



# REQUEST FOR PROPOSALS

## DESIGN SERVICES FOR PHASE 3A RECONSTRUCTION PROJECT

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The Rochester Joint Schools Construction Board (RJSCB), on behalf of the Rochester Schools Modernization Program (RSMP), seeks to identify highly qualified to provide Professional Design Services for the Phase 3A reconstruction project at Dr. Martin Luther King, Jr. School 9.

### ISSUE DATE:

**April 10, 2024**

### Rochester Schools Modernization Program

70 Carlson Road, Suite 200

Rochester NY, 14610





**Rochester Joint Schools Construction Board**  
**70 Carlson Road Suite 200, Rochester, New York 14610 Telephone: 585-417-6953**

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## **REQUEST FOR PROPOSAL**

**Date:** April 10, 2024

**To:** Architectural and Engineering Design Firms

**From:** Rochester Joint Schools Construction Board

**Project Title:**

Design Services: Dr. Martin Luther King, Jr. School 9

**Send Proposals to:**

Rochester Joint Schools Construction Board  
Attn: Pépin Accilien, P.E., Program Director  
70 Carlson Road – Suite 200  
Rochester, NY 14610

**Designated Procurement Officer:**

Kimberly Mitchell, Procurement Officer  
[kmitchell@rjscb.com](mailto:kmitchell@rjscb.com)  
Phone: 585-417-6953

	<b>RFP SCHEDULE</b>	<b>DATES</b>
1.	RFP issued to service providers / potential responders	April 10, 2024
2.	Walk – through of building (anticipated).	April 18, 2024
3.	Deadline for submittal of questions, clarifications and modifications regarding the RFP by service providers/potential responders.	April 25, 2024 (5:00 PM)
4.	Answers to questions and/or modifications issued by Addendum and posted on the RJSCB website: <a href="http://www.rcsdk12.org/rsmp">www.rcsdk12.org/rsmp</a>	April 29, 2024
5.	<b>Submittal Deadline for Request for Proposals.</b>	May 9, 2024 (Noon)
6.	Invitations to interview issued	May 16, 2024
7.	Interviews with Short Listed Service Providers	Week of May 19, 2024
8.	Award (anticipated).	June 10, 2024

## TABLE OF CONTENTS

<b>SECTION 1: RSMP PURPOSE OVERVIEW.....</b>	<b>4</b>
Purpose of Request for Proposals.....	4
District Information.....	4
RJSCB Information.....	4
A/E Evaluation Criteria.....	5
Design Team Overall Performance Criteria.....	7
Scope Introduction.....	8
Insurance Requirements.....	8
Proposal Submittal Protocol.....	8
Interview Protocol.....	9
Commitment Expected.....	9
Equal Employment Opportunity and Diversity Program.....	9
Procurement Protocol.....	9
RFP Questions.....	10
<b>SECTION 2: PROJECT INFORMATION PACKET .....</b>	<b>11</b>
Project Information Packet: Dr. Martin Luther King, Jr. School 9.....	11
Preliminary Schedule (subject to actual Design & Construction Updates).....	14
Preliminary Schedule for Design and Construction of all Phase III Schools.....	15
<b>SECTION 3: SAMPLE DESIGN SERVICES AGREEMENT .....</b>	<b>16</b>
1. Sample of Design Services Agreement.....	16
• Exhibit A - Provisions required to be inserted by Law.....	41
• Exhibit B - Program ‘Charette’ Verification Guidelines.....	44
• Exhibit C - Diversity Requirements and Forms.....	45
• Exhibit D - Payments for Services.....	46
• Exhibit E - Hourly Rates.....	48
• Exhibit F - Insurance Requirements.....	49
• Exhibit G - Preliminary Schedule Milestones.....	50
• Exhibit H - Design Document Standards.....	51
• Exhibit I - Schedule of Values for Services.....	61
• Exhibit J - Checklist of Contract Deliverables.....	62
• Exhibit K - Fixed Limit of Construction.....	63
• Exhibit L - Record Drawing Requirements.....	64
• Exhibit M - Interdisciplinary Documents Coordination (IDC) Review Requirements.....	65
• Exhibit N - Estimating Standards.....	66
• Exhibit O - Rochester City School District Design Standards.....	67
<b>SECTION 4: RFP FORMS.....</b>	<b>68</b>
Attachment 1: Certification of Non-Collusion in Bidding.....	68
Attachment 2: Offeror’s Affirmation of Understanding.....	69
Attachment 3: Offeror’s Certification of Compliance.....	70
Attachment 4: Form of Offeror’s Disclosure of Prior Non-Responsibility Determination.....	71
Attachment 5: Diversity Program Forms and Instructions.....	73-85
Attachment 6: Proposers Certification of Compliance with Iran Divestment Act.....	86
Attachment 7: Not Used.....	
Attachment 8: Not Used.....	
Attachment 9: Key Staff / Sub-Consultant Working Experience.....	88
Attachment 10: Summary Fee Proposal Form.....	90

## SECTION 1: RSMP PURPOSE OVERVIEW

### Section 1 - Rochester Schools Modernization Program Overview:

#### **Purpose of Request for Proposals:**

The Rochester Joint Schools Construction Board (RJSCB) is seeking proposals from qualified professional Design Services firms to act as the Architect of Record (AoR) and design team for Phase 3 schools of the Rochester Schools Modernization Program (RSMP). This Request for Proposals (RFP) is specifically related to the Phase 3A school Project at Dr. Martin Luther King, Jr. School 9.

The AoR will lead the design team through the steps of Program Verification, Schematic Design, and development of Construction Documents (i.e., CDs) at the 20%, 50%, 75%, 90% Complete Stages, as well as Final CDs (100%) for Bidding, Construction Administration and Project Close-Out. The AoR will also provide leadership and support in all submissions of design documents and associated forms as required packages to the State Education Department (SED) for progress review, and/or approval.

The AoR will report to Savin Engineers, P.C., the Phase 3 Program Manager (PM). The services to be provided will include, but not be limited to, various pre-construction activities: detailed estimating, budget reconciliations, constructability review, value management assessments, and preparation of front end documents and contractor requisitions. The AoR should take special note that detailed construction cost estimating is to be provided to accompany the Schematics, 25%, 50%, 75% and 90% Complete CD Stages of Work. Said estimates will be required to substantiate that the proposed Design is at, or below the 'cap' of 95% of the Maximum Cost Allowance for the approved Base Scope. Those priorities along with the detailed Scope of Work can be found in the Section 3: Sample Design Services Agreement.

All Design Services shall be provided under contract with the RJSCB. All firms responding to this RFP and selected for this Phase must be prepared to execute this form of *Design Services Agreement* as shown, with the only changes being the specifics of the Project and pending any clarification or negotiations regarding the Fee Proposal submitted by the design firm. The RJSCB reserves the right to review and approve the Mechanical, Electrical, and Plumbing (M/E/P) proposed Sub-consultant Firms, and all proposed 'key staff' are to be clearly identified in each A/E Team's Organization Chart.

#### **District Profile:**

The Rochester City School District (RSCD or District) serves approximately 22,860 students in P-K through grade 12 for the 2022-2023 school year. The district employs approximately 5,440 full-time employees and has a portfolio of 45 school buildings.

#### **RJSCB Information:**

The RJSCB oversees the RSMP, which is a multi-phase joint initiative of the District, the City of Rochester, and New York State to update and improve school facilities. The comprehensive Program is estimated at \$1.3 billion spanning at least 15 years.

Phase 3 of the RSMP is a \$475 million initiative which allows up to 12 Projects along with the digital and Educational Technology involving network and systems upgrades and infrastructure work. The Program is governed by the RJSCB, which is charged with implementing the comprehensive Strategic Plan of the RCSD. This RFP, however, only applies to the Design Services for a project in Phase 3A.

### **A/E Evaluation Criteria:**

The written and supporting graphic responses to the following points shall be used as criteria for evaluating proposals submitted by Architectural and Engineering (A/E) Design Teams that may be invited for interviews prior to final selection by the RJSCB. Please prepare a separate Fee Proposal (form provided in Section 3) for this Phase 3 Project. Please organize your Proposal to clearly address the following topics of interest to the RJSCB:

1. The proposed Architect of Record (AoR) as the prime Consultant's current project workload for all market sectors, and in particular the PK/12 school projects in the Design Phase.
2. Demonstrated performance in meeting Diversity, EEO/Affirmation Action, and Workforce Goals whether in Phase 1 or 2 of the RSMP, or other projects in New York State will be a significant consideration on the suitability of prospective A/E Teams, and failure to adhere to protocols will be considered a non-responsive proposal:
  - a. The prospective AoR shall provide in its Proposal a copy of that firm's current EEO Plan.
  - b. The prospective AoR shall provide a breakdown of its current overall professional and technical staff diversity by job title, or classification and the diversity of the specific team members proposed in response to this RFP that are located in the office that will be the A/E Team's base of operation.
  - c. The prospective AoR shall have each proposed subconsultant provide a similar diversity breakdown by firm, and all professional staff proposed for the A/E Team.
  - d. Refer to Equal Employment Opportunity and Diversity Program Overview provided in Exhibit C of the Section 3, Sample Design Agreement, for explanation of the required protocol with the Independent Compliance Officer.
3. AoR's relevant experience working with either the RSCD (including any specific experience with the RSMP Phase 1 or 2), or other PK/12 Upstate New York urban school districts over the past five (5) years.
4. Previous project experience on public schools in New York State with comparable scope, budget, size and schedule.
5. Similarly, identify the relevant experience and prior working relationships with all proposed Sub-consultants comprising the A/E Team. The ability to clearly identify and link the prospective Architectural and Engineering firm's relevant experience, with the key staff being proposed for each project is a critical aspect of the evaluation/selection process. The 1.1 Summary Matrix (Section 4) must be completed based upon the A/E Prime firm's relevant project experience (five projects at a minimum), key staff (Principal-in-Charge, Project Designer, Project Manager, Project Architect, proposed Project M/E/P Coordinator, Chief Estimator, and others as appropriate), and similarly for all respective sub-consultants. In the event any sub-consultant has not previously worked with the A/E Prime, use the 1.2 Summary Matrix sheet, (Section 4) to document that consultant's relevant experience and key staff (e.g., Project Engineer, Telecommunications, Landscape/Civil, etc.).
6. The prospective AoR shall identify as a 'key staff' member (or advisor) an officer-in-charge with the authority to commit firm staff resources to this Project; remain

intimately familiar with the status of the work, quality, and schedule; and at minimum attend the Interdisciplinary Document Coordination (IDC) review (see Exhibit M) initial coordination ‘checking’ meeting for the 90% Complete CDs as submitted by this prospective A/E Team.

7. The AOR’s proposed Work Plan for this Project’s stages of work as identified in this RFP, demonstrating where the proposed Team’s Key Staff (also identified in this RFP) would be engaged for significant periods of time.
8. Location of business operations in the greater Rochester area is preferred.
9. The resume of specific team members assigned to the project along with their professional background, experience and qualifications, role and responsibilities on the Project, as well as a designation of all key staff intended to be assigned for a majority of their weekly time to this work. If any key staff is not expected to be a significant participant during any stage of work, that should be clearly noted. See Attachment 9 for information required.
10. PK-12 Client references received on behalf of the architectural Firm as well as for the senior-most project key staff team members. At least a combination of three (3) recommendation letters for each AoR is required, and separately, one (1) for each sub-consultant, minimum.
11. Recent (past 5 years) experience showing ability to optimize the SED Maximum Cost Allowance (MCA) on complex or multi-phased projects. Provide the name and contact of the Superintendent, and/or Business Official for each client submitted for recent MCA experience.
12. Team expertise in Educational Technology (see Exhibit H in Section 3, Sample Design Services Agreement).
13. Demonstrated experience in historic preservation work and working with NY State Historic Preservation Office (SHPO).
14. Ability to work with formal and informal community groups including building committees, user groups, the public at large and other interested and concerned stakeholders.
15. In documenting document quality, emphasis will be placed upon the respective E&O percentages relative to completeness, accuracy, and coordination of disciplines; along with the Architect and/or M/E/P Coordinator for Errors and Omissions.
16. Quality of work performed previously by the firm, per the following Performance Criteria. Please specify projects and provide information where applicable including the name of a knowledgeable owner contact where Proposer’s qualifications, experience, etc. can be validated if there are further questions.

### **Design Team Overall Performance Criteria:**

Provide representative samples, and/or brief explanations (maximum 1-2 pages each) to demonstrate the proposed A/E Team's approach and expertise in delivering the following aspects of Design Services:

- Master Schedule-A statement on corporate letterhead acknowledging 'time is of the essence' regarding the sale of long term Bonding to finance the Project, and minimizing the duration of students relocated to temporary Swing Space(s). Thus, the AoR Firm's clear commitment is expected in the staffing of the proposed Project to best enable achieving all Milestones as shown by Exhibit G of this RFP including reconciliations and associated re-work to comply with not exceeding the 95% MCA Budgets as the 'cap' approved by RJSCB for the Project's Base Scope priorities.
- Communication skills – concise progress and report writing, graphic communication and presentations.
- Assessment of Strategic Plan 'Test Fit' and collaborating on 'charettes' to solicit evaluate ideas/suggestions for improvement.
- Document quality, and in particular, the respective E&O percentages for at least 3-projects (preferably in the past 5-years), based upon the Project Total Cost as approved for bidding.
- Adherence to the Owner's Design Standards (See Exhibit H of Section 3, Sample Design Services Agreement).
- Sensitivity to the Owner's goals (i.e., a design matching M/E/P infrastructure priorities, educational expectations and program, design appropriateness for context, working with school-based Building Advisory Committee, etc.).
- Flexibility in responsiveness to multiple client (e.g., RCSD and RJSCB) and SED approvals.
- Adherence to the project scope and budget. Expertise in detailed construction cost estimating for at least three (3) recent public-school projects. (If estimating is not an 'in-house' expertise, provide the name of the estimating sub-consultant's chief estimator, and requisite project-experience to substantiate the relative accuracy of detailed estimating of conceptual thru Final CD Bid Documents for School projects (preferably in the past 5-years)).
- Design experience with NYSERDA, LEED, CHPS or Energy Star, and other rebate requirements.
- A/E Team relationships (see Section 4, Attachment 9, Summary Matrices 1.1 & 1.2).
- Design Team management – demonstrated experience and communication techniques/tools.
- Experience and commitment to the AutoCAD 2023, REVIT, and BIM software applications, particularly for clash detection to be provided to contractor for the coordination model.
- Knowledge of SED process & procedures, along with a copy of the AoR's change order log summary (with each category type) for at least two (2) recent public

school projects.\* Note, other project type may supplement, but will not substitute for this criteria recognizing the unique aspects of the SED review/approval process for Aid reimbursement(s).

- RFI and Submittal response times – summary log for at least two (2) recent public school projects.\*
- Punch List Techniques - summarize the number of items, final acceptance tracking, and elapsed time track record for at least two (2) prior public school projects.\*
- Coordination of as-builts and project close-out records (i.e., completeness and timeliness) for at least two (2) recent public school projects.\*

\*Note: a strong preference and higher ranking of the prospective AoR will be attributed to using the same two (2) recent projects in response to the highlighted RFP Criteria.

### Scope Introduction:

The Scope of Services for which Fee Proposals should be prepared is detailed in Attachment 1 of Section 3, sample *Design Services Agreement*. **Note that Educational Technology, Public Address, Clocks, Security, Systems Networking, and Building Automated Controls will be in the AoR's Scope and need to be designed accordingly in relation to Occupied Phased Construction.** The AoR, or it's hired I/T consultant will be the liaison with the District's Information Management and Technology (IM&T) Department regarding Equipment by Owner (EBO) purchases, and will provide assistance with design coordination, and construction administration. The AoR shall provide the coordinated documents for the approved Information Technology (IT) scope of work. Feasibility study, Design, Coordination, and Construction Administration Work necessary for 'Make Ready' work at a Swing Space site to be identified by the RCSD or the Program Manager is also part of the AoR's Basic Service Scope.

The Project description is listed in Section 2 Project Information, including the Preliminary Program-Wide Master Schedule. The Fee Proposal for Basic Services and requested Additional Services must be completed on the forms in Section 4, Attachment 10. Any fee for phased packaging should be identified as a separate line item in the Schedule of Values.

### Insurance Requirements:

Refer to the Section 3 Sample Design Services Agreement, Exhibit F, for Insurance Requirements including Indemnification and Hold Harmless Provisions. Proposers to the RFP shall understand the insurance requirements and state whether they can and will meet them if awarded this Design Services contract.

### Proposal Submittal Protocol:

All of the requested information and Fee Proposals must be submitted in seven (7) hard copies and one electronic copy and received in the RJSCB office located at 70 Carlson Road, Suite 200, Rochester, NY 14610, by the date shown on Page 2 of this RFP, to the attention of Pépin Accilien, P.E., Program Director. All Proposals must be clearly marked as such on the outside of the package.

The RJSCB reserves the right to revise the Scope of Services prior to the execution of an Agreement to: (1) reflect changes arising out of this proposal process; (2) incorporate any RJSCB requirements adopted after the publication of this RFP; and (3) incorporate any other



changes it deems in the interest of the Board. The RJSCB reserves the right to reject any and all Proposals, and to request clarification of information from any firm submitting a Proposal, up-to-and-including after the interview stage. In addition, the RJSCB reserves the right to award the contract to the firm to its own advantage, and to negotiate compensation with the preferred firm(s) for any of the Projects. All costs to the A/E Team in the preparation of this proposal, along with any interviews, presentations, etc. shall be wholly the expense of the proposer.

### **Interview Protocol:**

Proposals will be reviewed, and firms will be notified regarding 'short list' interviews (if any) that are scheduled to be conducted on or about the date shown on Page 2 of this RFP, after the review and evaluation of proposals. Final selection of the firm is anticipated to occur at the RJSCB meeting on the date shown on Page 2 of this RFP. The Firm selected will be expected to start work and attend a kickoff meeting promptly within three (3) days after receipt of a written Notice to Proceed (N.T.P) from the RJSCB, based upon the mutual understanding to negotiate in good faith any remaining contractual matters.

### **Commitment Expected:**

The RJSCB expects that key staff brought forward by the AoR as part of the Proposal process will be assigned to the Project through completion of the required work. The RJSCB also expects that the duties will be performed by a sufficient, dedicated key staff to this Project, and that this staff will respond to the Program Manager in a timely and collaborative manner. Further, each key staff person will be assigned to the Project through completion, unless that person is no longer with the design firm and the proposed replacement is approved by the RJSCB.

### **Equal Employment Opportunity and Diversity Program:**

Refer to Exhibit C in Section 3, Sample Design Services Agreement, for the Program Diversity Requirements.

### **Procurement Protocol:**

Pursuant to State Finance Law §§139-j and 139-k, this RFP includes and imposes certain restrictions on communications between the RJSCB (Board) and an Offeror during the procurement process. **An Offeror is restricted from making any contact from the earliest release of this RFP, or notice of intent to solicit offers, through final award and approval of the Procurement Contract by the Board (the 'restricted period'), to other than the Board's Procurement Officer, unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a).** The Board's Procurement Officer, as of the date hereof, is identified below. Board members are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offeror pursuant to these two statutes.

Responding firms will need to complete all RFP criteria, forms, etc., which are attached hereto in Section 4, and include them with their proposal response to the RFP.

### **Designated Procurement Officer:**

Kimberly Mitchell  
Rochester Schools Modernization Program  
70 Carlson Road, Suite 200  
Rochester, NY 14610  
Phone (585) 417-6953

**RFP Questions:**

In lieu of a pre-proposal conference, any questions after the building tour, or regarding the RFP selection process should be submitted via email to [kmitchell@rjscb.com](mailto:kmitchell@rjscb.com) by the date shown on Page 2 of this RFP. Submitted questions and answers will be provided to all solicited firms via email by the close of business on the date shown on Page 2 of this RFP, (barring any unforeseen circumstances).

**SECTION 2: PROJECT INFORMATION PACKET**  
**Dr. Martin Luther King, Jr. School 9**







## Location of Martin Luther King, Jr. School 9 Relative to Neighboring Streets and Homes

### Proposed Program Summary

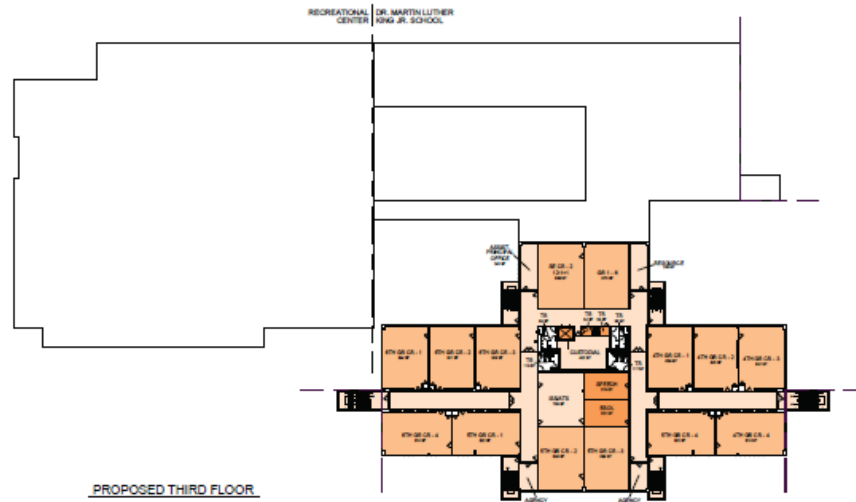
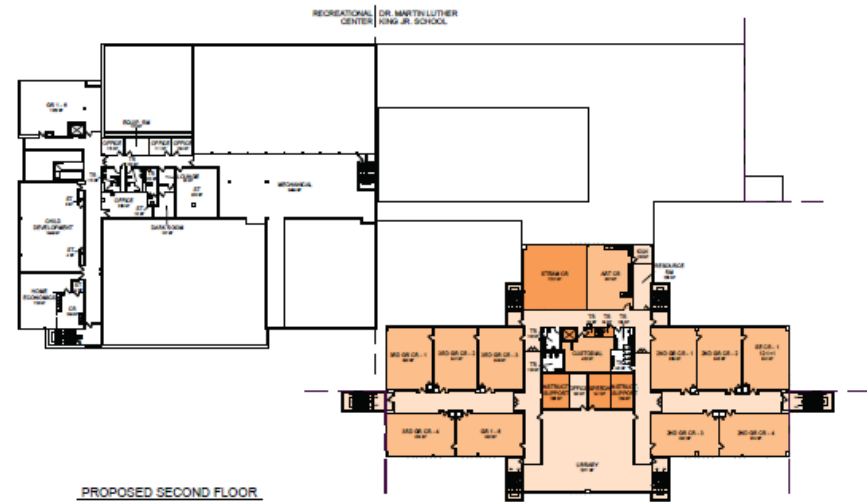
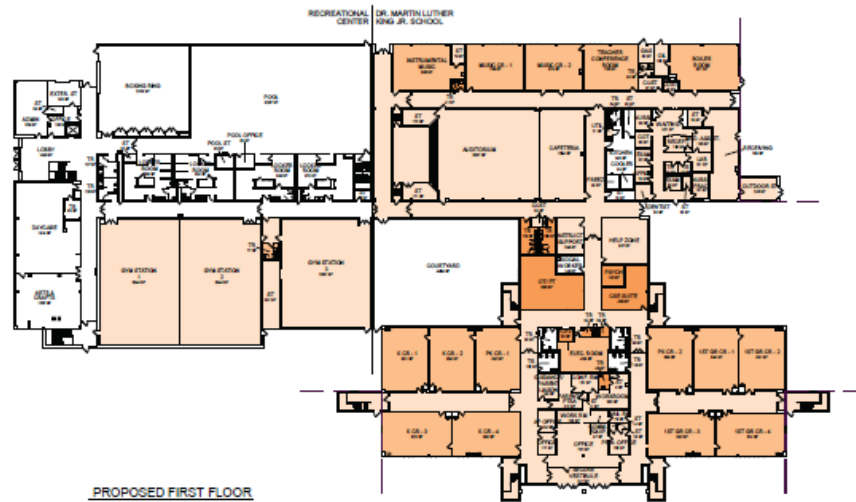
Location / Address:	485 N. Clinton Ave, 14605
Original Date:	1975
Addition Dates:	1994 / 2010
Existing Building Gross Area:	86,063 gross square feet (gsf) 44,464 gsf @ Recreation Center
Existing Modular Building Area:	N/A - 0 gross square feet (gsf)
Proposed Addition Area:	N/A
Current 2022-2023 Enrollment:	699 PK-6 Students
Planned Enrollment:	699 PK-6 Students

### Existing Context



**Site Highlights:** The existing 2.7 acre site is small and would benefit greatly from strategic land acquisitions to the north or west of the school. There is an attached rec center to the southeast and an adjacent 5.5 acre city park to the south that will receive upgrades as part of the modernization.

**Swing Space:** Townsend School 39



**LEGEND**

- LIGHT REHABILITATION
- MODERATE REHABILITATION
- HEAVY REHABILITATION
- ADDITION

PROPOSED SCOPE OF WORK SUMMARY...	
LEVEL OF WORK	AREA
HEAVY REHABILITATION	723 SF
MODERATE REHABILITATION	5011 SF
LIGHT REHABILITATION	46517 SF
MODERATE REHABILITATION	35442 SF
TOTAL	81693 SF

- KEY:**
- AIIS (Academic Intervention Services)
  - ATS (Alternative To Suspension)
  - CAD (Computer Aided Design)
  - CLO (Closet)
  - CONF (Conference)
  - CR (Classroom)
  - CSE (Committee on Special Education)
  - CTE (Career and Technical Education)
  - CUST (Custodian Closet)
  - ELA (English Language Art)
  - FACS (Family and Consumer Science)
  - GR (Grade)
  - ISS (In School Suspension)
  - K (Kindergarten)
  - LOTE (Language Other Than English)
  - NYSAA (New York State Alternative Assessment)
  - OT/PT (Occupational & Physical Therapy)
  - PK (Pre-K)
  - PSYCH (Psychologist)
  - REC (Student Records)
  - SE (Special Education)
  - SS (Social Studies)
  - ST (Storage)
  - STEM (Science/Technology/Engineering/Math)
  - SW (Social Worker)
  - TR (Toilet Room)



**Dr. Martin Luther King Jr. School No. 9**  
485 N Clinton Ave Rochester, NY 14605  
**PROPOSED SCOPE OF WORK SUMMARY**  
**CORE MODEL PROGRAM: 4 STRAND PK-6**  
**ENROLLMENT: 699 STUDENTS**



**Summary of Expected Rehabilitation Throughout School Building**

## SECTION 2: PROJECT INFORMATION PACKET PRELIMINARY SCHEDULE

### PROJECT: DR. MARTIN LUTHER KING, JR. SCHOOL 9

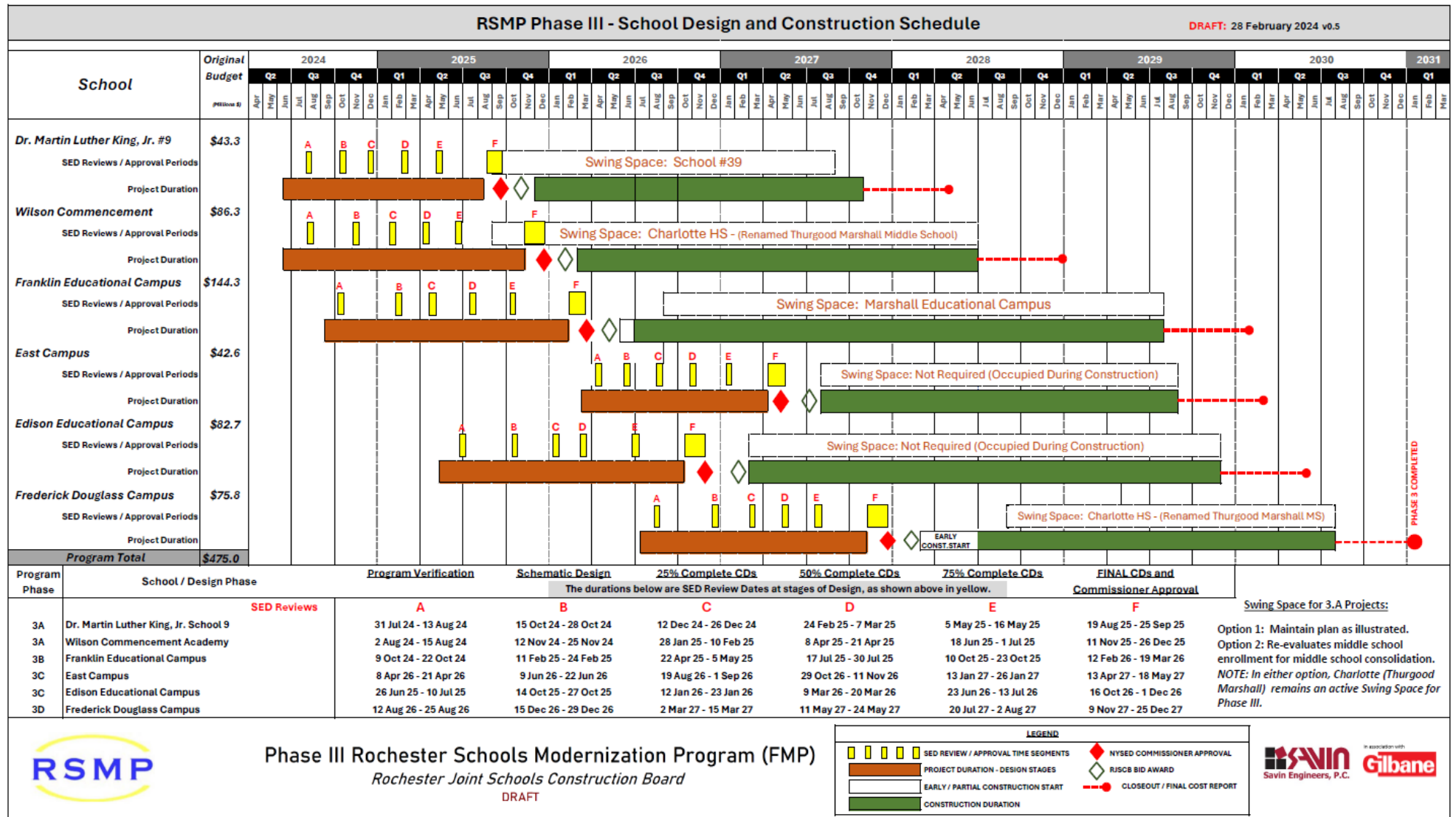
Anticipated Milestone:

Anticipated Date:

- |  |                           |
|--|---------------------------|
| • Submit all “Key Staff for confirmation by RJSCB  | 10 working days after NTP |
| • Submit M/E/P Program Verification to PM  | Approx. 30 days after NTP |
| • Submit Schematic Design (SD - M/E/P Base Scope) to PM  | 27 Aug 2024               |
| • Submit SD Detailed Cost Estimate to PM   | 11 Sep 2024               |
| • Submit 25% Complete Construction Documents (CDs) to PM   | 25 Nov 2024               |
| • Submit 25% Complete CDs Detailed Cost Estimate to PM   | 11 Dec 2024               |
| • Submit 50% Complete CDs to PM, with proposed Preliminary Bid Add Alternates  | 07 Feb 2025               |
| • Submit 50% Complete CDs Detailed Cost Estimate to PM   | 21 Feb 2025               |
| • Submit 75% Complete CDs to PM, with proposed Preliminary Bid Add Alternates  | 18 Apr 2025               |
| • Submit 75% Complete CDs Detailed Cost Estimate to PM   | 02 May 2025               |
| • Submit 100% Complete CDs to PM, with proposed Preliminary Bid Add Alternates   | 28 Jul 2025               |
| • Submit 100% Complete CDs Detailed Cost Estimate to PM  | 15 Aug 2025               |
| • Incorporate IDC comments, if any, for SED review   | 22 Aug 2025               |
| • Incorporate SED Final CD Review Comments as SED addenda  | 10 Sep 2025               |
| • SED Approval Date Milestone (on or before)   | 25 Sep 2025               |
| • Finalize CDs and Add Alternates for public bidding   | 25 Sep 2025               |
| • Participate in Bid Opening(s), Qualifications of Bidders, Award  | 13 Nov 2025               |
| • Submit Conformed CD Set for construction, attend kick off meetings   | 13 Nov 2025 – 01 Dec 2025 |
| • Start and Perform all Construction Phase Services  | 13 Nov 2025 – 10 Nov 2027 |
| • Perform Punch List, Partial and Final Certificates of Substantial Completion, along with Final Punch List Inspection(s)  | 10 Nov 2027 – 08 Feb 2028 |
| • Consolidate, Review As-Built Drawings, Prepare and Certify Final Record CDs, Operation Manuals, and all Warranties   | 09 Feb – 16 May 2028      |
| • Perform and Document Project Warranty Inspections during the Eleventh and Twenty-Second Months after the Final Certificate of Substantial Completion. Submit Document Report to the RJSCB and RCSD Facilities Group for Final Acceptance | Oct 2028 and Sep 2029     |

Note: All of the listed milestones are for A/E Proposal purposes and will be updated and/or superseded by the actual approved Master Schedule during the Design and then the Construction Phase of the Project. However, the overall duration in months is not expected to change significantly.

## SECTION 2: PRELIMINARY SCHEDULE FOR DESIGN AND CONSTRUCTION OF PHASE III SCHOOLS



### SECTION 3: SAMPLE DESIGN SERVICES AGREEMENT AGREEMENT BETWEEN THE BOARD AND ARCHITECT

THIS AGREEMENT, made as of \_\_\_\_\_, 2024 by and between the Rochester Joint Schools Construction Board, having its principal office and place of business at 70 Carlson Road, Rochester, New York 14610 (hereinafter the "Board" or the "RJSCB") and

[Architect/Engineer]

Having its office and place of business at:

(hereinafter the "Architect" or "A/E").

WHEREAS, the Board is authorized to have constructed the following project(s) for the Rochester City School District (hereinafter the "RCSD" or the "Owner") at the

SED# \_\_\_\_\_

Rochester City School District

Dr. Martin Luther King, Jr. School 9  
485 North Clinton Ave.  
Rochester, NY 14605

(hereinafter, the "Project")

and

WHEREAS, the Board has retained Savin Engineers, P.C., (hereinafter the "Program Manager" or "Savin") to act on its behalf to manage Phase 3 of the Rochester School Modernization Program ("RSMP" or "Program"); and

WHEREAS, the Board desires to have the Project constructed in as expeditious and efficient a manner as possible; and

WHEREAS, the Board has determined that such results can be accomplished most effectively by retaining the services of an architect to work with the Program Manager, its Consultant(s), and the Contractor(s) for the Project(s), so that the Project may be completed and ready for use at the earliest practicable date; and

WHEREAS, the Architect is ready, willing, and able to perform such services and represents that it is qualified in all respects to do so and that its officers and employees possess the knowledge, experience, and character necessary to qualify them individually for the particular duties they are to perform;

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree as follows:

#### DEFINITIONS

0.1 *Applicable Laws* shall mean all laws, ordinances, codes, statutes, rules, regulations, orders, rulings, decisions and permits of local, county, state, federal government bodies, agencies, authorities and courts having jurisdiction, including but not limited to the regulations and requirements of the Occupational Safety and Health Administration, and all provisions of any federal, state, county, or municipal health, safety and building codes and environmental laws and regulations applicable to the performance of the Services and the Work.

0.2 *Basic Compensation* shall mean payment to the Architect associated with providing Basic Services under this Agreement.

0.3 *Basic Services* shall mean all of the planning, architectural, engineering, and construction administration services as defined under the terms of this Agreement.

0.4 *Board* shall mean the party first identified above and includes its members, officers, employees, and agents, where applicable.

0.5 *Building Advisory Committee ("BAC")* shall mean the committee established by the Program Manager and Board to work with the Architect during the design phase to assist in identifying and reviewing specific Project design requirements.

0.6 *Building Turnover Process* shall mean those steps defined by Board and Program Manager to provide for an orderly transition from construction to building operations.

0.7 *Certificate of Payment* shall mean the document submitted by the Contractor and reviewed and approved by the Architect prior to submittal to the Board for payment.

0.8 *Change Order* shall mean a written instrument signed by the Board, Architect, Construction Manager and Contractor stating agreement upon (a) change in the scope of the Work, (b) the amount of the adjustment of the Contract Sum, if any, and (c) the extent of the adjustment, if any, in the Contract Time.

0.9 *Construction Change Directive* is the document initially prepared by the Construction Manager, reviewed and approved by the Architect, Program Manager and Board directing the Contractor to proceed with a change in the Work.

0.10 *Detailed Construction Cost Estimate* shall mean an estimate that provides construction costs and assumptions based on a systematic quantity take-off and unit costs of the Work described in the design documents as the design matures in detail through the various stages of the design phase. The Architect shall provide such estimates to the Board at the 25%, 50%, 75% and 90% stages of the Construction Documents.

0.11 *Construction Manager ("CM")* shall mean the construction management firm or professional hired by the Board to administer the construction of the Project pursuant to a separate agreement. The Board reserves the right to change the Construction Manager. In the event that the Board does not engage a construction manager for this Project, all references to



the Construction Manager herein shall mean the Program Manager.

0.12 Construction Documents (“CDs”) shall mean the drawings, specifications and other documents, prepared by the Architect, which set forth in detail the information which the Architect and/or Program Manager deems necessary to construct the Work.

0.13 Contract Documents shall mean the Contract for Construction, Conditions of the Contract, the Construction Documents, and any other documents incorporated therein by reference, as may be amended from time to time.

0.14 Contract for Construction shall mean the separate contract between the Board and the Contractor covering all construction services for the Project.

0.15 Contractor shall mean the successful bidder or bidders for the Work defined by the Construction Documents and awarded a contract by the Board. The term “Contractor” is used to refer to such persons or entities, whether single or plural.

0.16 Contract Sum when used in this document shall mean the stipulated sum payable to the Contractor for the construction of the Work of the Project.

0.17 Day shall mean calendar day unless specifically provided otherwise herein.

0.18 Design Stages Program Verification, Schematic Design, 25%, 50%, 75%, and 90% complete Construction Documents (CDs) shall mean those progress drawings, specifications and other documents, prepared by the Architect, which set forth the information in less than complete detail but which are used during the design process to plan and develop the Final 100% Construction Documents. These shall include, but are not limited to, Schematic and other Design Phase documents.

0.19 Educational and Building Technology shall mean Information Technology data wiring, computers, servers, MCER/ICER rooms, projectors and smart boards, cable TV, cabling distribution, integrated communication systems, building security and energy management systems, electronic door hardware, fire alarm, and similar electronic mediums as outlined in the Standard Specifications attached here as Exhibit O.

0.20 Energy Performance Contracting shall mean those items incorporated in the Contract Documents that satisfy the State Education Department’s energy performance standard for consideration for additional reimbursement.

0.21 General Conditions shall mean the General Conditions of the Contract for Construction, as amended from time to time, which are expressly incorporated herein.

0.22 Independent Document Coordination (“IDC”) Review means those services provided by a third party to review the Contract Documents prior to issuance for bid.

0.23 Phase 3 Master Plan shall mean the document prepared by the Board and submitted to SED for approval listing the

proposed projects to be considered for design and construction as part of the RSMP.

0.24 Pre-Design Consulting Services shall mean those services rendered by the Architect at the request of the Board as a prerequisite to being released to begin the Basic Services of the Architect.

0.25 Program Manager shall mean the party identified as the agent for the Board and who manages Phase 3 of the RSMP and this Project.

0.26 Program Verification Phase as used in this Agreement refers to the initial phase of services for the design team.

0.27 Project shall mean that which is so identified above, the total construction of which the Work performed under the Contract Documents may be the whole or a part, and which may also include construction performed by the one or more separate contractors.

0.28 Project Representative shall mean the Architect’s project representative(s) who assist in carrying out the Architect’s responsibilities at the site. The duties, responsibilities and limitations of authority of such project representative(s) shall be as set forth in an exhibit to be incorporated in the Contract Documents.

0.29 Project Site shall mean that area where the Project is to be constructed, as delimited in the Construction Documents.

0.30 Project Team shall mean the Board, Program Manager, Construction Manager, Contractor(s), and the Architect.

0.31 RCSD or District shall mean the Rochester City School District.

0.32 Schematic Design refers to the early phase of design following the Program Verification Phase where basic building infrastructure design requirements and documents are developed for the site, building, and all building systems, including Building Condition Survey work.

0.33 SED shall mean the New York State Education Department.

0.34 Services of the Architect (sometimes referred to only as “Services”) shall mean all efforts, actions, and activities which are required of the Architect and defined by this Agreement to be provided during the course of the Project.

0.35 Substantial Completion refers to the specific milestone date for building completion where all life safety requirements for the

building have been met and an occupancy permit has been obtained allowing building occupancy and operations.

0.36 Value Management or Value Engineering refers to the services provided by the Architect and others to control budget and cost on the Project.

0.37 Work shall mean all construction required by the Contract Documents for the Project, including all labor, materials, and equipment necessary therefore.

Except as expressly provided herein all other terms and conditions shall have the meaning as set forth in the General Conditions.

## ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

### 1.1 ARCHITECT'S SERVICES

1.1.1 The parties acknowledge that the Architect is an independent Professional Service.

1.1.2 The Architect agrees to provide all services in accordance with all Applicable Laws.

1.1.3 The Architect's Services shall consist of services performed by the Architect, the Architect's employees and the Architect's consultants as enumerated in Articles 2 and 3 of this Agreement and any other services included in Article 12 and the attached exhibits. The Architect shall comply with (a) the Board's guidance and directives; (b) this Agreement's terms and conditions; (c) the prevailing applicable professional or industry standards and sound architectural practices, per Subparagraph 1.1.5, below; and (d) any Applicable Laws, rules, etc., as set forth in Paragraph 0.1, above.

1.1.4 The Architect's Services shall be managed by the Program Manager and shall be coordinated with the services of a Construction Manager (or, in the absence of a Construction Manager, the Program Manager).

- a. The Construction Manager has the responsibility for integrating and pro-actively managing the Project Master Schedule, which includes the assistance of the Architect with establishing interim progress and required document submission milestones related to the Architect's and its subconsultants' scope of Services. The Architect agrees to work cooperatively with the Construction Manager in the best interests of the Board and the expeditious progress of the Project.
- b. The Construction Manager will be required to use ProjectSight, and OPC (P6) computer software for master scheduling, reports, submittal tracking and similar functions related to the Project's digital database.
- c. The Architect shall provide in a format to be approved by the Board the "raw data" to be

integrated by the Construction Manager into the Project Master Schedule as pertains to all pre-construction phase scope of services by the Architect and its subconsultants. Other types of similar detailed information as determined by the Board to directly impact achieving the Project's Master Schedule may be required including at minimum:

1. The Architect's proposed breakdown of the major tasks, and deliverables formats to be reviewed and approved by the Board.
  2. The interim progress and major milestone dates.
  3. Key feedback, instructions or decisions required (e.g., "ball-in-court" notification tracking).
  4. At minimum, a 30-day "Look Ahead" to be coordinated with the regularly scheduled committee, or monthly business meetings of the Board.
- d. The Architect and Construction Manager shall each provide assessments of the overall progress, and recommended actions to recover schedule delays as may arise from time-to-time when requested by the Program Manager or the Board.
- e. Beyond the various design phases described herein, the Architect shall provide in a format to be approved by the Board the "raw data" to be integrated by the Construction Manager into the Project Master Schedule as pertains to the bidding, award, and contract administration phases of the Architect's scope of Services further defined in this Agreement.
- f. After the Schematic Design Phase and at the stages of the Construction Documents Phase as provided in this Agreement, unless otherwise approved by the Board, the Architect shall reconcile the Detailed Construction Cost Estimates prepared by the Architect for the Project to a point of mutual agreement with the Construction Manager.
- g. Similarly, the Architect shall provide assistance to the Construction Manager in the form of clarifications, bulletins and supplementary documents as may be appropriate and as a matter of due diligence in the process of providing the Architect's professional opinion and supporting evidence regarding any subsequent cost estimates prepared by the Program Manager or the Construction Manager during the Design and Construction Phases of the Project.

1.1.5 The Architect shall act in accordance with the prevailing applicable professional or industry standards in the rendering of all services under this Agreement, and all of the Architect's services under this Agreement shall be performed in accordance with, as expeditiously as is consistent with, said standards and sound architectural practices. The Architect shall

submit for the Board's approval a schedule for the performance of the Architect's Basic Services in compliance with the Schedule of Basic Services, which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Board's, Program Manager's and SED's review and for approval of submissions by authorities having jurisdiction over the Project. The above referenced time frames shall be included in the Board's Design Phase Schedule. Time limits established by this Schedule shall not, except for reasonable cause, be exceeded by the Architect or the Board. Any adjustments to the Schedule shall be void and of no force and effect until such adjustments are agreed to in writing by the Board and Architect.

1.1.6 The Services covered by this Agreement are not subject to time limitations but are for the duration of the Project. The Architect is required to provide Basic Services until it issues the final certificate for payment.

1.1.7 The Board's designated representative is the RJSCB chair or his/her designee, who shall have express authority to bind the Board with respect to all matters requiring the Board's approval or authorization.

Day-to-day decisions on matters concerning the adequacy of services provided under this Agreement, estimates, schedules, construction budgets, and changes in the Work are the responsibility of the Program Manager under the direction of its Program Director. The Program Manager is responsible for managing and overseeing the activities of the Architect, the Construction Manager, and any Contractors or consultants retained by the Board that will have responsibilities on or otherwise become engaged in the Project. For all matters under this Agreement, the Architect shall report and take direction from the Program Manager. All changes to any of the Services specified under this Agreement must be submitted to the Program Manager and approved by Board in writing and in advance as to scope and terms of payment.

The Architect agrees to this relationship and shall cooperate with the Board, Program Manager, the Construction Manager, and Contractor(s) in good faith in an effort to promote the speedy and efficient construction of the Project. The Architect agrees it has anticipated the cost of this relationship and shall not request additional compensation except as specifically provided herein.

1.1.8 The Architect acknowledges that it is the Architect's responsibility to be aware of and comply with provisions of all relevant statutes of the State of New York including (without limitation) any recent modifications and to provide the Services required hereunder in accordance therewith.

1.1.9 The Architect may, with the prior written approval of the Board, utilize subconsultants to perform some of the Services. Prior to awarding any work to a subconsultant, the Architect shall submit to the Board, through the Program Manager, a written statement containing the proposed work of the subconsultant, the qualifications of the subconsultant's personnel that will be providing services, the fees the

subconsultant will charge for work and such other information as the Board may require. Such Architect's subconsultants shall be subject to the Board's acceptance in its sole discretion. If the Board approves the use of a subconsultant, the Architect shall incorporate all of the terms of this Agreement into its contract with the subconsultant and shall pay the subconsultant for work performed pursuant to such contract promptly. The Architect shall be responsible for the acts and omissions of its personnel, Architect's subconsultants of all tiers, and persons and entities directly or indirectly employed by them. Nothing contained in this Agreement shall create a contractual relationship between a subconsultant and the Board.

1.1.10 The Architect shall confirm in writing, which will become an exhibit to this Agreement, the key personnel to be assigned by the Architect to this Project, including an appropriately experienced Project Manager, Project Designer, Project Architect, Project M/E/P Coordinating Engineer and other "key staff." All individuals so listed shall remain in their respective assignments for the duration of the Project, unless their removal or change of duties is approved in advance by the Program Manager.

## ARTICLE 2

### SCOPE OF ARCHITECT'S BASIC SERVICES

#### 2.1 DEFINITION

2.1.1 The Architect's Basic Services consist of those described in Paragraphs 2.2 through 2.6 and any other services identified in Article 12, the exhibits attached hereto and otherwise in this Agreement as part of Basic Services, and include normal structural, mechanical and electrical engineering services, plumbing, fire protection, telecommunication, information and educational technology, landscape design and site civil services. All design work shall conform to the Rochester City School District (RCS D) Design Standards referenced in Paragraph 12.10 and any Rochester School Construction Program Energy Policy. The Project will consist of separate, continuous design phases. No work shall be undertaken by the Architect hereunder in connection with the Schematic Design Phase, Construction Documents Phase, Bidding or Negotiation Phase or Construction Phase until it receives written authorization to proceed with each such subsequent Phase from the Program Manager. No termination penalties are to be payable in the event approval is not provided to proceed with any Phase. Refer to Paragraph 3.3.9 for phased submissions to SED.

2.1.1.1 Telecommunication, Information and Educational Technology (collectively, "IT") design work for the Project is part of this Agreement may require separate drawings, specifications, and other Contract Documents. The bidding documents will include a requirement to identify the value of the IT work as part of the whole bid. The Architect or its subconsultant may coordinate the preparation of separate mini-bid documents or Purchase Orders for the furnishing of equipment such as: cameras, switches, Network Electronics, racks, interactive video monitors, classroom amplification, head ends, amplifiers, WAPS, VOIP modules and handsets, etc. This

equipment will be delivered to the successful electrical contractor for installation, calibration and commissioning. This work must be coordinated in the Contract Documents issued for bidding to electrical contractors.

### 2.2 PROGRAM VERIFICATION AND SCHEMATIC DESIGN PHASE

2.2.1 The Architect's design responsibilities shall commence with a Program Verification Phase during which the Architect, in consultation with the Program Manager and other persons or entities designated by Program Manager, shall ascertain the requirements of the Project and arrive at a mutual understanding of such program requirements in the overall Program Verification Report, and prior to completing the Schematic Design. Information prepared during the Program Verification Phase shall include preparation of an existing conditions assessment, any associated field measurements, a Space Program Summary, concepts and recommendations, and other Project infrastructure and site requirements for approval by Program Manager that will serve as the basis for the Schematic Design Phase. Much of the information used by the Architect during the Program Verification Phase shall be provided by the Program Manager and includes: a) conceptual Project design information contained in the Phase 3 Strategic Plan which includes architectural building floor plans; b) original building design documentation and some limited as-built documentation of existing building conditions where capital improvement projects have been recently completed; c) updated Building Conditions Survey ("BCS") recently completed by the RCSD; d) model educational program information where applicable to the Project; e) Design Standards as prepared by the RCSD; and f) other educational future program clarifications provided by the RCSD.

In addition to the information described above that is provided to the Architect by the Program Manager, during the Program Verification Phase, the Architect shall be responsible for visiting the Project site to verify existing conditions and for obtaining program input from the BAC that will include RCSD staff, building users, and other Project stakeholders. The BAC shall be established by the Program Manager for the Project to advise the Architect on specific user requirements and will be available to meet as appropriate during the Project Design Phase. The Architect shall be responsible for facilitating and taking accurate notes of all of the meetings with the BAC, as well as public/town meetings from time to time (three public design presentations), during all phases of Design. The intent is to coordinate and consistently manage all stakeholder input with the overall requirements of the RJSCB.

In addition to all of the above information requirements and BAC feedback needed to complete the Program Verification Phase, the Architect is responsible for reviewing all available information and advising the Program Manager where additional information about existing Project conditions may be required from the RCSD or others including building forensic testing. The Architect shall promptly provide notice to the Program Manager as the Architect becomes aware of any fault or defect in the information provided by the Program Manager

or District. Such additional testing services shall be provided by the Architect but must be pre-approved by Program Manager to be billable as a Reimbursable Expense under this Agreement. And where needed, such testing must be scheduled by the Architect with the Program Manager, RCSD facilities and building staff so as not to interfere with school operations, and shall be scheduled to provide needed information, preferably, prior to completion of Program Verification but not later than the mid-point of Schematic Design.

Where required to validate assumptions made on Program or State aid, the Architect shall schedule and attend a meeting with SED, with the need for such meetings to be coordinated with the Program Manager and RCSD. In addition, during the Program Verification and Schematic Design Phases, the Architect and its subconsultants shall be available to participate in any NYSERDA or life cycle cost analysis meetings held by Program Manager in conjunction with establishing the Energy Star Project or NYSERDA rebate design requirements.

2.2.1.1 The Architect's IT design responsibilities shall commence with a Program Verification Phase during which the Architect, in consultation with the Program Manager, RCSD technology and facilities personnel and/or other persons or entities designated by Program Manager, shall ascertain the requirements of the IT Program to be included in the Project and arrive at a mutual understanding of such Program requirements prior to initiating the Schematic Design. Information prepared during the Program Verification Phase shall include preparation of an IT Technology Program outline specification for the following systems:

- Cable and Equipment Rack Infrastructure
- Optical fiber, coaxial cable, multi-pair copper backbone cable
- Local Area networks (LANs)
- Network electronics
- Wide Area Networks (WANs) including wireless infrastructure
- Wireless computing
- Web and file servers
- Firewall hardware/software
- Uninterruptible power supplies (UPS)
- Voice and data closet security
- Telephone system and voice mail (new system that will be impacted by construction and required modification and expansion)
- Video conferencing and streaming systems
- Multimedia and classroom technology (Smart Boards, projectors, audio systems)
- Intrusion control system and CCTV
- Intra-building spaces (service entrances, technology rooms, equipment rooms, server rooms)
- Intra-building pathways (conduits, cable trays, pull boxes, duct banks, utility tunnels)

In addition to information described above that is developed by the Architect for the Program Verification and Schematic Design Phase, the Architect shall be responsible for preparing measured drawings as needed, visiting the Project site as needed to verify

existing conditions and for obtaining all necessary Program input.

2.2.2 During the Schematic Design Phase, the Architect shall review with the Program Manager, the RCSD, and the Construction Manager the proposed site use and improvements; selection of materials, building systems and equipment; and methods of Project delivery (*i.e.*, lump-sum general contract, multiple prime, phased completion, etc.). The Architect shall have prepared an updated site survey as described in Paragraph 4.5 and the Schematic Design information shall be consistent with the updated survey information. The cost of the updated survey shall be included in the fee for Basic Services.

2.2.2.1 The Project building's mechanical, electrical and plumbing ("M/E/P") infrastructure systems, along with the exterior envelope and BCS work identify the priority base scope for the Project ("Base Scope"). During the Schematic Design Phase, the Architect shall continue to identify the technology improvements, building infrastructure systems, and their placements and shall review them with the Program Manager, the RCSD Facilities Group, and the Construction Manager to allow for coordination with other Project needs.

2.2.2.2 The Architect shall also provide the services of geotechnical engineers when such services are needed for the Project regarding structural evaluations, structural reconstruction, new additions, or existing site conditions associated with proposed designs. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, ground corrosion and resistivity tests, and testing of existing building foundations or structures including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

2.2.2.3 As required, the Architect shall be responsible for the following services: hazardous materials testing and abatement consultant.

2.2.2.4 The Architect shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

2.2.3 The Architect shall review with the Program Manager and the Construction Manager alternative approaches to the Base Scope design and construction for the Project, which may include phasing or partial building renovations of certain improvements identified within the Phase 3 Program in order to maximize State aid or accommodate District educational goals. Construction Cost or schedule implications associated with unusual or uncommon design features shall be presented to the Program Manager and, if requested, further assessed by the Architect for alternatives and reported to the Program Manager for justification and approval.

2.2.4. IT Deliverables for the Schematic Design Phase by the Architect include standards, typical classroom layouts

(including specialized rooms), budget estimates, terminology agreed to be utilized, and a description of technology services. After consensus and agreement upon the deliverables of this Phase, the design of the site specific systems shall be developed by the Architect.

2.2.5 Based on the decisions of the Program Manager as to the program, schedule and construction budget requirements, the Architect shall prepare for approval by the Program Manager and the Board, the Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components. The Schematic Design Documents shall be prepared in accordance with the Design Document Standards (attached hereto as Exhibit H) and shall include, but are not limited to the following: site plan(s); schedule of building types; scale plan of all buildings; wall systems and elevations; outline specifications; M/E/P infrastructure major/head end preliminary and sizing, building technology improvements; CHPPS compliance goals; identification of BCS items that will be addressed; Project site analysis of codes, ordinances and regulations; three dimensional line drawings; and compliance with Program areas.

In addition, the Architect shall provide a Detailed Construction Cost Estimate in a format required by the PM, and breakdown of estimated State aid, grants and other funding associated with the Schematic Design in a form to be specified by the Program Manager. Both the Construction Cost and State aid estimates shall be reconciled by the Architect with the Project cost information listed in the Phase 3 Strategic Plan. If the Detailed Construction Cost Estimate for the Base Scope shows that the total estimated building aid payable for the Project is less than 95% of the total Project cost, it is the Architect's responsibility to provide design alternates or value engineering that brings the Project within the approved Construction Cost budget. The overall Project shall be completed to reoccupy the school consistent with the Program's Master Schedule at no additional compensation.

2.2.6 At intervals appropriate to the progress of the Schematic Design Phase and as required by the Program Manager, the Architect shall provide Schematic Design updates for the Program Manager's review and the Construction Manager's information. Unless instructed by the Board in writing, the Architect shall not stop work and shall maintain the overall Schedule.

2.2.7 In the further development of the drawings and specifications during this and subsequent phases of Design, the Architect shall review any estimates of Construction Cost, grants, other funding and state building aid, and the Construction Schedule provided by the Program Manager and/or the Construction Manager. Any significant discrepancies perceived by the Architect (based on the information available and the Architect's experience with similar projects of this type) which constitute, in the opinion of the Architect, an obstacle to meeting the budgeted Construction Cost, State building aid, or the Construction Schedule shall be promptly reported to the Program Manager, with suggested modifications to enable the Project to meet the approved Construction Cost budget, anticipated State

aid and Schedule. Because phased reviews by SED are required, the Architect shall attend all SED Meetings and be responsible for and shall advise the Board and Program Manager regarding compliance with all SED requirements.

2.2.8 Upon completion of the Schematic Design Phase, the Architect shall provide drawings, outline specifications, 3-D computer rendered perspectives if required by Program Manager, and other documents for the Board's approval and the Construction Manager's information. The Architect shall present the Schematic Design both to the Board and BAC. In addition, if requested by Program Manager, the Architect shall present the Schematic Design at a Community Meeting as directed by the Program Manager. The specific documentation required to be submitted to the Board for approval to satisfy the milestone for the completion of the Schematic Design Phase is detailed in Exhibit H (Design Document Standards), attached hereto and incorporated herein.

### 2.3 DESIGN STAGE – 25% COMPLETE CDs

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Board in the Project Schedule or Construction Cost budget, the Architect shall proceed to prepare preliminary documents representing Construction Documents at a 25% completion stage including, but not limited to, developing the Base Scope M/E/P and BCS work as the priority for the Program Manager's review and approval. The 25% Complete CDs shall be based upon data and estimates reviewed and accepted by the Program Manager with input from the Construction Manager, BAC, and RCSD and shall consist of drawings and other documents that establish and describe the size and character of the Project including, without limitation, all architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. Specific deviations from any RCSD standard shall be identified for approval at this stage (see Subparagraph 12.12.1).

2.3.1.1 IT Deliverables for this phase include all equipment specifications, drawings including cable locations, conduit requirements, cable-tray requirements, classroom layouts, video surveillance locations, wireless access locations, riser diagrams and equipment requirements. The Architect shall clearly identify the portions of the design that will qualify for grants and other funding.

2.3.2 As and when requested by the Program Manager, the Architect shall provide drawings and other documents that depict the current status of the 25% Complete CDs, along with a Detailed Construction Cost Estimate, for the Board's review and the Construction Manager's information.

2.3.3 In order to complete the 25% Complete CDs stage, the Architect shall provide drawings, outline specifications and other documents, in compliance with the Design Phase Schedule, for the Program Manager's approval and the Construction Manager's information and review. The specific documentation required to be submitted to the Program Manager for SED approval, to satisfy the milestone for the

completion of the 25% Complete CDs, is detailed in the Design Document Standards, attached hereto and incorporated herein as Exhibit H. If the Architect's Detailed Construction Cost Estimate for the 25% Complete CDs determines that the Project is over the Board's 95% Maximum Cost Allowance ("MCA") Approved Budget, the Architect is required to immediately participate in value management/engineering sessions with the Architect's cost estimator, Program Manager and Construction Manager. Design costs for revisions to the Drawings and Specifications based on the value management/engineering cost control measures shall be performed as Basic Services at no additional cost to the Board, and shall result in a list of proposed alternates or scope reductions to comply with the 95% MCA Approved Budget. The Architect shall attend all SED meetings for purposes of phased review and also be responsible for and shall advise the Board regarding compliance with all SED requirements.

2.3.3.1 After each Design Stage of work, and within 2-weeks of the start of the next Design Stage unless otherwise directed by the Board, the Architect shall reconcile its Detailed Construction Cost Estimate prepared for the Project to a point of mutual agreement with the Construction Manager and Program Manager.

2.3.3.2 Unless otherwise directed in writing by the Board, the Architect shall not stop its work and shall maintain the overall Schedule.

### 2.4 DESIGN STAGE – 50%, 75% & 90% COMPLETE CDs AND 100% FINAL CDs

2.4.1 Based on the approved 25% Complete CDs and any further adjustments authorized by the Board in the scope or quality of the Project or in the Construction Cost budget, the Architect, utilizing data and estimates prepared by the Program Manager or Construction Manager, shall prepare, for approval by the Board, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. The various stages of the Construction Documents provided for in Paragraphs 2.3 and 2.4, including the final CDs, shall comply with all Applicable Laws. Where necessary, such compliance shall include consultation with the local building officials regarding local interpretations of building codes, ordinances, etc. that may impact SED or local approvals, as well as design requirements imposed by entities providing utility services to the Project. The Architect shall attend all SED meetings and also be responsible for and shall advise the Board regarding compliance with all SED requirements.

2.4.2 During the Construction Documents Phase, and similar to the 25% complete CD criteria regarding the MCA cost cap, the Architect shall provide Drawings and Specifications for the Board's, Construction Manager's, and SED's review and approval when the CDs are at 50%, 75%, 90% and 100%, along with Detailed Construction Cost Estimates for each such CD completion stage. The Board has engaged the services of an Independent Document Reviewer. At the Program Manager's direction, the Construction Documents shall be subject to IDC

review as specified in Paragraph 12.11 and Exhibit M. The Construction Documents shall contain, but not be limited to, the information listed in Exhibit H, Design Document Standards, and shall be at a level of coordinated completeness and quality that will allow for the construction by the various Contractors and subcontractors with a minimum of interference, questions, errors or design changes.

2.4.3 Upon completion of the final Construction Documents approved by SED, the Architect shall provide Construction Documents for the Program Manager's approval and the Construction Manager's information.

2.4.4 The Architect shall assist the Program Manager and Construction Manager in the preparation of the necessary bidding information, bidding forms and the Conditions of the Contracts. The Architect shall assist the Program Manager and Construction Manager in issuing bidding documents to bidders and conducting pre-bid conferences with prospective bidders. The Architect, with the assistance of the Program Manager and Construction Manager, shall respond to questions from bidders, and shall issue addenda as required. As part of Basic Services, the Architect shall assist the Program Manager and Construction Manager in developing individual bid packages. Where required, the Architect will submit all addenda, as issued, to SED for approval.

2.4.5 The Architect shall advise the Program Manager and Construction Manager of all requirements for filing documents for the approval of governmental authorities having jurisdiction over the Project and will assist in the filing of all applications required for such approvals.

2.4.6 In connection with the securing of SED approvals and any other local permits and approvals required as of the date of this Agreement, the Architect shall provide documents and information developed by it and its subconsultants as may be necessary or appropriate for the purpose of assisting in securing such permits and approvals, all as part of the Architect's Basic Services. For costs associated with obtaining approvals on new requirements or regulations enacted after the date of this Agreement, such costs will be reimbursable as Additional Services and will not be considered in the Fee for Basic Services.

2.4.7 In the event that the Architect, in the written opinion of the Program Manager, is responsible for a delay in meeting any of the Design Phase milestones, the Architect shall be subject to back-charges for additional costs incurred by the Board as a result thereof.

## 2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 The Architect, following the Program Manager's approval of the Construction Documents and the final reconciliation of the Construction Manager's latest estimate of Construction Cost, shall assist the Construction Manager in obtaining bids and assist in finalizing the Contract for Construction including preparation of information for reasonable budget-protection bid alternates. While it is

expected that Project bidding will be done on a multiple prime contractor basis, there may be some limited phasing of early packages (e.g., demolition, abatement, sitework, etc.) to allow for an early start of construction. This may require a phased submission of completed design information for SED approvals, which shall be provided by the Architect as part of its Basic Services. Refer to Subparagraph 3.3.9 for phased submissions of bidding packages to SED.

## 2.6 CONSTRUCTION PHASE – ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Architect's responsibilities to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates one (1) year after the date of Substantial Completion of the Work *and* the Program Manager's written acceptance of the completed Project or written notice from the Board that Services are no longer required.

2.6.1.1 The Architect shall assemble a "Conformed Set" of Construction Document Drawings, depicting only the Base Scope and the bid-add or deduct alternates selected by the Board. All alternates or work otherwise not-in-contract shall be removed from the Conformed Set of drawings used for construction.

2.6.2 The Architect shall assist the Program Manager and Construction Manager in the administration of the Contract for Construction in all matters pertaining to interpretation of the Construction Documents and other services under this Agreement. This required assistance includes use of the Program's standard Construction Management Software ("EXPEDITION"). This required assistance also includes, but is not limited to, Project Team access to real-time Project documentation ensuring questions are answered in a timely manner, from the early Drawings and Specifications to Contractor submittals, and the paperwork generated during the Design and Construction Phases.

2.6.3 Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Board and Architect.

2.6.4 The Architect shall also be available for up to 40 hours (office based and/or in-the-field) at the Program Manager's written direction from time to time following the one (1) year period after Substantial Completion to assist the Program Manager in resolving issues that may occur regarding corrective work as described in the Contract Documents. After 40 hours, the continuation of such services will entitle the Architect Additional Services compensation.

2.6.5 The Architect and any of its subconsultants appropriate to the stage of Work shall visit the Project site and attend weekly on-site job meetings to become familiar with the progress and the quality of the Work and to determine if the Work is being performed in accordance with the Contract Documents and approved Construction Schedule. The Architect shall coordinate scheduling of site visits with the Construction Manager. To the

extent reasonably possible, the Architect's contacts with the Contractor and trade subcontractors shall be through the Construction Manager. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations in its capacity of architect of record, the Architect shall keep the Program Manager informed of the progress and quality of the Work and shall endeavor to guard the Board against defects and deficiencies in the Work. The Architect and its major subconsultants are required to issue written summary reports, at a minimum every month until occupancy, outlining the Work in place to date, and any rejected Work and direction to correct deficiencies given to the Contractor and Construction Manager. (More extensive site representation may be agreed to as an Additional Service as described in Paragraph 3.2.1.) The Architect shall promptly advise the Program Manager and Construction Manager in writing of any Work that the Architect believes is not in conformity with the Contract Documents.

2.6.5.1 Any errors or omissions in the Drawings, Specifications or other Contract Documents furnished by the Architect shall be promptly corrected by the Architect at no cost to the Board, and the Architect shall promptly reimburse the Board for any costs resulting from the use of such defective Drawings, Specification, or Contract Document. The Board's approval, acceptance, use of or payment for all or any part of the Architect's Services hereunder or of the Project itself shall in no way alter the Architect's obligations or the Board's rights hereunder.

2.6.6 The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are the Contractors' responsibility under the Contracts for Construction. Although the Architect shall not be responsible for the Contractors' schedule slippage or failure to carry out the Work in accordance with the Contract Documents (except due to the fault of the Architect), the Architect shall report any such failure, suspected failure or substitution that is noncompliant with the Contract Documents to the Program Manager immediately upon discovery. The Architect shall be responsible for its and its subconsultants acts or omissions. The Architect shall not have control over or charge of acts or omissions of the Contractors, Subcontractors, or their agents or employees, or of any other persons performing services or portions of the Work, but shall nonetheless have the responsibility to promptly report defective or noncompliant Work to the Program Manager on discovery or reasonable suspicion.

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

2.6.8 Project communications of the Board or its Program Manager by and with the Architect's subconsultants shall be coordinated through the Architect.

2.6.9 The Architect shall review and approve the Contractors' monthly invoices for payment. In accordance with the Contract Documents or when requested by the Program Manager, the Architect shall inspect the Work, evaluate the progress and certify compliance with the Contract Documents as part of the processing of the Contractors' monthly invoices.

2.6.9.1 The Architect's certification for payment shall constitute a representation to the Board and the Program Manager, based on the Architect's observations at the site provided in Subparagraph 2.6.5, on the recommendations of the Construction Manager and on the data comprising the Contractors' Applications for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation by the Architect that the Contractor is entitled to payment in the amount certified.

2.6.9.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) exhaustively or continuously reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Program Manager or Construction Manager to substantiate the Contractor's right to payment other than the existence of appropriate lien waivers from the Contractor and Subcontractors or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

2.6.10 The Architect shall have authority to reject Work that does not conform to the Contract Documents and shall have the responsibility to reject Work that does not conform to the design concept expressed in the Contract Documents. The Architect shall notify the Contractor, Construction Manager and Program Manager about such rejections. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect shall have the authority, upon written authorization from the Program Manager, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Contractors, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

2.6.11 The Architect shall review and approve or take other appropriate action upon the Contractors' 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, and determining whether the Work, if completed in accordance with such shop Drawings, product data and samples, will be materially in conformance with the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Contractors' Work or in construction by the Owner's own forces, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractors, all of which remain the responsibility of the Contractors to the extent required by the Contract Documents. Review of shop drawings and submittals shall be fully coordinated and in agreement with the Contractor's schedule.

2.6.11.1 The timeframes for the Architect's responses and approvals shall be in accordance with the approved Schedule and no longer than as follows:

- Requests for information ("RFIs"): 7 calendar days
- Shop drawings and submittals: 14 calendar days
- High priority (Hot List) Items (as determined by the Program Manager): 3 business days

These approval timeframes may be extended only where RFIs or submittals are deemed, within three (3) business days of receipt and so noted on the Architect's review stamp, to be incomplete or need to be coordinated with other submittals or information not provided with the original submittal. The Architect is responsible for communicating such omissions to the Contractor or Construction Manager in a timely manner to allow for proper coordination and timely responses.

2.6.12 The Architect's review of the Contractors' submittals shall not constitute approval of jobsite safety precautions or, unless otherwise specifically stated by the Architect, of construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

2.6.13 The Architect shall provide for timely review and sign off or take other appropriate action on Change Orders and Construction Change Directives prepared by the Construction Manager for the Board's approval and execution in accordance with the Contract Documents.

2.6.14 The Architect may authorize minor changes in Work not involving an adjustment in a Contract Sum or an extension

of the Contract Time, which are not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order issued through the Program Manager and Construction Manager with a copy to the Board.

2.6.15 The Architect shall interpret and decide matters concerning performance of the Contractor under the requirements of the Contract Documents on written request of either the Program Manager, Board, Construction Manager, or Contractor. The Architect's response to such requests shall be made with reasonable promptness and within any time limits agreed upon so as to cause no delay to the Project.

2.6.16 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall assume faithful performance and fairness by both the Board and the Contractor, and shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith and in the absence of negligence.

2.6.17 The Architect shall render written decisions within a reasonable time on all claims, disputes or other matters in question between the Board and Contractors relating to the execution or progress of the Work as provided in the Contract Documents.

2.6.18 The Architect, assisted by the Construction Manager, shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. The Architect shall generate a "punch list," as appropriate or needed and requested by the Program Manager or Construction Manager, of all outstanding items of Work to assist and facilitate the completion of the Project by the Contractor. The Architect and Construction Manager shall re-inspect the Work to confirm completion and punch list completion. The Architect shall forward to the Program Manager warranties and similar submittals required by the Contract Documents, which have been received from the Contractor. The Architect shall issue a final Project Certificate for Payment upon compliance with the requirements of the Contract Documents.

2.6.19 The Architect and its subconsultants shall participate in the commissioning of the Project and startup process and assist any third party commissioning agents engaged by the Board for such purposes. Attendance of M/E/P systems subconsultants shall be required at all commissioning meetings and such attendance is included in the fee for Basic Services.

2.6.20 The Architect shall assist the Construction Manager and Contractor in meeting their obligation to close out the Construction Phase of the Project within 180 days of Substantial Completion and beneficial occupancy. This includes, but is not limited to, responding to all RFIs, PCOs, COs, requests for guidance, punch list inspections, punch list re-inspections, issuance of completion certificates, or any other required documentation needed to close out the Project. Unless directed otherwise by the Program Manager, the only exception to the

180-day construction closeout window is the commissioning process. Where the commissioning process needs to be extended beyond the 180-day closeout window due to the need to test equipment in various seasonal conditions, the Architect and its M/E/P subconsultants shall be available as part of Basic Services and at no additional cost to the Board to assist with the completion of that process. For other closeout issues not associated with the extended commissioning process, if the Architect's failure to assist the Contractor or Construction Manager is a cause for delaying the closeout of the Project beyond 180 days, the Architect may be subject to a back-charge by the Board for additional staffing and operational costs incurred by the Board, Program Manager, Contractor or Construction Manager caused by that failure.

### ARTICLE 3 ADDITIONAL SERVICES

#### 3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 12 or otherwise in this Agreement or its exhibits as Basic Services or required due to the fault of the Architect or its failure to perform in accordance with the terms of this Agreement. The services provided in this Article 3 deemed to be outside Basic Services shall be paid for by the Board as provided in this Agreement in addition to the compensation for Basic Services. Upon the written authorization of the Program Manager, an Additional Services Not-to-Exceed Allowance of \$25,000 may be made available to the Architect for Additional Services on an hourly basis (see Exhibit I). In addition, Exhibit I sets forth Additional Design Services of the Architect and not-to-exceed amounts associated with such services, which services shall only be provided upon the written authorization of the Program Manager. An Allowance of \$5,000 is included in addition to Basic Services compensation and may be made available to the Architect upon the written authorization of the Program Manager for reimbursable printing costs. The services described under Paragraphs 3.2, 3.3 and 3.4 shall be provided only if authorized or confirmed in writing by the Board. If services described under Contingent Additional Services in Paragraph 3.3 are required due to circumstances beyond the Architect's control, the Architect shall notify the Program Manager of the need to perform such services and await written authorization to proceed prior to commencing such services. If the Board acting through its Program Manager deems that such services described under Paragraph 3.3 are required, it shall give prompt written notice to the Architect. If the Board indicates in writing that all or parts of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services. Notwithstanding anything to the contrary in this Agreement, the Board shall not be responsible to pay and the Architect shall not be entitled to receive compensation for any services contemplated under Paragraphs 3.2, 3.3 or 3.4 unless authorized in writing, in advance by the Board.

#### 3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

3.2.1 If more extensive representation at the site than is described in Subparagraph 2.6.5 is required, the Architect shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

3.2.2 If required, the additional on-site Project Representatives described in Subparagraph 3.2.1 shall be selected, employed and directed by the Architect, and approved by the Board. If approved, the Architect shall be compensated as an Additional Service, as agreed under the terms of this Agreement.

3.2.3 Through the observations by such Project Representatives, the Architect shall use its best efforts to provide

further protection for the Board against defects and deficiencies in the Work.

### **3.3 CONTINGENT ADDITIONAL SERVICES**

3.3.1 Making major revisions in Drawings, Specifications or other Contract Documents when such revisions are:

- (1) inconsistent with approvals or instructions previously given by the Board or Program Manager, including revisions made necessary by material adjustments in the Board's Program or Project budget.
- (2) required by the enactment or revision of codes, laws or regulations subsequent to the date of this Agreement; or
- (3) due to changes required as a result of the Board's or Program Manager's failure to provide direction within 10 business days after the Architect has given written notice of the fact that a decision is required or, in the event of an emergency, within such reasonable shorter period of time after the Architect has given notice that such emergency condition exists and that an earlier response is required, which decision if not rendered within that time frame, will give rise to provable, actual additional costs resulting directly from such delay in response by the Board.

The Architect shall advise the Board and Program Manager in writing prior to making any such revisions subject to this Subparagraph whether such revisions are minor or major revisions.

3.3.2 Providing services required because of significant changes in the Project, including, but not limited to, material changes in size, quality, complexity, the Board's or the Construction Schedule.

3.3.3 Preparing Drawings, Specifications and other documentation and supporting data, evaluating the Contractor's proposals and providing other services in connection with Change Orders and Construction Change Directives, unless such Change Orders or Construction Change Directives were required or are appropriate by reason of an oversight, error or deficiency in the Drawings, Specifications or other documentation and supporting data prepared by the Architect.

3.3.4 Providing services in connection with evaluating requests by the Contractor for substitutions requiring subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

3.3.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

3.3.6 Providing services made necessary by the termination or default of the Contractor, evaluation or problem resolution associated with major defects or deficiencies in the Work of a Contractor, or by failure of performance of either the Board or a Contractor under a Contract for Construction.

3.3.7 Providing services in evaluating an extensive number of changes and claims (as defined by the history of projects in the RSMP) submitted by a Contractor in connection with the Work unless caused by the acts or omissions of the Architect or its subconsultants.

3.3.8 Providing services in connection with a public hearing, or legal proceeding except where the Architect is party thereto or, where such hearing or legal proceeding is based upon a decision of the Architect rendered hereunder or relates to the application for permit or approval required for the completion of the Work or for public informational and comment purposes, provided, however, that to the extent that a hearing or proceeding is based upon a decision of the Architect and a judgment or decision is rendered validating or approving the Architect's decision, the Architect shall be entitled to additional compensation for such services.

3.3.9 Preparing documents for alternate, separate or sequentially phased submissions, if approved by SED, beyond three phases to facilitate phased bidding and construction may be considered an Additional Service. Any fee for phased packaging should be identified as a separate line item in the Schedule of Values.

### **3.4 OPTIONAL ADDITIONAL SERVICES**

3.4.1 Providing financial feasibility or other special studies.

3.4.2 Providing campus planning studies, site evaluations or comparative studies of prospective sites beyond those specified in Paragraph 2.2.

3.4.3 Providing special surveys or environmental studies beyond those specified in Paragraph 2.2.

3.4.4 Providing services relative to future facilities, systems and equipment.

3.4.5 Providing coordination of construction performed by the RCSD's own forces and coordination of services required in connection with construction performed and equipment supplied by the RCSD, unless planned as part of the Project's Basic Services.

3.4.6 If requested by the Board, providing services in connection with the work of separate consultants retained by the Board and not identified in this Agreement.

3.4.7 Providing estimates of Construction Cost beyond that specified in Subparagraph 5.2.2.

3.4.8 Providing detailed quantity surveys or inventories of material and equipment.

3.4.9 Providing services for planning tenant or rental spaces for use of a school as swing space.

3.4.10 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

3.4.11 Except for services necessary to assist with startup or those required to assist with third-party commissioning, providing additional services associated with consultation on systems and building after the Warranty period.

3.4.12 Providing services more than two (2) years after the date of Completion of the Work.

3.4.13 Providing services of consultants for other than architectural, structural, mechanical and electrical engineering, plumbing, fire protection, IT, landscape design, environmental and site civil services portions of the Project provided as a part of Basic Services.

3.4.14 Regarding services of geotechnical engineers, refer to Paragraph 2.2.2.

3.4.15 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural and engineering practice for similar projects.

#### **ARTICLE 4 THE BOARD'S RESPONSIBILITIES**

4.1 The Board and its Program Manager shall consult with the Architect regarding requirements for the Project, including a program which shall set forth the Board's objectives, schedule constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements.

4.2 The Board shall establish and update an overall budget for the Project based on consultation with the Program Manager, Construction Manager and the Architect, which shall include the Construction Cost, the Board's other costs and reasonable contingencies related to all of these costs.

4.3 The Board shall designate a representative authorized to act on the Board's behalf with respect to the Project. The Board or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services and the Project.

4.4 The Board shall retain a Construction Manager to manage the construction activities of the Project. The Architect shall cooperate with the Construction Manager and be responsive to all requests for information from the Construction Manager but the Architect shall not be responsible for actions taken by the Construction Manager.

4.5 The Board shall identify the Project site area and the Architect shall provide the site survey for the Board's approval

under Subparagraph 2.2.2. 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 pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

4.6 The Board may, at its discretion, furnish the services of other consultants when such services are reasonably required by the scope of the Project such as Special Inspection, and Construction Testing. The Architect, as part of its Basic Services, shall coordinate the preparation by one or more consultants and contractors of the specifications for any asbestos, lead paint removal or any other third-party consultant required in connection with the Project and shall integrate such specifications into the Drawings and Specifications for the Project.

4.7 For Special Inspections and Reports required by law or the Contract Documents see Paragraph 2.2.2.4.

4.8 The Board shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Board may require to verify the Contractor's Application for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Board. In the event the Architect has knowledge that any of such services or advice rendered in connection therewith is or may be erroneous or is premised upon an incorrect assumption, the Architect shall immediately so advise the Board.

4.9 The services, information, surveys and reports required by Paragraphs 4.5 through 4.8 shall be furnished at the Board's expense or upon the written request of the Board, provided by the Architect as a reimbursable expense. Where available, the Board will provide such, and other, information as is in its control or custody regarding the Project which is reasonably necessary to enable the Architect to satisfy the Architect's obligations under this Contract. The furnishing of such information by the Board to the Architect shall be for the limited purpose of providing the Architect with information which is in the Board's possession, and shall in no way constitute a warranty by the Board of the completeness or accuracy of any such documentation, or otherwise release in whole or in part any obligation of the Architect under this Contract, or create any liability on the part of the Board for any error or inconsistency or mistake which may later be found in such documentation.

4.10 Prompt written notice shall be given by the Program Manager to the Architect and the Construction Manager if the Program Manager or the Board becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents. However, the furnishing of such information by the Program Manager to the Architect shall be for the limited

purpose of providing the Architect with information that is in the Program Manager's or Board's possession, and shall in no way constitute a warranty by the Board or Program Manager of the completeness or accuracy of any such information, or release in whole or in part any obligation of the Architect under this Contract, or create any liability on the part of the Board or Program Manager for any error or inconsistency or mistake which may later be found in such information.

4.11 The proposed language of certificates or certifications requested of the Architect or the Architect's consultants shall be submitted to the Architect for review and approval at least 14 days prior to execution, if practicable. The Board or Program Manager shall not request certifications that would require knowledge or services beyond the scope of this Agreement.

4.12 The Board and its Program Manager shall furnish the required information and services and shall render approvals and decisions as expeditiously as is reasonably necessary for the orderly progress of the Architect's services and the Project.

## ARTICLE 5 CONSTRUCTION COST

### 5.1 DEFINITION

5.1.1 The Construction Cost shall be the total cost or estimated cost to the Board of all elements of the Project designed or specified by the Architect.

5.1.2 The Construction Cost shall include the cost at current market rates of labor, materials and equipment designed, specified, selected or specially provided for by the Architect, plus a reasonable allowance for the Contractors' overhead and profit. In addition, a reasonable allowance for escalation shall be included for market conditions at the time of bidding and for changes in the Work during construction.

5.1.3 Construction Cost Estimate does not include the compensation of the Architect and the Architect's subconsultants, the compensation of the Construction Manager and the Construction Manager's subconsultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Board as provided in Paragraphs 4.1 through 4.12; however, the Architect's Total Project Cost estimate will include all of the Incidental Costs.

### 5.2 RESPONSIBILITY FOR CONSTRUCTION COST

5.2.1 The Architect shall review the Board's Project budget and preliminary estimates of Construction Cost and reconcile its own detailed estimates with the detailed estimates of Construction Cost prepared by the Program Manager and/or the Construction Manager. Any significant discrepancies perceived by the Architect (based on the information available and the Architect's experience with similar projects of this type) which constitute, in the opinion of the Architect, an obstacle to meeting the Board's Project Budget must be promptly reported to the Program Manager, with the

Architect's suggestions for modification to the Project to enable it to meet the Project Budget.

5.2.2 Included within the Basic Services fee, the Architect will provide the services of a competent estimator with knowledge and experience of the New York public school construction market and the local Rochester construction market, who shall be approved by the Program Manager to provide all detailed estimates required by this Agreement. Because the Program Manager or Construction Manager may also be preparing cost estimates, the Architect shall provide all relevant project information (as specified in the Design Document Standards, Exhibit H) to all entities who will be engaged in the estimating process (*i.e.*, the Program Manager, Construction Manager or other consultant). The Architect and its estimator shall be available, as part of the Architect's Basic Services, to review the results of all estimates and participate in any reconciliation process such that a consensus can be reached as to the estimated Construction Cost prior to the design work continuing into the next phase or stage of Design. If the Architect's Detailed Construction Cost Estimate determines that the Project is over the Board's 95% Maximum Cost Allowance ("MCA") Approved Budget, the Architect is required to immediately participate in value management/engineering sessions with the Architect's cost estimator, Program Manager and Construction Manager. Design costs for revisions to the Drawings and Specifications based on the value management/engineering cost control measures shall be performed as Basic Services at no additional cost to the Board and shall result in a list of proposed alternates or scope reductions to comply with the 95% MCA Approved Budget. The Architect shall attend all SED meetings for purposes of phased review and also be responsible for and shall advise the Board regarding compliance with all SED requirements. In order to assist with the estimating process during later stages of Design, the Architect shall cooperate with requests for information and shall provide information to the Construction Manager and participate in any value management and engineering sessions. Changes to the design necessary to stay within the Project Budget as identified during the estimating and review process, including identification of bidding options and the design of budget-protection alternates, shall be made by the Architect as part of its Basic Services and at no additional cost to the Board.

5.2.3 The Architect acknowledges that the Board has established a Construction Cost budget for the Project (included herein for reference in Exhibit K). This budget may be subject to adjustment to reflect changes issued by Board during the course of the Project or for other reasons. In the event that the total Construction Cost Estimate exceeds such budget, the Architect shall consult with the Program Manager promptly following a determination of such projected excess, to recommend changes in the Project necessary to reduce the total Construction Costs to meet such budget. The budget of Construction Cost is exclusive of certain items listed in more detail in Exhibit K.

5.2.4 In the event that the lowest bona fide bids or negotiated Contractor proposals received by the Board exceeds the Board's

budget, the modification of Contract Documents to meet the budget, as required in Paragraph 12.2, shall be the Architect's responsibility as part of its Basic Services. Further design changes or design services not associated with meeting the budget shall be treated as Additional Services except to the extent the changes or services result from acts or omissions of the Architect or its subconsultants, or the Architect's final Detailed Construction Cost Estimate, as reconciled, being more than 10% lower than the lowest bona fide bid(s) to be awarded by the Board. Where the Architect has modified the Contract Documents to meet the Board's budget, the Architect shall be entitled to compensation in accordance with the Agreement for Basic Services performed whether or not the Construction Phase is commenced.

## ARTICLE 6 USE OF THE ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

6.1 All Drawings and Specifications, and the information contained therein, produced by the Architect under this Agreement are the sole and exclusive property of the Board. Upon execution of this Agreement, and provided that the Board has made payments to the Architect in accordance with this Agreement, the Architect hereby grants to the Board a non-exclusive, perpetual, royalty-free license to, upon termination, completion or cancellation of this Agreement, use all Drawings, Specifications and other documents produced by the Architect and its subconsultants pursuant to this Agreement to complete, alter or modify the Project. In the event the Board uses the Drawings and Specifications in connection with renovations or additions to the Project or for any other purposes other than that contemplated by this Agreement, the Architect shall have no liability to the Board for any such reuse of the Construction Documents without the Architect's written adaptation of these documents for such purposes, and the Board agrees to hold Architect harmless from and against any and all damages caused by or arising out of such reuse by the Board.

6.2 Submission or distribution of design documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Architect's reserved rights.

## ARTICLE 7 DISPUTE RESOLUTION

7.1 Should any claim, dispute or other matter between the Architect and the Board arising out of or relating to this Agreement or the breach thereof, except as provided in Subparagraph 2.6.17 with respect to the Architect's decisions on matters relating to artistic effect or aesthetic effect, and except for claims which have been waived by the making or acceptance of final payment by the Architect, such matters shall be decided as follows:

7.1.1 The matter, upon written request of either the Architect or the Board, shall be referred immediately to the designated representatives of the Board and the Architect for settlement. Each party will be represented by one individual who has no

direct responsibility for the matters contemplated by this Agreement or the matters involved in the dispute, but who is authorized to settle the matter involved in the dispute (collectively, the "Representatives.") The Representatives shall meet promptly in a good faith effort to resolve the dispute.

7.1.2 If the Representatives are unable to reach a resolution within 15 calendar days of referral of the matter to them (or such other time as may be agreed to between the Representatives based upon the issues involved and the complexity of the matters related thereto), within 15 days thereafter, the matter may be submitted by either party to voluntary non-binding mediation through the American Arbitration Association or such other third party mediation service as may be jointly agreed upon between the parties. The submission by either party to mediation is neither mandatory nor is the result thereof binding upon either party; however, should one party submit the matter to mediation within the timeframe referenced above, the other party shall be bound to proceed with the mediation process. Any such mediation shall be completed within 30 days of submission and each of the parties shall cooperate in the process. Both parties may agree to extend the process depending upon the issues involved and the complexity of the matters therein.

7.1.3 Each of the parties shall bear its respective costs incurred in connection with the procedures called for in Subparagraphs 7.1.1 and 7.1.2 above, except that the parties shall share equally in any fees or expenses of the mediator(s).

7.1.4 Any claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof which are not resolved pursuant to the procedures called for in Subparagraphs 7.1.1 and 7.1.2 above shall be resolved by litigation in the New York State Supreme Court in and for the County of Monroe.

7.1.5 The parties agree that no court proceedings may commence during the procedures called for in Subparagraphs 7.1.1 or 7.1.2 above (so long as those procedures have been timely initiated and pursued in good faith) until the earlier of the occurrence of one of the following:

- (a) The mediation procedures have been concluded or the time period called for in the mediation procedure has passed; or
- (b) The expiration of any applicable statute of limitations is imminent. Notwithstanding the foregoing, it is agreed that the parties will, despite the commencement of court proceedings, make reasonable efforts to continue the process described in Subparagraphs 7.1.1 and 7.1.2 above.

7.2 The parties recognize that all procedures provided for in Subparagraphs 7.1.1 and 7.1.2 are conducted for the purpose of settlement or compromise of a dispute, and the parties agree, with the execution of this Agreement, to keep confidential all aspects of any proceeding called for in Subparagraphs 7.1.1 or 7.1.2 above, including without limitation, all written, prepared or oral presentations, statements of any mediator or any other person hired as an expert with respect to such proceedings, and that the same shall remain confidential as to all other persons and

shall be inadmissible as evidence in any pending or later filed civil action directly or indirectly involving the parties or subject matter, and inadmissible for any other purpose by virtue of the agreement of the parties and the principles expressed in Rule 408 of the Federal Rules of Evidence and applicable New York law.

7.3 The parties agree that any proceeding commenced under Subparagraphs 7.1.1 and 7.1.2 and any court proceedings commenced with respect to this Agreement or the Project may, to the extent permitted by law, be expanded by any party through consolidation or joinder or in any other appropriate manner to include resolution of disputes with any other party involved in the Project, which disputes arise out of a common question of facts or law and if the presence of such party is desirable or required to accord complete relief. The intent of this provision is to allow a single opportunity for resolution of disputes relating to the same fact or events. This agreement to utilize consolidation or joinder or other appropriate procedure to include all parties shall be specifically enforceable in any court having jurisdiction.

7.4 Unless otherwise agreed in writing, the Architect shall continue to carry out its services as provided in this Agreement and maintain its progress during any proceedings undertaken pursuant to this Article, and the Board shall continue to make payments to the Architect in accordance with this Agreement, except for matters specifically relating to the dispute.

7.5 The provisions of this Article 7 shall be incorporated in any agreements or contracts entered into by Architect and its subconsultants with respect to the Project, including the provisions of Paragraph 7.3 providing for consolidation or joinder.

#### ARTICLE 8

##### TERMINATION, SUSPENSION, OR ABANDONMENT

8.1 This Agreement may be terminated by either party upon not less than 10 business 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, except with regard to the Architect as provided in subparagraph 8.5. In the event this Agreement is terminated due to the fault of the Architect, the Architect shall not be entitled to receive any unpaid compensation for Basic and Additional Services allegedly due or for any Reimbursable Expenses allegedly incurred to date of termination.

8.2 The Board, in its sole and absolute discretion, may terminate this Agreement upon not less than seven (7) days' written notice to the Architect for the Board's convenience and without cause.

8.3 In the event this Agreement is terminated either due to the fault of the Board or the Board's election to voluntarily terminate this Agreement for the Board's convenience and without cause, the Architect shall be entitled to receive compensation for the portion of its fee then earned and all substantiated Reimbursable Expenses incurred as of the date of

termination. If such termination by the Board occurs during the initial Program Verification and conceptual design phase and prior to the start of the Schematic Design Phase, the termination fee shall be based on a detailed accounting of services provided up to the date of termination. If voluntary termination occurs during the later stages of design, for any reason, as a condition of final payment, the Architect shall deliver all Drawings and Specifications in electronic form to the Board produced as of the date of termination and substantiate the billings for compensation based on the completion status of such work products.

8.4 This Agreement may be terminated by the Board upon not less than seven (7) days' written notice to the Architect in the event that the Project is permanently abandoned. If the Project is abandoned by the Board for more than 90 consecutive days, either party may terminate this Agreement by giving written notice.

8.5 Failure of the Board to make payments to the Architect properly due and owing in accordance with this Agreement shall be considered substantial nonperformance and cause for termination. Notwithstanding the foregoing, the Board's failure to make payments in accordance with this Agreement shall not be considered substantial nonperformance and cause for termination unless and until the Board fails to make payment in accordance with this Agreement on more than three (3) occasions or on two (2) occasions during a continuous period of more than 90 days. No such termination for nonpayment shall be effective unless the Architect provides written notice to the Board of the default and in such writing grants to the Board an additional 45 days in which to cure said nonpayment.

8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

8.7 Except as set forth in Paragraph 8.1 hereof, if this Agreement is terminated by either the Board or the Architect, the Architect shall be compensated for all Basic Services and Additional Services satisfactorily performed prior to the date of termination and substantiated with specific deliverables and work products in accordance with this Agreement and Reimbursable Expenses then due.

8.8 If, after notice of termination for cause, it is determined for any reason that Architect was not in default or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued without cause by the Board pursuant to Paragraph 8.2.

#### ARTICLE 9

##### MISCELLANEOUS PROVISIONS

9.1 This Agreement shall be governed by the laws of the State of New York.

9.2 Terms in this Agreement shall have the same meaning as those in the General Conditions of the Contract for Construction.

9.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Project Certificate for Payment for acts or failures to act occurring after Substantial Completion.

9.4 To the extent damages are covered by Property insurance, the Board and the Architect waive all rights against each other and against the Program Manager, Construction Manager, Contractors, and the consultants, agents and employees of any of them for damages, except such rights as they may have to the proceeds of such property insurance as set forth in the Contract Documents. The Board and Architect each shall require similar waivers from the Program Manager, Construction Manager, Contractors, consultants, agents, and persons or entities awarded separate contracts administered by the Board. This paragraph shall be null and void to the extent that it invalidates any insurance coverage.

9.5 The Board and the Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Board nor the Architect shall assign this Agreement without the written consent of the other.

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

9.7 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 Board or the Architect.

9.8 Unless otherwise provided in this Agreement, the Architect and the Architect's subconsultants shall have no responsibility during Construction for the latent (as unrecorded) discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

9.9 The Architect shall not use, publish, distribute, sell or divulge any information obtained from the Board through this Agreement for the Architect's own purposes or for the benefit of any person, firm, corporation or other entity without the prior written consent of the Board. Any reports or other work product prepared by the Architect while performing services under this Agreement shall be owned solely and exclusively by

the Board and SED and cannot be used by the Architect for any purpose beyond the scope of this Agreement without the prior written consent of the Board. Any information designated by the Board in accordance with applicable law as confidential shall not be disclosed to any third parties without the prior written consent of the Board.

9.10 When written notice or other formal notice required pursuant to Articles 7, 8 or 9 shall be required by this Agreement or is otherwise appropriate, notice to the Architect shall be deemed to have been duly delivered if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party receiving notice. If to the Board, written notice shall be deemed to have been duly served if sent by registered or certified mail to the Rochester Joint Schools Construction Board, 70 Carlson Road, Rochester, New York 14610, with a copy to the Program Manager sent simultaneously by electronic mail.

9.11 The City of Rochester ("City") and the RCSD shall have the right to request copies of any and all certificates of insurance, and if desired, full copies of insurance policies for the Architect and any subconsultants retained by the Architect. The Architect shall require that each subconsultant provide proof of insurance coverage (by means of a certificate of insurance and specified endorsements) as described below for the coverage and limits stated. This information shall be provided to the Architect prior to the execution of this Agreement. If a subconsultant is contracted after the execution of this Agreement, the same requirements apply.

The Architect shall procure and maintain the following insurance until termination of this Agreement or for such longer period as required herein:

**Types of Insurance:**

- Commercial General Liability Limits:
  - Per Occurrence Limit: \$1,000,000
  - General Aggregate (other than Products/Completed Operations): \$2,000,000
  - Products and Completed Operations: \$2,000,000
  - Personal and Advertising injury: \$1,000,000
  - Fire Damage Legal Liability: \$300,000
  - Medical Payments, any one person: \$10,000
- Business Automobile: \$2,000,000 per accident
- Professional Liability Insurance:  
\$5,000,000 per claim/\$5,000,000 aggregate
- Workers' Compensation: Statutory amount
- Employer's Liability: \$500,000
- Excess/Umbrella (for general aggregate and auto liability



only): \$5,000,000

The Architect's policies shall provide that they may not be canceled, materially changed or allowed to expire until after 30 days prior written notice to Board. The RJSCB shall be a certificate holder and an additional named insured on such policies on a primary and non-contributory basis (except professional liability). The Architect shall furnish the RJSCB with a certificate of insurance and applicable endorsements evidencing that it has complied with the obligations under this Paragraph of the Agreement. In addition, the Architect shall require its subconsultants, if any, to carry similar liability insurance, to name the RJSCB as a certificate holder and an additional insured on such policies on a primary and non-contributory basis (except professional liability) and to furnish the RJSCB with certificates of insurance and policy endorsements establishing compliance with this obligation. The Architect is responsible for the payment of all insurance premiums.

The City, the District, Savin, its subsidiaries and subconsultants, Gilbane Building Company ("Gilbane"), the Bonding Agency, and Trustee, must be named as additional named insureds on the Architect's policies as well as the subconsultant's policies on a primary and non-contributory basis (except professional liability). The Architect and its subconsultants shall promptly obtain or supplement their additional insured endorsement to include any additional Program Consultant identified by the Board in writing at any time during the course of the Contract. The professional liability coverage shall be carried by the Architect and its subconsultants for the term of the Agreement. If the Professional Liability coverage is on a claims-made form, the parties agree to provide an extended reporting period of three (3) years from the expiration of the policy in force at the time of work. The Comprehensive General Liability and Umbrella policies shall provide completed operations coverage for the term of three (3) years from the date of Final Completion of the Work.

9.12 Tail Coverage: If any of the required liability insurance from the Architect or its subconsultants is on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of 36 months, or the maximum time period reasonably available in the marketplace. The Architect and/or its subconsultants shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 36 months following Agreement completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this Agreement. If continuous "claims made" coverage is used, the Architect and/or subconsultant shall be required to keep the coverage in effect for duration of not less than 36 months from the end of this Agreement.

9.13 Notwithstanding the foregoing insurance liability limits, the Architect's liability for errors and omissions related to the performance of services is not limited in any way, including, but not limited to, amount of coverage, or, time period in which Board shall have the right to commence suit

against the Architect. Such time frame in which suit may be commenced shall be the maximum amount of time allowed by New York law in effect at the time this Agreement is executed.

9.14 Any deductible or self-insured retention must be declared to, and approved by, the Board. All deductibles or self-insured retentions are the sole responsibility of the Architect and/or its subconsultants to pay and/or to indemnify the Board for coverage.

9.15 Payment due under this Agreement shall be withheld where the Architect has not provided necessary information for the Board to comply with the reporting requirements of the RSMP Enabling Legislation, as determined by SED, and shall continue to be withheld until such information provided is satisfactory to SED. Such withholding shall not constitute a breach of contract entitling the Architect to terminate this Agreement or to be awarded damages.

## ARTICLE 10

### PAYMENTS TO THE ARCHITECT

#### 10.1 DIRECT PERSONNEL EXPENSE

10.1.1 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

#### 10.2 REIMBURSABLE EXPENSES

10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees and sub consultants in the interest of the Project, as identified in the following clauses. Expenses not expressly identified herein as Reimbursable shall be considered a cost of the Architect's business and included in the Basic Services Fee.

10.2.1.1 Expenses in connection with authorized out-of-town travel that is directly related to the Project and fees paid for securing approval of authorities having jurisdiction over the Project are eligible Reimbursable Expenses. Reimbursable Expenses may not be incurred by the Architect without prior written consent of the Board. All requests for reimbursement of Reimbursable Expenses shall be accompanied by receipts for such expenses, or, in lieu of receipts, other evidence satisfactory to the Board.

10.2.1.2 Expense of reproductions, express deliveries, and handling of Drawings, Specifications and other documents including expenses incurred in assisting the Program Manager and Construction Manager with the preparation of the bid packages, clarification of items within the Contract Documents and reproduction of documents are only eligible for

Reimbursement when requested by the RJSCB and which are beyond required submissions.

10.2.1.3 Except as set forth in Paragraph 12.7, expense of renderings and mock-ups requested by the Board.

10.2.1.4 Expense of additional insurance coverage or limits including professional liability insurance, requested by the Board in excess of that described in Paragraph 9.11 hereof.

10.2.2 All progress/interim, draft and final deliverables are to be submitted in hard copy, and digital formats to be reviewed and approved by the RJSCB. The following designated Reimbursable Expenses shall be paid at the rates set forth below:

- Delivery: at cost (requested "overnight" shipments only)
- Parking: at cost (when requested for out-of-town travel)
- Other copying and printing: at cost (Basic Services include the first twenty requested copies)
- In house plotting: at cost (exclusive to the A/E Team's use, requested or scheduled meetings and required Submissions)

#### 10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

10.3.1 Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Subparagraph 11.1.4.

#### 10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES

10.4.1 Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred with receipts or other evidence satisfactory to Board.

10.4.2 Unless otherwise specifically set forth herein or unless a stipulated sum is otherwise agreed to by the parties in writing (see Paragraphs 3.1.1 and 12.9), the Architect shall be compensated for Additional Services provided in accordance with this Agreement at the hourly rates set forth on Exhibit E (Hourly Rates) attached and incorporated by reference. Upon the written authorization from the Board, the Board shall make the Additional Services Allowance listed in Exhibit I (Schedule of Values for Services) available to the Architect for authorized Additional Services.

#### 10.5 PAYMENTS WITHHELD AND DIRECT PAYMENTS

10.5.1 The Board may institute a payment withholding from the Architect if the Board or the Program Manager determines, at its or their sole discretion, that the Architect is not making satisfactory progress or there is other specific cause for such withholding including, but not limited to, non-payment of

subconsultants, which shall be stated in writing by the Board or Program Manager. The Board reserves the right to pay subconsultants directly if evidence of non-payment arises and deduct any such payments made in association with the assumption of this responsibility.

#### 10.6 ARCHITECT'S ACCOUNTING RECORDS

10.6.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Board or the Board's authorized representative at mutually convenient times. Said records shall be available to the Board or its authorized representative for inspection and copying during regular hours for three years after the date the Board accepts the Project.

### ARTICLE 11

#### BASIS OF COMPENSATION

The Board shall compensate the Architect as follows:

##### 11.1 BASIC COMPENSATION

11.1.1 For Basic Services, as described in Article 2, and any other services included in Article 12 and otherwise identified in this Agreement and its Exhibits as a part of Basic Services, compensation shall be a stipulated lump sum of \$ \_\_\_\_\_. Basic Services includes either single prime or multiple prime contractor bidding document packages typical of the Wick's Law minimum, as determined by the Board in its sole discretion. Compensation is payable in accordance with the provisions of subparagraph 11.1.4 hereof.

11.1.2 Allowances for Additional Services, Consultants and Other Allowance are set forth in Exhibit I. The amounts listed in Exhibit I shall be treated as not-to-exceed cost allowances where payment shall be based on approved invoices using agreed hourly rates and made following completion of the services. Any savings that result in the completion of these Allowances may, with Program Manager's approval, be reprogrammed into the Reimbursable Expenses, Consultants and Other Allowances and budgets for possible use in the later stages of the Project where such services may be required. At Project completion, those funds remaining in the Allowances will be credited back to the Board and thereby reduce the final payment amount due to Architect. For changes in the Project scope that necessitate a modification in the Architect's services and compensation, the Architect shall provide a detailed cost proposal to the Board describing the services and costs associated with the proposed change. For changes to the fixed limit of construction that are not covered by the process described in Paragraph 12.2 and that are the result of changes in scope directed by the Board or other causes not the fault of the Architect, the Architect shall be entitled to a change in compensation according to the following:

##### 11.1.3 Changes in Fixed Limit of Construction:

Limit of Construction Value

Change in Compensation

- 0 to 5% change: No change in compensation
- Greater than 5% change: Equal to 5% of total \$ change in fixed limit of construction in excess of the initial 5% of changes.

11.1.4 Progress payments for the services in each Phase shall total the following percentages of the total Basic Compensation payable:

- Program Verification Phase: Five percent (5%)
- Schematic Design Phase: Twenty percent (20%)
- 25% Complete CDs: Twenty percent (20%)
- 50% Complete CDs: Seven percent (7%)
- 75% Complete CDs: Seven percent (7%)
- 90% Complete CDs: Ten percent (10%)
- Issued for Bid CDs: Four percent (4%)
- Bidding or Negotiations Phase: Two percent (2%)
- Construction Phase, including Commissioning: Twenty-two percent (22%)
- Post Construction Phase: Three percent (3%)
- Total Basic Compensation: One hundred percent (100%)

11.1.5 In the event of a material change in the scope of the Project or the Architect's services, the Architect shall continue to perform in accordance with the terms of this Agreement during the course of any renegotiation of the Architect's compensation hereunder.

## 11.2 COMPENSATION FOR ADDITIONAL SERVICES

11.2.1 For on-site project representation beyond Basic Services, as described in Paragraph 3.2, compensation shall be billable at the rate accepted by Program Manager and mutually agreed upon at such time by Board and Architect.

11.2.2 For Additional Services of the Architect, as described in Paragraph 3.4 and Article 12, other than (1) Additional Project Representation, as described in Paragraph 3.2, and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, compensation shall be as set forth on Exhibit I or as mutually negotiated and agreed upon between the Board and Architect in writing prior to commencement of such services. Minor delays in the Design Schedule shall not be the basis for a claim for Additional Services and major delays in either the Design or Construction Schedule, not due to the fault of the Architect, shall only allow for compensation for the actual costs associated with additional staff time and expenses incurred by Architect and its subconsultants caused by the delay.

11.2.3 For Additional Services of the Architect's subconsultants, including additional structural, mechanical and

electrical engineering services and those provided under Paragraph 3.4 or identified in Article 12 as part of Additional Services, compensation shall be billable at a multiple of one point one (1.1) times the amounts billed to the Architect for such services.

## 11.3 REIMBURSABLE EXPENSES

11.3.1 For Reimbursable Expenses, as described in Paragraph 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of one point zero (1.0) times the expenses incurred by the Architect, the Architect's employees and subconsultants in the interest of the Project.

## 11.4 ADDITIONAL PROVISIONS

11.4.1 Payments following the completion of the Program Verification Phase as described in Subparagraph 2.2.1 or for work on subsequent phases authorized by the Board are due and payable 30 days from the date the Architect's invoice is approved by the Program Manager and the Board.

## ARTICLE 12 OTHER CONDITIONS OR SERVICES

See Exhibits A through O attached and incorporated herein by reference, which amend, supplement and, in some cases, void portions of this Agreement.

12.1 MEETINGS: Attendance and representation at the following meetings, hearings and presentations where required to obtain Project approvals and communicate Project design information (collectively, "Meetings") shall be included in Architect's Basic Services: RJSCB, RCSD, Rochester City Council, BAC, neighborhood meetings with members of the community in which the Project is located, City Planning Commission hearings; City or County Engineering staff meetings; Preliminary/Site Approval Hearings; Zoning Board of Appeals Hearings; all meetings with SED or other State agencies including those required for phased design review; all other related meetings as required by Program Manager; Final Site Approval Hearing; and Additional Hearing Follow-up. Attendance at meetings beyond those specified above shall constitute and be compensated as Contingent Additional Services, provided that the Architect is directed to attend such meetings in writing by the Program Manager. Basic Services includes all regulatory approvals process for the Work. As part of its Basic Services, a representative of the Architect shall be present at all BAC meetings, unless otherwise instructed by Program Manager, and shall be responsible for coordinating design input and presentations to BAC, and preparing and distributing the minutes of such meetings. The Architect is responsible for preparing and distributing all agendas and meeting minutes for meetings requiring the Architect's attendance from Agreement date through the bid opening.

12.2 Questions concerning the need for and extent of redesign and possible disagreements between the Architect's Detailed Construction Cost Estimate and the Construction Cost estimates prepared by either the Construction Manager or the

Program Manager and shall be referred to the Program Manager for resolution.

12.3 As part of its Basic Services, the Architect shall provide all submissions required for approvals of the Construction Documents from governmental authorities or others having jurisdiction over the Project.

12.4 The Architect, where needed, shall prepare measured drawings for the Project for the not-to-exceed sum listed in Exhibit I. Payment for such measured drawings shall be made by the Board within 30 days of completion and delivery of such drawings to the Program Manager and the Program Manager's approval of same, which shall not be unreasonably withheld.

12.5 As part of its Basic Services, the Architect, where applicable and necessary for the Project, shall provide services to verify the accuracy of drawings or other information furnished by the Board.

12.6 As part of its Basic Services, the Architect, where applicable and necessary for the Project, shall provide studies or analyses of owning and operating costs such as, but not limited to, life cycle cost analyses for mechanical equipment.

12.7 MODELS: Only when requested by the Board, the Architect shall provide the Board with a non-illuminated scale model of the Project with site landscaping during the Schematic Design Phase of the Project as a Reimbursable Expense, which model shall be and remain the property of the Board. The Architect shall make the model available for display at the request of the Board. Payment for the scale model shall be made by the Board within 30 days of completion and delivery of such model to the Board and the Board's approval of same, which shall not be unreasonably withheld.

12.8 The Architect shall provide the Program Manager with two (2) full-size (one bound, one unbound) prints, two (2) half-size sets, and a complete set of CAD and PDF files of Record Drawings in accordance with Paragraph 12.16 and Exhibit L.

12.9 The Board may choose to hire certain consultants directly to serve the needs of multiple projects. Where this occurs, the consultants may be assigned to work with the Architect on the Project. In addition, the Architect may need to also engage certain consultants that are necessary for the Project, the cost of which would be an Additional Service. Such a request will require the approval of the Program Manager and Board in order for the Architect to engage certain consultants. Upon the written authorization of the Program Manager, the Architect may engage the services of such consultants, provided, however, that such consultants and the terms of the contracts with such consultants shall be acceptable to the Program Manager in its sole discretion. Attached hereto as Exhibit I and incorporated herein is the Architect's Schedule of Values for Services, including not-to-exceed Consultant Allowances.

A copy of all Architect consultant contracts (Basic Services and Specialty Consultants) shall be made available to the Board for review and record purposes.

12.10 The RCSD Design Standards, hereinafter referred to as the Design Standards, are incorporated into this Agreement by reference. The Design Standards are the requirements of the RCSD in the governance and design of its school renovation and construction projects. The Design Standards provide the necessary information to the Architect and shall be referred to for all design decisions that fall within its purview.

12.10.1 The Architect shall, as part of its Basic Services, comply with the applicable requirements during the building turnover process and as may be amended from time to time.

12.10.2 Compliance with the Design Standards shall be demonstrated by the Architect at each design phase submission to the Program Manager. Failure to submit a complete design phase or stage document package will result in a submission being deemed incomplete. The Board shall not make payment for incomplete submissions.

12.10.3 Compliance with the Design Standards is a requirement of this Agreement as part of the Architect's Basic Services. Deviation from the Design Standards shall only be allowed by written approval of the Program Manager. All deviations approved by the Program Manager must be documented as such. All deviating items that have not been approved by the Program Manager will be the responsibility of the Architect as to the cost of all design and corrective implementation related to said deviating items.

12.11 Unless exempted from this requirement, the RSMP requires an IDC Review of the Construction Drawings prior to putting the documents out to bid. The IDC Review shall be performed by others with the cooperation of the Architect and is more generally described in Exhibit M. It is the responsibility of the Architect to incorporate or otherwise correct any and all deficiencies discovered as a result of an IDC Review as part of its Basic Services and at no additional cost to the Board.

12.12 Events of Default: Either party may terminate this Agreement on the occasion of a default as described below (an "Event of Default") by the other party:

- a. the dissolution or liquidation of a party, or cessation of doing business for 30 days or more;
- b. a party makes an assignment for the benefit of creditors;
- c. a party either commences, or has commenced against it, bankruptcy proceedings under the Federal Bankruptcy Code or under any other insolvency law; and
- d. a trustee, receiver, custodian, or liquidator is named for the purpose of general administration of such party's property.

12.13 ADA: The Architect shall conform its Drawings and Specifications to the requirements of the Americans with Disabilities Act Accessibility Guidelines as part of its Basic Services.

12.14 No Presumption Against Drafter; Captions and Numbers. Both parties acknowledge and agree that this Agreement has been freely negotiated by both parties and that, in any dispute over the meaning, interpretation, validity or enforceability of this Agreement or any of its terms or conditions there shall be no presumption whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

12.14.1 The captions and numbers appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe or describe the scope or intent of any paragraph, nor in any way affect this Agreement. All words used in this Agreement, regardless of the number or gender in which they are used, will be construed to include any other number or gender, as the context or sense may require.

12.15 Severability: If any provision or subparagraph of this Agreement shall to any extent be held void, unenforceable or invalid, then the remainder of this Agreement or the application of such provision to the persons or circumstances other than those as to which it is held void, unenforceable or invalid shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

12.16 CAD: All Schematic, Design and Construction Drawings and documents prepared by Architect shall be AutoCAD generated drawings employing standard AIA layering utilizing AutoCAD release 2023 for drawing production, along with a REVIT 2023 model for Building Information Modeling, or newer software in either case.

12.17 Compliance with RSMP Diversity Plan and Other Requirements: The Architect shall at all times in the performance of its work, as well as in its hiring and employment practices, fully comply with all rules, guidelines and requirements set forth in the RSMP Phase 3 Diversity Plan. The Architect shall also fully comply with all Federal, New York State and City of Rochester laws, statutes, ordinances and regulations as well as any special requirements outlined in the Contract Documents during the term of this Agreement. This requirement includes, but is not limited to, the Architect's continuing obligation to comply with all Equal Employment Opportunity and Affirmative Action programs referenced in, or incorporated as a part of, the RSMP.

12.18 Indemnity: To the fullest extent allowed by law, the Architect shall defend, indemnify and save harmless the RJSCB, the City, the RCSD, Savin, Gilbane, Bonding Agent, and the Trustee, and their officers, agents, and employees (collectively, the "Indemnitees") from and against any and all liabilities, obligations, claims, damages, demands, causes of action, losses and expenses (including, without limitation, reasonable attorneys' fees and costs of suit) directly or indirectly relating to, arising from or in connection with: (a) any actual or alleged negligent act or omission or willful misconduct of the Architect or any of its agents, employees, subconsultants or subcontractors; (b) any breach by the Architect of any of its representations, warranties, covenants

or obligations set forth in this Agreement; (c) injury to person or property (including death) to the extent arising out of or resulting from violation by the Architect of any state, federal, or local law, rule or regulation; or (d) any actual or alleged injuries to person or property (including death) suffered by any of the Architect's agents, employees, subcontractors or subconsultants, or any employees or agents of the Architect's agents, subcontractors or subconsultants in the course of their performance or completion of any work or other obligations arising under or pursuant to the Agreement, or upon any premises owned, leased or controlled by the Indemnitees, or any Project site. Nothing herein shall be construed as requiring the Architect to indemnify the Indemnitees or any of them for any claim for damage or loss of any kind to the extent such loss or damage is caused by the negligence or willful misconduct of the Indemnitees or any of them.

12.18.1 The Architect shall include in each agreement with a subcontractor and/or subconsultant for the Project, a provision substantially similar to Paragraph 12.18, which provides that such subcontractors and/or subconsultants shall defend, indemnify and hold harmless the Architect and the Indemnitees for all losses, claims, liabilities, injuries, damages and expenses, including attorneys' fees, that the Architect or the Indemnitees may incur arising out of or resulting from such subcontractor's or subconsultant's negligent performance of services, violation of state, federal, or local law, rule or regulation, or negligence or willful misconduct.

12.19 Presentations: The Architect shall prepare documents and submissions, to be reviewed by the Program Manager, to all appropriate and necessary oversight entities and make all required presentations to the BAC, "Town Hall" type meetings, RJSCB, the RCSD Board of Education, the Rochester City Planning Commission, Rochester City Council or other commissions and boards of the City of Rochester or the State of New York State necessary to securing funding or other approvals in connection with the Project. At least once per year during the Project on a date and at a time designated by the Board, the Architect shall prepare and arrange a visual display at the school involved in the Project, which describes, without limitation, the status of the Work and the Project and the various components of the Project and which includes, without limitation, sample floor plans, materials and finishes, and photographs of the progress of the Work. The services set forth in this Paragraph 12.19 are included in the Architect's Basic Services.

12.20 Not Used.

12.21 Representations: The Architect hereby represents and warrants to the Board the following:

- a) that the Architect is able to furnish any of the plans, tools, materials, supplies, equipment, key personnel and labor required to complete the services required hereunder and perform all of its obligations hereunder and has sufficient experience and competence to do so;
- b) that the Architect is authorized to do business in New York and properly licensed by all necessary governmental and public and quasi-public authorities

having jurisdiction over it and the services required hereunder and the Project itself;

- c) that the Architect's execution of this Agreement and its performance thereof is within its duly authorized powers; and
- d) that the Architect's duly authorized representative has visited or will visit the Project site and generally familiarized himself with the local conditions under which the Services required hereunder are to be performed and correlated his observations with the Contract Documents.

The Architect agrees said representations and warranties in this Paragraph 12.21 shall survive the execution and delivery of this Agreement.

12.22 Exhibit J, attached to this Agreement and incorporated by reference, is a list of deliverables required of the Architect pursuant to this Agreement. Exhibit J is to be used as a guide and aid to both parties of this Agreement and shall not be construed to be a comprehensive all-inclusive list. Exhibit J shall be reviewed periodically between the Architect and the Program Manager and may be used in review of the monthly requisitions for payment to ensure that the requisition is properly aligned with the Project progress.

#### ARTICLE 13 GENERAL PROVISIONS

Each and every provision required by law to be inserted in this Agreement, including, but not limited to the provisions set forth in Exhibit A, which is attached hereto and made a part hereof, shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein and in the event any such provision is not inserted or is not correctly inserted, then, upon the application of either party, this agreement shall forthwith be physically amended to make such insertion or correction.

13.1 The Board shall determine every question of fact that may arise in relation to the interpretation of this Agreement and the performance by the parties hereto of their respective obligations and responsibilities hereunder, and the decision of the Board shall be final, conclusive and binding upon the Architect unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as to necessarily imply bad faith.

13.2 No action or proceeding shall lie or be maintained by the Architect, or anyone claiming under or through the Architect against the Board, or any of its trustees, members, officers, agents or employees, upon any claim arising out of or based upon this Agreement or any alleged breach thereof or by reason of any act or omission of the Board, or its trustees, members, officers, consultants, agents and employees, unless such action or proceeding is instituted in the Supreme Court of the State of New York in and for the County of Monroe and such action or proceeding is commenced within one (1) year after the Board's final acceptance of the construction

work on the Project or termination of this Agreement, whichever shall first occur. All such actions or proceedings shall be governed by the laws of the State of New York.

13.3 No delay or omission by the Board to exercise any right or remedy accruing to it under this Agreement or existing at law or in equity or by statute or otherwise shall be construed as a waiver of any of the provisions of this Agreement or of any such right or remedy or be construed to be a waiver of or acquiescence in the act or acts or omission or omissions to act giving rise to the accrual of such right or remedy, upon the occurrence of any subsequent event of the same or of a different nature.

13.4 If any term or provision of this Agreement or the application thereof to any person, firm or corporation or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remainder of this Agreement, or the application of such terms and provisions to persons, firms or corporations or circumstances other than those to which it is held to be invalid or unenforceable, shall not be affected thereby and each term or provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

13.5 The term "Contractors" as used in this Agreement shall be deemed to include all Contractors who have previously or may hereafter be awarded construction contracts by the Board for the Project.

13.6 The terms "Project Consultant" and "Consultant" as used herein shall mean the person(s) or firm(s) designated by Board as the Consultant(s) for the Project.

13.7 The term "Project" is for capital improvement work for the Dr. Martin Luther King Jr. No. 9 School, 485 North Clinton Avenue, Rochester, NY. 14605

13.8 As used in this Agreement, the singular of any word or designation, whenever necessary or appropriate, shall include the plural.

13.9 This Agreement constitutes the entire Agreement between the parties hereto and supersedes all previous understandings and agreements with respect to the Project or any of the provisions hereof. No statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, except the proposal provided by the Architect that is not contained herein shall be binding or valid, and this Agreement shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the parties hereto.

#### ARTICLE 14 TIME OF PERFORMANCE

14.1 The Architect shall complete all the services required by this Agreement within allotted schedule duration from the date of the authorization to proceed by the Board. The preliminary schedule for the Project is shown in Exhibit G, which is attached and incorporated herein.

ARTICLE 15  
DIVERSITY PLAN

Federal occupational categories or other appropriate categories specified by the Board.

15.1 The Architect agrees to comply with the Board's Diversity Plan and goals as outlined in Exhibit C, attached to this Agreement, all applicable federal, state and local civil rights and human rights laws with reference to equal employment opportunities in the provision of Services. The Architect shall undertake or continue existing programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age disability or marital status.

[Signature Page Follows]

15.2 Prior to the execution of this Agreement, the Architect shall submit an Equal Employment Opportunity ("EEO") Policy Statement to the Board's Independent Compliance Officer (ICO). This EEO Policy Statement shall contain, but not necessarily be limited to, and the Architect, as a precondition to entering into a valid and binding Agreement with the Board, shall, during the performance of this Agreement, agree to the following:

- a. The Architect shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall undertake or continue existing programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and good faith efforts to employ and utilize minority group members and women in its work force on the Agreement.
- b. The Architect shall state in all solicitations or advertisements for employees that, in the performance of this Agreement, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- c. Not Used.
- d. Prior to the execution of this Agreement and within 10 calendar days after receipt of a request therefore, the Architect shall submit to the Board's ICO a staffing plan of the Architect's anticipated work force to be utilized under this Agreement or, where required, information on the Architect's total work force, including apprentices, broken down by specified ethnic background, gender and Federal occupational categories or other appropriate categories specified by the Board. The form of the staffing plan shall be supplied by the ICO.
- e. Within 10 calendar days after receipt of a request from the Board, Program Manager or ICO, the Architect shall submit to the ICO a work force utilization report, in a form and manner required by the Board, of the work force actually utilized on this Agreement, broken down by specified ethnic background, gender and

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

**Rochester Joint Schools Construction Board**

By: \_\_\_\_\_

Thomas Richards – RJSCB Chair

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

Witness: \_\_\_\_\_

Witness Name: \_\_\_\_\_

**[Architect]**

By: \_\_\_\_\_

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

Witness: \_\_\_\_\_

Federal ID # \_\_\_\_\_

Witness Name: \_\_\_\_\_

*(If Corporation affix Corporate Seal)*

Approved as to form:

Attorney for Rochester Joint Schools Construction Board

\_\_\_\_\_

Edward Hourihan Jr., Esq., General Counsel

Date \_\_\_\_\_



**EXHIBIT A TO DESIGN SERVICES AGREEMENT  
PROVISIONS REQUIRED TO BE INSERTED BY LAW**

The Rochester Joint Schools Construction Board (the "Board") and \_\_\_\_\_ (referred to in this Exhibit A as the "Contractor"), as parties to the attached Design Services Agreement (hereinafter "the Contract" or "this Contract") agree to be bound by the following clauses which are hereby made a part of the Contract:

1. **Executory Clause.** In accordance with Section 376 of the Education Law, the Board shall have no liability under this Contract to the Contractor or to anyone else beyond funds appropriated and available for this Contract.
2. **Non-Assignment Clause.** In accordance with Section 138 of the State Finance Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the Board and any attempts to assign the Contract without the Board's written consent are null and void. The Contractor may, however, assign its right to receive payment without the Board's prior written consent unless this Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. **Workers' Compensation Benefits.** In accordance with Section 142 of the State Finance Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefits of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
4. **Non-Discrimination Requirements.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work; or for the manufacture, sale, or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex, or disability:
  - (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239, as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.
5. **Wage and Hours Provisions.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay as determined by the State Labor Department in accordance with the Labor Law.
6. **Non-Collusive Bidding Requirement.** In accordance with Section 139-d of the State Finance Law, if this Contract was awarded based upon the submission of bids, the Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further warrants that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the Board a non-collusive bidding certification on the Contractor's behalf.
7. **International Boycott Prohibition.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this Contract exceeds \$5,000, the Contractor agrees, as a material condition of this Contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of the Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Contract's execution, such Contract,

amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).

8. **Records.** The Contractor shall establish and maintain complete and accurate books, records documents, accounts and other evidence directly pertinent to performance under this Contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the Board, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the state, for the term specified above for the purposes of inspection, auditing and copying. The Board shall take reasonable steps to protect from public disclosure any of the records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate Board official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Board's right to discovery in any pending or future litigation.

9. **Identifying Information and Privacy Notification.**

- (a) **Federal Employer Identification Number and/or Federal Social Security Number.**

All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to the Board must include the payee's identification number, i.e. the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number) or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on his invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

- (b) **Privacy Notification.**

The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property and the authority to maintain such information is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the Board and the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

The personal information is requested by the Board. The information is maintained in the New York State's Central Accounting System by the Director of State Accounts, Office of the State Comptroller, 110 State Street, Albany, New York 12207.

10. **Conflicting Terms.** In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Schedule "A," the terms of this Schedule "A" shall control.
11. **Governing Law.** This Contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.
12. **Prompt Payment Requirements.** Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by Article XI-A of the State Finance Law to the extent required by law. For the purposes of Article XI-A of the State Finance Law, the Rochester Joint School Board's office whose mailing address is 70 Carlson Road, Rochester, New York 14610, is the Board's designated payment office.
13. **No Arbitration.** Disputes involving this Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York, County of Monroe.
14. **The Omnibus Procurement Act of 1992,** as amended, requires that, by signing this Proposal, the bidder certifies that whenever its Total Bid amount is greater than \$1,000,000.00: (a) it has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on this Project, and has retained the documentation of these

efforts to be provided upon request to the State; (b) it has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended; (c) it agrees to make reasonable effort, to provide notification to New York State residents of employment opportunities on this Project through listing any such positions with the Community Services Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The bidder further agrees to document these efforts and to provide said documentation to the State and the Fund upon request; and (d) it acknowledges notice that New York State may seek to obtain offset credits from foreign countries as a result of this Contract and agrees to cooperate with the State in these efforts. Documented efforts by a successful bidder shall consist of and be limited to showing that such bidder has:

- (a) Solicited bids, in a timely and adequate manner, from New York State Business Enterprises including certified Minority and Women's Business Enterprises, or
  - (b) Contacted the New York State Department of Economic Development to obtain listings of New York State Business Enterprises, or
  - (c) Placed notices for subcontractors and suppliers in newspapers, journals and other trade publications distributed in New York State, or
  - (d) Participated in bidder outreach conferences.
  - (e) If the bidder determines that New York State Business Enterprises are not available to participate on the Contract as subcontractors or suppliers, the bidder shall provide a statement indicating the method by which such determination was made.
  - (f) If the bidder does not intend to use subcontractors on the Contract, the bidder shall provide a statement verifying such intent.
15. Chapter 807 of the Laws of New York of 1992, requires the Contractor and any individual or legal entity in which the Contractor holds a 10 percent or greater ownership interest and any individual or legal entity that holds a 10 percent or greater ownership interest in the Contractor's firm either (a) have no business operations in Northern Ireland or, if they do have such an interest, (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles and shall permit independent monitoring of their compliance with such Principles.
16. The Architect certifies that all information provided to the Board with respect to State Finance Law Section 139-k is complete, true and accurate.
17. The Board reserves the right to immediately terminate this contract in the event that it is found that the certification filed by the Architect in accordance with State Finance Law Section 139-k was intentionally false or intentionally incomplete.

**EXHIBIT B TO DESIGN SERVICES AGREEMENT  
PROGRAM “CHARETTE” VERIFICATION GUIDELINES (minimum)**

- I. Project Initiation – within three days of Notice to Proceed (“NTP”)
  - A. Introduce Team/Responsibilities/Contact Information
  - B. Discuss Baseline Issues
    - 1. Base Scope Priorities – M/E/P Infrastructure and BCS
    - 2. M/E/P Infrastructure Construction Degree of Complexity
    - 3. Stakeholders: User Group(s) and BAC to be determined
    - 4. Technology Integration (REVIT and BIM)
  - C. Initial Summary of Understandings
- II. Introduce “Charette” Approach to RCSD/User Representatives: within 14-days of NTP
  - A. Conduct ‘Kick-Off’ Interviews (Stakeholders TBD), including RCSD Facilities Design Group
  - B. Analyze existing M/E/P Infrastructure as Base Scope priorities relative to 95% MCA Budget cap
  - C. Review Initial Space Program Summary (based upon Strategic Plan “Test Fit”)
  - D. Analyze potential site, BCS and building envelope needs
  - E. Analyze and clarify (if needed) Educational Specifications per approved Strategic Plan
  - F. Initial Summary Findings (A-D above) Progress Submission to PM
- III. BAC/Charette Workshop – Week 3
  - A. Introduce BAC, including RCSD Facilities Design Group
  - B. Record BAC “Input/Feedback” on Space Programming, “Most Desirable(s)”; pending M/E/P Base Scope cost update(s)
  - C. Provide A/E Team’s M/E/P Infrastructure Base Scope Summary Recommendations (i.e., reconciliation as needed)
  - D. Initial Summary Findings (A-C above) Progress Submission
- IV. BAC “Charette” Feedback – Week 4
  - A. Assess Strategic Plan ‘Test Fit’ (pro’s and con’s)
  - B. Proposed Concept Update: Strategic Plan and Update Alternative (if needed, per cost estimates)
  - C. Update Initial MCA
  - D. Preliminary Probable Construction Cost Alignment: Base (M/E/P) scope, space program prioritized and 95% MCA Budget cap
  - E. Update BAC and RCSD Facilities Design Group
  - F. Initial Summary Findings (A – E above) Submission
- V. Program Verification Report – Week 5
  - A. Consolidate and Summarize Work to Date
  - B. Finalize Concept, Project Budget Reconciliation (per 95% MCA Budget cap) and Recommendations
  - C. Present Summary of Draft to BAC and RCSD Facilities Design Group
  - D. Document all Feedback and Submit Report to Program Manager for Final Review/Comment
- VI. Final Program Verification Presentation (pending RJSCB regular meeting, but Schematic Design not to be delayed)
  - A. Incorporate Final Review Instructions into Final Report
  - B. Present Program Verification Update to RJSCB with RCSD Superintendent and BAC as invited guests
  - C. Submit Program Verification Final Update Report as a courtesy report to SED (also RCSD Superintendent and BAC representatives)
  - D. Invite BAC to Schematic Design Update (next stage, date to be determined)

## **EXHIBIT C TO DESIGN SERVICES AGREEMENT DIVERSITY REQUIREMENTS**

### **GENERAL:**

The Rochester Joint Schools Construction Board (the “Board” or “Owner”) has employed the services of a Program Manager (“PM”) to oversee the development and implementation of the Rochester Schools Modernization Program (“RSMP”) . In addition, the PM administers the design and construction related agreements entered into by the Board. The Architect shall recognize and report to the PM. The parties to the foregoing Design Services Agreement [hereinafter, “the Contract” or “this Contract”] agree to be bound by the following scope provisions that are hereby made a part of the Contract.

### **EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN:**

The Board recognizes the need to take action to ensure that minority and women-owned business enterprises, disadvantaged and small business enterprises, and minority and women employees and principals (M/W/D/SBE’s) are given the opportunity to participate in the performance of contracts of the Board.

This opportunity for full participation in our free enterprise system by persons traditionally, socially and economically disadvantaged is essential to obtain social and economic equality. Accordingly, the Board fosters and promotes the participation of such individuals and business firms in contracts with the Board. Each firm for this undertaking should acknowledge its understanding and support of the social policy herein stated and will be expected to demonstrate its efforts to solicit the participation of such individuals as partners, and/or employees. In this regard, the Board expects the Architect to undertake or continue the existing programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination.

The Board is committed to providing Women, Minorities, Women and Minority-Owned Businesses, and Disadvantage Businesses with equal opportunities in the performance of contracts. In order to achieve the Business Development goals of the Program, each contractor, supplier, professional service firm or other business providing goods or services with a Board contract of \$25,000 or more (\$100,000 or more for construction services) shall strive to and use best efforts to meet the above stated commitment of the Board regarding the participation and use of Women, Minorities, Women and Minority Owned Business and disadvantaged Businesses. One of the principal goals of the RJSCB is to support workforce development and the creation of diversification opportunities. As such, all contractors, suppliers, professional service firms and/or other business entities providing goods or services under a Board contract of \$25,000 or more (\$100,000 or more for construction services) shall agree to comply with the following workforce diversity rules and requirements:

- Minority Workforce: 23% of project personnel, including skilled trades people, trainees, journeymen, apprentices and supervisory staff
- Female Workforce: 7% of project personnel, including skilled trades people, trainees, journeymen, apprentices and supervisory staff

The Board is also committed to the meaningful participation of qualified minority-owned, women-owned, disadvantaged business entities and small business entities throughout the RSMP. In order to meet this commitment, all contractors, suppliers, professional service firms and/or other business entities providing goods or services under a Board contract of \$25,000 or more (\$100,000 or more for construction services) shall agree to engage qualified minority-owned, women-owned, disadvantaged business entities and small business entities to assist in the completion of all work under any such contract. With each contract of \$25,000 or more (\$100,000 or more for construction services), the selected contractor, supplier, professional service firm and/or other business entity agrees to provide for the following:

- Minority-Owned Business entities shall participate in a minimum of 18% of each contract or purchase order
- Women-Owned Business entities shall participate in a minimum of 12% of each contract or purchase order
- Disadvantaged Business entities shall participate in a minimum of 2% of each contract or purchase order
- Small Business entities shall participate in a minimum of 2% of each contract or purchase order

The Board reserves the right to revise, adjust and/or modify the above goals for contracts awarded at a later date for contracts awarded in Phase 3 of the RSMP. If the Architect needs assistance in meeting the above commitments of the Board, they may contact the Independent Compliance Officer (ICO).

## EXHIBIT D TO DESIGN SERVICES AGREEMENT PAYMENT FOR SERVICES

### GENERAL:

Payments following the completion of the Program Verification Phase for work on subsequent phases authorized by the Board are due and payable thirty (30) days from the date the Architect's invoice is received and approved by the Program Manager and the Board. Initial payments will be delayed until completion of the initial Program financing. Delays in this initial payment due to delays in the completion of financing will not be deemed substantial non-performance by the Board under the provisions of Paragraph 8.5 of the annexed Design Services Agreement ("Agreement").

For additional costs not included in the lump sum fee that are reimbursable at cost (i.e. no markup), such items will not be payable unless the monthly invoices include receipts and detailed backup of the actual costs incurred for providing these additional services.

For the Architect's services included in the Basic Compensation Fee, the Board shall compensate the Architect in accordance with the following not-to-exceed breakdown by project phase. Reimbursable expenses shall be billed each month as they occur and shall, together with the progress payments, not exceed the totals specified in Articles 10 and 11 without prior Board approval:

Progress Payments for the services in each phase shall total the following percentages of the total Basic Compensation payable:

• Program Verification Phase:	five percent (5%)
• Schematic Design Phase:	twenty percent (20%)
• 25% Complete CDs:	twenty percent (20%)
• 50% Complete CDs:	seven percent (7%)
• 75% Complete CDs:	seven percent (7%)
• 90% Complete CDs:	ten percent (10%)
• Issued for Bid CDs:	four percent (4%)
• Bidding or Negotiations Phase:	two percent (2%)
• Construction Phase, including Commissioning:	twenty-two percent (22%)
• <u>Post Construction Phase:</u>	<u>three percent (3%)</u>
• Total Basic Compensation:	one hundred percent (100%)

In the event of a material change in the scope of the Project or the Architect's Services, the Architect shall continue to perform in accordance with the terms of this Agreement during the course of any renegotiation of the Architect's compensation hereunder.

### COMPENSATION FOR ADDITIONAL SERVICES:

For On-Site Project Representation beyond Basic Services, as described in Paragraph 3.2 of the Agreement, compensation shall be billable at the rate as accepted by Program Manager and mutually agreed upon at such time by the Board and Architect.

For Optional Additional Services of the Architect, as described in Paragraph 3.4 and Article 12 of the Agreement, other than (1) Additional Project Representation, as described in Paragraph 3.2, and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, compensation shall be as mutually negotiated and agreed upon between the Board and the Architect prior to commencement of the Work. Minor delays in the design schedule shall not be the basis for a claim for Additional Services and major delays in either the design or construction schedule shall only

## **Design Services Agreement**

allow for compensation for the actual, reasonable costs associated with additional staff time and expenses incurred by Architect and its consultants caused by the delay.

For Additional Services of Consultants, including additional structural, mechanical and electrical engineering services and those provided under subparagraph 3.4 of the Agreement or identified in Article 12 of the Agreement, as part of Additional Services, compensation shall be billable at a multiple of one point one (1.1) times the amounts billed to the Architect for such services.

### **REIMBURSABLE EXPENSES:**

For Reimbursable Expenses, as described in Paragraph 10.2 of the Agreement, and any other items included in Article 12 of the Agreement as Reimbursable Expenses, a multiple of one point zero (1.0) times the expenses incurred by the Architect, the Architect's employees and consultants in the interest of the Project.

Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees and consultants in the interest of the Project, as identified in the following clauses. Expenses not expressly identified herein as Reimbursable shall be considered a cost of the Architect's business and included in the Basic Services Fee:

- Expenses in connection with authorized out-of-town travel from the Rochester City School District that is directly related to the Project and fees paid for securing approval of authorities having jurisdiction over the Project are eligible. Out-of-Town Travel is allowed only from Rochester City School District to Albany (SED) or special/required trips related to the project from the home office. Commuting/travel expenses to Rochester from out-of-town is not allowed.
- Reimbursable Expenses payable to the Architect hereunder may not exceed the sum listed in Exhibit I of the Agreement without prior written consent of the Board. All requests for reimbursement of Reimbursable Expenses shall be accompanied by receipts for such expenses, or, in lieu of receipts, other evidence satisfactory to the Board.
- Expense of reproductions, express deliveries, and handling of drawings, specifications and other documents, including expenses incurred in assisting the Program Manager and Construction Manager with the preparation of the bid packages, clarification of items within the Contract Documents and reproduction of documents are only eligible for reimbursement when requested by RJSCB beyond required submissions.
- Except as set forth in Paragraph 12.7 of the Agreement, the expense of renderings and mock-ups requested by the Board.
- Expense of additional insurance coverage or limits including professional liability insurance, requested by the Board in excess of that described in Paragraph 9.11 of the Agreement.

**EXHIBIT E TO DESIGN SERVICES AGREEMENT  
HOURLY RATES**

Per the terms of Article 3, Subparagraph 10.4.2 of this Agreement, approved Additional Services provided by Architect shall be compensated per the following hourly rates.

<u>TITLE</u>	<u>RATE</u>
<u>Principal</u>	
<u>Associates</u>	
<u>Senior Architect</u>	
<u>Architect III</u>	
<u>Architect II</u>	
<u>Architect I/CAD Technician</u>	
<u>Partner</u>	
<u>Project Manager</u>	
<u>Project Designer</u>	
<u>Other/Non-Admin</u>	
<u>Project Engineer</u>	
<u>Engineer</u>	
<u>M/E/P Coordinating Engineer</u>	



## EXHIBIT F TO DESIGN SERVICES AGREEMENT INSURANCE REQUIREMENTS

### Insurance Policies:

The Architect, for work on this Project, shall have the following insurance requirements:

#### Commercial General Liability Limits

Per Occurrence Limit:	\$1,000,000
General Aggregate (other than Products/Completed Operations):	\$2,000,000
Products and Completed Operations:	\$2,000,000
Personal and Advertising injury:	\$1,000,000
Fire Damage Legal Liability:	\$ 300,000
Medical Payments, any one person:	\$ 10,000
<b>Business Automobile:</b>	\$2,000,000 per accident
<b>Professional Errors and Omissions Liability Insurance:</b>	\$5,000,000 per claim/\$5,000,000 aggregate
<b>Workers' Compensation:</b>	Statutory amount
<b>Employer's Liability:</b>	\$500,000
<b>Excess/Umbrella (for general aggregate and auto liability only):</b>	\$5,000,000

The RJSCB shall be a certificate holder and an additional named insured on such policies on a primary and non-contributory basis. The Architect shall furnish the RJSCB with a certificate of insurance evidencing that it has complied with the obligations under this Exhibit F. In addition, the Architect shall require its sub-consultants, if any, to carry similar liability insurance, to name the RJSCB as a certificate holder and an additional insured on such policies and to furnish the RJSCB with certificates of insurance establishing compliance with this obligation. Thirty (30) days' written notice of cancellation for the above-referenced policies is required. The Architect is responsible for the payment of all insurance premiums.

All liability policies (excluding workers compensation and professional) shall also include the following as additional insured on a primary and non-contributory basis: Rochester Joint Schools Construction Board ("RJSCB"); the City of Rochester (the "City"); the Rochester City School District ("RCSD"); Savin Engineers, P.C. ("Savin"), Gilbane Building Company ("Gilbane"), the County of Monroe Industrial Development Agency ("COMIDA" or another capital bonding agency to be named by RJSCB), and U.S. Bank National Association ("Trustee" or another Trustee to be named by the RJSCB). A waiver of subrogation in favor of the RJSCB, the City, the RCSD, Savin, Gilbane, COMIDA (or another capital bonding agency to be named by RJSCB), and the Trustee (or another Trustee to be named by the RJSCB) applies to general liability, automobile liability, umbrella and worker's compensation (GL additional insured, ongoing & completed operations, form CG2010 1185 or equivalent - to be attached to certificate). Copies of all additional insured/primary-noncontributing/waiver of subrogation endorsements must be attached to certificate. Policies shall include a 30-day notice of cancellation to the RJSCB by registered or certified mail, return receipt requested. Copies of all other endorsements to be attached to the certificate.

#### Indemnification & Hold Harmless:

The Architect shall defend, indemnify and save harmless the RJSCB, the City, the RCSD, Savin, Gilbane, COMIDA (or another capital bonding agency to be named by RJSCB) and their officers, agents, and employees (collectively, the "Indemnitees") as set forth in Paragraph 12.18 of the Design Services Agreement.

The Architect shall include in each agreement with a subcontractor and/or subconsultant for the Project, a provision substantially similar to the paragraph above, which provides that such subcontractors and/or sub-consultants shall indemnify the Architect and the Indemnitees for all losses, claims, liabilities, injuries, damages and expenses, including attorneys' fees, that the Architect or the Indemnitees may incur arising out of or resulting from such subcontractor's or subconsultant's performance of services, violation of state, federal, or local law, rule or regulation, or negligence.

## EXHIBIT G TO DESIGN SERVICES AGREEMENT PRELIMINARY SCHEDULE

### PROJECT: Dr. Martin Luther King, Jr. School 9

<u>Anticipated Milestone:</u>	<u>Anticipated Date:</u>
• Submit all “Key Staff for confirmation by RJSCB	10 working days after NTP
• Submit M/E/P Program Verification to PM	Approx. 30 days after NTP
• Submit Schematic Design (SD - M/E/P Base Scope) to PM	27 Aug 2024
• Submit SD Detailed Cost Estimate to PM	11 Sep 2024
• Submit 25% Complete Construction Documents (CDs) to PM	25 Nov 2024
• Submit 25% Complete CDs Detailed Cost Estimate to PM	11 Dec 2024
• Submit 50% Complete CDs to PM, with proposed Preliminary Bid Add Alternates	07 Feb 2025
• Submit 50% Complete CDs Detailed Cost Estimate to PM	21 Feb 2025
• Submit 75% Complete CDs to PM, with proposed Preliminary Bid Add Alternates	18 Apr 2025
• Submit 75% Complete CDs Detailed Cost Estimate to PM	02 May 2025
• Submit 100% Complete CDs to PM, with proposed Preliminary Bid Add Alternates	28 Jul 2025
• Submit 100% Complete CDs Detailed Cost Estimate to PM	15 Aug 2025
• Incorporate IDC comments, if any, for SED review	22 Aug 2025
• Incorporate SED Final CD Review Comments as SED addenda	10 Sep 2025
• SED Approval Date Milestone (on or before)	25 Sep 2025
• Finalize CDs and Add Alternates for public bidding	25 Sep 2025
• Participate in Bid Opening(s), Qualifications of Bidders, Award	13 Nov 2025
• Submit Conformed CD Set for construction, attend kick off meetings	13 Nov 2025 – 01 Dec 2025
• Start and Perform all Construction Phase Services	13 Nov 2025 – 10 Nov 2027
• Perform Punch List, Partial and Final Certificates of Substantial Completion, along with Final Punch List Inspection(s)	10 Nov 2027 – 08 Feb 2028
• Consolidate, Review As-Built Drawings, Prepare and Certify Final Record CDs, Operation Manuals, and all Warranties	09 Feb – 16 May 2028
• Perform and Document Project Warranty Inspections during the Eleventh and Twenty-Second Months after the Final Certificate of Substantial Completion. Submit Document Report to the RJSCB and RCSD Facilities Group for Final Acceptance	Oct 2028 and Sep 2029

Note: All of the listed milestones are for A/E Proposal purposes and will be updated and/or superseded by the actual approved Master Schedule during the Design and then the Construction Phase of the Project. However, the overall duration in months is not expected to change significantly.

## EXHIBIT H TO DESIGN SERVICES AGREEMENT DESIGN DOCUMENT STANDARDS

### SCHEMATIC DESIGN MINIMUM STANDARDS:

A/E Basic Obligations: The A/E Design Team will be required to prepare, assemble and coordinate all Design and associated Detailed Construction Cost Estimating work for the Schematic Design Phase, as well as the 25%, 50%, 75% and 90%, and update for the Final 100% Complete Construction Documents (CDs) Stages. The A/E's documents at each stage are expected to be iterative from the preliminary 25% CDs through the Final CDs for bidding of the Project. The CD process, accordingly, will mature in a logical manner that optimizes time and the required submittals at each stage until the Final CDs are approved by the RJSCB and SED. The A/E's basic services will include the incorporation of all SED comments in the approval process.

### Documents and Reports

- Design Services Agreement scope, and/or schedule modifications (if any)
- Update /distribute for record any final Program "Charette") Verification Final Update Report modifications, per Board approval
- Code Compliance Summary Statements: All applicable codes, ADA, occupancy, fire resistive rating, fire protection and structural adequacy.
- SED Manual of Planning Standards Compliance Summary Statement
- Geotechnical reports including soils condition analysis and site environmental conditions analysis as necessary.
- Site survey.
- Existing conditions documentation, including field measurements of buildings, as necessary for design completion
- Traffic study report, if required by the RJSCB.
- Assess the hazardous materials' effects on design
- The following systems outline specifications including proposed materials, systems and design criteria.
  1. Structural
  2. M/E/P Infrastructure Major Headend Replacement Equipment as the top priority
  3. BCS Replacement Work Scope as the second priority
  4. Plumbing and Fire Protection System Replacements/Upgrades
  5. HVAC System Replacements/Upgrades
  6. Electrical and PA Systems Replacements/Upgrades
- Description of specific ADA handicap requirements inside and outside of the building to comply with applicable Codes.
- Review of computer cabling, telecom, network Educational Technology design criteria, and analysis of effects on Design Program.
- Description of the building envelope; wall systems, window types, glazing types, thermal requirements, and roofing systems as the third priority (budget permitting).
- Typical schedule of interior finishes; doors, hardware, partitions, ceilings, flooring, wall finishes and mill/casework as the fourth priority (budget permitting).
- A description of special finishes required per Program: café, auditorium, gym, pool, exercise, computer, etc. for RCSD to establish priorities (budget permitting).
- Energy study and life cycle cost analysis necessary for submission to the Owner and filing per SED requirements
- Security issues narrative for design with priority and budget determination reviews by RCSD.\*
- FF&E program description with priority and budget determination reviews by RCSD.\*

\*Note: Requested review, priority and budget decisions by RCSD to occur within two weeks of submission of SD documents to SED for concurrence.

### Drawings

- Site Plan showing the relationship between new and existing structures/utilities, traffic flow, existing and proposed contours, landscaping features, roads, walks, and utility connections, easements and encroachments.

## Design Services Agreement

- Typical M/E/P central plant and preliminary layout for all proposed major headend replacement equipment rooms.
- Typical floor plans, indicating the relationship of new construction and existing renovation (if applicable).
- Typical floor plans assigning room and space names, clearly indicating program use. Room/Name/Number system
- Typical floor plan showing fire and smoke partitions.
- Roof plans, indicating type of design and proposed system.
- Elevations, showing all sides of the new and/or existing building where new work is proposed.
- Diagrammatic sections, indicating floor elevations and internal building construction (schematic) to initiate coordination of M/E/P replacement distribution systems.
- Equipment and furnishing drawings that may influence general and design of all proposed scope of work noted “budget permitting.”
- Preliminary 3-D computer model of the overall campus and building(s) suitable for presentation, discussion and relative “cut away” depiction of the major scope of work components to allow stakeholders/public to better understand the proposed Project (see Paragraph 12.19 Presentations).

### 25% COMPLETE CONSTRUCTION DOCUMENTS MINIMUM STANDARDS:

The A/E’s basic services will include the incorporation of all SED comments at each stage of the approval process. The following is the documentation required after completion of the Schematic Design Phase:

- Drawings sufficient to fix and illustrate the project scope and character in all essential design elements as preliminary (25%) Construction Documents (CDs);
- Outline specifications;
- Recommendations for phasing of construction;
- Site Plan(s);
- Landscape Plan;
- Floor Plans, including enlarged plans for M/E/P priority scope as appropriate;
- Elevations, buildings and wall sections;
- Updated three-dimensional line drawings; and
- Engineering drawings and calculations.

The Architect shall prepare and assemble Summary of Work Scope Plans that indicate in a consistent, color-coded format the net and gross square footage areas as including M/E/P Base Scope priorities that will be applied in each Detailed Construction Cost Estimate required. The PM must approve for format purposes the Summary of Work Scope Plans prior to the submission of any cost estimates for the approved Project.

## SPECIFIC SUBMITTAL CRITERIA

### Drawings

1. Title sheet with drawing Index, Vicinity map, project name, project number, name and address of the Architect of Record, listing of consultants with addresses, identification of the Board, RCSD, Program Manager and the Construction Manager.
2. All drawing sheets are to carry the title “25% Complete Construction Documents Submittal” and the submittal date in the title block.
3. Architectural drawings shall include dimensioned floor plans with all details reference symbols. Each floor plan is to clearly designate scope of work under this contract in a different manner from existing construction, work by others and work which not a part of this scope.
4. All finishes and material selections are to be designated. Submit a preliminary Finish Schedule for all spaces (in compliance with RCSD priorities and budget).
5. Components elevations (Doors, Windows etc.), schedules and legends are to be included for all major portions of the design.
6. Floor plans with the composite design for all rooms within a building wing shall be submitted. Enlarged “Typical Rooms” for each room type shall be submitted for all disciplines (A/C/S/M/E/P).
7. Any partial floor plan and/or wing plan of the building or a floor must carry an associated “key plan” for reference.

## **Design Services Agreement**

### Outline Specifications

1. The outline specifications are to be bound and submitted with a table of contents. Page numbers and quantity of pages are to be shown.
2. The Architect's stamp (seal) is to appear on the front cover. The front cover is to include the Owner's name, Architect's names, project name, project number, the title "25% Complete Construction Documents Submittal" and the submittal date.
3. Any front end document proposed by the Architect is to be submitted. In the table of contents, reference all Board or other required documents, and insert "place holder" colored sheets at the appropriate locations where these documents would go. Title each colored sheet.
4. The "Summary of Work" will be submitted in a full draft form. The Summary of work shall include the following:
  - Related documents
  - Project Description
  - Existing Conditions
  - Overview of M/E/P Coordinated Systems Design
  - Overview of Architectural Design for the General Trades
  - Demolition – select and general
  - Continuous Operation of Existing M/E/P systems
5. Divisions 2-18 specification sections are to include Part 1 - General, Part 2 - Products and Part 3 - Execution. Product descriptions for all intended materials, products and equipment are to be indicated with three or more manufacturers. No Performance nor assigned design type specification shall be allowed without prior approval of the PM and RJSCB in writing.

### Site Plan(s)

1. Drainage scheme and proposed collection systems are to be indicated.
2. All existing sewer, water, electrical, telephones cable and gas lines are to be shown and sized. New lines or connections are to be shown and detailed.
3. All new site improvements are to be shown.
4. Electrical transformers, cooling towers, and other major equipment are to be shown and detailed.
5. New and existing paving with handicapped accessibility are to be clearly shown.
6. Existing and new fencing are to be shown.
7. Existing and new site lighting are to be shown.

### Landscape Plan

1. Adequate in detail to show planting types and species, preliminary details shown and related site design items illustrated.
2. Prepared by a Landscape Architect licensed in the State of New York.

### Engineering Drawings

1. All rooms/locations proposed for the location of M/E/P headend or major equipment preliminary layout plans, major vertical riser locations proposed, boiler rooms, electrical vaults(s), electrical closets and distribution rooms are to be drawn to a large scale with all new and existing to remain equipment, panels and major feeds shown.
2. Fire alarm and sprinkler systems drawn, and main panels are to be shown in elevation.
3. Show security system and cameras.
4. Show lighting, power and PA system preliminary layout plans with legends and schedules.
5. Show all sub-panels and distribution boards with legends and schedules.
6. Show all M/E/P plans with legends and schedules.
7. All civil and structural components are to be detailed, dimensioned and referenced back to architectural drawings.
8. Submit backup calculations for all loads, major equipment sizes and pipe sizes.\*

### Code Compliance\*

List all current and applicable codes for the project.

List all review and permitting agencies that are applicable to this project.

Calculate and submit all exiting requirements, rated corridors and required number of stairs.

Update Code Compliance as part of the Final Construction Drawings, per SED Standards.

*\*Indicates that these items are to be bound together in a separate manual with a table of contents and dividers.*

### THE BALANCE OF CONSTRUCTION DOCUMENT MINIMUM STANDARDS:

The balance of the 50%, 75% and 90% Complete CDs, and 100% Final CDs are to be prepared in a logically consistent manner as determined by the Architect with the PM's review for compliance with the Master Schedule milestones. The specific applicability and/or appropriateness of these Exhibit H Design Document Standards, in whole or in part, is the responsibility of the Architect according to the RJSCB approved scope of Work for each Project within the approved budget. The A/E's basic services will include the incorporation of all SED comments at each stage of the approval process. Thus, the balance of the CDs shall be based on the approved SD Documents and 25% Complete CDs, which may include, but not be limited to, the following:

- CAD plan sheets, including all reflected ceilings, roof, basement, and incidental areas with all column lines and column line dimensions identified. The roof plan will show all necessary slopes, pitches, equipment, access doors, plumbing vents, risers, and any equipment needed to be taken into account prior to submission of construction bids.
- It is recommended that a common elevation system be used for all construction disciplines. If not, provide benchmarks on respective discipline plans (i.e., how an architectural elevation benchmark relates to civil/site elevations, and vice versa).
- On respective floor plans, all rough openings for windows, louvers, and exterior doors should be shown.
- On respective floor plans, all spaces be fully identified, labeled, dimensioned, and numbered.
- On respective floor plans, all pitched or depressed floors shall be clearly identified.
- For each space, provide a schedule of material finishes. All finishes for floors, bases, walls, ceilings and ceiling heights (if not shown on reflected ceiling plans) should be clearly referenced to appropriate details and/or specifications for material selection and installation requirements. Where multiple finishes are required for a common space, those details should be clearly defined either by narrative or large scale (1/4"=1'0") detail.
- For all doors, provide a schedule of materials and appropriate references. Each door on the plan set should be identified. Proper elevations and/or specification sections should be present and properly referenced by the schedule. The information contained with the schedule should identify for each door:
  - a. The door type & material.
  - b. The frame type & material.
  - c. The door and frame fire rating per the code analysis.
  - d. Glazing requirements.
  - e. Hardware requirements
  - f. Jamb, head, and sill details.
  - g. Any other pertinent or special requirements required for that door type.
- Exterior Elevations shall be provided and referenced, showing:
  - a. The relationship between finish grade, floor to floor heights, cladding, parapets, towers, roofs, and other building structures.
  - b. Window types, louver types, light fixtures, and miscellaneous metal enclosures for MEP equipment.
  - c. Material selections for exterior finishes, referenced to appropriate details and/or specifications.
- All windows and louvers shall be referenced to details or specifications by type, where dimensions, construction, materials, finishes, head, jamb, sill and any other pertinent design criteria are clearly defined.
- Building sections shall be provided and referenced, showing: the relationship between floors, floor thickness, ceilings, and building structure.
- Interior elevations should be shown for all bathroom, entrance and public areas where disparate finishes and mounting heights for applicable equipment should be distinguished.
- Exterior wall sections shall be provided and referenced where wall type, material characteristics (i.e., flashings, sealants, blocking, etc.), differences in elevation, or where functionality of a building system (i.e. windows, or wall sleeve for mechanical equipment) needs to be identified.
- All wall and partition types should be identified. A corresponding schedule of partition types should be referenced.
- All stairs shall be identified and referenced to large scale details including, if applicable, number of risers, types of nosings, treads, railings, balustrades, entrance mats, finishes and life safety features.

## Design Services Agreement

- All Millwork, Casework, and Specialty Display Equipment should be referenced to details and specifications. Custom wood products should be identified in large scale elevations, have cross sections where necessary to clarify the extent of material selections, dimensions and finishes.
- All shafts, elevators, escalators, shall be identified and referenced to large scale details and/or specifications.
- All plan sheet details for other miscellaneous architectural features (i.e. soffits, recessed cabinets, etc.) shall be clearly identified. All plan sheet details should be used and referenced.

### Structural Design Minimum Documentation:

- 1/8" = 1'-0" scale CAD plan sheets, including all foundation, floors, roof, and incidental structures such as towers and/or support services buildings should be included.
- Foundation system design (Note: For the various systems, typical criteria concerning footings, slabs, reinforcing is not repeated. Where multiple systems are used, common structural elements shared by the various systems should be shown.)
  - a. Sheeting & shoring requirements
    - Scaled plan locating sheeting. Details & elevations should be provided and referenced...
    - Quantifiable tie-back systems, if required, should be provided and referenced.
  - b. Spread Footing / Mat Slab Design
    - Scaled plan (1/8" preferred) indicating isolated footings, continuous footings, slabs on grade and foundation walls. Slab elevations and bottom of footing elevations noted. Dimensions should be provided on details when not listed on plan sheets.
    - Schedule of isolated footings, by type, indicating size and reinforcing requirements. All isolated footings on the plan sheets should be referenced to the schedule. For reinforcing requirements or isolated footings with unusual geometry, sectional views should be shown
    - Continuous footing details indicating sizes and reinforcing requirements. Where changes in continuous footings occurred, detail or sectional references should be provided. For reinforcing requirements or continuous footings with unusual geometry, sectional views should be shown
    - Foundation wall & pier conditions indicating sizes & reinforcing requirements should be scheduled and referenced. Sectional views should be shown.
    - Slab on grade should indicate top of slab elevation, slab thickness, pitch, depressions thickness and area, and reinforcing requirements. Sectional views should be shown
    - Waterproofing and foundation drainage requirements should be referenced in details and/or specifications.
  - c. Pile / Caisson Design
    - Scaled plan (1/8" preferred) indicating pile/caisson sizes & quantities, caps, grade beams, slabs on grade and foundations walls. Slab elevations and bottom of cap / grade beam elevations noted.
    - Length of piles/caissons including amount of rock socketing.
    - Type of piles with loading criteria referenced to details and/or specifications.
    - Pre-augering requirements referenced to details and/or specifications.
    - Casing requirements referenced to details and/or specifications.
    - Types, number of tests, and locations of tests shown on the plan sheets, and referenced to details and/or specifications.
    - Provide a schedule of typical cap and grade beam designs indicating sizes and reinforcing requirements. All grade beams should be labeled and referenced to the schedule.
  - d. Slurry Wall Design
    - Scaled plan (1/8" preferred) indicating slurry wall layout, slabs on grade and any additional foundation walls. Slab elevations and top of slurry wall elevations noted.
    - Slurry wall material composition should be referenced by notes, details and/or specifications.
    - Length of slurry wall including amount of rock socketing.
    - Thickness of slurry wall with reinforcing requirements.
    - Section showing guide wall requirements. Provide multiple sections, if required.
    - Quantifiable tie-back systems, if required, should be provided and referenced.
    - Types, number of tests, and locations of tests shown on the plan sheets, and referenced to details and/or specifications.

- Main Structural System Design
  - a. Steel Structural Systems
    - Scaled plans (1/8" preferred) indicating layout structure, column lines, column line dimensions, elevations of floor slabs, piece types & sizes, moment connections and bracing locations. Slab elevations noted.
    - A column schedule should be provided, showing relationship of columns from foundation to roof, column sizes, connection details, and base plate details. All applicable details should be provided and referenced.
    - Bracing labels should be shown on the plan sheets and referenced to elevations. Beam sizes and connection details at the braces should be identified and referenced.
    - Girder & truss elevations with members sized.
    - Skylight and curtain wall supports should be shown and referenced to details and/or specifications. The criteria for curtain wall wind bracing loads and criteria for skylight supports design should be provided for independent shop drawing confirmation.
    - Tie-rod & cable requirements should be shown; applicable references to details and/or specifications should be provided.
    - Connection details should be shown; applicable references to details and/or specifications should be provided.
    - Exterior wall sections/details should be provided and referenced. Wall section references should be provided when wall construction changes.
    - Framing @ floor & roof openings should be shown.
    - Beam opening locations for MEP or other equipment/infrastructure should be shown. Criteria for beam openings, by a schedule, specification, or detail, should be provided and referenced.
    - Slab depressions, equipment support, roof screen support, window washing anchorage, satellite dish support, should be shown; references to details and/or specifications should be provided.
    - Slab locations, top of slab elevations, thickness, reinforcing and deck type/size should be shown and referenced to details and/or specifications.
    - Type of deck closure relative to light gauge or bent plate material should be shown and referenced to details and/or specifications.
    - Number of deck shear connectors should be noted.
    - Spray fireproofing or concrete encasement should be shown on the plans, plan sheet notes, details and/or specifications.
    - Any additional secondary framing requirements noted. (i.e. mezzanines, stages, stairs, ramps, etc.) Should be shown with all members, connections, bracing labeled and/or scheduled.
    - Priming / painting criteria should be listed in plan sheet notes or in the specifications. Any structural steel in an exposed location should be noted if special preparation for finishes is required.
  - b. Cast-in Place Concrete Systems
    - Scaled plans (1/8" preferred) indicating layout of floor slabs, openings, column lines, and column line dimensions, slab type & sizes and structural wall locations. Slab elevations noted.
    - A schedule of cast in place columns should be provided. Sections and reinforcing requirements should be referenced to details and/or specifications.
    - Structural wall, beams & column drop sections & details with reinforcing requirements should be referenced to details and/or specifications.
    - Structural girder sections & details with reinforcing requirements should be provided.
    - Embed items such as loading dock angles, sleeves, steel support plates, etc. should be shown on plans, and referenced to details and/or specifications.
    - Slab placement criteria should be defined and referenced.
    - Finishing & curing criteria should be defined and referenced.
  - c. Structural Precast Systems
    - Scaled plans (1/8" preferred) indicating layout of floor slabs, openings, column lines, and column line dimensions, slab type & sizes and structural wall locations. Slab elevations noted.
    - A schedule of cast in place columns should be provided. Sections and reinforcing requirements should be referenced to details and/or specifications.



## Design Services Agreement

- A schedule of structural wall, beams & column drop sections & details with reinforcing requirements should be referenced to details and/or specifications. Otherwise, sectional views representing the same information should be provided and referenced to the plan sheets.
- Structural girder sections & details with reinforcing requirements should be identified and referenced to details and/or specifications.
- Stair element system should be identified and referenced to details and/or specifications.
- Exterior wall sections/details should be provided and referenced. Wall section references should be provided when wall construction changes.
- Framing @ floor & roof openings should be shown.
- Beam opening locations for MEP or other equipment/infrastructure should be shown. Criteria for beam openings, by a schedule, specification, or detail, should be provided and referenced.
- Embed items such as loading dock angles, sleeves, steel support plates, etc. should be shown on plans, and referenced to details and/or specifications.
- d. Wood / Light Gauge Framing Systems
  - Scaled plans (1/8" preferred) indicating layout of floor framing, openings, column lines and structural wall locations. Slab elevations noted.
  - Wood species, sizes and rating requirements required for all framing elements.
  - Metal stud and joist sizes and gauge should be shown and referenced to details and/or specifications.
  - Connection points should be shown and referenced to details and/or specifications.
  - Truss elevations should be shown with all members labeled and connections points identified.
- Final structural design criteria
  - a. Live load criteria should be listed on the plans and/or specifications.
  - b. Dead loads criteria should be listed on the plans and/or specifications.
  - c. Wind load criteria should be listed on the plans and/or specifications.
  - d. Special provisions for concentrated loads, openings & equipment loads should be listed on the plans and/or specifications.
  - e. Deflection & vibration control should be listed on the plans and/or specifications.
  - f. Thermal movement control should be listed on the plans and/or specifications.
  - g. Subsurface waterproofing should be listed on the plans and/or specifications.
- The following foundation design criteria and/or quantities should be shown on the plans and specifications.
  - a. Soil bearing capacity.
  - b. Boring & test pit data.
  - c. Water table data.
  - d. Contaminated soil removal criteria.
  - e. Potential subsurface obstruction allowance established.
  - f. Potential rock / ledge removal.
- Critical coordination clearances
  - a. Sections at critical clearance areas with detailed dimensions should be shown on the plans and/or referenced to appropriate details.
- Specifications or materials lists
  - a. Specifications are expected to indicate material and installation requirements by major structural components.
  - b. Specifications sections to be issued include, but are not limited to:
    - Earthwork
    - Cast-in-place Concrete
    - Structural Precast Concrete
    - Reinforcing
    - Structural Steel
    - Steel Joists
    - Metal Decking
    - Light Gauge Metal Framing

## Design Services Agreement

- Metal Stairs & Railings
- Rough Framing - Carpentry

### Mechanical Design Minimum Documentation:

- HVAC System
  - a. Heating and cooling design load calculations. These should be redundant at this point.
  - b. Air and water system balancing criteria should be shown on the plans and/or specifications.
  - c. Equipment locations should be shown and units referenced to an equipment schedule. The schedule should indicate representative manufacturer's name, model number, size, capacity, utility connections and/or characteristics, and capacities. Recommend showing pad, structural support, or vibration control via detail, schedule description, or specification.
  - d. Mechanical infrastructure layouts
    - Size, location and routing of major ductwork should be shown, with all bends, tees, flexible connections, volume, smoke, fire dampers identified. Details for duct fittings, connections, and relationship of dampers to walls and/or access doors should be provided and referenced. This should be the case for all supply, return, and exhaust systems.
    - If plan view is too congested or unclear, a single line diagram of branch ductwork, with sizes and capacities, heating zones, VAV boxes etc. should be provided.
    - Size, location and routing of steam and/or heating water piping should be shown. Details for terminal unit connection, including all shutoff valves, check valves, balancing valves and/or ports, gauges, units, etc. should be provided and referenced.
  - e. Required space for equipment should be identified. Provide small scale plans (1/4"=1'0) for especially congested or unclear piping areas.
  - f. Required chases and clearances should be identified.
  - g. Acoustical and vibration control should be referenced to plan sheet notes and/or specifications.
  - h. Temperature control system description should be provided in the specifications.
    - Plan sheet should indicate locations of temperature control equipment (i.e. main control and zone control panels, thermostats, humidistats, piping or duct sensors, motorized valves, variable frequency drives, etc.)
    - A temperature control schematic should be provided, well as a description of the system sequence of operation.
- Plumbing
  - a. On the plan sheets, show location and size of incoming services (i.e. gas, water, storm, sewer, etc.).
    - All plumbing fixtures, including roof drains, floor drains, storage tanks, hot water heaters, etc. should be located and labeled on the plan sheets. Details of relationship between drains and flooring and/or roofing systems should be identified.
    - All fixtures and drains should be referenced to an equipment schedule and/or specifications. Schedule/specifications should contain representative manufacture, model number, and utility connection types and sizes.
  - b. Recommend showing pad, structural support, or vibration control via detail, schedule description, or specification.
  - c. Size, location and routing of hot water, cold water, recirculation lines, gas lines, waste piping and any other incidental plumbing system should be shown. Details for equipment unit connection, including all shutoff valves, traps, water hammer arrestors, gauges, etc. should be provided and referenced.
  - d. Provide hot and cold water, sanitary, and storm system riser diagrams.
- Fire Protection System
  - a. Provide basis for fire protection system calculations.
  - b. On the plan sheets, show location of incoming fire protection service. If applicable, show site fire loop, shutoff valves, hydrants, fire department connections, thrust blocks, etc. If not shown here, the system should be shown on the site utility plan.
  - c. Locate fire pump, compressor and other incidental equipment. Provide representative manufacture, model number, size and capacity.
  - d. Show location of all standpipes, drain lines and test stations. Configuration of shutoff valve, fire department valves and recessed cabinets, check valves, tamper and flow switches should be referenced to details and/or specifications.

## Design Services Agreement

- e. Provide layout of sprinkler system on plan sheet. Identify diameter of pipe runs 2" and over.
- f. Indicate type of sprinkler head (concealed, exposed, upright, etc.)

### Electrical Design Minimum Documentation:

- General note: Major equipment, such as panelboards, fire alarm panels, lighting equipment, sound systems, etc. all shown on common sub-discipline plan sheets.
- Power system
  - a. On the plan sheets, provide sizes and locations for conduits and wires of incoming electrical service(s). If applicable, provide a site plan showing all transformers, substations, duct banks, site lighting and conduit, manholes, hand holes and remote power requirements. If not shown here, it should be shown on the site layout.
  - b. Provide a single line riser diagram of both normal and emergency power (if applicable). Identify all generators, UPS systems, main electrical cabinets, motor control centers, panelboards, load centers transformers, disconnect switches, enclosed circuit breakers and/or motor starters above 100 amps, and termination of equipment. Riser should show all conduits, wire sizes and encasement requirements. All riser equipment should be completely referenced to respective schedules and/or specifications.
  - c. Provide locations for all special receptacles, outlets, hardwire equipment locations and rough-ins. Identify feeder types and panelboard circuit and references for each terminal device.
- Lighting System
  - a. On plan sheets, show physical location of all light fixtures, lighting or dimming cabinets, time clocks and other incidental lighting system components. Provide wiring diagrams or schematics where relays or extensive switching means are required. Identify feeder types and panelboard circuit references for each lighting fixture and/or circuit.
  - b. Provide light fixture schedule with representative manufacture's fixture type, model number, lamp and/or ballast requirements.
  - c. Provide physical location of light switches, occupancy sensors and /or control cabinets. Provide wiring diagrams for extensive switching means are required.
- Fire Alarm System (Including special requirements)
  - a. Minimum: Descriptive specification section identifying building code requirements by space, explanation of equipment and breakdown.
  - b. Minimum: Single line riser diagram identifying all fire alarm system components including smoke detectors, duct smoke detectors and equipment shutdown controls, heat detectors, separate elevator recall system (if required), horns, horn strobes, strobe lights, evacuation speakers, annunciator panels, building layout panel, main fire alarm control panel, type of system wiring (Class A, B),
  - c. Preferred: Plan sheet layout showing physical location of each device corresponding to the riser diagram. All equipment requiring line voltage to have circuit size and panelboard circuit references provided.
- Call for Aid (including any special requirements)
- Public Address System (including any special requirements)
- Tel/Data systems (including any special requirements)
  - a. If cable trays or dedicated empty conduits are required, they should be shown on the plan sheets.
  - b. Data drop and clock locations are required, wiring and backboard locations for security cameras, Smart Boards, or video projector mounting.

### Civil Design Minimum Documentation:

- Site Plan showing buildings, paving walls, curbs, retaining walls and property lines and all site materials should be shown and referenced to details and/or specifications.
- Site lighting layout
- Boring information
- Sections through paving, walkways and curbs should be shown and referenced to details and/or specifications.
- Site drainage pattern and location of utilities and points from which services will be run to the building. Sizes of manholes, invert elevations, and utility sizes, capacities and materials should be identified.
- Indicate all underground utilities and services existing and proposed.

### Landscape Design/Documentation Service:

- Landscape plan showing types and quantities of planting per the Owner's standards.

## **Design Services Agreement**

- Plans showing existing grades in relation to finish grades.
- Parking layouts

### Food Service Design/Documentation Service (coordinate with Owner's food service design consultant):

- $\frac{1}{4}'' = 1'-0''$  scale on plan sheets, if possible. No smaller than  $\frac{1}{8}''$  scale. Plan sheet to show relationship of food service equipment to building structure.
- Provide an itemized schedule for all food service equipment including unit description and utility requirements (i.e. sizes and/or types of connections for hot water, cold water, drainage, steam, gas, electrical, etc.)
- Identify areas on plan sheet where food service equipment requires changes in floor conditions (i.e. depressed slabs, pitched floors, etc.)
- Provide specification section describing equipment, including manufacturer's part number and description, approved equals (if appropriate) and quantity of units to be provided.

**EXHIBIT I TO DESIGN SERVICES AGREEMENT  
SCHEDULE OF VALUES FOR SERVICES**

<b>Basic Design Services Fee Breakdown</b>			
		<b>Breakdown</b>	<b>Fee</b>
	Program Verification	5%	
	Schematic Design Phase	20%	
	25% Complete CDs	20%	
	50% Complete CDs	7%	
	75% Complete CDs	7%	
	90% Complete CDs	10%	
	Issued for Bid CDs	4%	
	Bidding or Negotiations Phase	2%	
	Construction Phase	22%	
	Post Construction Phase	3%	
	<b>Total</b>	<b>100%</b>	
<b>Additional Services</b>			
<b>Additional Design Services</b>			
1	Pending Contract Negotiations		TBD
2	Measured Drawings	Included in Basic Design Services Fee	
3	As Built/Record Reproducible Drawings	Included in Basic Design Services Fee	
4	Additional Services (Allowance)		\$25,000
	<b>Subtotal Additional Services</b>		
<b>Consultant Allowances</b>			
5	FF&E Consultant	Included in Basic Design Services Fee	
6	Traffic Consultant	Included in Basic Design Services Fee	
7	Swing Space Coordinator	Included in Basic Design Services Fee	
8	Selective Demolition/Investigation Allowance	Included in Basic Design Services Fee	
9	Lighting Consultant	Included in Basic Design Services Fee	
10	AV/Theater Consultant	Included in Basic Design Services Fee	
11	Code Review Consultant	Included in Basic Design Services Fee	
12	Geotechnical Consultant	Included in Basic Design Services Fee	
13	Hazmat Survey & Testing	Included in Basic Design Services Fee	
14	Site Survey/Boundary/Utility	Included in Basic Design Services Fee	
15	Energy Modeling Consultant		\$25,000
16	Acoustical Consultant		\$15,000
17	Digital Existing Building Scanning		\$25,000
	<b>Subtotal Consultants</b>		
18	Additional Printing Allowance		\$5,000
19	Reimbursable Expenses Allowance		\$5,000
20	Additional Professional Time for RJSCB call-backs	Included in Basic Design Services Fee	
	<b>Total of Table (Items 1 – 20)</b>		
	<b>TOTAL OF BASIC DESIGN SERVICES, ALLOWANCES &amp; ADDT'L SERVICES</b>		

## EXHIBIT J TO DESIGN SERVICES AGREEMENT CHECKLIST OF CONTRACT DELIVERABLES

This checklist is meant to be a guide to the deliverables owed under this contract. It is not to be construed as all-inclusive for everything contained within this Agreement.

Article	Sub-paragraph	Service	Deliverable
	Basic Services:		
1.0	1.1.3	Architect's services	Schedule of Basic Services
2.0	2.2.1	Program Verification Phase	Educational Specification
	2.2.1		Forensic testing program
2.0	2.2.2	Schematic Design Stage	Site survey
	2.2.3		Cost implications/MCA & EPC analysis
	2.2.4		List of key personnel
	2.2.5 / 2.2.9		Schematic Design Docs
	2.3.1 / 2.3.3	Design Completion Stages	25%, 50%, 75% & 90% Complete CDs
	2.3.2		DD Progress Docs
	2.3.3		Value Management
	2.4.1 / 2.4.3	Design and Final CDs	CD Docs
	2.4.1		Present CD's to RJSCB
	2.4.2		CD Progress Docs
	2.4.4		Assist CM w/ Bidding info.
			Issue Addenda to SED
	2.4.5		Advise RJSCB, PM & CM of all requirements for governmental approvals
	2.4.6		Provide testimony and docs
	2.5.1	Bidding	Assist CM or PM in obtaining bids
	2.6.1 / 2.6.19	Construction Administration	Assist CM or PM in Constr. Admin.
	2.6.5		Attend site meetings.
			Issue Field Reports.
	2.6.9		Review and approve Applications for Payment
	2.6.10		Reject nonconforming work
	2.6.11		Review and approve submittals, etc.
	2.6.13		Review and recommend change orders
	2.6.15		Issue punch list.
			Determine substantial and final completion (certificates).
			Forward Warranties.
	2.6.16 / 2.6.18		Interpret and decide matters concerning performance.
	2.6.19		Participate in Commissioning
	Additional Services:		
3.0	Explicit Services and Deliverables under Article 3 will be reviewed and agreed upon at the time of engagement for those services.		
5	5.2.1	Construction Cost	Review Board's project budgets
	5.2.2		Estimating Services
	5.2.4		Modification of Construction Docs
9	9.11	Miscellaneous Provisions	Certificates of Insurances
12	12.1	Other Conditions or Services	Meetings
	12.3		All submissions for governmental approvals
	12.4		Additional Digital Scanning if needed
	12.5		Verify RCSD drawings
	12.6		Energy Modeling & LCCA
	12.7		Project Model if requested
	12.8		CAD Record Drawings (PM to approve)
	12.10		Subconsultant Contracts
	12.11		IDC Review
	12.12		Adherence to Standards Checklists.
			Turnover Documents
	12.13		Adherence to ADA
	12.16		CAD drawings
	12.19		Presentations
	12.20		Student Learning Program

**EXHIBIT K TO DESIGN SERVICES AGREEMENT  
FIXED LIMIT OF CONSTRUCTION**

Project: \_\_\_\_\_

Location: Rochester, New York

1. General Scope: The proposed modernization of \_\_\_\_\_ will focus on \_\_\_\_\_. Specifically, the Program Verification will prioritize and validate the Work Scope including the entire building envelope, mechanical/electrical/plumbing infrastructure replacement, the renovation of the instructional and support spaces, along with a new addition, and associated site improvements. The Architect will review and coordinate with the District's Facilities Group potential scope from the Building Condition Survey document contained in the RFP for possible inclusion in this Phase 3 project, if the budget permits.
2. Planned Enrollment: Approximately \_\_\_\_ pupils (Grades \_\_\_\_)
3. Probable Fixed Limit of Construction ("FLC"): \$\_\_\_\_\_ (including site improvements).

The value for the FLC anticipates the start of construction in the year of \_\_\_\_\_. It does include assumed escalation in construction costs, and will be finalized at the end or before the start of the 25% Complete CDs stage.

For the purposes of this Agreement the following items of work are budgeted within the FLC:

- Hazmat Abatement
- Existing school building gross and / or selected demolition as required
- All hard construction costs
- All site improvements (i.e. on and off-site utilities, sidewalks, parking, play areas/fields traffic upgrades, etc.)
- Construction Contingency (10% typical)

For the purposes of this Agreement the following items of work are budgeted in other areas of the Owner's project budget and are, therefore, excluded from the FLC:

- Demolition of adjacent existing properties (non-BOE owned)
- Computer Equipment
- New Furnishings
- CM General Conditions
- CM Fee

**EXHIBIT L TO DESIGN SERVICES AGREEMENT  
RECORD DRAWING REQUIREMENTS**

Record documents and drawings to be provided in accordance with Paragraph 12.8 of this Agreement shall be:

Construction drawings revised to show approved changes made during the construction process, based on Change Orders, manually marked “as-built” prints, drawings, and other data furnished to the Construction Manager by the construction contractors. The Construction Manager shall collect such prints, drawings and other data from the construction contractors, confirm completeness, and deliver same to the Architect for his/her use in preparing a comprehensive set of reproducible Record Documents.

Provide all Record Drawings in PDF, AutoCAD DWF and DWG file formats, and in accordance with Paragraph 12.8 of the Agreement. All layers and xrefs must be embedded (DWF) or bound (DWG) as appropriate, and all security features must be turned off.



**EXHIBIT M DESIGN SERVICES AGREEMENT  
INDEPENDENT DOCUMENT REVIEW REQUIREMENTS  
(Provided by Others)**

**INTRODUCTION**

This exhibit outlines the process used for performing an Interdisciplinary Document Coordination (IDC) review. IDC is designed to address Coordination issues within and between various construction disciplines. The goal is to provide a set of quality project documents in both process and resulting construct.

Discrepancies are identified, noted and reviewed with the design team. The design team is required to correct discrepancies and reissue all affected/revised construction documents.

The IDC review will not identify every conflict; it is not a Constructability review or Value Management session. It is a methodical, systematic examination of construction plan sheets, specifications, sketches, and addenda. The review points out inconsistencies within the body of presented information. It is not a substitute for engineering or architectural review.

**CONVENTIONS AND PRACTICES**

The compiled report issued at the conclusion of an IDC review should be a stand-alone document. The comments should direct a plan holder to discrepancies discovered without using a marked up set of plans. Consistent language and formats should be used in the report.

A. Before the review, note the following:

Documentation Assessment / Pre-Coordination/Reporting Log. This step requires the reviewer to determine if the documents are suitable for an IDC review. An IDC review is typically best performed when Construction Documents are beyond ninety percent (90%). Usually, a completion percentage below ninety percent means that a substantial amount of information is missing. Therefore, comparisons among and between disciplines will be difficult. If the documents are not sufficiently complete, the review should not commence and the project team should be informed.

B. After the review, note the following:

Because each review is unique, the effort may conclude in different ways. Reviews may take place with a single issue of documents, where a single compliance check is performed after revisions. Others might be phased, where several interim reports and compliance checks are necessary. Regardless, the goal should be to provide a quality set of consistent documents for bidding and construction.

C. Document Re-issuance:

The Architect and appropriate subconsultants shall correct, amend or revise the documents in the most expeditious manner in accordance with the discrepancies noted in the IDC report. All documents shall be labeled with a reissue date and forwarded to the CM for bidding. Documents that have not been through an IDC review or have not been coordinated shall not be issued for bidding.

## EXHIBIT N TO DESIGN SERVICES AGREEMENT ESTIMATING STANDARDS

The RSMP uses a standard estimating format that all estimates shall comply with. The purpose is to:

- Provide consistency between estimates prepared by different entities (i.e., Architect, Construction Manager, and RSMP).
- Ensure that quantities of material developed or assumed by different estimators are consistent.
- Assure that assumptions, exclusions, and inclusions considered by estimators are consistent with the intent of the Architect.
- Assure that Contingencies for design, construction and escalation assumed by different estimators are consistent.

### ESTIMATE FORMAT

1. There must be a cover sheet matching the format of the Board's budget.
2. All estimates must be in "Present Day" dollars plus an escalation factor to match Project Schedule.
3. All plan sheets must contain the following Information:
  - Project Name
  - Architect's Name
  - The document date
  - Sheet Number
  - Name of the Estimator, the Checker and Company
  - Type of Estimate (i.e., Conceptual, Schematic, Design Development or Construction Document)
4. Costs should be broken as follows:
  - Trade Costs
  - Allowances for special features (if not well defined)
  - Total Trade Costs
  - Taxes Excluded
  - General Conditions
  - CM Fees (TBD%)
  - Escalation per year % (Trade costs only)
  - Design Contingency % (check w/ Program Manager) Trade costs only
  - Construction Contingency (TBD% - Check w/Program Manager) on Trade costs only
  - Sub Total
  - Estimate Total
5. Sheet 2 of the Estimate Summary must be in CSI (Construction Specifications Standards) Format. Show major items of work within each division.

#### Major Divisions (not limited to)

010000	024000	040000	070000	100000	130000	220000	260000	310000
020000	026000	050000	080000	110000	140000	230000	270000	320000
022000	030000	060000	090000	120000	210000	250000	280000	330000

6. If Project includes renovation and addition, provide estimate for each separately. Both estimates must be prepared using the same format with quantities, unit, unit price, and the total.
7. All the backup sheets for each division of work should include the basic information of: Description, Quantities, Unit, Unit Price, Total.
8. Total costs for the divisions.
9. The project gross and net areas as defined in Exhibit A and broken down by renovation versus new construction.
10. Written assumptions and clarifications.
11. Allowances with descriptions, units and values.
12. Written exclusions.

**EXHIBIT O TO DESIGN SERVICES AGREEMENT  
ROCHESTER SCHOOLS MODERNIZATION PROGRAM DESIGN STANDARDS**

The Rochester Schools Modernization Program Design Standards and all related design guidelines, checklists and documents are herein incorporated into this Agreement by reference. It is the responsibility of the Architect and all of his consultants to become familiar with the content of the Standards and apply them throughout all aspects of the Project.

The Architect is responsible for demonstrating compliance with the Standards by use of the various supplied checklists at the end of each design phase and as may be requested by the Program Manager.

Deviations from the Standards must be formally requested of, and approved by, the Program Manager and the Board.

SECTION 4: RFP FORMS

ATTACHMENT 1

CERTIFICATION OF NON-COLLUSION IN BIDDING

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury that to the best knowledge and belief:

- 1. The prices of this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor.
- 2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- 3. No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

BY

<hr/>	<hr/>
*LEGAL NAME OF FIRM OR CORPORATION	AUTHORIZED SIGNATURE
<hr/>	<hr/>
ADDRESS	TYPED NAME OF AUTHORIZED SIGNATURE/TITLE
<hr/>	<hr/>
CITY, STATE, ZIP CODE	TELEPHONE/DATE

\*Indicate the complete legal name of your firm or corporation. Do not abbreviate. If a corporation, use name as it appears on corporate seal.

ATTACHMENT 2

OFFEROR’S AFFIRMATION OF UNDERSTANDING OF AND  
AGREEMENT PURSUANT TO STATE FINANCE LAW §139-j (6) (b)

Background:

State Finance Law §139-j (6) (b) provides that:

Every Governmental Entity (including, voluntarily, the Rochester Joint Schools Construction Board, the “Board”) shall seek written affirmations from all Offerors as to the Offeror’s understanding of an agreement to comply with the Board’s procedures relating to permissible contracts during a Governmental Procurement pursuant to State Finance Law §139-j(3).

Instructions:

In connection with all proposals, bids, RFP’s, etc., the Board must obtain the following affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible contacts in the Restricted Period for a Procurement Contract in accordance with State Finance Law §139-j and §139-k:

*Offeror affirms that it understands and agrees to comply with the Rochester Joint Schools Construction Board’s Procurement Disclosure Policy, which Policy conforms to the requirements of State Finance Law §139-j (3) and §139-j(6)(b).*

BY

_____ *LEGAL NAME OF FIRM OR CORPORATION	_____ AUTHORIZED SIGNATURE
_____ ADDRESS	_____ TYPED NAME OF AUTHORIZED SIGNATURE/TITLE
_____ CITY, STATE, ZIP CODE	_____ TELEPHONE/DATE

\*Indicate the complete legal name of your firm or corporation. Do not abbreviate. If a corporation, use name as it appears on corporate seal.

ATTACHMENT 3

OFFEROR CERTIFICATION OF COMPLIANCE WITH  
STATE FINANCE LAW §139-K (5)

By signing below, I certify that all information provided to the Rochester Joint Schools Construction Board with respect to State Finance Law §139-k is complete, true and accurate.

_____ *LEGAL NAME OF FIRM OR CORPORATION	_____ SOCIAL SECURITY OR TAX ID NUMBER
_____ ADDRESS	_____ PHONE NO.
_____ CITY, STATE, ZIP CODE	_____ FAX NO.
_____ NAME OF AUTHORIZED SIGNATURE	_____ TITLE OF AUTHORIZED SIGNATURE

\*Indicate the complete legal name of your firm or corporation. Do not abbreviate. If a corporation, use name as it appears on corporate seal.

BY: \_\_\_\_\_ DATED: \_\_\_\_\_, 20 \_\_\_\_\_  
(Signature)

ATTACHMENT 4

FORM OF OFFEROR DISCLOSURE OF  
PRIOR NON-RESPONSIBILITY DETERMINATION

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

\_\_\_\_\_

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

1.

Has any Government Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?  
(Please circle):                      No                      Yes  
If yes, please answer the next questions:
2.

Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?  
(Please circle):  
  
   No                      Yes
3.

Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Government Entity? (Please circle):  
  
   No                      Yes
4.

If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-Responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

ATTACHMENT 4

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

6. If yes, please provide details below:

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

Offeror certifies that all information provided to the Rochester Joint Schools Construction Board with respect to State Finance Law §139-k is complete, true and accurate.

By: \_\_\_\_\_

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

Signature: \_\_\_\_\_



## ATTACHMENT 5

### DIVERSITY PROGRAM FORMS

<b><u>FORM NO.</u></b>	<b><u>DESCRIPTION</u></b>
OCSD – 1:	Equal Employment and Policy Statement
OCSD – 2:	Staffing Plan
OCSD – 3:	Workforce-Utilization-Report
OCSD – 4:	Utilization Report
OCSD – 5:	Request for Waiver
OCSD – 6:	MWBE, SBE, and DBE Compliance and Payment Report

Forms OCSD – 1, 2, 4 must be completed as accurately as possible and submitted with proposal.



**Empire State  
Development**



**OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**

**OCSD-1 M/WBE, SBE AND DBE PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

I, \_\_\_\_\_ (CONTRACTOR OR GRANT REPRESENTATIVE),

the \_\_\_\_\_ (GRANTEE/COMPANY NAME)

agree to adopt the following policies with respect to the project being developed or services rendered at

\_\_\_\_\_.

**NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY**

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (c) At the request of the ESD, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) Organization shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The organization and its sub-vendors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) The organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this contract.

**MWBE PARTICIPATION (MWBE)**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participation goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.



**Empire State  
Development**



**OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**

**OCSD-1 M/WBE, SBE AND DBE PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

- (2) Request a list of State-certified M/WBEs from ESD's Office of Contractor and Supplier Diversity ("OCSD") and solicit bids from the listed vendors directly. OCSD may be reached via email at [OCSD@ESD.NY.GOV](mailto:OCSD@ESD.NY.GOV).
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

**SBE AND DBE PARTICIPATION (EBE)**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the SBE/DBE contract participation goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified DBEs and self-certified SBEs including solicitations to contractor associations.
- (2) Request a list of State-certified DBEs from ESD's Office of Contractor and Supplier Diversity ("OCSD") and solicit bids from the listed vendors directly. OCSD may be reached via email at [OCSD@ESD.NY.GOV](mailto:OCSD@ESD.NY.GOV).
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective EBEs .
- (4) Where feasible, divide the work into smaller portions to enhance participation by SBEs and DBEs and encourage the formation of joint venture and other partnerships among EBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to SBEs and DBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting the EBE contract participation goals.
- (6) Ensure that progress payments to are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage DBE and SBE participation.

Agreed on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

By: \_\_\_\_\_  
(SIGNATURE)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_





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## OCSD-2 - STAFFING PLAN

(REQUIRED ONLY OF CONTRACTS VALUED AT \$250,000 OR MORE)

## OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

Submit with Bid or Proposal – Instructions on page 2

<b>Contract/Project No.:</b>	<b>Contract/Project Title:</b>	<b>Report includes Contractor's/Subcontractor's:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor
<b>Contractor/Grantee Name:</b>		
<b>Contractor/Grantee Address:</b>		
		<b>Subcontractor's name</b> _____

Enter the total number of employees for each classification in each of the EEO-Job Categories identified.

EEO-Job Category	Total Work force	Work force by Gender			Work force by Race/Ethnic Identification																							
		Total Male (M)	Total Female (F)	Total X (X)	White			Black			Hispanic			Asian			Native American			Disabled			Veteran					
					(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)			
Officials/Administrators																												
Professionals																												
Technicians																												
Sales Workers																												
Office/Clerical																												
Craft Workers																												
Laborers																												
Service Workers																												
Temporary /Apprentices																												
Totals																												

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b>	<b>EMAIL ADDRESS:</b>	<b>DATE:</b>
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>			





## OCSD-2 - STAFFING PLAN

(REQUIRED ONLY OF CONTRACTS VALUED AT \$250,000 OR MORE)

## OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

**General Instructions:** All Contractors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (Form OCSD-2) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or Subcontractor's total work force, the Contractor shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or Subcontractor's total work force, the Contractor shall complete this form for the contractor's and/or Subcontractor's total work force.

### Instructions:

1. Enter the Contract or Solicitation number that this report applies to along with the name and address of your company or organization.
2. Check off the appropriate box to indicate if the Contractor completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Contractor's total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the M/WBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name and contact details of the person completing the form. Sign and date the form in the designated boxes.

### RACE/ETHNIC IDENTIFICATION:

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

### OTHER CATEGORIES:

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male, Female, or "X"



**Empire State  
Development**

OCSD 3 - Workforce  
Utilization Report



Reporting Entity ☐ Contractor ☐ Subcontractor

FEIN   
Contractor Name

Contractor Address

Project Name/Number   
or Contract Number

Preparer's Name

Preparer's Title

Reporting Period - Select One

☐ January 1 - March 31 ☐ April 1 - June 30  
☐ July 1 - September 30 ☐ October 1 - December 31

Reporting Month - Select One

☐ January ☐ February ☐ March  
☐ April ☐ May ☐ June  
☐ July ☐ August ☐ September  
☐ October ☐ November ☐ December

Workforce Identified in Report

☐ Workforce Utilized in Performance of Contract  
☐ Contractor/Subcontractor's Total Workforce

Date

☐ By checking this box, I certify that I personally completed this document and I adopt the name typed above as my electronic signature under the NYS Electronic Signatures and Records Act, with like legal force and effect as if I had physically signed the document.

☐ Check this box to request that the material included herein be withheld from disclosure pursuant to Article 6 of the Public Officers Law (Freedom of Information Law)

Occupation Classifications (SOC Major Group)	SOC Job Title	EEO Job Title	SOC Job Code	Race/Ethnicity	Gender	No. of Employees	No. of Hours Worked	Total Compensation
		#N/A	#N/A	Select One:	Select One:			
		#N/A	#N/A	Select One:	Select One:			
		#N/A	#N/A	Select One:	Select One:			
		#N/A	#N/A	Select One:	Select One:			
		#N/A	#N/A	Select One:	Select One:			
		#N/A	#N/A	Select One:	Select One:			
		#N/A	#N/A	Select One:	Select One:			
		#N/A	#N/A	Select One:	Select One:			
		#N/A	#N/A	Select One:	Select One:			
		#N/A	#N/A	Select One:	Select One:			
		#N/A	#N/A	Select One:	Select One:			
		#N/A	#N/A	Select One:	Select One:			
		#N/A	#N/A	Select One:	Select One:			
		#N/A	#N/A	Select One:	Select One:			
		#N/A	#N/A	Select One:	Select One:			
		#N/A	#N/A	Select One:	Select One:			


**Empire State  
Development**

OCSD 4 - Utilization Report



**INSTRUCTIONS:** This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This MWBE, SBE and DBE Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) and/or Small Business Enterprise (SBE) Disadvantaged Business Enterprise (DBE) under the contract. Attach additional sheets if necessary.

\* indicates mandatory fields

\*Contractor Name: \_\_\_\_\_ Address: \_\_\_\_\_  
 \*Representative Name: \_\_\_\_\_ Town, State & Zip: \_\_\_\_\_  
 \*Phone: \_\_\_\_\_ \*ESD Contract/Project Number: \_\_\_\_\_  
 \*Fax: \_\_\_\_\_ RFP/R/Q/Solicitation Number: \_\_\_\_\_  
 \*Email: \_\_\_\_\_ \*MWBE Goal: MBE \_\_\_\_\_ % + WBE \_\_\_\_\_ % = MWBE GOAL \_\_\_\_\_ %  
 \*Total Dollar Value of Contract/Grant: \$ \_\_\_\_\_ \*SBE Goal: \_\_\_\_\_ % \*DBE Goal: \_\_\_\_\_ %

1. * Certified MWBE, SBE or DBE Firm Name, Contact Person's Name, Address, Phone and Email.	2. * Check All That Apply	3. * Federal ID No.	4. * Detailed Description of Work (Attach additional sheets, if necessary, Attach Contract if available)	5. * Check Firm Type That Applies for Work Completed on this Project	6. * Dollar Value of Contract (if unavailable or yet undetermined, indicate \$1)
A.	<input type="checkbox"/> <u>NYS CERTIFIED</u> <input type="checkbox"/> <u>MBE</u> <input type="checkbox"/> <u>WBE</u> <input type="checkbox"/> <u>SBE (Self-Certified)</u> <input type="checkbox"/> <u>DBE</u>			<input type="checkbox"/> <u>Subcontractor</u> <input type="checkbox"/> <u>Subconsultant</u> <input type="checkbox"/> <u>Materials Supplier</u> <input type="checkbox"/> <u>Trade Agents/Brokers</u>	
B.	<input type="checkbox"/> <u>NYS CERTIFIED</u> <input type="checkbox"/> <u>MBE</u> <input type="checkbox"/> <u>WBE</u> <input type="checkbox"/> <u>SBE (Self-Certified)</u> <input type="checkbox"/> <u>DBE</u>			<input type="checkbox"/> <u>Subcontractor</u> <input type="checkbox"/> <u>Subconsultant</u> <input type="checkbox"/> <u>Materials Supplier</u> <input type="checkbox"/> <u>Trade Agents/Brokers</u>	
C.	<input type="checkbox"/> <u>NYS CERTIFIED</u> <input type="checkbox"/> <u>MBE</u> <input type="checkbox"/> <u>WBE</u> <input type="checkbox"/> <u>SBE (Self-Certified)</u> <input type="checkbox"/> <u>DBE</u>			<input type="checkbox"/> <u>Subcontractor</u> <input type="checkbox"/> <u>Subconsultant</u> <input type="checkbox"/> <u>Materials Supplier</u> <input type="checkbox"/> <u>Trade Agents/Brokers</u>	
D.	<input type="checkbox"/> <u>NYS CERTIFIED</u> <input type="checkbox"/> <u>MBE</u> <input type="checkbox"/> <u>WBE</u> <input type="checkbox"/> <u>SBE (Self-Certified)</u> <input type="checkbox"/> <u>DBE</u>			<input type="checkbox"/> <u>Subcontractor</u> <input type="checkbox"/> <u>Subconsultant</u> <input type="checkbox"/> <u>Materials Supplier</u> <input type="checkbox"/> <u>Trade Agents/Brokers</u>	
E.	<input type="checkbox"/> <u>NYS CERTIFIED</u> <input type="checkbox"/> <u>MBE</u> <input type="checkbox"/> <u>WBE</u> <input type="checkbox"/> <u>SBE (Self-Certified)</u> <input type="checkbox"/> <u>DBE</u>			<input type="checkbox"/> <u>Subcontractor</u> <input type="checkbox"/> <u>Subconsultant</u> <input type="checkbox"/> <u>Materials Supplier</u> <input type="checkbox"/> <u>Trade Agents/Brokers</u>	
F.	<input type="checkbox"/> <u>NYS CERTIFIED</u> <input type="checkbox"/> <u>MBE</u> <input type="checkbox"/> <u>WBE</u> <input type="checkbox"/> <u>SBE (Self-Certified)</u> <input type="checkbox"/> <u>DBE</u>			<input type="checkbox"/> <u>Subcontractor</u> <input type="checkbox"/> <u>Subconsultant</u> <input type="checkbox"/> <u>Materials Supplier</u> <input type="checkbox"/> <u>Trade Agents/Brokers</u>	
G.	<input type="checkbox"/> <u>NYS CERTIFIED</u> <input type="checkbox"/> <u>MBE</u> <input type="checkbox"/> <u>WBE</u> <input type="checkbox"/> <u>SBE (Self-Certified)</u> <input type="checkbox"/> <u>DBE</u>			<input type="checkbox"/> <u>Subcontractor</u> <input type="checkbox"/> <u>Subconsultant</u> <input type="checkbox"/> <u>Materials Supplier</u> <input type="checkbox"/> <u>Trade Agents/Brokers</u>	

7. If unable to fully meet the MWBE, SBE or DBE goals set forth in the contract, the Contractor must submit a Waiver Request form, which may be obtained from the Office of Contractor and Supplier Diversity, at [OCSD@ESD.NY.GOV](mailto:OCSD@ESD.NY.GOV).

PREPARED BY (Signature): \_\_\_\_\_ DATE: \_\_\_\_\_

Preparer's Name (Print or Type): \_\_\_\_\_

Preparer's Title: \_\_\_\_\_

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

SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE AND SOVDB REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW ARTICLES 15-A AND 17-B, 5 NYCRR PART 143, 9 NYCRR PART 252, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.

The MWBE Certification status of the firms listed on this form **MUST** be verified using the New York State Contract System's Directory of Certified Minority and Women-owned Business Enterprises.

This directory is available at <https://ny.newmycontracts.com/>.

The SBE Certification requires the completion of a self-certification form issued by the RSMP.

The DBE Certification status of the firms listed on this form **MUST** be verified using the Directory of New York State Certified Disadvantaged Business Enterprises. This directory is available at <https://nyscdp.newmycontracts.com/>.

TELEPHONE NO.:

EMAIL ADDRESS:

**Policy Regarding Use of MWBE/SBE/DBE Suppliers and Brokers** Only sums paid to MWBE, SBE or DBE for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.

**FOR CONSTRUCTION/CAPITAL PROJECTS** – The portion of a contract with an MWBE, SBE or DBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. Brokers will not receive credit for this project.

**\*\* FOR OCSD USE ONLY \*\***

REVIEWED BY:

DATE:

UTILIZATION PLAN APPROVED?

YES ☐ PARTIAL ☐ NO ☐ Date: \_\_\_\_\_





**Empire State  
Development**



**OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**

**OCSD-5**

WAIVER REQUEST FORM

<b>Request for Waiver</b>	
Grantee / Contractor Name:	Fed ID No.:
Full Address:	Contract / Project Number:
Project Details (Project Name, Project Location):	Have you Previously submitted a Waiver Request? (YES/NO) <input type="checkbox"/>
Current Contract Value:	MWBE Goal: MBE <input type="text"/> % + WBE <input type="text"/> % SBE Goal: <input type="text"/> % DBE Goal: <input type="text"/> %
<p>By submitting this form and the required information, the Contractor certifies that every "Good Faith Effort" has been taken to promote MWBE, SBE and DBE participation pursuant to the MWBE, SBE and DBE requirements set forth under the contract. Review <a href="#">5 NYCRR § 142.8</a> and <a href="#">9 NYCRR § 252</a>, Contractor's Good Faith Efforts, for the precise definition of "Good Faith Effort." Failure to adequately demonstrate Good Faith Efforts will result in a denial of your Waiver Request. It is the Contractor's responsibility to ensure that adequate, clear and complete information is presented to the Office of Contractor and Supplier Diversity ("OCSD").</p>	
<p><b>*UTILIZATION VALUE MET:</b></p> <p style="text-align: center;">MBE: \$ <input type="text"/>   WBE: \$ <input type="text"/>   SBE \$ <input type="text"/>   DBE: \$ <input type="text"/></p>	
<p><b>*CONTRACTOR IS REQUESTING :</b></p> <ol style="list-style-type: none"> <li>1. <input type="checkbox"/> <b>MBE Waiver</b> – A waiver of the MBE Goal for this procurement is requested. REQUESTED MBE GOAL: <input type="text"/> %</li> <li>2. <input type="checkbox"/> <b>WBE Waiver</b> – A waiver of the WBE Goal for this procurement is requested. REQUESTED WBE GOAL: <input type="text"/> %</li> <li>3. <input type="checkbox"/> <b>SBE Waiver</b> – A waiver of the MWBE Goal for this procurement is requested. REQUESTED SBE GOAL: <input type="text"/> %</li> <li>4. <input type="checkbox"/> <b>DBE Waiver</b> – A waiver of DBE Participation Goal for this procurement is requested. REQUESTED DBE GOAL: <input type="text"/> %</li> </ol>	
<p>PREPARED BY (Signature): <input style="width: 60%;" type="text"/> Date: <input style="width: 20%;" type="text"/></p> <p>SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT THAT IT HAS MADE GOOD FAITH EFFORTS, PURSUANT TO 5 NYCRR §142.8 AND/OR 9 NYCRR §252, TO INCLUDE THE PARTICIPATION OF NEW YORK STATE CERTIFIED MINORITY AND WOMEN OWNED BUSINESSES AND SERVICE DISABLED VETERAN OWNED BUSINESSES IN THE ABOVE PROJECT OR CONTRACT. CONTRACTOR HEREBY AGREES TO PROVIDE ANY AND ALL RELEVANT DOCUMENTATION IN SUPPORT OF THE DEMONSTRATION OF ITS GOOD FAITH EFFORTS AND ACKNOWLEDGES THAT IT HAS PROVIDED WITH THIS WAIVER REQUEST ALL AVAILABLE DOCUMENTATION SUPPORTING ITS GOOD FAITH EFFORTS.</p>	
<b>*Name and Title of Preparer:</b>	<b>*Telephone Number:</b>
<b>*Email:</b>	



Empire State  
Development



OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

OCSD-5

WAIVER REQUEST FORM

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## Contractor's Good Faith Efforts

- (a) Contractors must document their good faith efforts toward utilizing certified firms, including but not limited to, those identified within a utilization plan. Such documented efforts, shall include, at a minimum:
  - (1) Copies of its solicitations of certified firms enterprises and any responses thereto;
  - (2) If responses to the contractor's solicitations were received, but a certified firm was not selected, the specific reasons that such firm was not selected;
  - (3) Copies of any advertisements for participation by certified firms timely published in appropriate general circulation, trade, MWBE and SDVOB oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;
  - (4) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified firms enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;
  - (5) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified firms.
- (b) In addition to the information provided by the contractor in subdivision (a) above, the State agency may also consider the following to determine whether the contractor has demonstrated good faith efforts:
  - (1) where applicable, whether the contractor submitted an amended utilization plan consistent with the subcontract or supplier opportunities in the contract;
  - (2) the number of certified firms in the region listed in the directory of certified businesses that could, in the judgment of the State agency, perform work required by the State contract scope of work;
  - (3) the actions taken by the contractor to contact and assess the ability of certified firms located outside of the region in which the State contract scope of work is to be performed to participate on the State contract;
  - (4) whether the contractor provided relevant plans, specifications or terms and conditions to certified firms sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier;
  - (5) the terms and conditions of any subcontract or provision of suppliers offered to certified firms and a comparison of such terms and conditions with those offered in the ordinary course of the contractor's business and to other subcontractors or suppliers of the contractor;
  - (6) whether the contractor offered to make up any inability to comply with the certified firms goals in the subject State contract in other State contracts being performed or awarded to the contractor;
  - (7) the extent to which contractor's own actions, including but not limited to, any failure by contractor to discharge contractor's duties pursuant to this Part, Articles 15-A or 17-B of the Executive Law, contributed to contractor's inability to meet the maximum feasible portion of the contract goals;
  - (8) whether the contractor knowingly utilized one or more certified firms, in the performance of the subject State contract, that contractor knew or reasonably should have known could not perform a commercially useful function.



**Empire State  
Development**



**OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**

**OCSD-5**

**WAIVER REQUEST FORM**

- (9) whether the contractor submitted compliance reports, which identified certified firms that contractor knew or reasonably should have known did not perform a commercially useful function on a State contract on which goals were assigned. and
- (10) any other information that is relevant or appropriate to determining whether the contractor has demonstrated a good faith effort.

<p>Submit with the bid or proposal or if submitting after award submit to:</p> <p><b>Empire State Development Office of Contractor and Supplier Diversity 633 Third Avenue, 35<sup>th</sup> Floor New York, New York 10017</b></p>	<b>***** FOR OCSD USE ONLY *****</b>	
	<p><b>REVIEWED BY:</b></p>	<p><b>DATE:</b></p>
	<p> <b>Waiver Granted:</b> <input type="checkbox"/> YES    <b>MBE:</b> <input type="checkbox"/>    <b>WBE:</b> <input type="checkbox"/>    <b>SDVOB:</b> <input type="checkbox"/>  <input type="checkbox"/> Total Waiver                      <input type="checkbox"/> Partial Waiver  <input type="checkbox"/> *Conditional                      <input type="checkbox"/> Notice of Deficiency Issued _____  <b>* Comments:</b>  <div style="border: 1px solid black; height: 100px; width: 100%;"></div> </p>	



**Empire State  
Development**



## OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

### OCSD-6

### MWBE, SBE AND DBE COMPLIANCE AND PAYMENT REPORT

CONTRACTOR/GRANTEE:

ADDRESS:

TOWN/COUNTY/ZIP:

CONTACT PERSON:

TELEPHONE:

EMAIL:

ESD OCSD REPRESENTATIVE:

CONTRACT/PROJECT NAME:

CONTRACT/PROJECT #:

PROJECT START DATE:

PERCENT COMPLETE:

ACTUAL COMPLETION DATE:

REPORTING PERIOD: ☐ Monthly for the Month of: (Month) (Year)

☐ Quarterly (Check Applicable): ☐ Quarter 1 (4/1-6/30) | ☐ Quarter 2 (7/1-9/30) | ☐ Quarter 3 (10/1-12/31) | ☐ Quarter 4 (1/1-3/31)

Attach MWBE, SBE and DBE executed contracts, wire transfer confirmations and cancelled checks as proof of payment to the identified EBEs.

This report should be completed and signed by an officer of the Reporting Company. Attach additional sheets if necessary.

PRIME CONTRACTOR, if different from above (Name, Address, Contact Person, Title and Phone # with area code)	PRIME CONTRACT AMOUNT	MWBE, SBE or DBE SUBCONTRACTOR (Name, Address, Contact Person, Title and Phone # with area code)	NYS CERTIFICATION (Check One)	DESCRIPTION OF SERVICES	CONTRACT AMOUNT	PAYMENTS PREVIOUSLY REPORTED	PAYMENTS ON CURRENT REPORT	TOTAL PAYMENTS TO DATE
	\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/> DBE		\$	\$	\$	\$
	\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/> DBE		\$	\$	\$	\$
	\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/> DBE		\$	\$	\$	\$

CERTIFICATION: I, \_\_\_\_\_ (Print Name), the \_\_\_\_\_ (Title) of the Reporting Company above, do certify that (i) I have read this Compliance Report and (ii) to the best of my knowledge, information and belief, the information contained herein is complete and accurate.

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

Submission of this form constitutes the Contractor's acknowledgement as to the accuracy of the information contained herein. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, suspension and/or termination of the Contract.





**Empire State  
Development**

## OCSD-6



## OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

MWBE AND SDVOB COMPLIANCE AND PAYMENT REPORT

**SUBMIT REPORT TO:** Office of Contractor and Supplier Diversity  
Empire State Development  
633 Third Avenue, 35<sup>th</sup> Floor  
New York, NY 10017

Completed forms may be emailed directly to OCSD at [ocsd@esd.ny.gov](mailto:ocsd@esd.ny.gov). All email submissions must include ESD's project/contract number(s), and the name and contact information of the individual or firm submitting the information.

**QUESTIONS?** Please contact the OCSD's Compliance Managers or email the office at [ocsd@esd.ny.gov](mailto:ocsd@esd.ny.gov).

Danielle Adams	Bertrand Dorcilien	Kelly Forsey	Jordan Kaplan	Denise Ross	Ami Shipley
(518) 474-2569	(212) 803 - 3571	(716) 846-8238	(212) 803-3659	(212) 803-3226	(212) 803-3222
<a href="mailto:Danielle.Adams@esd.ny.gov">Danielle.Adams@esd.ny.gov</a>	<a href="mailto:Bertrand.dorcilien@esd.ny.gov">Bertrand.dorcilien@esd.ny.gov</a>	<a href="mailto:Kelly.forsey@esd.ny.gov">Kelly.forsey@esd.ny.gov</a>	<a href="mailto:Jordan.kaplan@esd.ny.gov">Jordan.kaplan@esd.ny.gov</a>	<a href="mailto:Denise.ross@esd.ny.gov">Denise.ross@esd.ny.gov</a>	<a href="mailto:Ami.shipley@esd.ny.gov">Ami.shipley@esd.ny.gov</a>
R E G I O N S :					
Capital District SUNY Poly Portfolio Mohawk Valley Dept. of Economic Development	Long Island North Country NYC – Bronx, Brooklyn, Queens	Finger Lakes Western New York ESD Subsidiaries – ECHDC, USA Niagara	Central NY Southern Tier ESD Subsidiary – AYCDC	Mid-Hudson NYC- Manhattan, Staten Island	ESD Procurement Contracts ESD Subsidiaries – CCDC, QWDC, LMDC, ESNMC, HCDC, MSDC

ATTACHMENT 6

**PROPOSER’S CERTIFICATION OF COMPLIANCE WITH  
IRAN DIVESTMENT ACT**

Pursuant to General Municipal Law §103-g, which generally prohibits the City and the School District from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the proposer submits the following certification to Rochester Joint Schools Construction Board:  
*[Please Check One]*

**PROPOSER’S CERTIFICATION**

- ☐ By submission of this proposal, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.
  
- ☐ I am unable to certify that my name and the name of the proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
FULL BUSINESS NAME

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Notary Public

**ATTACHMENT 7 – Not Used**

**ATTACHMENT 8 – Not Used**

DRAFT

ATTACHMENT 9

1.1 SUMMARY MATRIX: AoR/KEY STAFF 'WORKING' EXPERIENCE															
<b>DESIGN SERVICES PROPOSAL</b> <b>Project:</b> _____ <b>Architect of Record (AoR):</b> _____ <b>AoR's Key Staff: Identify Below*</b>															
	Client: Project:	Client Contact/Tele.:	Construction Cost:	Year Completed:		Client: Project:	Client Contact/Tele.:	Construction Cost:	Year Completed:		Client: Project:	Client Contact/Tele.:	Construction Cost:	Year Completed:	
• Principal / Officer in Charge:															
• Project Designer:															
• Project Manager:															
• Project Architect:															
• Project M/E/P Coordinator															
• Project Chief Estimator															
• Others:															
•															
•															
<b>Key Staff - Under 2-Yrs with Firm:</b>															
•															
•															
•															
•															
•															
•															
<b>Do Not Write in these Boxes</b>															

\* Note: Prospective AoR to fill-in Client Contact Information, Key Staff, and an 'X' in the Matrix boxes to indicate Project(s) worked.



1.2 SUMMARY MATRIX: TEAM/KEY STAFF 'WORKING' EXPERIENCE																
<b>DESIGN SERVICES PROPOSAL</b> <b>Project:</b> _____ <b>Architect of Record (AoR)*:</b> _____ <b>Consultant Name / Key Staff Role:</b> <b>(below)</b>																
	Client: Project:	Client Contact/Tele.:	Construction Cost:	Year Completed:	Client: Project:	Client Contact/Tele.:	Construction Cost:	Year Completed:	Client: Project:	Client Contact/Tele.:	Construction Cost:	Year Completed:	Client: Project:	Client Contact/Tele.:	Construction Cost:	Year Completed:
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<b>Key Staff - Under 2-Yrs with Firm:</b>																
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<b>Do Not Write in these Boxes</b>																

\* Note: Prospective AoR to fill-in Client Contact Information, Key Staff, and an 'X' in the Matrix boxes to indicate Project(s) worked.

# RSMP Request for Proposal: Design Services

## ATTACHMENT 10

### FEE SUBMITTAL FORM: Dr. Martin Luther King, Jr. School 9

**Basic Services Amount** \$ \_\_\_\_\_

### **HOURLY RATES ELIGIBLE FOR ADDITIONAL SERVICES**

Principal	\$ _____	Partner	\$ _____
Associates	\$ _____	Project Manager	\$ _____
Senior Architect	\$ _____	Project Designer	\$ _____
Architect III	\$ _____	Other/Non-Admin	\$ _____
Architect II	\$ _____	Architect I/CAD Technician	\$ _____
Project Engineer	\$ _____	Engineer	\$ _____
M/E/P Coordinating Engineer	\$ _____		

Annual hourly rates for Professional Additional Services shall remain in effect through the Project Warranty Inspection. A similar breakdown for each Firm comprising the A/E Team will be required upon Selection/Notice to Proceed.

### **ADDITIONAL DESIGN SERVICES** (If determined necessary)

Measured Drawings	Basic Service
As-Built/Record Documents	Basic Service
Additional Services (Allowance)	\$ 25,000

### **ADDITIONAL CONSULTANTS & ALLOWANCES** (If determined necessary)

FF&E Consultant	Basic Service
Traffic Consultant	Basic Service
Swing Space Coordinator	Basic Service
Existing Building Select/Forensic Demolition	Basic Service
Lighting Consultant	Basic Service
A/V or Theatre Consultant	Basic Service
Code Review/Consultant	Basic Service
Digital Existing Building Scanning	\$ 25,000
Acoustical Consultant	\$ 15,000
Site/Boundary/Utility Survey	Basic Service
Energy Modeling Consultant	\$ 25,000
Hazmat Survey & Testing	Basic Service
Geotechnical Consultant	Basic Service
Additional Approved Printing Allowance	\$ 5,000
Reimbursable Expenses Allowance	\$ 5,000

TOTAL OF BASIC DESIGN SERVICES, ALLOWANCES & ADDT'L SERVICES \$ \_\_\_\_\_

PROPOSAL AUTHORIZED BY: \_\_\_\_\_

(Typed Name/Title): \_\_\_\_\_ Date: \_\_\_\_\_