



August 29, 2023

Mr. Steve Jakubowski
Business Administrator
West Deptford School District
West Deptford, NJ 08086

Re: West Deptford School District
Pre-Referendum Services

Dear Mr. Jakubowski:

On behalf of Spiezle Architectural Group Inc. (Architect), we appreciate the opportunity to provide a proposal to assist the district in developing and advancing a potential referendum for capital improvements. Our current understanding of scope and budget, as well as our proposed pre-referendum (phase 1) and post referendum (phase 2) scope of services, are outlined below.

Proposed Scope of Professional Services:

We understand the district is targeting a 2024 referendum with a potential September date. While the scope of the referendum would be determined through our initial planning process with the district, we currently understand it may encompass a range of improvements include HVAC, athletic improvements, various program space upgrades, auditorium and arts improvements, and other scopes of work.

We have structured our proposal into two phases: In phase 1, an initial pre-referendum and discovery phase encompassing collaborating with you and your stakeholders to facilitate discussion and potential scope to advance. We would assess budgets for that scope and work with your groups to prioritize those considerations. The phase 2 scope outlined below would apply only when a referendum is passed and work is authorized to proceed. This includes advancement of full design, engineering, preparation of bidding documents, seeking remaining approvals, and construction administration efforts.

Our proposed scope and fees, as outlined below, include architectural, MEP engineering, and structural engineering services. Some scope may require site/civil services and services related to hazardous material abatement or other services which are not currently included within this proposal. A potential list is provided below.

Proposed Professional Services:

Phase 1: Pre-Referendum Services:

We would undertake the review of the district's facilities and conduct a series of sessions with the district to confirm and finalize the anticipated referendum scope, budgets, and schedule, including Board and community sessions. We would develop referendum plans, prepare necessary documentation for DOE approval submissions, and work with the district to develop pre-referendum community interaction and communication strategies to support the referendum vote. Our efforts would include the following:

- Review each school facility and site: We would conduct walk-thru assessments with your facility staff to observe school and site conditions. This would include photographing conditions as they exist to support future public communication around issues and why they need to be addressed. We would observe readily accessible and visible areas of the buildings (no destructive testing or observation of



hidden conditions). Following our review, we would meet to discuss findings and scope with the district.

- Develop a preliminary scope and budgets: we would prepare an initial listing of potential scope and initial budgets to review with the district.
- Plan and facilitate meetings with district stakeholders: Following initial assessment and discussion of findings, we would facilitate sessions with your district teams to get their perspectives on what needs should be considered, and how needs should be prioritized within the scope to be advanced. Following these sessions, our scope listing and budgets would be updated. We would anticipate these discovery sessions to be held with a broad range of parties, the board, and others, including members of the public, municipal government, etc. but we would defer on who should participate to the district.
- Assess an initial construction approach: How work might be implemented can impact budgets. We would strategize schedule and implementation considerations with your and adjust our budgets accordingly. Our goal would be to simultaneously manage budget costs while minimizing impacts on students, teachers, and general school operations.
- Prepare and present received feedback along with the proposed scope of work, estimated budgets, and preliminary schedule information to the Board and public as part of this process. In these session(s) we would seek feedback and then work with the district to assess this feedback and adjust scope/budgets/etc. accordingly.
- Develop schematic designs for the various scope components and present to the district as design progresses to support the NJDOE approval submission process.
- Upon finalization of scope and budgets, we would update the Districts' LRFP website database to include the proposed projects. This is characterized as a 'minor' or project specific update. We understand the district's LRFP was recently updated to satisfy the 5-year requirement (a 'major' update).
- Prepare, update and finalize NJDOE application packages for review and approval. We would prep the district with template letters and guidance related to the submission process as well as a schedule to help plan required actions by the Board and others as part of this process.
- If necessary, we would attend and present at a local planning board meeting in association with the submission of project(s) to NJDOE.
- Facilitate overall pre-referendum strategy meeting(s) focused on developing a communication approach that would work best in building understanding of the referendum and scope within your community. These meetings would include helping the district understand schedule deadlines, such as Board action needs, in advance.
- Meet with the district referendum committee(s), administration, and Board periodically.
- Assist in organizing information efforts which will support the pre-referendum information campaign. We are assuming distribution of referendum information materials will be undertaken by the district (updating the district website, mailings, etc.).
- Meet with District and municipal representatives at key junctures to communicate up-to-date information through the process. We would anticipate the need to attend a planning and or municipal board meeting to present the projects and solicit a response.



- Attend and conduct presentations at community events. We would anticipate this to include periodic Board meetings, public information sessions and general information sessions at the schools.
- Prepare information to support presentations of the referendum scope.
- Assist with developing communication ideas (email, websites, print, presentations, small group coffees, etc.) to help get the right message out to the public, counter misinformation, respond to press inquiries, and reach stakeholder groups.
- Develop an anticipated question/answer script and FAQs with Board and/or community participants, which will support and prepare Board members, community members, and District personnel for questions they may be asked during the process.
- Assist the District in responding to questions throughout the referendum process.
- Coordinate with bond counsel, board attorney, and other consultants the Board may retain in association with the referendum and project effort. We would provide supporting information as needed by these parties.

Phase 2: Design, Documentation, Bidding, and Construction Administration Services:

Phase 2 scope only applies with authorization to proceed upon passage of a referendum. We would undertake the remaining design and documentation efforts to facilitate public bidding and construction associated with the approved scope of work and each project. Our efforts would include the following:

Schematic Design, Design Documentation, Construction Documentation, and Bidding Efforts:

- Conduct additional surveys of existing conditions, dimensions, and characteristics for the project.
- Develop schematic plans, design development, and construction documents for review.
- Conduct periodic coordination meetings to review project designs and budgets as work progresses.
- Review equipment and material options with the district.
- Facilitate a design development meeting at the completion of this phase to review material selections and material samples prior to completion of construction documents.
- Coordinate contractual front-end language for the specifications with the district and your attorney and CM (if applicable). This would include the formal Owner-Contractor contract to be used in bidding and the various front-end requirements of the project specifications.
- Based on approved design, develop construction documents and specifications for bidding,
- Conduct our in-house 'fresh-eyes' quality control review of documents prior to bidding.
- Support for permit review and approval process with NJ DOE, local code official and/or NJDCA.
- Public bidding of the project(s) and/or procurement of components through coop purchasing.
- Respond to RFI's during bidding.
- Chair a pre-bid meeting or meetings for bid packages when issued.
- Attend the bid opening and make a recommendation on the lowest responsible bidder.



Construction Administration and Close Out:

- Output and issue AIA contract between contractor and District (would be reviewed with district attorney prior to issuance).
- Issue Notice of Award on behalf of the district.
- Represent district interests through construction process, monitoring construction for conformance with designs, specifications, and construction requirements.
- Attend a preconstruction meeting, one job meeting every two weeks during construction and prepare/inspect the punch list and final completion.
- We would conduct on-site visits to observe construction activity in the district bi-weekly and at other times based our assessment of need and the activity underway on site(s).
- Maintain records of correspondence, submittals, minutes, etc. on behalf of the district during construction
- Review construction schedule, payment applications and shop drawings.
- Respond to RFI's and process close out documents.
- Review/assess any proposed changes and/or substitutions from the contractors.

Optional Service: Enhanced Construction Administration (CA) Services:

If desired, Spiezle can provide enhanced construction administration services and we can structure such services in a flexible way, to the satisfaction of the district's desire for expanded on-site supervision for the project(s). Depending on the method(s) of procurement/bidding and the final scope undertaken, a daily fee for consideration can be quoted for this additional service if desired.

Additional site visits, up to daily, can be provided and each additional site visit during construction would typically consist of two to three hours on site depending on the level of active construction activities. Site visits could be scheduled at staggered times so contractors would not anticipate us on site at the same time each visit. Each site visit will include observation of construction activity, evaluation of work being performed and provision of direction to the contractor(s) related to any questions, concerns, etc. A weekly field report will be prepared and emailed to the contractor and District.

Optional Service: Enhanced Existing Condition Investigation Services:

In our experience renovation projects are prone to discovery of previously unknown or differing hidden conditions once construction commences. Adjustments to the design to address these conditions, once construction starts, can be costly and create undesired delays. As a result, beyond the typical general survey of readily observable and visible existing conditions, an enhanced investigative phase can be undertaken to obtain more information regarding the buildings' hidden or non-observable conditions with the goal of managing cost and schedule risk. Depending on the schematic design approach developed and existing conditions, this phase may be recommended. To assess this, the following efforts would be initially undertaken within our proposed fees:

- Conduct a general review of available as built/record documentation to understand available information and identify potential gaps in information related to the building's construction.
- Our team will review available information and discuss with your facility representative(s).
- We will conduct our general assessment of readily observable conditions (accessible and viewable areas).
- We recommend that the design team and the Owner's construction team survey existing conditions together for familiarity and awareness.



Based on this, further action may be recommended as follows, and if so recommended, a proposal for additional services, and/or recommendation for additional services to be undertaken by the Owner, will be provided. This may potentially include:

- Recommendation for more in depth Condition Assessment/Material Testing/Surveys/Feasibility Studies. This may include hazardous material surveys by your abatement consultant, but may also include other testing such as infrared roofing, other scans, exploratory demolition, etc.
- Conduct more detailed or follow-up survey of the building. It may be recommended that a contractor be hired for selective destructive (soft) demolition/testing, invasive inspection or other pre-bid exploratory construction work.
- Photography and scanners can be useful tools for documenting existing conditions and recommendations will be made where access is limited and these methods are appropriate.
- As with initial survey efforts, we recommend that the design team and the Owner’s construction team survey existing conditions together.

The recommendation to undertake an enhanced existing condition investigation, the type of investigation, and the location or nature of investigation will be made upon development of the schematic design and initial engineering to the point where impacts on the existing building can be assessed. If it is assessed that an investigation could be beneficial in managing cost or schedule risks during construction, the recommendation for an enhanced investigation phase will be made in writing along with an estimate of costs. Should the Owner forgo the enhanced investigation phase, then it is recommended that the Owner’s budget be adjusted to include adequate contingency to address unforeseen future costs that may arise, as well as account for potential schedule delays that may result from such conditions not being discovered or understood until after bidding.

Proposed Professional Services Fees: Spiezle Architectural Group, Inc. proposes that the following fees be provided as outlined below per the above basic services covered within this proposal.

Phase 1: Pre-Referendum Fees:

Spiezle Architectural Group, Inc. proposes that referendum services as outlined above be provided for the Lump Sum Fee of Fourteen Thousand Five Hundred Dollars (\$14,500). This fee is inclusive of the services outlined under phase 1 above and would include the efforts of Spiezle Architectural Group, Inc. and our team of mechanical, electrical, plumbing, and structural engineering consultants to the degree required.

Phase 2: Design, Documentation, Bidding/Procurement, and Construction Administration Fees:

Upon a successful referendum, we propose to undertake the phase 2 design, documentation and bidding phase work based upon 6.10% of estimated hard construction costs. This fee would only apply to portions of the scope designed and/or documented by Spiezle for either procurement or public bidding processes (would not apply to equipment selected/purchased/installed by the district directly for example). For scope designed and/or documented by Spiezle, upon completion of design development efforts (approximately 50%) and development and production of an updated cost estimate at the end of design development phase, this fee would be converted to a lump sum fee based upon this updated DD estimate of construction costs.

Documentation phases:

Phase 2 design, documentation, bidding/procurement, and construction administration efforts would be billed according to the below allocation of fees by development phase:

Schematic Design	20 %
Design Development	25 %
Construction Documents	30 %



Bidding/Procurement	5 %
<u>Construction Administration</u>	<u>20 %</u>
	100 %

Fee on alternates prepared for bidding would be based on the above stipulated percentage of construction costs. If the bid/price is solicited but not awarded, only the documentation and bidding portion of the fee would apply (80%). If awarded by the Board, the full fee would apply and be billed according to the above.

Assumptions/Exclusions

Other Services - not included in Basic Services above:

Our proposed fees are inclusive of the basic services outlined above and include the efforts of Spiezle Architectural Group, Inc. and our team of mechanical, electrical, plumbing, and structural engineering consultants. However, there are other services that may be required to implement the project. Some of these other services can be contracted under Spiezle as an additional service or directly by the district as desired. Spiezle can solicit proposals from qualified consultants on behalf of the district if desired:

- Civil/site and environmental engineering
- Hazardous material services
- Geotechnical services related to any additions, drainage, parking area improvements, or similar.
- Roofing: an infrared scan is typically recommended once an initial roof assessment is undertaken. These scans can help identify insulation that can remain vs be replaced (resulting in savings) as well as wet insulation areas that need to be removed.
- Acoustic engineering: may be recommended related to additions, media center improvements, and rooftop mechanical equipment to the degree it applies

Our proposed fees are based on the application of the below assumptions/exclusions, attached terms and conditions, and the assumption that these terms will be incorporated into an AIA format Owner-Architect agreement once approved. Should these services be requested, Spiezle Architectural Group, Inc. would be pleased to provide them as an additional service.

- Hazardous material identification, testing, or documentation of any kind is excluded.
- Design and Engineering services beyond those specifically included within this proposal are not included within the proposed fees.
- We understand the district has recently updated its NJDOE LRFP, a "major" LRFP update has not been included in the proposed fees. Only 'minor' LRFP updates related to submitted projects are included.
- Printing of referendum information material for distribution. We would provide content for incorporation into web material prepared and posted by the district on the district website as such graphic design services have not been included.
- This proposal assumes that an AIA format Owner-Architect Agreement will be entered into based on the Terms and Conditions in this proposal within sixty days.

Terms and Conditions and Standard Hourly Rates:

Should any additional services be required or requested, beyond those included under the scope of work outlined in this proposal, they shall be billed in accordance with the attached Standard Fee Schedule. Please refer to the attached Terms & Conditions.



Should this proposal be acceptable please note your acceptance by signing below and returning an executed copy to us at your earliest convenience. Should you have any questions please do not hesitate to contact me.

Sincerely,

Accepted:

A handwritten signature in black ink, appearing to read "S. Downie", written over a horizontal line.

Scott E. Downie, AIA, LEEDap
Principal
Spiezle Architectural Group, Inc.

Mr. Steve Jakubowski
Business Administrator
West Deptford School District

Date: _____

Attachments



ATTACHMENT 1: Standard Hourly Rates and Compensation

The Architect will be compensated for work performed on an hourly basis according to the below listed standard hourly rates. Reimbursable costs as described below are in addition to these rates and any applicable Not-to-Exceed fee figures that may be agreed upon. These standard hourly rates are subject to adjustment consistent with the annual salary review practices of the Architect and the Architect’s consultants.

FEE BY PHASE BREAKDOWN:

Schematic Design	20 %
Design Development	25 %
Construction Documents	30 %
Bidding/Procurement	5 %
Construction Administration	20 %
	100 %

SPIEZLE HOURLY RATE SCHEDULE:

Title:	Rate:
Chief Executive Officer	\$190
Principal	\$190
Associate Principal	\$175
Director of Construction Administration	\$175
Director of Landscape Architecture	\$165
Director of Electrical Engineering	\$165
Director	\$165
Senior Project Manager	\$165
Project Manager	\$155
Construction Administrator	\$155
Senior Project Architect	\$140
Senior Interior Designer	\$140
Project Architect	\$130
Landscape Project Architect	\$130
Marketing Director	\$125
Electrical Designer	\$125
Senior Project Coordinator	\$120
Project Coordinator	\$115
Interior Designer	\$105
Architectural Designer	\$105
Landscape Architect	\$105
Executive Administrator	\$85
Administrative Assistant	\$85
Marketing Coordinator	\$85
Engineers / Consultants	1.2 x actual costs

When compensated based upon hourly rates, the Architect will be compensated for work performed on an hourly basis according to the below listed standard hourly rates. Reimbursable costs as described below are in addition to these rates and any applicable Not-to-Exceed fee figures that may be agreed upon.

Reimbursable Expenses will be billed as noted below and are in addition to compensation for the Architect's services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, This includes reproductions, plots, standard form documents, postage, handling, and delivery of Instruments of Service (1.1 x actual costs).



TERMS AND CONDITIONS TO PROPOSAL AGREEMENT

Owner's Responsibilities. The Owner shall furnish surveys to describe the physical characteristics, legal limitations and utility locations for the site of any Project and any written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights of way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

The Owner shall furnish the services of geotechnical engineers and other consultants when such services are requested by the Design Professional.

The Owner shall furnish all legal, accounting and insurance services that may be necessary at any time for any Project to meet the Owner's needs and interests.

The services, information, surveys and reports set forth above shall be furnished at the Owner's expense and the Design Professional shall be entitled to rely upon the accuracy and completeness thereof. Without altering the foregoing, the Design Professional shall, however, provide prompt written notice to the Owner if the Design Professional becomes aware of any error, omission or inconsistency in such services, information, surveys and reports. The Design Professional will not be responsible for the Owner's inability to construct the project due to site conditions unknown to Design Professional or due to zoning restrictions.

The Owner shall provide prompt written notice to the Design Professional if the Owner becomes aware of any fault or defect in any Project, including any errors, omissions or inconsistencies in the plans or Instruments of Service for any Project.

The Owner and Design Professional acknowledge that changes may be required because of possible errors, omissions, ambiguities or inconsistencies in the plans and specifications, or circumstances beyond the parties' control, therefore, the Cost of the Work may exceed any estimates, contract sums or the Owner's budget for the Cost of the Work. Therefore, the Owner shall establish an allowance or reserve for that contingency. The Design Professional advises that the Owner set aside an allowance or reserve in the amount of ten percent (10 %) of the actual projected construction costs as a contingency reserved to be used, as required, to pay for any such increased project costs.

Design Professional's Standard of Care .

The Design Professional shall perform its services consistent with the professional skill and care ordinarily provided by members of Design Professional's profession practicing in the same or similar locality under the same or similar circumstances. The Design Professional shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Design Professional makes no other representations, nor any warranties, whether express or implied, with respect to the services rendered hereunder, and the aforementioned Standard of Care shall not be altered by the interpretation, application or construction of any other provision of this Agreement.

The Design Professional shall identify a representative authorized to act on behalf of the Design Professional with respect to the Project.

Instruments of Service. Drawings, specifications and other documents, including those in electronic form, prepared by the Design Professional and the Design Professional's consultants are Instruments of Service to be used solely with respect to the Project for which they were prepared. The Design Professional and the Design Professional's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights including copyright. The Design Professional grants to the Owner a non-exclusive license to reproduce the Design Professional's Instruments of Service solely for the purposes of constructing, using and maintaining the Project for which they were prepared, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due. Any termination of this Agreement prior to its expiration, or termination of the Design Professional's services on any Project prior to completion of that Project shall terminate this license. Upon such termination, the Owner shall refrain from making any further reproduction of the Instruments of Service and shall return to the Design Professional with seven days of termination all original



and reproductions in the Owner's possession or control. If and upon the date the Design Professional is adjudged in default of this Agreement, by a court of competent jurisdiction, the foregoing license will be deemed terminated and replaced by a second nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for the purposes of completing, using and maintaining the Project for which they were prepared.

Except for the aforesaid, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sub-license, pledge or otherwise transfer any license granted herein to any other party without the prior written agreement of the Design Professional. However, the Owner shall be permitted to authorize its contractors to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the work by license granted above. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with a Project is not to be construed as publication and derogation of the reserved rights of the Design Professional and the Design Professional's consultants. The Owner shall not use the Instruments of Service for future additions or alterations of the Project for which they were prepared or other projects unless the Owner obtains a prior written agreement of the Design Professional and the Design Professional's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Design Professional and the Design Professional's consultants. In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, or in violation of this Agreement, the Owner releases the Design Professional and Design Professional's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to defend, indemnify and hold harmless the Design Professional and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from such use by the Owner.

Law and Venue. This Agreement shall be governed by the Law of the State of New Jersey, and any litigation arising out of this Agreement shall be brought in a court of competent jurisdiction in the State of New Jersey.

Limitations Period. Causes of action between the parties to this Agreement pertaining to acts or failures to act on any Project shall be deemed to have accrued and the applicable statutes of limitations and/or statutes of repose shall commence to run not later than either the date of substantial completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after substantial completion. In no event shall such statutes commence to run any later than the date when the Design Professional's services are substantially completed.

Waiver of Consequential Damages and Subrogation. The Design Professional and Owner waive consequential damages for claims, disputes and other matters in question arising out of or relating to this Agreement, including but not limited to lost rents, loss of production, loss of use, profits, business, reputation or financing, and fines or penalties.

To the extent any damages are covered by property insurance during construction of a Project or afterwards, the Owner and Design Professional waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

The Owner and the Design Professional, as appropriate, shall require of the contractors, sub-consultants, agents and employees of any of them to include in their contracts or agreements on the Project a similar waiver of consequential damages and a similar waiver of subrogation in favor of the other parties enumerated herein.

Successors and Assignment. The Owner and Design Professional, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Design Professional shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for that Project. In such event, the lender shall assume the Owner's rights and obligations under the Agreement, including full payment of all sums due for services rendered. The Design Professional shall execute all consents reasonably required to facilitate such assignment.



Entire Agreement. This Agreement represents the entire and integrated agreement between the Owner and the Design Professional and supersedes all prior negotiations, representations and agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the Design Professional.

Third Parties/Extension. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Design Professional. **Any provision in this Agreement that inures to the benefit of the Design Professional shall also inure to the benefit of the Design Professional's consultants and the directors, officers, employees, partners, members, shareholders, agents and consultants of each of them.**

Hazardous Substances. The Design Professional and the Design Professional's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at any Project site or in the existing building. The Design Professional and the Design Professional's consultants have no responsibility for the identification, discovery, presence, handling, removal of, or exposure to mold or associated damage of any type at the project site or in the existing building.

Promotion. The Design Professional shall have the right to include photographic or artistic representations of the design of any Project among the Design Professional's promotional and professional materials. The Owner agrees to make the Projects reasonably available to Design Professional to obtain such representations.

Extension of Services. If any services covered by this Agreement have not been completed prior to the expiration of this Agreement, extension of the Design Professional's services beyond that time shall be granted by the Owner in order to complete the services or Projects.

Payments and Collection. Payments are due and payable 30 days from the date of the Design Professional's invoice. Amounts unpaid 30 days after the invoice date shall bear interest at the rate of one and one-half percent per month. Payment of all sums due is a condition precedent to Design Professional releasing any or all deliverables under this Agreement, including but not limited to plans, specifications and reports. Design Professional shall have no responsibility or liability for any damages, including indirect and consequential, sustained by Owner as a result of non-payment and Design Professional's withholding of deliverables. In the event Design Professional has to demand mediation, file suit or institute collection procedures to collect outstanding fees, it shall be entitled to recover its reasonable attorney fees, costs and expenses of litigation and/or collection including but not limited to court costs, reasonable attorney's fees, and staff time expended for court appearances and depositions. Should the Design Professional be awarded less than the entire amount sought, then the recovery of legal fees, expenses and costs shall be commensurate with the amount of the award. Nothing in this Agreement prevents the Design Professional from invoicing and recovering fees and expenses for the value of services completed at the time the project or services were either suspended, halted or discontinued, or the project or this Agreement terminated at the option of either party.

Site Visits; Responsibility of Contractor. The Design Professional shall be responsible for the Design Professional's negligent acts or omissions and those of consultants retained by the Design Professional, but the Design Professional shall not have control over or charge of and shall not be responsible for the acts or omissions of the Owner, Builder or Contractor, or any of their subcontractors, consultants or their agents or employees, or of any other persons or entities performing portions of the Work.

In the event the Design Professional provides any construction contract administration services that include site visits as a representative of the Owner, then the Design Professional shall visit the site as agreed upon to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, and to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be substantially in accordance with the Contract Documents. However, unless expressly agreed upon in writing, Design Professional shall not be required to make exhaustive or continuous on-site observations, or any inspections (except those to determine substantial and final completion) to check the quality of the Work. Design Professional shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.



In the event the Design Professional provides any payment application services, then the Design Professional's certification for payment shall constitute a professional opinion to the Owner, based on the Design Professional's site visits and the data comprising the Contractor's Application for Payment, that, to the best of the Design Professional's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing professional opinions are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Design Professional. In the event any documents or certificates used to certify the amounts due to the Contractor contain language inconsistent with this provision, then this provision shall govern.

The issuance of a Certificate for Payment shall not be a representation or professional opinion that the Design Professional has (1) made exhaustive or continuous on-site observations, or any inspections (except any agreed upon in writing or to determine substantial and final completion) to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

In the event the Design Professional provides any submittal review services, then the Design Professional's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Design Professional's professional judgment, to permit adequate review. The Design Professional shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Design Professional's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences, or procedures. The Design Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

Concealed or Unknown Conditions in Existing Buildings. In the event the Design Professional provides services to the Owner in making changes to an existing facility, if the Owner does not provide documentation or information beyond that which is apparent by non-intrusive observations of the existing facility and the Owner does not contract with the Design Professional or others to perform destructive testing or to investigate concealed or unknown conditions, then the Owner shall assume sole responsibility for all unknown or concealed conditions that are encountered during construction that require changes in the design or construction of the Project, including but not limited to additional construction costs and the cost of Change in Services or Additional Services of the Design Professional. On projects involving existing conditions and demolition, destructive testing and/or invasive inspection, the Owner shall hire the necessary contractors to perform that work. On projects involving existing conditions and electrical service, the Owner shall hire a licensed electrical contractor to open and examine all electrical panels, transformers, and switchgears, and furnish a report to the Design Professional regarding the condition and capacity of the equipment including wire size, amperage, voltage, operating conduits available and code compliance.

Americans with Disabilities Act. The Design Professional shall use reasonable professional effort and judgment in interpreting and advising the Owner as to the necessary requirements for any Project to comply with the Americans with Disabilities Act (ADA). The Design Professional shall rely on the local building department for interpretations of the ADA at the time the service is rendered. The Design Professional does not warrant or guarantee that the Project will fully comply with interpretations of ADA requirements by regulatory or judicial bodies.

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

The Owner may terminate this Agreement upon not less than seven days' written notice to the Design Professional for the Owner's convenience and without cause.



In the event Owner terminates this Agreement or terminates or suspends any Project, the Design Professional shall be paid all sums due prior to termination or suspension and there shall be an equitable adjustment to the Design Professional's compensation, which shall include all reasonable costs incurred by the Design Professional on account of termination of the Agreement or termination or suspension of any Project, for preparation of documents for storage, maintaining space and equipment pending resumption, orderly demobilization of staff, maintaining employees on a less-than-full-time basis, terminating employment of personnel because of termination or suspension, rehiring former employees or new employees because of resumption, reacquainting employees with a Project upon resumption and making revisions to comply with the Project requirements at the time of resumption.

Limitation of Liability. Owner and Design Professional each recognize the risks, rewards, and benefits of the Project. In addition, Owner, and Design Professional each recognize that additional limits of professional liability insurance coverage for the Design Professional can be purchased by the Design Professional for this Project and paid for by the Owner as a reimbursable expense pursuant to this Agreement. Notwithstanding these considerations, Owner has not requested that Design Professional incur the expense of additional professional liability insurance coverage and therefore agrees that, to the fullest extent permitted by law, the total liability, in the aggregate, of the Design Professional, its consultants, and their agents, servants and/or employees for all injuries, damages, losses, expenses or claims whatsoever related to services provided by the Design Professional or its consultants under this Agreement, including, but not limited to negligence, errors, omissions, strict liability, breach of contract or any claim whatsoever, shall not exceed the lesser amount of either five times the fees paid or due the Design Professional under this Agreement, or the Design Professional's professional liability insurance policy's available limits at the time that the claim is resolved either by settlement, arbitration award or final judgment. Any requests by Owner that the Design Professional increase its limits of professional liability insurance coverage must be made in writing to Design Professional within fourteen (14) days of the date of this Agreement.

Irrespective of the foregoing, for any change in the Project caused by the Design Professional, the Design Professional shall not be responsible for costs associated with the change to the extent the costs would have otherwise been incurred by the Owner had the error or omission by the Design Professional, resulting in a change, not occurred. Excepting any reasonable additional or premium costs due to Design Professionals error or omission, Design Professional shall not be responsible for any cost or expense that provides betterment, upgrade, or enhances the value of the Project.

In the event the Owner requests recommendations or referrals from Design Professional in establishing a list of prospective contractors to bid for the work or negotiate contracts for the work, then Owner understands that such information is solely for the convenience of the Owner and does not constitute either professional advice or opinion, or a representation or warranty, by Design Professional regarding the past or future performance or capabilities of the contractors, and as such the Owner waives any claims against, and releases Design Professional from any damages alleged to result from any recommendations or referrals, all of which shall further be considered consequential damages.