

**ARCHITECTURAL / ENGINEERING DESIGN FOR
SUBJECT PROJECT
PROFESSIONAL ARCHITECTURAL SERVICES AGREEMENT
BETWEEN**

CITY OF BRIDGEPORT

AND

BLANK

DATE

PROFESSIONAL ARCHITECTURAL / ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT IS MADE AND ENTERED INTO as of the **XX day of XXXXX, 2008**, by and between the **CITY OF BRIDGEPORT**, a municipal corporation, having an address at 45 Lyon Terrace, Bridgeport, Connecticut, acting through the School Building Committee for the SUBJECT PROJECT (hereinafter referred to as "**Owner**") and **BLANK**, a Connecticut corporation, having an address at ARCHITECT ADDRESS and being licensed to practice architecture in the State of Connecticut ("**Architect**"),

WHEREAS, the Owner advertised for the Architectural/Engineering Design of SUBJECT PROJECT and related improvements;

WHEREAS, the Owner received as part of its solicitation the Architect's qualifications dated **XXXX XX,XXXX**, and its proposals, as supplemented to both dated **XXXX XX, XXXX**, attached as **Exhibit A**.

WHEREAS, the Owner selected the Architect based upon its qualifications and proposal and further based upon the Architect's statements and representations made during the interview process for purposes of entering into negotiation of a contract for professional architectural services for the Project.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

DEFINITIONS

The following definitions will be used throughout this agreement, unless the context requires otherwise:

"Agreement" means this document, all exhibits, schedules and attachments, and all other documents referred to herein, including documents purporting to be amendments hereto and duly-executed by the authorized representatives of the respective parties.

"Approval" or **"Approved"** means, with respect to the administration and performance of this Agreement, that the Owner, in combination with the Owner's Representative, the Program Manager, and/or the Construction Manager, as the context requires, has or have given its or their respective written approval(s) to the Architect when required, including but not limited to, the approval of budgets, Task Orders, directions, changes or deviations from or with respect to Task Orders, additional expenses, substitutions, time delays, schedule changes, etc.

“Architect” means **BLANK.**, including the Architect’s Representative, and its Approved consultants and subcontractors designated in writing from time to time during the term of this Agreement.

“Architect’s Representative” means a specific individual or individuals designated in writing by the Architect to the Owner and the Construction Manager from time to time as its representative or representatives with respect to the Project pursuant to Paragraph 1.6 of this Agreement. At the inception of this Agreement, the Architect’s Representative is

“Budget” or **“Task Construction Budget”** means the Owner’s declaration of maximum construction cost set forth in each Task Order.

“Building Committee” or **“School Building Committee”** means the body empowered by the City Council to implement the design and construction of the Project, as defined herein.

“Construction Bid Documents” is defined in Paragraph 2.4.A hereof.

“Construction Documents Phase” means the Architect’s preparation of drawings, specifications and cost estimates setting forth in detail the requirements for the construction activities described in a Task Order.

“Construction Manager” means **[Name of Construction Manager]**, acting through a specific individual designated at the inception of this Agreement and in writing from time to time during the term of this Agreement. At the inception of this Agreement, the designee of the Construction Manager is **[Individual’s Name]**, or his designee set forth in writing to the Owner and Architect.

“Codes” means the most recently adopted editions of the Connecticut State Building Code, including referenced standards, the Connecticut State Fire Safety Code and referenced standards, guidelines of the Americans with Disabilities Act then in force, the Uniform Federal Accessibility Standards (Federal 504) and all other such industry, regulatory or administrative standards applicable to the Project.

“DEP” means the Connecticut Department of Environmental Protection, including all laws, rules, regulations and official policies applicable to its jurisdiction over the .

“Notice to Proceed” means a specific written notice from the Owner’s Representative to the Architect directing the Architect to commence the work referred to in a Task Order or otherwise specified therein on a date certain.

“**Owner**” means the City of Bridgeport, a municipal corporation, acting through its School Building Committee for the SUBJECT PROJECT, acting through the Owner’s Representative, designated in writing from time to time during the term of this Agreement.

“**Owner’s Representative**” means a specific individual or individuals designated in writing by the Owner to the Architect and Construction Manager from time to time during the term of this Agreement as its representative or representatives with respect to the Project. At the inception of this Agreement, the Owner’s Representative is **XXXXXXX**, Director of the Construction Management Division of the Department of Public Facilities, or his designee set forth in writing to the Architect.

“**Schematic Design Phase**” means the Architect’s undertaking and completion of Preliminary Design Phase Documents as defined in Paragraph 2.2 of this Agreement.

“**Schematic Design Phase Documents**” is defined in Paragraph 2.2 B of this Agreement.

“**Program Manager**” means O&G Industries Inc. acting in such capacity in connection with defining the requirements for the Bridgeport Schools Construction Program, managing implementation of the program by recommending hiring of professionals in design and construction to deliver the elements of the program, and coordinating the management and delivery of those elements. At the inception of this Agreement, the designee of the Program Manager is **Raymond Wiley**, or his designee set forth in writing to the Owner and Architect from time to time during the term of the Agreement.

“**Project**” means the proposed “ **School**” and related improvements to be designed by the Architect in accordance with one or more Task Orders issued pursuant to this Agreement.

“**Services**” means the design, documentation and other customary and necessary professional services for a Project of this type set forth in a Task Order for the completion of the work described therein.

“**Task Construction Budget**”—see definition of “**Budget**”.

“**Task**” or “**Task Order**” is a description of the Services requested from the Architect, the format of which is described generally in Paragraph 1.1.D and **Exhibit B** of this Agreement, and the description of the particular Services requested from the Architect in one or more Task Orders issued to the Architect from time to time during the term of this Agreement.

“Task Schedule” means the CPM Schedule of milestones and other time requirements established in each Task Order.

“Term” means the duration of this Agreement, commencing upon the date of issuance by the Owner of a Notice to Proceed on Task Order No. 1 and ending either on (a) the date of completion of the final Task Order then outstanding, (b) the earlier termination of this Agreement as provided herein, or (c) December 31, 2010, whichever shall last occur.

ARTICLE I BASIC AGREEMENT

1.1 Structure of the Agreement

A. Architect's Qualifications. The Architect represents that its ownership is comprised of duly-licensed architects and engineers engaged in the performance of architectural and engineering services pursuant to and in compliance with the provisions of Section 20-288 through Section 20-310, inclusive, of the Connecticut General Statutes, as amended, that it is qualified and experienced in the design and preparation of construction drawings, specifications, cost estimates, contracts and bid documents relating to the design and construction of elementary schools and other public improvements related to schools in accordance with the requirements of the Owner as set forth in one or more Task Orders. The parties are entering into this Agreement with the understanding that the Architect will provide multi-disciplinary Services through its own forces or by engaging qualified consultants and subcontractors to the Architect, including but not limited to, architectural services, civil engineering services, structural engineering services, electrical engineering services, landscape architectural services, geo-technical engineering services, mechanical engineering services and related services necessary for the completion of the Project. The Architect will conduct, or prepare and present to the Owner for review and acceptance, all required studies, plans, surveys, specifications and drawings after review and approval by the Owner's Representative, the Program Manager and the Construction Manager as determined by the Owner to be necessary to accomplish the Tasks in the manner more specifically set forth in this Agreement and in accordance with the Task Orders issued by the Owner. The Services shall also include, but shall not be limited to, reviewing the Construction Manager's projected construction costs to endeavor to provide a design which meets the Owner's Budget established under each Task Order, scheduling, communicating and coordinating with all participants and consultants identified by the Owner, the Construction Manager and the Program Manager to endeavor to ensure the completion of the Project on time and within Budget, attending and participating in weekly, monthly and other periodic job or progress meetings, identifying and monitoring key factors impacting the quality, timing and completion of the work, developing strategies to avoid or mitigate delays, and other Services that may be required or desired.

B. Use of Task Orders. The Architectural Services required by this Agreement will be assigned by Task Order to allow for the sequential or partial completion of Services. The Architectural Services shall be authorized to proceed to render Services by one or more Task Orders. The content, schedule and Compensation for each Task Order shall be negotiated prior to commencing Services under such Task Order. The following is a list of possible Task Orders:

- Preparation of Educational Specification Study and Site Development Study documents for the project.
- Preparation of schematic design and design development documents for the , as described in "**Exhibit F**", **DISTRICT WIDE PREK-8 EDUCATIONAL SPECIFICATIONS** dated
- Preparation of construction documents and construction administration services during construction for the **SUBJECT PROJECT**.
- Preparation of construction documents for the Furniture, Equipment and Technology for the **SUBJECT PROJECT**.

C. **Assignment of Tasks.** At the inception of this Agreement, the Architect shall perform the Services within the scope of work specifically identified as "**Task Order No. 1**" attached or to be attached hereto. The Owner shall identify and inform the Architect of additional Tasks that it wishes the Architect to perform with respect to the Project, each such Task to be set forth in a written Task Order upon mutual agreement of the terms and conditions thereof between the Owner and the Architect. Each additional Task Order will be considered an amendment to this Agreement, shall be incorporated by reference into this Agreement and shall become a part hereof as if fully set forth herein. The Architect shall commence each Task Order assignment within five (5) working days of receipt of a written Notice to Proceed.

D. **Work Issued in Phases; Structure and Contents of a Task Order.** The Services of the Architect shall be subdivided into phases of work (each a "**Phase**"), through the issuance of one or more Task Orders, each providing for a delivery date.

- (i) **First Phase.** The first phase shall be the Schematic Design Phase, which shall include all studies, field surveys and testing required to complete the Task Order work. Identification of all regulatory permitting requirements, and the process and duration of each, shall be included. The deliverables shall include a brief narrative outlining possible design options based on existing condition analysis and constraints, and all investigations and tests required. Design option plans shall be presented as small-scale overall plans, elevations and sections. The plans shall be used as the basis for the Architect to provide CSI-format outline specifications and to assist the Construction Manager with the preliminary cost estimates as part of the deliverables. In addition, the Architect shall attend the PREP meeting with State Department of Education School Facilities Unit. A percentage of the total Task Order fee shall be established for the Schematic Design Phase and all other phases prior to issuing the Notice to Proceed for the Task Order.

After review by the Owner, with any adjustments made as directed by the Owner, written Approval shall be given to proceed to the next phase.

- (ii) **Second Phase.** The second phase shall be the Design Development Phase, which shall advance the selected option of the Schematic Design Phase to a point representing approximately Forty (40%) percent of the design phase work. The second phase deliverables shall include design analyses including criteria and parameters, final-scale plans, elevations and adequate sections to describe the designed system, a detailed CSI-format specification, and assistance to the Construction Manager with the preparation of a detailed estimate of the cost of construction, including unit prices and quantities with labor and material prices. This estimate shall be complete enough to allow adjustments in the design required to minimize the possibility of final bids exceeding the Owner's Budget. After review by the Owner, with any adjustments made as directed by the Owner, provided that such adjustments are not in conflict with directions or decisions provided previously by the Owner's Representative, written Approval shall be given to proceed to the next phase.

- (iii) **Third Phase.** The third phase is the Construction Documents Phase described in Section 2.4, which includes creation of all bidding and construction documents necessary and desirable to construct the Project. Deliverables shall include Construction Bid Documents prepared in cooperation with the Construction Manager consisting of all drawings, specifications and bidding instructions. The drawings shall advance the Design Development Phase drawings to one hundred percent (100%) completion. The specifications shall be complete, in CSI format and include the bid instructions. The Architect will assist the Construction Manager in the preparation of the CSI-format estimate, which shall contain any small adjustments necessary due to final adjustments in materials and quantities used. After review by the Owner, with any adjustments made as directed by the Owner, provided that such adjustments are not in conflict with directions or decisions provided previously by the Owner's Representative, the construction documents shall be submitted for approval of the State Department of Education (SDE). Submissions to and attendance at the SDE Plan Completion Test (PCT) meeting is a required Service under this phase. Once document revisions are made, if required by the PCT review, and final approval for bidding is secured from the SDE, Services for design will be considered to be complete. The Architect shall then support the Construction Manager through the bidding process by providing clarifications to the documents,

issuing addenda and answering Requests for Information. The Architect will attend bid review meetings with the Construction Manager to verify the bids. Upon completion of the bidding process the Architect may present the final requisition for payment for the Construction Documents phase.

- (iv) **Fourth Phase.** The fourth phase shall be Construction Phase Services described in Section 2.5. The Owner and/or Construction Manager shall propose a specific scope of services to the Architect in the form of a Task Order.

All the deliverables in all phases shall be prepared using the following computer programs: drawings in AutoCad™ Release 14 or AutoCad™ 2000; specification and bid documents in Microsoft Word™; cost estimates in Microsoft Excel™; schedules in Primavera Project Planner™, or as may be otherwise specified by the Owner. A minimum of three (3) hard copies and one (1) reproducible copy of all drawings, and digital files for each deliverable shall be provided by the Architect to the Program Manager, unless otherwise directed by the Task Order or the Owner's Representative.

E. **Task Order Format.** A format for a Task Order is attached as **Exhibit B**. This format is the general framework to be used in authorizing each and every Task Order requiring the Architect's Services for the duration of this Agreement. To determine the lump sum cost, the Architect will prepare an estimate of man-hours for each discrete element of work multiplied by the Hourly Billing Rate (defined below) per job classification to be utilized through the Architect's forces or through each subcontractor employed or to be employed to perform each Task Order for the duration of the Task Order. Items of work such as borings and laboratory expenses and any estimated reimbursable expenses shall also be listed as individual line items.

F. **Authority to Request Additional Tasks or Services.** It is understood and agreed by the parties that, upon the Approval of this Agreement, only the Owner's Representative, designated by the Owner in writing from time to time to the Architect, shall have the authority to add Tasks or Services to this Agreement.

1.2 **Compensation.** The Owner shall compensate the Architect for the Services rendered during each Phase, subject to retainage for each phase of the work, which will be released upon satisfactory completion of the work in each such phase. The parties have negotiated compensation on the basis of an analysis of cost and price data submitted by the Architect in accordance with the A/E Proposal Instructions contained in the bid package, which has resulted in negotiated compensation for each phase of the work that was computed in the manner described below.

A. **Basis.** Compensation is based on the lump sum fixed fee price for each Phase of the work. The City has reviewed the Architect's raw data in order to verify the Architect's cost of doing business. This information is business confidential and is protected from disclosure pursuant to the Connecticut Freedom of Information Act and the Confidentiality Policy of the Department of Construction Management Services. The compensation was determined as the sum of the following elements:

- (1) Direct labor costs;
- (2) Overhead on direct labor;
- (3) General and administrative expenses;
- (4) Reimbursable expenses
- (5) Profit

B. **Direct Labor Costs.** Compensation to the Architect, including its own forces and those of its subcontractors and consultants, was computed by hourly rates. Salary costs were limited to direct payroll of technical, professional and administrative employees for time spent on the Project, and do not include amounts for vacation or holiday pay, social security, unemployment insurance, worker's compensation, or other fringe benefits. The hourly salary cost for an individual was computed by dividing his/her normal annual basic remuneration by 2,080 (work hours per year). Employees shall perform work only in the job categories for which they are qualified; if an employee works in a job category for which he/she is overqualified, the lower hourly rate for the job category in which such person is working shall govern.

C. **Overhead on Direct Labor.** The Architect is reimbursed for the indirect costs added to its direct labor cost by application of a multiplier of its direct labor costs. Such costs include, but are not limited to the following:

- (1) Unemployment taxes
- (2) Worker's compensation
- (3) Group health benefits
- (4) Group life insurance
- (5) Vacation, holiday and severance pay
- (6) Sick leave

(7) Military leave

An auditable multiplier, based upon the Architect's accounting records for the previous three (3) years, has been calculated on the basis of total overhead on direct labor divided by the total direct labor. This multiplier is applied to direct labor cost only. This information is business confidential and is protected from disclosure pursuant to the Connecticut Freedom of Information Act and the Confidentiality Policy of the Department of Construction Management Services.

D. **General and Administrative Expenses.** The Architect shall be reimbursed for indirect costs that are allocable to the performance of the Services and are necessary for the operation of the business. Such costs include, but are not limited to the following:

- (1) Clerical services
- (2) Depreciation of furniture and equipment
- (3) General office supplies
- (4) Rental of office space
- (5) Utilities
- (6) Indirect salaries of executives or management not allocated to direct labor costs
- (7) Non-allocable time of personnel who, under ideal business conditions, would be directly employed on specific projects.

An auditable multiplier, based upon the Architect's accounting records for the previous three (3) years, has been calculated on the basis of total general and administrative overhead expenses divided by the total direct labor cost only. This multiplier is applied to direct labor cost only. This information is business confidential and is protected from disclosure pursuant to the Connecticut Freedom of Information Act and the Confidentiality Policy of the Department of Construction Management Services.

E. **Reimbursable Expenses.** The Architect shall be reimbursed for only those expenses set forth on **Exhibit C** attached hereto and made a part hereof. Any additional reimbursable expenses shall not be paid without the prior approval of the Owner ("**Reimbursable Expenses**").

F. **Profit.** A multiplier has also been applied to all costs above as profit.

G. **Phasing of Compensation.** The City and the Architect will negotiated specific Compensation for each phase of the work.

1.0 Schematic Design Phase	To Be Determined
2.0 Design Development Phase	To Be Determined
3.0 Construction Documents Phase	To Be Determined
4.0 Construction Phase	To Be Determined
Reimbursable Expenses	To Be Determined
Surveying & Wetlands Consultant	To Be Determined
Geotechnical Consultant	To Be Determined
Furniture, Fixtures and Equipment	To Be Determined
F, F & E Reimbursable Expenses	To Be Determined
Technology, Security and Telephone	To Be Determined
Technology Reimbursable Expenses	To Be Determined

1.3 **Payment.** Payment of the Compensation set forth herein shall be made to the Architect as follows:

A. **Progress Payments.** Payment of the Compensation set forth in this Agreement shall be made monthly for services completed during the prior month less ten (10%) retainage, and Reimbursable Expenses. The Owner has the right to withhold ten percent (10%) of each monthly payment to the Architect as retainage (“**Retainage**”). The accumulated total Compensation at the completion of each Task Order or phase of work within a Task Order, excluding Compensation for additional Services requested or approved in writing by the Owner in connection with each such Task Order, if any, shall not exceed the Compensation payable for Services to be performed under each Task Order or phase thereof.

B. **Submission of Invoices.** All invoices for Compensation shall be submitted monthly for the prior month’s Services rendered on each Task Order then being performed. Each invoice shall be entered electronically by the Architect into the Owner's Expedition™ project management software system via

Internet link or other means specified by the Owner and shall be augmented with sufficient supporting data acceptable to Owner.

C. **Timing of Submission; Payment; Interest.** Invoices shall be submitted by the fifth (5th) day of the month for Compensation due for the previous month. The Owner shall have thirty (30) days to review each complete invoice. Payment of all undisputed amounts of Compensation, less Retainage, shall be made within forty-five (45) days after receipt of the Architect's invoice with all required backup documentation. Notwithstanding anything herein to the contrary, Compensation shall not be paid for disputed invoices or portions thereof, the parties shall cooperate to resolve any such dispute in a prompt and equitable manner, and no interest shall be payable to the Architect on amounts withheld by the Owner based upon a good faith dispute with the Architect.

D. **Release of Retainage.** Upon Approval of the completion of the work required for each Phase to the reasonable satisfaction of the Owner, the Retainage for such Phase shall be released in full to the Architect.

E. **Responsibility for Certain Payments.** The Architect shall remain responsible for, and hereby indemnifies and will hold harmless the Owner, from and against all liability for the withholding and payment of all Federal, state and local personal income taxes, wages, earnings, occupational taxes, social security, worker's compensation contributions, unemployment taxes, sickness and disability insurance taxes, payroll levies and employee benefit requirements (under ERISA, state law or otherwise) now existing or hereafter enacted and attributable to the Architect, its subcontractors and consultants and their respective employees.

1.4 **Budget.** The Owner and Architect agree:

A. **Costs Included.** For each Task Order, the Owner will develop a construction budget (each, a "**Task Construction Budget**") which shall include all hard costs required directly or indirectly to construct the work of the Task Order in accordance with the Owner's requirements as set forth in this Agreement, excluding, however, the cost of financing, the Owner's administrative, legal, management and accounting fees, the Compensation for Services payable to the Architect hereunder, advertising costs, and the costs of consultants retained directly by the Owner. The Architect shall have the right to review a detailed breakdown of each Task Construction Budget for content and completeness prior to the initiation of any work.

B. **Limited Liability of Architect for Task Construction Budget.** The Architect shall control the design of the work of the Task Order so that in the Architect's professional opinion, the work under such Task Order can be properly designed and constructed within the Task Construction Budget. It is recognized, however, that neither the Architect nor the Owner has control over the cost of

labor, materials or equipment, the Construction Manager's or contractor's means and methods, determination of bid prices, competitive bidding processes, economic, market or bargaining powers during negotiation. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Task Construction Budget or from any estimate of construction cost or evaluation prepared or agreed to by the Architect, but agrees to use its efforts and experience, in the interests of the Owner, such that costly changes or budget exceedances resulting from design errors or omissions have been minimized.

1.5 Use of Consultants and Subcontractors. The Architect has in its employ, under contract, or will retain as subcontractors or consultants, at its sole cost and expense, fully-licensed professionals, where licensing is required, to render the following categories of service:

<u>Professional Category and Firm</u>	<u>Status</u>
STRUCTURAL ENGINEERING	
LANDSCAPE ARCHITECTURE	
CIVIL ENGINEERING	
MECHANICAL / ELECTRICAL / PLUMBING ENGINEERING	
INTERIOR DESIGN	

To the extent that the above are not employees of the Architect, such subcontractors are the only subcontractors Approved by the Owner at the inception of this Agreement. The Architect shall inform the Owner in writing in advance of engaging any other subcontractors and consultants not identified above pursuant to Paragraph 1.8.E hereof. The retention or dismissal of such consultants and subcontractors shall not diminish or reduce the overall responsibility of the Architect under this Agreement for the successful completion of the Task Order work in accordance with the terms and conditions of this Agreement.

1.6 Project Responsibility and Staffing.

A. Architect's Staffing. The Architect's Representative or its designee will represent the Architect in all matters of communication, coordination, decision and policy pertaining to Architect's Work under this Agreement, which person may be removed or replaced as set forth herein in writing from time to time (the "**Architect's Representative**") in the manner set forth below. It is agreed that neither the Architect's Representative nor any of the

Architect's staff identified in **Exhibit D** shall be removed from the Project by the Architect without the prior written approval of the Owner unless such individual has ceased his or her employment with the Architect. However, at the written request of the Owner, the Architect's Representative shall be removed from the Project and replaced, without cost or expense to the Owner. If the Owner requests that the Architect's Representative be replaced, the Owner shall be permitted to terminate this Agreement in the event a replacement satisfactory to the Owner, in the Owner's sole discretion, is not provided promptly.

B. **Consultants and Subcontractors.** The Project will, at a minimum, be staffed in the professional categories listed in Paragraph 1.5 above with the companies identified therein and individuals possessing the listed qualifications set forth in **Exhibit D**, which shall be amended from time to time by the Architect as subcontractors and consultants are hired by it in accordance with Paragraph 1.8.E hereof. The Architect represents that all consultants and subcontractors employed by it in connection with this Agreement possess the requisite education, training and experience to perform their job descriptions and functions in a competent and professional manner with respect to this Project. No subcontractor or consultant shall be replaced unless by another firm of equal or better qualifications and capabilities as to this Project without the prior written approval of the Owner, such approval not to be unreasonably withheld or delayed. The Owner may, without incurring cost or expense, require the replacement of any consultant or subcontractor identified on **Exhibit D** for sufficient cause upon written notice to the Architect.

1.7 **Time.** Unless delayed through no fault of its own, the Architect shall complete each Task Order required by this Agreement in a timely fashion in accordance with the mandatory milestones and the final completion date contained in the CPM Schedule for each Task Order (each, a "**CPM Schedule**") to be attached as **EXHIBIT G**. Once the parties hereto have agreed to the CPM Schedule for a Task Order, such mandatory milestones and the final completion dates set forth in the CPM Schedule, as the same may be amended from time to time in accordance with this Agreement, shall be **TIME OF THE ESSENCE**. The Architect shall submit, within ten (10) days of receipt of a Notice to Proceed for each Task Order, a CPM Schedule of all activities required to complete the Task Order, the form and content of which shall be acceptable to the Owner. Such CPM Schedule shall reflect but shall not be limited to, all Task Order Permits and Approvals, all funding source timing and conditions, any other development requirements and constraints, and all other critical and non-critical events and dates disclosed to or reasonably determined by the Architect. The Architect shall perform its services in accordance with the CPM Schedule, subject to extensions of such CPM Schedule due to causes outside of its reasonable control, as provided in Section 6.16 below. The Architect acknowledges that the Owner may suffer losses and other adverse consequences if the Architect does not perform its Services strictly in accordance with the CPM Schedule. The Architect shall be liable to Owner in Delay Damages (defined below) to compensate the Owner for

losses and other adverse consequences which may not be readily calculable that are sustained by the Owner should the Architect fail, for reasons within the Architect's control, to meet the mandatory milestones and the final completion dates reflected on the CPM Schedule and any extensions pursuant to the provisions herein.

A. **Timely Performance an Essential Condition.** Subject to the foregoing paragraph, it is hereby understood and agreed by the Architect that the date of commencement, the dates of mandatory milestones and the time for completion, as specified in this Agreement and in the accepted CPM Schedule for the Services to be completed by the Architect with respect to each Task Order issued by the Owner, are ESSENTIAL CONDITIONS of this Agreement.

B. **Commencement of Services.** It is mutually understood and agreed that the Services of the Architect hereunder for each Task Order shall be commenced within five (5) days after the receipt of a written Notice to Proceed by the Architect.

C. **Daily Damages For Delay.** Notwithstanding anything to the contrary set forth in this Agreement, in the event of the unexcused failure of the Architect to timely complete its Services in accordance with the respective mandatory milestones and the final completion dates contained in each CPM Schedule in each Task Order, as the same may be amended from time to time in accordance with this Agreement, the Architect shall be liable for daily damages to the Owner which shall be considered liquidated damages and not a penalty, in the amount of One thousand five hundred (\$1,500.00) per day ("**Delay Damages**") for each and every day that the said Services required to be completed by the date specified on the CPM Schedule shall be and remain incomplete, except for any cure period that may be in effect under this Agreement, due to the negligent act or omission of the Architect and due to no direct fault of the Owner or a third party not within the reasonable control of the Architect, for the loss to the Owner resulting from the delay in completion of such portion of the Services. The parties acknowledge that Delay Damages are to compensate the Owner for added direct and indirect costs and expenses, including but not limited to, increased administrative costs, increased legal and consulting fees, additional temporary services, additional inspection costs, and other expenses set forth in this Agreement, which the parties agree are not readily capable of calculation. Any such Delay Damages for which the Architect is liable shall be deducted from Compensation payable to the Architect or within ten (10) days of written demand from the Owner. The Owner shall indemnify and hold the Architect harmless from and against any claims, demands or liabilities arising out of any delays to the completion of the Architect's duties and obligations under this Agreement, which are caused by parties not under the control of the Architect.

D. Schedule(s) Deemed To Be Reasonable; Revisions. It is expressly understood and agreed by the parties that the time for the completion of each milestone and completion date in the CPM Schedule for a Task Order and the ultimate performance of the Services necessary to complete each Task Order has been established by mutual agreement of the parties to be a reasonable time for the completion thereof. If the Architect fails to meet a milestone or completion date in the CPM Schedule contained in a Task Order, the Architect may submit a revised CPM Schedule to the Owner's Representative demonstrating how the time projected to have been lost in the attainment of a required date or milestone will be recovered by the efforts of the Architect at no additional cost, expense or damage to the Owner. If, in the opinion of the Owner's Representative, the Architect's revised CPM Schedule will avoid any further delay, thereby reflecting the timely attainment of the next succeeding milestone date, and if the Architect proceeds in accordance with and achieves the revised date in such approved revised CPM Schedule, Delay Damages for the failure to meet such date or milestone will cease to accrue and shall not be charged to the Architect as to such delay. The Architect's plan for amending the CPM Schedule to recover any such lost time that may occur will not be approved by the Owner if it reflects costs, expenses, procedures, resource requirements, or other adverse affects upon the Owner or the project which the Owner's Representative determines are in violation of other requirements of this Agreement.

E. Additional Forces and Resources. With respect to any Task Order or other portion of the Services to be rendered by the Architect under this Agreement, the Owner's Representative and the Construction Manager will have the right to review, accept and/or reject the timeliness and/or progress of the Services, may approve/disapprove or modify payments made to the Architect, and monitor/comment upon and, as necessary, require the Architect to place additional forces and resources, at no cost to the Owner, onto the Task to meet the scheduled milestone or completion date in the CPM Schedule and avoid the imposition of Delay Damages.

1.8 Representations and Warranties. The Architect represents and warrants, as of the date hereof and throughout the Term of this Agreement, as follows:

A. Use of Qualified Personnel, Subcontractors and Consultants. The Architect represents that it has the requisite experience to undertake and complete the Services pursuant to the requirements of this Agreement, has in its employ, or will engage at its sole cost and expense, licensed (where required), experienced, qualified and trained personnel, subcontractors and consultants suitable for the nature of the work of each Task Order, and will use, or require those in its employ to use, quality equipment accurately calibrated to competently perform the Services required by this Agreement.

B. Construction Budget; Correction of Design Errors and Omissions. The Architect shall assist the Construction Manager in the preparation of an estimate, in accordance with Section 1.4B hereof, that will form the basis for calculating the probable construction cost (“**Probable Construction Cost**”) for the Project. The Owner and Construction Manager will prepare the Budget based upon the Probable Construction Cost. The Architect warrants that, should its design, which forms the foundation for establishing the Probable Construction Cost and ultimately the Budget, contain errors or omissions that have an impact on the Budget, it will, at its sole cost and expense and without additional cost to the Owner, correct any errors or omissions in its design in a manner acceptable to the Owner in the Owner’s exercise of its commercial business judgment, reasonably exercised. The Owner and Architect agree that, since minor errors and omissions are likely to occur, the Owner will provide an allowance of five percent (5 %) of the hard construction cost (“**Design Contingency**”) for the use by the general contractor or construction manager to make changes resulting from such errors and omissions. However, construction and other costs to correct the Architect’s errors and omissions that exceed the Design Contingency shall be the Architect’s obligation and liability. Any such additional construction and other costs for which the Architect is liable shall be deducted from Compensation payable to the Architect or shall be payable within ten (10) days of the Owner’s written demand.

C. Architect Possesses Adequate Resources and Personnel. The Architect represents that it is financially stable, has adequate resources and personnel to assign to the Project, will consistently maintain staff levels throughout the Term of the Agreement, and will complete the Services in a timely fashion in accordance with the Schedule.

D. No Conflict or Violation of Law. The Architect has disclosed, or shall promptly disclose, in writing prior to the execution of this Agreement, all conflicts or potential conflicts of interest that may or are likely to have an adverse affect on the Architect’s ability to independently protect the Owner’s interests in connection with the Project. The Architect represents that its performance of the Services described herein and its representation of the Owner will not result in a conflict of interest, will not violate any laws or contractual obligations with third parties, and is an enforceable obligation of the Architect.

E. Prior Approval of All Subcontractors and Consultants. The Architect will not engage any consultant or subcontractor for any of the Services for any Task Order without prior written notice to and written approval by the Owner and receipt of the Owner’s written consent, except for those subcontractors and consultants specifically identified at the inception of this Agreement.

F. No Violation of Law. The Architect represents that neither it, nor any of its officers, directors, owners, employees or, to the best of its knowledge

any of its subcontractors and consultants, have committed a criminal violation of federal or state laws arising directly or indirectly from its business operations that resulted in the imposition of a monetary fine, injunction, criminal conviction or other sanction, and further represents that the Architect shall take all reasonable steps to ensure that its officers, directors, owners, employees, agents, subcontractors and consultants shall comply with the requirements of all laws, rules and regulations applicable to this Agreement or to the conduct of its or their businesses in the performance of the Services under this Agreement.

G. **Standard of Care; Quality and Performance of Services.** The Architect represents that it will perform, and ensure the performance of the Services by other members in their design team in a good and workmanlike manner consistent with the degree of care and skill ordinarily exercised by members of the architectural/engineering profession currently practicing under similar circumstances on projects of this type and scope in the State of Connecticut, and will undertake, diligently pursue and timely complete such Services in accordance with the terms of this Agreement.

H. **Licenses and Permits.** The Architect represents that it possesses, and will ensure that its subcontractors and consultants possess, all professional licenses and other licenses and permits that may be required to perform the Services required by this Agreement, including but not limited to State of Connecticut Department of Consumer Protection professional firm ownership regulations.

I. **Observance of Proprietary Rights.** The Architect represents and warrants that it will take reasonable steps to ensure that the performance of the Services will not infringe upon or misappropriate any United States copyright, trademark, patent, or the trade secret or other proprietary material of any third persons. Upon being notified of such a claim, the Architect shall, at the request of the Owner and in the Owner's sole discretion, (i) defend through litigation or obtain through negotiation the right of the Owner to continue using the Services of the Architect while such claim of infringement is contested; (ii) modify the Services to be rendered at no cost, expense or damage to the Owner so as to make such Services non-infringing while preserving the original functionality, and/or (iii) replace the Services or the infringing or potentially infringing portion thereof with the functional equivalent. If the Owner determines that none of the foregoing alternatives provide an adequate remedy or resolution of the claim of infringement, the Owner may terminate all or any part of the Services and, in addition to other relief, shall be entitled to recover the amounts previously paid to the Architect hereunder related to such claim of infringement.

J. **Y2K Compliance.** The Architect represents that it has taken and/or will take reasonable steps to endeavor to ensure that any computer program included as a deliverable Service or used in connection with the performance of any Service or Task Order hereunder operates substantially in

accordance with the specifications for such Service or Task Order and is otherwise in compliance with Year 2000 Standards. For these purposes, "**Year 2000 Standards**" means that the deliverable Services, Task Orders and work, material or reports prepared in connection therewith records, stores, recognizes, interprets, processes and presents both 20th and 21st century dates using four (4) digit years and operates at a programming interface level with other programs for which it could reasonably be expected to operate without causing the other programs to violate such Year 2000 Standards.

K. Communications and Coordination. The Owner's Representative shall receive, control and coordinate all documents and arrange all meetings with the Architect and third parties on behalf of the Owner. The Architect shall inform the Owner's Representative of the nature and content of all direct communications that the Architect may have with local, State of Connecticut and U.S. Government representatives, representatives of funding sources and the like in connection with the discharge of the Architect's responsibilities on the Project.

L. Owner Not Obligated For Certain Taxes. The Owner is not obligated to pay certain sales, use, gross receipts taxes, ad valorem or other taxes with respect to the Services rendered by the Architect, its consultants and subcontractors, and the Architect agrees to use its best efforts to avoid incurring such taxes in the procurement of goods and services. Upon request of the Architect, the Owner's Purchasing Department will issue tax-exempt certificates to the Architect and to any consultant, subcontractor or other party rendering services to the Project in order to avoid the imposition of taxes for which the Owner is not responsible.

M. Recordkeeping and Audits. The Architect shall keep daily, weekly and monthly logs and other records detailing the Services rendered which shall contain sufficient detail as to type of activity performed by each employee, consultant and subcontractor working on the Project under the supervision of the Architect, the job category of each such employee, the number of hours worked, etc. The Owner, its agent(s), or the representatives of any funding source shall have the right to inspect such records from time to time, with or without prior notice, during normal business hours of the Architect.

1.9 Term. The duration of this Agreement shall commence upon the date of issuance by the Owner of a Notice to Proceed on Task Order No. 1 and shall end either on (a) the date of completion of the final Task Order then outstanding, (b) the earlier termination of this Agreement as provided herein, or (c) **December 31, 2010**, whichever event shall last occur.

ARTICLE II ARCHITECT'S RESPONSIBILITIES

2.1 **General Description of Services**

A. **Architectural Services.** The Architect's Services shall consist of the Services described in each Task Order and the architectural and other services described in Article I hereof.

B. **Scope of Architect's Services.** The scope of the Architect's Services is described generally in this Agreement, and more specifically in each Task Order. The Architect shall exercise due professional care to perform its Services and provide documents that comply with the restrictions and requirements of applicable laws, rules and regulations of federal, state and local governmental and quasi-governmental agencies, authorities and funding sources having jurisdiction over or otherwise related to the project, utility companies, fire underwriters, and other parties disclosed by the Owner and otherwise known to the Architect or which, in the exercise of the best professional judgment of an independent architect retained by the Owner, should have been known to the Architect.

C. **Notice of Meetings.** In coordination with the Owner, the Architect shall give timely prior notice to the Owner's Representative and any third party or parties of any and all Project-related meetings desired, required or scheduled with educational or funding entities, utility companies, or local, state, federal, regional or other governmental regulatory agencies and authorities, etc. The scheduling of such meetings is to be arranged and noticed by the Architect, after consultation with the Owner's Representative and the Architect as to the time and date of such meetings and the participants in each such meeting. The Owner's Representative shall arrange with the Architect to distribute any materials required or desired to be reviewed in advance thereof, etc. The Architect's Services shall also include attendance at all meetings related to obtaining any necessary Permit and/or Approval for any Task Order work.

D. **Architect's Cooperation With Other Parties and Participants.** The Architect shall cooperate fully with and confer with any consultant, architect or other professional identified by the Owner in connection with the Project.

E. **Familiarity With Requirements of Funding Source(s).** The Architect, in cooperation with the Owner's Representative, shall become familiar with the requirements and restrictions imposed by the State and local funding terms and requirements for any Task Order for the Project and will endeavor to ensure that all relevant terms are complied with in the Architect's performance of Services, including proper documentation, billing and accounting practices. All of the Architect's invoices shall be subject to State and local audit.

F. The Architect shall exercise the same degree of professional care and diligence in the rendition of all services under this Agreement as is exercised by architectural services firms which provide design services to schools located

in the State of Connecticut, and all of the Architect's services under this Agreement shall be performed as expeditiously as is consistent with said standards and shall comply with the requirements of Section 10 of 2006 Public Act No. 06-158. In that regard the Architect will perform services as an independent contractor and in good and workmanlike manner, consistent with (a) instructions, guidance and directions provided by the City to the Architect; (b) the terms and conditions of this Agreement; (c) the highest prevailing applicable professional or industry standards; (d) sound architectural practices; and, (e) any applicable laws, rules, regulations, ordinances, codes, orders and permits of all federal, state and local governmental bodies, agencies, authorities and courts having jurisdiction. Such services agreement shall not limit the liability of the Architect for errors and omissions related to the performance of the services.

G. The Architect acknowledges if the City fails to adhere to the provisions of Section 10 of 2006 Public Act No. 06-158 for a project for which the City receives State assistance pursuant to Chapter 173 of the general statutes, it shall be assessed a ten per cent reduction in the amount of its grant approved pursuant to said chapter 173 upon completion of an audit pursuant to Section 10-287 of the General Statutes. In the event the City fails to adhere to said provisions due to acts of the Architect the fee of the Architect shall be reduced in order to accommodate for the loss of the grant and the Architect shall remain obligated to continue performance of its services under this Agreement.

2.2 Schematic Design Phase. The Schematic Design Phase shall commence within five (5) days of receipt of a Notice to Proceed for any Task Order from the Owner. During the Schematic Design Phase, the Architect shall be responsible for the following matters:

A. **School Facilities Unit.** The Architect shall assist the Owner in scheduling, and shall attend, Pre-Review Evaluation Process ("**PREP**") meeting with the State Department of Education Bureau of School Facilities ("**BSF**"). This meeting is to be scheduled as early as possible during the Schematic Design Phase. The SFU will review the submission standards for the Project.

B. **Review and Notification of all Requirements For the Project.** The Architect shall review each Task Order furnished by the Owner's Representative, each of which shall be attached hereto as an exhibit, and shall analyze the Task Order requirements applicable to the requirements of the Department of Environmental Protection, Building and Fire Codes, local authorities and zoning codes, land use requirements, physical characteristics of the project site, legal requirements for approval of all governmental agencies and authorities having jurisdiction, other information and applicable laws, statutes, ordinances, and regulations to ascertain the requirements for all Task Order Permits and Approvals (defined below) required for the successful completion of the Task Order, and shall confirm and mutually agree on all requirements in consultation with the Owner's Representative and Program Manager.

C. **Preparation of Schematic Design Phase Documents.** Based upon the Owner's Task Order instructions, mutually agreed-to Task Order requirements, the Owner's Task Construction Budget, and the agreed-to Architect's CPM Schedule, the Architect shall prepare preliminary drawings and a study report, which shall constitute the Schematic Design Phase submittal ("**Schematic Design Phase Documents**"). The preliminary drawings shall be plan, elevation and section drawings illustrating the scale and relationship of all components of the proposed work to existing and any known future development on the site, and shall illustrate the design concept and details for any proposed work or structure with regard to foundation, anchoring, internal and external features, materials and finished appearance and location. The preliminary study report shall include all information required for permits and approvals including their timeframes, written information on material specifications, cost estimates in CSI format and any other information required to file for any and all required Task Order Permits and Approvals.

D. **Distribution of Project Information.** The Architect shall promptly furnish to the Owner's Representative copies of all drawings, documents, reports, correspondence, studies, meeting minutes and other written records, on any media, created by the Architect or which comes into the possession of the Architect and which are required, desired or necessary to keep the Owner informed of the progress of the Architect's Services, the progress of the Project, or as otherwise may be requested by the Owner pursuant to this Agreement. Deliverables for the final Schematic Design Phase documents shall be a minimum of three (3) hard copies of all documents submitted for review and one (1) electronic copy in approved electronic media.

E. **Evaluation Process.** The Architect shall assist the Owner in scheduling, and attend, the PREP meeting with the State BFU. This meeting is to be scheduled as early as possible during the Schematic Design Phase. The BSF will review the submission standards for the Project, and review what Project costs are acceptable reimbursable expenses. The Architect shall make necessary modifications to the Schematic Design Phase Documents, consistent with the Owner's project objectives, to endeavor to maximize the City's reimbursement from the State for this project. It is expressly understood, however, that the Architect cannot ensure that all basic Project costs will be eligible for reimbursement. Prior written approval by the Owner is required for the inclusion of project items that will be only partly eligible or ineligible for reimbursement.

2.3 **Design Development Phase.** If design development ("**Design Development**") services are included in a Task Order, upon receipt of the Owner's written approval of the Schematic Design Phase and receipt of a Notice To Proceed with the Design Development Phase, the Architect shall have the following responsibilities:

A. **Preparation of Design Development Phase Documents.** The Architect shall prepare from the drawings and study report of the approved Schematic Design Phase Documents, a set of design development documents (the “**Design Development Documents**”) consisting of final-scale plans, elevations and detail sections sufficient in detail to completely describe the design concept of the Task Order work and fix the size and character of the work as to site improvements, aesthetics, structures, mechanical systems, electrical systems as well as all other aspects or systems of the work, identify all materials and other elements of the work as may be appropriate, and submit those documents for approval by the Owner and authorities having jurisdiction. The Architect shall prepare for submittal all design analyses indicating design criteria and parameters used in developing the design concept. These Design Development Documents shall be prepared for consultation with the Owner, the Construction Manager and other consultants retained by the Owner, if any, for the Project. The Architect’s Design Development Phase Documents shall form the basis for seeking permits and approvals for the Project (“**Project Permits and Approvals**”) including, but not limited to full Connecticut Department of Environmental Protection (“**DEP**”) approvals and all federal, State, local and other permitting as required and necessary to perform and complete all required phasing to facilitate the timely completion of the Task Order within the CPM Schedule.

B. **Conformity with Budget.** The Architect shall cooperate with the Owner’s Representative, the Construction Manager and the Owner’s designated consultants to review and update the Owner’s Task Construction Budget to determine whether the Design Development Documents exceed that Budget. To the extent that the construction cost exceeds the Owner’s Task Construction Budget after the completion of the Design Development Documents, the Architect shall suggest options and alternatives to reduce the construction costs, which, if accepted by the Owner, will be incorporated into the Construction Documents subject to the provisions of Section 1.8B of this Agreement, provided such cost overruns are exclusively caused by the Architect’s increase in the scope of the work, over-design, or design errors or omissions as compared with the approved Schematic Design Drawings. If it is determined that the Architect is not responsible and the cause of the overrun is attributable to the accuracy of the Construction Cost Estimate prepared by others, the Architect will be compensated for any redesign effort as Additional Services. The Owner’s Representative, or his designee, reserves the right to recommend changes to the work that will assist in keeping the work within the Task Construction Budget, and the Architect agrees to incorporate changes into the work provided sound architectural practices are maintained and extensive or disproportionate redesign efforts, inconsistent with previously-approved documents or the Owner’s instructions, are not required.

C. **Distribution of Project Information.** The Architect shall promptly furnish to the Owner's Representative copies of all drawings, documents, reports, correspondence, studies, meeting minutes and other written records, on any media, created by the Architect or which come into the possession of the Architect and which are required, desired or necessary to keep the Owner informed of the progress of the Architect's Services or the progress of the Project, or as otherwise may be requested by the Owner pursuant to this Agreement. Deliverables for the final Design Development Phase documents shall be at a minimum three (3) hard copies of all documents submitted for review and one (1) copy of all documents in approved electronic media, unless otherwise directed by the Owner.

2.4 **Construction Documents Phase.** Upon receipt of the Owner's Approval to implement the Design Development Phase and to proceed with the Construction Document Stage, the Architect shall have the following responsibilities:

A. **Preparation of Construction Phase Documents.** The Architect shall prepare from the approved Design Development Documents, drawings and specifications setting forth in detail the requirements for the construction of the entire Project including drawings and technical specifications, and shall submit the same to the Owner for Approval ("**Construction Bid Documents**"). The Architect shall cooperate with the Owner's Representative and the Construction Manager in the preparation of bid forms, instructions to bidders and other front-end type bid documents as well as final changes required to the Construction Bid Documents prior to their release for bidding.

B. **Preparation of Documents and Permit Applications.** The Architect shall provide necessary design documentation for inclusion into permit applications, shall assist others in the preparation of applications necessary to obtain all Project Permits and Approvals from all governmental authorities having jurisdiction over the Project, and shall be responsible for revising the drawings and related materials, if necessary, in connection with obtaining such approval as a Service under a Task Order if such revisions are required to correct inconsistencies with or violations of stated provisions of applicable laws, rules and regulations or published governmental policies. The Architect shall determine whether all costs of construction resulting from any such required revision are within the Task Construction Budget. If it is necessary to revise the drawings to secure governmental approval, the drawings shall be revised by the Architect, as necessary, at no additional cost to the Owner unless such revisions are due to inconsistent information provided to the Architect by others, including governmental agencies. In this circumstance, the Architect will be compensated for such revisions as Additional Services.

C. **Certification of Governmental Compliance.** Prior to the commencement of construction, the Architect shall certify to the Owner and any

funding source for the Project that, to the best of the Architect's knowledge and belief, the Construction Documents, Construction Bidding Documents, and all other required deliverables prepared by the Architect in connection with each Task Order, conform to all applicable governmental regulations, statutes and ordinances, and, if the Project is constructed in accordance with the Construction Documents, it shall be code compliant.

D. Coordination of All Project Drawings; Correction of Errors.

The Architect shall be responsible for coordination of all Project drawings and specifications with the plans and specifications for any design furnished by any consultant and subcontractor employed by the Architect, and will correct coordination errors at its sole cost and expense.

E. Plan Completion Test ("PCT") Meeting.

Upon completion of the Construction Documents, the Architect and engineer that worked on the Project will attend the Plan Completion Test ("PCT") Meeting at the BSF. The Architect will ensure that all BSF guidelines and standards have been met. The Construction Documents will not be considered complete until these documents pass the PCT review. If the documents fail, the Architect is responsible for revising the Construction Documents in order to achieve approval at its sole cost and expense. All revisions to the Construction Documents required by the PCT meeting shall meet the Budget and continues to meet the constructability requirements of the Construction Manager.

2.5 Services During Construction Phase

A. Architect's Role. Upon receipt of the Owner's authorization to implement the Construction Phase Services, the Architect shall advise and consult with the Owner's Representative and the Construction Manager as described herein in order to protect the interests of the Owner in connection with such Task Order. The Architect's Services in connection with the construction of the Project shall include (as further defined in the applicable Task Order), the interpretation of Construction Phase Documents, participation in project meetings and site visits to familiarize itself with the progress and quality of the construction in accordance with the plans, specifications and any other documents governing the progress of the construction, review of change order proposals, review and approval of contractor submittals, determination of Substantial Completion, administration of punch-list correction, and recommendation of final acceptance of the Project. The Owner requires the Architect to process documents, including but not limited to drawing logs, reports and contractor submittals, through the use of the Owner's Expedition™ project management software. On the basis of its on-site observations as an architect, the Architect shall notify the Owner's Representative and the Construction Manager in writing if any portion of the construction is not in conformity with the requirements of the Construction Phase Documents, and make recommendations to the Owner for its correction. The Architect and its consultants and subcontractors shall be available to consult with

the Owner's Representative and the Construction Manager on the occasion of any and all circumstances arising during the course of the construction where such consultation would be in the best interests of the Owner. The Architect shall neither have control over, charge of nor be responsible for the construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project.

B. Representation Beyond Basic Services During Construction Phase. If more extensive representation at the Site than is described in any Task Order issued pursuant to Paragraph 2.5.A above, the Owner may request that the Architect provide one or more full-time project representatives to assist the Owner's Representative and the Construction Manager. Such full-time project representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as mutually agreed between the Owner and the Architect, at such time as such services are requested. The duties, responsibilities and limitations of authority of such full-time project representatives shall be set forth in a Task Order. The Architect shall be given thirty days notice of the Owner's intent to require such Representation Beyond Basic Services prior to the date by which the Owner intends such services to commence.

C. As-Built Drawings. At the completion of the Project, the Architect shall, based upon information furnished by the Construction Manager, provide Construction Documents on a computer diskette in a Windows format compatible with AUTOCAD, RELEASE 14 software. Said documents shall show the reported location of the work and significant changes made during the construction process. Because these drawings will be based upon unverified information provided by other parties, which are assumed by the Architect to be reliable, the Architect cannot and does not warrant their accuracy. In addition to the computer diskette, the Architect shall provide two (2) sets of blackline prints and one (1) set of photocopy mylars, the cost of which shall be Reimbursable Expense to the Architect.

ARTICLE III INFORMATION AND COMMUNICATION

3.1 Information to be Supplied. The Owner shall provide information regarding its requirements in the form of Task Orders. The Owner shall furnish to the Architect such information with reasonable promptness to avoid delay in the performance and delivery of the Services. The Architect shall be entitled to rely upon the completeness and accuracy of any Owner-supplied information unless, in the exercise of the Architect's professional judgment, it knows or should know that such reliance would be unreasonable, in which case the Architect shall inform the Owner's Representative in writing of the unreliability, inconsistency, unreasonableness or nonconformity of the information supplied.

3.2 Owner's Representative; Limits of Authority. Each such person or entity functioning in the capacity as the designated Owner's Representative shall act on behalf of the Owner and make decisions with respect to this Agreement and all Task Orders within the scope of their respective authority. When acting within the scope of their respective authority, the Architect is entitled to rely on such decisions. The Owner's Representative shall not perform any design services or other services performed by an architect. The Owner's Representative shall examine documents, at each phase of the Services performed or to be performed by the Architect, which are submitted by the Architect from time to time, and shall render evaluations and decisions pertaining thereto promptly in order to avoid unreasonable delay in the performance and delivery of the Architect's services. Any Approval or Approvals given by the Owner's Representative shall not relieve the Architect of any of its obligations hereunder.

3.3 Independent Legal and Accounting Services. The Owner shall furnish its own legal, accounting, auditing and insurance counseling services, however, the fact that the Owner possesses such support services will not relieve the Architect of its responsibilities pursuant to this Agreement. The Architect shall furnish, as part of its own overhead expense, its own legal, accounting, auditing and insurance counseling services.

3.4 Confidential Information. Each party hereby acknowledges that it may be exposed to confidential information which may not be available to the public or discoverable under the Freedom of Information Act ("**FOIA**") and other proprietary information belonging to the other party or relating to its business and affairs, including, without limitation, source code and design materials for work product and other materials expressly designated or marked as confidential ("**Confidential Information**"). Confidential Information does not include (i) information not properly identified and marked where feasible as Confidential Information; (ii) information already known or independently developed by the recipient; (iii) information in the public domain through no wrongful act of the party; (iv) information received by a party from a third party who was free to disclose it; or (v) information properly disclosable under FOIA.

(b) **Covenant Not to Disclose.** Each party hereby agrees that during the term of this Agreement and at all times thereafter it shall not use, commercialize or disclose the other party's Confidential Information to any person or entity, except to its own employees who have a "need to know," to such other recipients as the party claiming confidentiality may approve in writing in advance of disclosure, or as otherwise required by court order, statute or regulation. Each party shall use at least the same degree of care in safeguarding the other party's Confidential Information as it uses in safeguarding its own Confidential Information, but in no event shall a party use less than due diligence and care. Neither party shall alter or remove from any software, documentation or other Confidential Information of the other party (or any third party) any proprietary, copyright, trademark or trade secret legend.

3.5 **Existing Environmental Reports.** The Owner shall furnish to the Architect for its use any chemical, air and water pollution tests, tests for hazardous materials, other laboratory and environmental tests, evaluations and analyses in the Owner's possession or that come into its possession.

ARTICLE IV REMEDIES

4.1 **Default by Architect.** It shall be a material default under this Agreement in the event that any of the following occur (each an **Architect's Default**): (i) the Architect, or any employee, subcontractor, consultant or agent of the Architect shall file or record a lien against the Project site or any property of the Owner, or (ii) the Architect is declared to be bankrupt or insolvent, an assignment for the benefit of creditors is made by the Architect, the Architect shall file a voluntary petition in bankruptcy or insolvency, or a receiver shall be appointed for the Architect and such appointment or bankruptcy or insolvency proceeding, petition, declaration or assignment is not set aside within thirty (30) days of filing, or (iii) any representation or certification made by the Architect to the Owner shall prove to be materially false or misleading on the date said representation or certification is made or shall thereafter become false or misleading, or (iv) default shall be made in the observance or performance of any material covenant, agreement or condition contained in this Agreement required to be kept, performed or observed by Architect, or (v) the Architect, or any principal or officer of the Architect shall be convicted of a crime punishable as a felony, or (vi) the Architect violates a material provision of any laws, ordinances, rules, regulations or orders of any public authority in the performance of its duties hereunder. If such an Architect's Default has occurred and has not been cured within thirty (30) days (the "**Architect's Cure Period**") or, if not reasonably capable of being cured within 30 days, the Architect has either not commenced to take action to cure such default within 30 days or has failed to pursue a cure using its best efforts with due diligence until such cure is achieved to the reasonable satisfaction of the Owner, with written notice from the Owner to the

Architect, the Owner may declare the Architect to be in default hereunder and exercise any remedies available to it, including the termination of this Agreement and any Task Order(s) then outstanding.

4.2 Termination by Owner Due to Architect's Default. If the Architect commits an Architect's Default under this Agreement which continues beyond the Architect's Cure Period, the Owner may, without prejudice to any right or remedy, terminate the employment of the Architect and take possession of all plans, specifications, drawings and other data prepared by the Architect, whether complete or not, with respect to the Task Order or Task Orders by making written demand upon the Architect, which the Architect shall comply with within five (5) days or suffer Delay Damages thereafter. Additionally, the Owner may pursue any legal action available to it to obtain relief for actual damages suffered by reason of Architect's Default hereunder. In such event, the Architect shall be liable to compensate and reimburse the Owner for all of its loss, cost and expense, including but not limited to attorney's fees and consultant's fees, which are caused by the Architect's Default.

4.3 Default by Owner. In the event the Owner shall fail to perform any of its material obligations pursuant to this Agreement ("**Owner's Default**") and the same has not been cured within sixty (60) days (the "**Owner's Cure Period**"), with or without written notice from the Architect to the Owner, the Architect may declare the Owner to be in default hereunder and exercise any remedies available to it.

4.4 Termination by Architect Due To Owner's Default. Should the Owner commit an Owner's Default that continues beyond the Owner's Cure Period, the Architect may, as its sole and exclusive remedy, terminate this Agreement. Upon such a termination, the Architect shall be entitled to recover from the Owner all Compensation due for Services performed in accordance with the requirements of this Agreement to the date of such termination, and Reimbursable Expenses, which shall also include the following termination expenses only ("**Termination Expenses**"): reproduction costs, delivery, correction and archiving of printed and electronic files in order to accomplish the orderly close-out of all Project files for each Task Order. The Architect may not recover any other damages, costs or expenses from the Owner.

4.5 Termination by Owner Without Fault of the Architect. Upon fifteen (15) days' prior written notice, the Owner shall have the right to cancel and terminate this Agreement whether or not an Architect's Default exists hereunder, and the Owner shall incur no liability to Architect or any other person by reason of such cancellation, except that the Owner shall pay the Architect in accordance with Paragraph 4.4 hereof for Services performed up to **the date of termination set forth in the notice.**

4.6 Transfers Upon Termination. In the event of any termination of this Agreement by the Owner, the Architect shall, upon written request of the Owner, return to the Owner within ten (10) days of demand all plans, specifications, drawings, sketches, papers, materials and other items and data prepared by or in the possession of the Architect relating to the Project whether created by or at the request of the Architect or created by others. In addition, each party will assist the other party in an orderly termination of this Agreement and the transfer of all aspects hereof, tangible and intangible.

4.7 Resolution of Disputes and Choice of Law. The parties agree that all disputes between them arising under this agreement or involving its interpretation, if they cannot be first resolved by mutual agreement, are subject to the following alternate dispute resolution procedure:

- (a) Either party may send written notice to the other in the manner specified in this agreement that a dispute has not been resolved by mutual agreement. A copy of such notice setting forth the nature of the dispute shall also be forwarded to the Director, Department of Public Facilities, or his designee ("**Director**"), 999 Broad Street, Bridgeport, Connecticut 06604. The notice shall also contain a position statement and copies of documents supporting the notifying party's position regarding the dispute. Within five (5) working days after receipt of such notice by the other party, the other party shall file its reply with position statement and supporting documents to the Director. Within five (5) working days after receipt of such reply, the Director shall review the matter and render a determination in writing ("**Determination**") to the parties. The Director may reach a Determination with or without a face-to-face meeting with the parties and with or without testimony of witnesses, in his/her sole discretion.
- (b) If either party objects to the Determination, such party may commence non-binding mediation before the American Arbitration Association within thirty (30) days after the date of the Determination in accordance with its mediation rules then in effect, which mediation shall be held in Bridgeport, Connecticut. Each party shall bear the cost of its respective counsel and one-half of the administrative costs of such mediation, including but not limited to the mediator's fees and expenses.
- (c) If resolution of such dispute is not achieved after mediation, such dispute may be submitted by either party to the American Arbitration Association for resolution in accordance with its construction rules of arbitration then in effect. Arbitration shall take place in the City of Bridgeport. Upon the request of either party, the dispute may be determined by the Fast Track or

other expedited procedure of the American Arbitration Association then in effect if the matter is of such a nature and magnitude that it is appropriate for determination by expedited procedures. The award shall be limited to the remedies set forth in this agreement. The arbitrator shall have authority, at his/her sole discretion, to award reasonable attorneys' fees and costs to the prevailing party. Such award shall be final and binding upon the parties and shall be enforceable in any court of competent jurisdiction. If the award does not contain an award of attorneys' fees and/or costs, each party shall bear the cost of its respective counsel, and one-half of the administrative costs of such arbitration, including but not limited to the arbitrator's fees and expenses (except filing fees for demands and counterclaims, which shall be borne by the party initiating the same). THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE STATE OF CONNECTICUT. NOTWITHSTANDING ANYTHING CONTAINED IN THIS PARAGRAPH 4.7 TO THE CONTRARY, EACH PARTY RESPECTIVELY RESERVES THE RIGHT TO CHALLENGE IN A COURT HAVING JURISDICTION OVER THE PARTIES ANY AWARD MADE IN ARBITRATION BASED UPON THE ARBITRATOR'S MISINTERPRETATION OR MISAPPLICATION OF PREVAILING CONNECTICUT LAW.

ARTICLE V INDEMNIFICATION AND INSURANCE

5.1 **Indemnification.** The Architect represents and warrants that it will employ its best professional architectural judgment in the performance of the Services hereunder to ensure that design products are consistent with the exercise of the standard of care set forth in Paragraph 1.8G hereof. To the fullest extent permitted by law, the Architect, on behalf of itself and its subcontractors, consultants and agents (the "**Indemnitor**"), agrees to indemnify, save and hold Owner, its elected officials, department heads, employees, subcontractors, Construction Manager, Program Manager and consultants (the "**Indemnitee**") harmless from and against any and all liability, damage, loss, claim, demand, action and expenses of any nature whatsoever, including, but not limited to costs, expenses, consulting fees and reasonable attorneys' fees to the extent caused by: (i) any negligent act, error or omission by the Indemnitor in the performance of this Agreement; (ii) the negligent failure of the Indemnitor to comply with the laws, statutes, ordinances or regulations of any governmental or quasi-governmental agency or authority having jurisdiction over the Project; or (iii) the breach of any material term or condition of this Agreement by the Indemnitor. The provisions of this indemnification article shall not be construed as an indemnification of the Indemnitee for any loss or damage attributable to the

act or omission of the Indemnitee. The indemnity set forth above shall survive the expiration or any earlier termination of this Agreement.

5.2 Environmental Indemnification.

A. **Indemnification.** [The Capitalized terms used herein are defined in Paragraph 5.2.B hereof.] The Architect, for itself and its subcontractors and consultants, agrees to indemnify, hold harmless and pat to defend the Owner from and against all liability, damage, loss, claim, demand, action and expense of any kind whatsoever, including, but not limited to, costs, expenses, consulting fees and reasonable attorneys' fees which may be claimed, suffered or incurred by the Owner or a third party to the extent that such harm was caused by the Architect's or its subcontractor's or consultant's negligent acts or omissions which result in a Release onto the Project site, into the environment or onto property of others of any Hazardous Substances. "Negligent acts or omissions" would not include a Release **resulting from** the existence of hidden conditions not reasonably determinable in advance using due care consistent with the standard of care applicable, **respectively**, to the Architect, its subcontractors **or** consultants.

The indemnification protects against the following events, including without limitation:

- (i) the removal, encapsulation, containment or other treatment, transport or disposal of Hazardous Substances on the Project site or emanating therefrom;
- (ii) the imposition of a lien against the Project site, including liability resulting from the Architect's failure to take prompt steps to remove, and to remove, such lien by payment of the amount owed or by the furnishing of a bond, cash deposit or security in an amount necessary to secure the discharge of such lien or the claim out of which the lien arises;
- (iii) any inquiry, claim or demand, by any person including without limitation, any costs incurred in connection with responding to or complying with such inquiry, claim or demand;
- (iv) any failure of the Architect to use the Project site in compliance with all applicable Environmental Laws, and the defense of any litigation, proceeding or governmental investigation relating to such failure to comply with Environmental Laws;
- (v) any personal injury concerning or relating to the presence of Hazardous Substances on or emanating from the Project site, or as a result of activities conducted on or with respect to the Project site in connection with the remediation of Hazardous Materials thereon or emanating therefrom.

The provisions of this indemnification shall govern and control over any inconsistent provision of any other document executed or delivered by the Architect in connection with this Agreement. This paragraph shall survive the expiration of the Agreement or the earlier termination thereof and shall be a continuing obligation of the Architect and shall be binding upon the Architect, its successors and assigns, and shall inure to the benefit of the Owner, its successors and assigns.

B. Definitions.

“Architect” means the Architect, its subcontractors and consultants.

“Environment” means any water or water vapor, any land including the land surface and subsurface, air, aquatic life, wildlife, biota and all other natural resources and features.

"Environmental Laws" means, without limitation, all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the Environment and/or governing the use, storage, production, treatment, generation, transportation, processing, handling or disposal of Hazardous Substances, and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives, whether formal or informal, of federal, state and local governmental agencies and authorities with respect thereto, as they may be amended, renumbered, substituted or supplemented from time to time, and those Environmental Laws that may come into being or into effect in the future.

"Environmental Permits" means, without limitation, all permits, licenses, approvals, authorizations, filings, consents or registrations required by any applicable Environmental Law in connection with (a) the ownership, use and/or operation of the Project site for the use, storage, production, treatment, generation, transportation, processing, handling or disposal of Hazardous Substances, or (b) the sale, transfer, encumbrance or conveyance of all, or any portion of the Project site.

"Hazardous Substances" means, without limitation, any flammable, explosive, corrosive or ignitable material, characteristic waste, listed waste, radon, radioactive material, asbestos, urea-formaldehyde foam insulation, polychlorinated biphenyl's, petroleum and petroleum-based wastes, methane gas, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, mixtures or derivatives having the same or similar characteristics and effects, as defined in, listed under, or regulated by various federal, State or local environmental laws, rules or regulations, including, without being limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801 et seq.), the

Emergency Planning and Community Right to Know Act, as amended (42 U.S.C. 11001 et seq.), the Resource, Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1251, et seq.), the Clean Air Act, as amended (42 U.S.C. Section 7401 et seq.), the Clean Water Act, as amended (33 U.S.C. 1251 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. 300, et seq.), or as such substances are defined under any similar state laws or regulations, including, without being limited to, the release of substances constituting a "spill" as defined In Connecticut General Statutes Section 22a Sect. 452(c).

"Improvements" means the buildings, structures and other physical improvements previously existing, presently located on, or to be constructed on the Project site.

"Project site" means the real property described herein or in any Task Order, and its appurtenances.

"Release" or "spill" shall have the same meaning given to those terms under the Environmental Laws whether they are historic or sudden, and without regard to quantity.

5.3 Insurance. The following insurance coverage is required of the Architect and it is understood that the Architect will require other coverage from every consultant and subcontractor in any tier according to the work being performed and shall ensure that all insurance coverage is issued and in force in accordance with the terms hereof at all times in the performance of the Services under a Task Order.

A. Coverage Required. The Architect shall procure, present to the Owner in advance of any Services being performed, and maintain in effect for the Term of this Agreement without interruption the insurance coverages identified below with insurers licensed to conduct business in the State of Connecticut and having a minimum Best's A + 15 financial rating, or otherwise acceptable to the City.

Errors and Omissions Insurance (claims made form) will be provided by all architects and design professionals involved in the Project with minimum limits of \$3,000,000, or as otherwise required by the Owner.

Commercial General Liability (occurrence form) insuring against claims or suits brought by members of the public alleging bodily injury or personal injury or property damage and claimed to have arisen out of operations conducted under this Agreement. Coverage shall be broad enough to include premises and operations, contingent liability, contractual liability, completed operations (24 months), broad form property damage, care,

custody and control, with limitations of a minimum \$1,000,000 per occurrence and \$2,000,000 combined primary and excess coverage for each occurrence/aggregate and \$300,000 property damage. Under no circumstances may this insurance coverage be an aggregate type for all locations and/or all operations of the Architect, its subcontractors or consultants, nor may the face amount of any such coverage be reduced by other claims against the Architect, defense costs or any other setoff. Such insurance coverage must be provided for this Project or this Agreement only.

Business Automobile insuring against claims or suits brought by members of the public alleging bodily injury or personal injury or property damage and claimed to have arisen out of the use of owned, hired or non-owned vehicles in connection with business. Coverage will be broad enough to include contractual liability, with limitations of \$1,000,000 combined primary and excess coverage for each occurrence/aggregate with a combined single limit for bodily injury, personal injury and property damage.

Workers' Compensation insuring in accordance with statutory requirements in order to meet obligations towards employees in the event of injury or death sustained in the course of employment. Liability for employee suits shall not be less than \$500,000 per claim.

Property Damage insuring against direct damage loss to buildings, structures or improvements to any permanent buildings, structures or improvements, covering the interest of the City, the Contractor, its contractors and subcontractors and parties having an interest therein. Waivers of subrogation will be provided for all interested parties named herein. The Owner shall be named as loss payee as its interests may appear. The Architect, its consultants and subcontractors will be responsible for insuring their respective equipment, tools and materials brought to the job site but which are not intended to become part of any temporary construction requirements or part of any permanent structures, buildings or improvements.

B. General Requirements. All policies shall include the following provisions:

Cancellation notice—The Owner shall be entitled to receive from the insurance carriers not less than 30 days' written notice of cancellation, non-renewal or reduction in coverage, such cancellation notices to be given to the Owner at: Purchasing Agent, City of Bridgeport, City Hall, 45 Lyon Terrace, Bridgeport, Connecticut 06604.

Certificates of Insurance—All policies will be evidenced by an original certificate of insurance on an ACORD-25 form delivered to the Owner and authorized and executed by the insurer or a properly-authorized agent or representative reflecting all coverage and terms required, such certificate required to be delivered to the Owner prior to any work or other activity commencing under this Agreement.

Additional insured—The Architect, its consultants and subcontractors will arrange with their respective insurance agents or brokers to name the Owner, its elected officials, officers, department heads, employees and agents on all policies of primary and excess insurance coverages as additional insured parties except for errors and omissions insurance and workers' compensation coverage, and as loss payee with respect to any damage to property of the Owner, as its interest may appear. The undersigned shall submit to the Owner upon commencement of this Agreement and periodically thereafter, but in no event less than once during each year of this Agreement, evidence of the existence of such insurance coverages in the form of original Certificates of Insurance issued by reputable insurance companies licensed to do business in the State of Connecticut and having minimum Best's A + 15 financial rating or rating otherwise acceptable to the Owner. Such certificates shall designate the Owner in the following form and manner:

“The City of Bridgeport
Attention: Purchasing Agent
45 Lyon Terrace
Bridgeport, Connecticut 06604”

ARTICLE VI MISCELLANEOUS

6.1 **Singular, Plural, Gender, etc.** Wherever in this Agreement the context so requires, the singular number shall include the plural number and vice versa, and any gender herein used shall be deemed to include the feminine, masculine or neuter gender.

6.2 **Professional Services Contract.** This Agreement is entered into solely to provide for the design of the work of various Task Orders for work related to the Bridgeport Schools Program and to define the rights and obligations, risks and liabilities of the parties hereto. This Agreement, and any document or agreement entered into in connection herewith, shall not be deemed to create any other or different relationship between the Architect and the Owner other than as expressly provided herein. The Architect acknowledges that the Owner is not a partner or joint venturer with the Architect and that the Architect is not an employee or agent of the Owner.

6.3 **Assignment Prohibited.** The Architect may not transfer, hypothecate or in any way alienate or assign its interest in this Agreement or delegate any duties or obligations to be performed by it hereunder without the prior written consent of Owner, which may be withheld in its sole and absolute discretion. The Owner may assign its interest in this Agreement at any time to any person or entity that assumes the Owner's obligations from the date of the assignment hereunder; provided, however, that, absent express consent in writing by the Architect, such assignment shall not release the Owner from its obligations to the Architect hereunder for payment of all amounts due the Architect pursuant to this Agreement.

6.4 **Notices.** All notices, requests, demands or changes of address required or desired by either party shall be in writing and shall be either personally delivered, delivered by messenger or overnight delivery service, or be delivered by registered or certified mail, return receipt requested, postage prepaid, and addressed to the other party at the address heretofore set forth (each a "**Notice**"). All Notices shall be deemed received, in the case of personal or overnight delivery service, upon receipt, or in the case of mailing, on the date of receipt thereof by the party to whom it is addressed or, if receipt is refused, upon the expiration of forty-eight (48) hours from the time of deposit of such mailed notice in an office of the United States Postal Service.

6.5 **No Waiver.** No waiver of any party's default hereunder by the other party hereto at any one time shall be construed as a waiver by such party of any subsequent breach of the same or another term of this Agreement by the other party.

6.6 **Ownership and Use of Documents.** All drawings, specifications, surveys, test results, models, plans, computer files, databases and other work

product prepared by the Architect or anyone employed by the Architect for the Project in any form or media upon creation are and shall be the sole and exclusive property of the Owner, including without limitation all rights of reproduction and reuse, and other interests relating thereto. The Architect shall have an irrevocable, non-exclusive license to copy and use such documents and data and may retain copies of such documents and data for re-use in the conduct of its professional practice. The Owner shall not alter any drawings or specifications signed and sealed by the Architect or use the drawings and specifications on any other project without the Architect's prior written consent, and the Owner shall indemnify, release and hold harmless the Architect from and against all liability for the Owner's alteration of such drawings or specifications prepared by the Architect without the Architect's prior written consent. The Architect shall retain all copyrights.

6.7 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of the Owner and the Architect and their respective successors, assigns and legal representatives.

6.8 Captions. The captions and headings contained herein are for convenience only and are not to be construed as part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.

6.9 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of Connecticut and the United States of America. Resolution of all disputes shall be commenced and resolved in Fairfield County, Connecticut.

6.10 Entire Agreement. Each party acknowledges that there are no oral promises, undertakings or agreements in connection with this Agreement that are not contained herein. This Agreement may be modified only by a written agreement signed by all parties hereto. All previous negotiations and agreements between the parties hereto, with respect to the transactions set forth herein, are merged in this instrument, the documents or other materials referenced herein, the Task Orders, and amendments hereto mutually agreed to in writing by the parties, which together fully and completely express the parties' rights and obligations.

6.11 Partial Invalidity. If any term or provision of this Agreement shall be found by a court of competent jurisdiction over the parties to be illegal, unenforceable or in violation of the laws, statutes, ordinances or regulations or any public agency or authority having jurisdiction over the parties or the Project, then, notwithstanding the illegality or enforceability of such term or provision, this Agreement shall be and remain in full force and effect and such term shall be deemed stricken therefrom; provided, however, that this Agreement shall be

interpreted, whenever possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

6.12 **Survival.** The terms, provisions, representations, warranties and certifications contained in this Agreement, or inferable therefrom, shall survive the completion of the Project, or the earlier termination of this Agreement as to the Services completed to the date of such termination, subject to all applicable statutes of limitation and repose.

6.13 **Waiver of Lien.** The Architect hereby waives any right it may have to file or assert a mechanic's or materialmen's lien against the Project site or against the Bridgeport Schools Program, including but not limited to, any rights granted to the Architect by the laws of the State of Connecticut.

6.14 **Excusable Delay.** The parties hereto, respectively, shall not be in default of this Agreement if either is unable to fulfill, or is delayed in fulfilling, any of its obligations hereunder, or is prevented or delayed from fulfilling its obligations, in spite of its employment of best efforts and due diligence, as a result of extreme weather conditions, natural disasters, catastrophic events, mass casualties to persons or significant destruction of property, war, governmental preemption in a national emergency, enactment of law, rule or regulation or change in existing laws, rules or regulations which prevent any party's ability to perform its respective obligations under this Agreement, or actions by other persons beyond the exclusive control of the party claiming hindrance or delay. If a party believes that a hindrance or delay has occurred, it shall give prompt written notice to the other party of the nature of such hindrance or delay, its effect upon such party's performance under this Agreement, the action needed to avoid the continuation of such hindrance or delay, and the adverse effects that such hindrance or delay then has or may have in the future on such party's performance. Notwithstanding notification of a claim of hindrance or delay by one party, such request shall not affect, impair or excuse the other party hereto from the performance of its obligations hereunder unless its performance is impossible, impractical or unduly burdensome or expensive, or cannot effectively be accomplished without the cooperation of the party claiming delay or hindrance, The occurrence of such a hindrance or delay may constitute a change in the scope of Services, and may result in the need to adjust the Compensation in accordance with the terms of this Agreement.

6.15 **Non-Discrimination.** The requirements for minority hiring and participation by disadvantaged businesses are set forth in **Exhibit E** attached hereto.

6.16 **Precedence of Documents.** In the event that there exists any ambiguity or conflict between this Agreement and any attachment, exhibit or Task Order, the terms of this Agreement shall govern as to all matters of interpretation.

6.17 **Building Committee Approval of Agreement Required.** This Agreement shall not become effective until the Building Committee for Northend School of the City of Bridgeport approves the same, the Co-chair executes the Agreement, and a fully executed original thereof complete with all Schedules, Exhibits and any Task Order is delivered to the Architect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF BRIDGEPORT

Acting through the Building Committee For
the SUBJECT PROJECT

By:_____

Name:

Co-Chairman, duly-authorized

BLANK.

By:_____

Name:

Title:

Duly-authorized

Exhibit A
Architect's Proposal

Task Order Format

This Task Order No. ___ is made as of this ___ day of _____, [year] under the terms and conditions established in the Professional Architectural Services Agreement between the Owner and the Architect dated _____, and shall constitute an amendment to such Agreement. This Task Order is issued for the following purpose; consistent with the Project defined in the Agreement:

[Brief description of the Project elements to which this Task Order applies.]

Section A—Scope of Services

A.1. The Architect shall perform the following Services:

A.2. The following Services are not included in this Task Order, but shall be provided as additional Services if Approved in writing by the Owner.

[List]

A.3. In conjunction with the performance of the foregoing Services, the Architect shall provide the following submittals/deliverables (“**Deliverables**”) to the Owner:

[List]

Section B—Task Schedule

The Architect shall perform the Services and deliver the related documents, if any, according to the following Task Schedule:

[List or Attach]

Section C—Compensation

C.1. Compensation shall be paid in accordance with the Agreement, except as may be set forth below:

[List any variance]

C.2. Compensation for any additional Services requested under this Task Order, if any, shall be paid by the Owner to the Architect according to the following terms:

[List]

Section D—Owner’s Responsibilities

The Owner shall perform and/or provide the following in a timely manner so as not to delay the performance or completion of the Services by the Architect. Unless otherwise provided in this Task Order, the Owner shall bear all costs incident to compliance with the following:

[List]

Section E—Other Provisions

The parties agree to the following additional provisions with respect to this Task Order:

[List]

Except to the extent modified herein, all terms and conditions of the Agreement shall continue in full force and effect.

Owner

By: _____
Name:
Title:

Architect

By: _____
Name:
Title:

Reimbursable Expenses

(A schedule of Reimbursable Expenses shall be identified for each Task Order of Phase thereof for the Owner's budgeting purposes.)

Reimbursable Expenses may include the following:

1. Shipping and handling of documents during design and construction documents phases.
2. Reproduction of documents for submittals to the Owner and regulatory agencies (the Owner will provide for reproduction of final documents for bidding and construction purposes)
3. In-house printing
4. Computer plots
5. Out-of State long-distance telephone
6. Local courier services
7. Out-of-city courier services
8. Out-of-State mileage
9. Termination Expenses
10. Models and renderings
11. Environmental investigations and environmental testing
12. Expedition Training

Staffing of Project

ARCHITECTURAL
BLANK.

Managing Partner –
Partner –
Project Manager –

STRUCTURAL ENGINEERING
NAME

LANDSCAPE ARCHITECTURE
NAME

CIVIL ENGINEERING
NAME

MECHANICAL / ELECTRICAL / PLUMBING ENGINEERING
NAME

INTERIOR DESIGN
NAME

Nondiscrimination

See Section 3.12 of the City Ordinances.

Education Specification

Memo dated 9/5/06 from the Board of Education in reference to the Architectural plans for the proposed curriculum in the magnet pre-school through grade 8.

District Wide PreK to 8 Education Specification – dated December 2002.

Schedule