to the fullest extent of the law, the Architect, Architects consultants, and agents and employees of any of them arising from claims, damages, losses and expenses, direct and indirect and consequential damages arising out of or resulting from events or incidents related to attacks on the school or vestibule as may question the performance of the work by the Architect as it relates to the design of the work."
- 10.16** The Americans with Disabilities Act (ADA) requires the removal of Architectural barriers in existing facilities where such removal is readily achievable. The Owner acknowledges that the definition of "readily achievable" contained in the ADA is flexible and subject to interpretation on a case-by-case basis. The requirements of the ADA will therefore be subject to various and possibly contradictory interpretations. The Architect will use his or her reasonable professional efforts and judgment to interpret applicable ADA requirements and to advise the Owner as to the modifications to the Owner's facility that may be required to comply with the ADA. Such interpretation and advice will be based on what is known about ADA interpretations at the time this service is rendered. The Architect, however, cannot and does not warrant or guarantee that the Owner's facility will fully comply with interpretations of ADA requirements by regulatory bodies or court decisions.
- 10.17** It is recognized that the Owner faces certain obligations under the American with Disabilities Act (ADA) that could affect the design of this project. It is further recognized that the ADA is federal civil rights legislation that is not part of, or known to be compatible with, state or local law, codes, and regulations governing construction. Consequently, the Architect will be unable to make recommendations or professional determinations that will ensure compliance with the ADA or guarantee that all design decisions will conform to the ADA standard of "reasonable accommodation."
- 10.18** The Architect strongly advises the Owner to obtain appropriate legal counsel with respect to compliance with the ADA. The Architect will endeavor to design for accessibility by the disabled in conformance with any applicable provisions in or references by applicable state or local building codes. The Architect further agrees to include in the design such provisions for the disabled as the Owner may request in response to the ADA, provided such requests are timely made, technically achievable, and in conformance with all other pertinent codes and regulations.

- 10.19** Upon receipt of the recommendations of the Architect concerning ADA compliance, the Owner will determine the full extent of its obligation under the ADA. The Owner shall communicate design requests regarding compliance with the ADA to the Architect in writing at the appropriate times during the project to allow for incorporation of such requests without requiring revisions after the completion of a given design phase, i.e., schematics, design development, construction documents.
- 10.20** The construction documents are based upon the evaluation of the existing structures to the extent possible and based upon certain assumptions regarding existing conditions where those assumptions cannot be verified without expending additional sums of money or destroying otherwise adequate or serviceable portions of the building. As such and pursuant to the standard of care in the industry, the Architect shall not be held responsible for any and all damages liability and cost, including reasonable attorneys' fees and defense costs, arising or allegedly arising out of the inability to verify existing conditions; except for the sole negligence or willful misconduct of the Architect.
- 10.21** In the event the Owner consents to, allows, authorizes or approves of changes to any plans, specifications or other construction documents, and these changes are not approved in writing by the Architect, the Owner recognizes that such changes and the results thereof are not the responsibility of the Architect. Therefore, the Owner agrees to release the Architect from any liability arising from the construction, use or result of such changes.
- 10.22** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or the Architect. The Architect's services under this Agreement are being performed solely for the Owner's benefit, and no other entity shall have any claim against the Architect because of this Agreement or the performance or nonperformance of services hereunder. Based upon language submitted by the Architect for the Owner's approval, the Owner agrees to include a provision in all contracts with contractors and other entitled entities involved in this project to carry out the intent of this paragraph.
- 10.23** The Owner shall promptly report to the Architect any defects or suspected defects in the Architect's work or services of which the Owner becomes aware, so that the Architect may take measures to minimize the consequences of such a defect. The Owner warrants that he or she will impose a similar notification requirement on all contractors in his or her Owner/Contractor contract and shall require all subcontracts at any level to contain a like requirement. Failure by the Owner, and the Owner's contractors or subcontractors to notify the Architect, shall relieve the Architect of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given.
- 10.24** Payments to the Architect shall not be withheld, postponed or made contingent on the construction, completion or success of the project or upon receipt by the Owner of offsetting reimbursement or credit from other parties causing Additional Services or expenses. No withholdings, deductions or offsets shall be made from the Architect's compensation for any reason unless the Architect has been found to be legally liable for such amounts.
- 10.25** It is understood that unforeseeable and unintended events may occur during the course of construction that could not have been considered or planned for under the construction documents. If, due to the Architect's error, any required item or component of the project is omitted from the Architect's construction documents, the Architect shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the project or otherwise adds value or betterment to the project. In no event will the Architect be responsible for any cost or expense that provides betterment, upgrade or enhancement of the project.
- 10.26** It is intended by the parties to this Agreement that the Architect's services in connection with the project shall not subject the Architect's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the Owner agrees that as the Owner's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the Architect, a New Jersey Limited Liability Company, and not against any of the Architect's employees, officers or directors.
- 10.27** As used herein, the following words and their derivative words or phrases have the meanings indicated, unless otherwise specified in the various sections of this Agreement.

- 10.271.** CERTIFY, CERTIFICATION: An Architect’s opinion based on his or her observation of conditions, knowledge, information and beliefs. It is expressly understood that the Architect’s certification of a condition’s existence relieves no other party of any responsibility or obligation he or she has accepted by contract or custom.
  - 10.272.** ESTIMATE: An opinion of probable construction cost made by the Architect. The accuracy of a probable construction cost opinion cannot be guaranteed.
  - 10.273.** INSPECT, INSPECTION: The visual observation of construction to permit the Architect to render his or her professional opinion as to whether the contractor is performing the Work in a manner indicating that, when completed, the Work will be in accordance with the Contract Documents. Such observations shall not be relied upon by any party as acceptance of the Work, nor shall they relieve any party from fulfillment of customary and contractual responsibilities and obligations.
- 10.28** This Agreement represents the entire and integrated agreement between the Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

**11. ARTICLE 11 – COMPENSATION - PAYMENTS TO THE ARCHITECT**

**11.1 COMPENSATION FOR PROJECTS**

- 11.1.1.** Individual projects to be entertained shall be detailed by amended letters of agreement that are subject to the provisions of this document. Solutions Architecture will provide fees on a project by project basis.
- 11.1.2.** Fees will be inclusive of Professional Architectural and Engineering Services that may be provided for a variety of projects including but not limited to: renovations, capital improvements, additions and renovations, feasibility studies, site work, pre-referendum services and other projects as requested by the Board of Education or required by a State or Local Agency having jurisdiction.
- 11.1.3.** Fees will be generated via one of the following methods as agreed upon for the particular project at hand:
  - 11.1.3.1.** Lump Sum Fee
  - 11.1.3.2.** Fee based upon a percentage of construction costs
  - 11.1.3.3.** Hourly Not-to-Exceed -- per approved hourly rate schedule
  - 11.1.3.4.** Hourly -- per approved hourly rate schedule.
- 11.1.4.** Where compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Basic Services in each phase shall total the following (or similar) percentages of the total Basic Compensation payable:

PROFESSIONAL SERVICE PHASE	% OF TOTAL FEE
Dept.. of Education Submission (where applicable)	5%
Investigation & Schematic Design	20%
Design Development	20%
Construction Documents	35%
Bidding Or Negotiation	5%
Construction Administration	15%
<b>TOTAL BASIC COMPENSATION</b>	<b>100%</b>

**11.2 PERSONNEL BILLING RATES**

- 11.2.1.** The hourly billing rates delineated below include the direct salary, overheads, and profit for each of the personnel classifications listed.

**11.2.2.** Hourly Rates are subject change annually due to inflationary and cost of living increases.

### **11.3 DIRECT EXPENSES - REIMBURSABLE EXPENSES**

**11.3.1.** Reimbursable Expenses are in addition to the Compensation for Basic and Additional services and include expenses incurred by the Architect and the Architect's employees and consultants in the interest of the Project.

**11.3.2.** Solutions Architecture has integrated many such direct expenses into our basic fee for project related services. As such there is no need to charge for items considered to be the cost of doing business such as faxes, photocopies, internal plotting, mileage or telephone calls.

**11.3.3.** Reasonable Direct Expenses that can be expected for any given project will be invoiced at cost plus 10% of the expenses incurred and would include:

**11.3.3.1.** Expense of fees paid for securing approval of authorities having jurisdiction over the Project will be reimbursable at cost.

**11.3.3.2.** Expense of document reproductions, hardcopies, plotting, associated with the preparation of Bidding Documents and Bid Specifications.

**11.3.3.3.** Postage and handling and overnight delivery of Drawings, Specifications and other documents including shop drawings, submittals, samples etc.

**11.3.3.4.** If authorized in advance by the Owner, expense of data processing, 3-Dimensional graphic design and photographic production techniques when used in connection with Additional Services.

**11.3.3.5.** Expense of renderings, photographs, models, mock-ups and presentation material requested by the Owner including mounting materials, boards, delivery and setup.

### **11.3.4. COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE**

**11.3.4.1.** Should the Owner terminate the Architect for its convenience under Section 9.1, or the Architect terminates this Agreement under Section 9.1, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project.

### **11.4 PAYMENTS ON ACCOUNT OF BASIC SERVICES**

**11.4.1.** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed as delineated in the Letter of Agreement. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid for a period greater than 90 days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

**11.4.2.** If and to the extent that the time initially established in the Letter of Agreement for the specific project is exceeded or extended through no fault of the Architect, compensation for any services rendered during the additional period of time shall be computed on an hourly basis or by a mutually agreed upon lump sum amount.

### **11.5 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES**

**11.5.1.** Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

### **11.6 PAYMENTS WITHHELD**

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

### **11.7 ARCHITECT'S ACCOUNTING RECORDS**

**11.7.1.** Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on an hourly billing rate shall be available to the Owner or the Owner's authorized representative at mutually convenient times upon written request for same.



**11.7.2.** Adherence to the payment schedule established as part of the Letter of Agreement for a particular project is part of the consideration required by the Architect for performance of the work. The Architect may suspend work in the event that payment of the Architect’s statement is not maintained on a current basis, as described in the fee payment schedule upon 7 days notice to Owner. The Owner agrees to release the Architect from any consequences of the Architect’s suspension of work due to the Owner’s nonpayment of Architect’s fees.

**11.8 COMPENSATION FOR ADDITIONAL OR HOURLY SERVICES**

**11.8.1.** All services requested or necessary that fall outside of the Professional Services described above, will be considered Additional to the Contract. Services deemed additional will be documented by an **Additional Service Order (ASO)** and submitted to the Owner when possible in advance of said work being performed. Owner authorized Additional Services, will be invoiced as a mutually agreeable Lump Sum or on a Time and Material basis, in accordance with the Rate Schedule itemized below:

**11.8.2.** FOR ADDITIONAL SERVICES OF THE ARCHITECT, as described in Articles 3 and 12, but excluding services of consultants, compensation shall be computed on an Hourly Basis as follows, unless otherwise stipulated in this Agreement.

SOLUTIONS BY THE HOUR (2020-2021)	
PROBLEM RESOLUTION EXPERTS	HOURLY RATE
Project Principal	\$165
Associates	\$145
Project Manager / Graphic Design	\$125
Project Coordinator	\$115
Construction Administration	\$125
Production / CAD	\$90
Architectural Support	\$65
Administrative Support	INCLUDED

\* Engineering Consultants will be billed at cost plus a 20% administrative markup.

**11.9 ADDITIONAL PROVISIONS**

**11.9.1.** IF THE BASIC SERVICES covered in Article 3 and moreover included within the Project Letter of Agreement, have not been completed within the designated time limit, as mutually agreed upon by the parties hereto before commencement of the Architect’s services on a particular Project, through no fault of the Architect, extension of the Architect’s services beyond that time shall be compensated as provided in Subparagraph 11.8.1.

**11.9.2.** Payments are due and payable thirty (30) days from the date of the Architect’s invoice. Should it become necessary that unpaid accounts be referred for collection, the Owner agrees to pay all costs associated with the collection processes (including, without limitation, court costs, costs of suite, and reasonable attorney and/or collection agency fees and expenses) as these costs are incurred by the Architect.

**11.9.3.** The rates set forth for Basic and/or Additional Services outlined in Article 11, shall be annually adjusted by mutual agreement of the parties.

**11.9.4.** If Owner objects to any portion of an invoice, the Owner shall pay the portion of the invoice that is not in

dispute by the due date. The Owner shall notify the Architect in writing within 15 days of receipt of the invoice and shall identify the specific cause of the disagreement.

- 11.9.5.** The Owner agrees that payments to Solutions Architecture are not subject to third party payments (i.e. Grant funding or reimbursement) or any other finance arrangements.

## **12. ARTICLE 12 – SPECIAL TERMS AND CONDITIONS**

### **12.1 EXCLUSION OF SERVICES**

- 12.1.1.** The Architect excludes any professional services in connection with asbestos lead or other hazardous material discovery, identification, sampling, testing, quantification, removal encapsulation, or abatement procedures, which might become necessary on any project location.
- 12.1.2.** The Architect and his sub-consultants exclude any professional services in connection with environmental engineering, including wetlands, environmental impact statements, environmental assessment, hydrological, flood plains, oil tank removal, septic analysis and design, well drilling analysis and design, ECRA, treatment plant evaluation or design or lead abatement;
- 12.1.3.** The Architect excludes all permits, applications or filing fees.
- 12.1.4.** The Architect excludes special engineering such as acoustics, technology, special site conditions.
- 12.1.5.** The Architect excludes legal, bonding services, site survey, soil borings, geotechnical/changes to plans substantially completed.

### **12.2 POLLUTION EXCLUSION**

- 12.2.1.** The Owner shall assume all responsibility for testing detection, monitoring, clean-up, removal, containment, treating, detoxification or neutralization of all “pollutants” in any existing buildings, facilities, or sites.
- 12.2.2.** “Pollutants” means any solid, liquid, gaseous or thermal irritant or containment, including smoke, vapor, soot, fumes, acids, alkaloids, chemicals, asbestos and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 12.2.3.** In order to satisfy this responsibility, the Owner shall obtain the service of a qualified consultant to perform all testing, detection, monitoring and advising relative to “pollutants” as well as development of documents for any and all clean-up, of any materials or products that contain “pollutants.” The Architect shall rely upon the Owner and the Owner’s consultant for all pollution related services, and the Architect shall be held harmless by the Owner for all pollution related claims arising from any existing buildings, facilities or sites.

### **12.3 INSURANCE PROVISIONS**

- 12.3.1.** Throughout the term of this Agreement and during the period of any additional services, the Architect shall maintain or cause to be maintained, in full force and effect, insurance in such amounts and against such risks as follows:
- 12.3.1.1.** Broad form, comprehensive or commercial liability insurance, including contractual liability coverage, against claims for personal injury, death or property damage with coverage in the amount of not less than \$1,000,000 in respect to injury or death of a single person and in the aggregate \$1,000,000 in respect to property damage and excess coverage in the amount of \$2,000,000
- 12.3.1.2.** Professional liability insurance coverage in the amount of not less than \$2,000,000
- 12.3.1.3.** Worker’s compensation insurance within the minimum statutory limits of coverage.
- 12.3.1.4.** Automobile liability insurance including coverage for any and all owned, non-owned, hired, or borrowed vehicles, covering bodily injury and property damage. Such coverage shall be in the amount of \$1,000,000 combined single limit.
- 12.3.1.5.** The Architect shall provide to the Owner upon request, a certificate or certificates of insurance evidencing the coverages above and naming the Owner, the State of New Jersey, the EDA, the NJ DOE, and the NJSDA as additional insureds, excepting the Worker’s Compensation and Professional Liability Insurance.

**13. ARTICLE 13 – MISCELLANEOUS PROVISIONS**

- 13.1** Pursuant to Executive Order #24, which went into effect on July 29, 2002, and as same may be applicable to Owner’s Project, the Architect shall construct the Project Designs in a manner that incorporates the guidelines known as Leadership in Energy and Environmental Design (“LEED”), Version 4.1v, to achieve maximum energy efficiency and environmental sustainability in school construction, which guidelines were developed by the United States Green Build Council.
- 13.2** This agreement, if necessary, is assignable to the EDA/New Jersey Schools Development Authority
- 13.3** The Architect acknowledges that this Project is a school facilities Project as defined in the Educational Facilities and Financing Act, P.L. 2000c.72(NJSA 18A:7G-1 et.seq) (The Act) thereby being funded in part with funds from the New Jersey Economic Development Authority (the Authority) This project shall be completed as required by the Act and the regulations applicable thereto. Architect shall recommend language for use in Bid and Contract Documents which complies in each particular, with the Act and the New Jersey Schools Construction Corporation (NJSCC) requirements.
- 13.4** The Architect shall execute the “Form of Consultant Certification and Consent Upon Award of Contract” promulgated by the Authority and shall comply with all other conditions which may be imposed by the Authority during the course of this project and thereafter, as applicable to this Project.
- 13.5** Architect agrees that it shall permit the Economic Development Authority, Unit of Fiscal integrity, Department of Community Affairs, Department of Education, Department of labor and their duly authorized agents to investigate, audit, examine, and inspect in such manner and at such times as such authorities deem necessary. Architect agrees that all documents relevant to this project or which in any way relate to the School Facilities Project and/or to the grant shall be retained for ten (10) years following closeout, provided however, if any litigation, claim or audit relating to the school facilities project and/or to the grant is commenced prior to closeout, such records and documents shall be retained until all litigation, claims or audit findings involving the records have been fully resolved
- 13.6** This Agreement consists of the document above-written and the Architect’s proposals submitted to the Owner together with any attachments hereto. To the extent that the proposal is inconsistent with the Agreement, the terms of the Agreement shall govern, unless the Proposal imposes a greater duty upon the Architect or is otherwise more advantageous to the Owner.
- 13.7** Architect agrees that where relevant, it shall comply with the following: Anti-discrimination provisions of NJSA 10:2.1 et. Seq., the New Jersey Law Against Discrimination. NJSA 10:5-1 et seq, NJAC 17:27-1.1 et seq and NJAC 6:4-1.6.

Signature by Owner’s representative in the space provided below will make this a binding Agreement entered into as of the day and year first written above.

**OWNER:**

Union County Educational Services Commission  
Mr. Eric Larson  
Business Administrator  
45 Cardinal Drive  
Westfield, NJ 07090

**ARCHITECT:**

Solutions Architecture, LLC  
Mr. Frank A. Messineo  
Principal / Owner  
96 Pompton Avenue, 2nd Fl. Suite 200  
Verona, NJ 07044



Signature

Mr. Eric Larson

Signature

Frank A. Messineo