



June 13, 2024

Dr. Gerry Benaquista
Superintendent
Union Township Public Schools
2369 Morris Avenue, Union, NJ 07083

Re: Union Township Public Schools
Pre-Referendum Planning and Referendum Services

Dear Dr. Benaquista,

On behalf of Spiezle Architectural Group Inc. (Architect), we appreciate the opportunity we have had to interact and explore school improvements that would strengthen the educational opportunities that the Union Township Public Schools could offer into the future. As discussed, the next step in considering potential school improvements, new facilities, and solutions to address other long range facility needs is to undertake the planning and community process that can move the district toward a potential referendum and support of funding for such solutions.

Spiezle has been involved helping our clients successfully plan, approach, and pass referenda throughout our history and are justly proud of our strong historic referendum passage rate. We attribute this to our hands on, community based, pre-referendum planning and communication strategies and we would welcome the opportunity to work with you and your board, staff, and community to help you achieve your educational vision for the future in Union Township. Toward this goal, we welcome your consideration of the proposal we have outlined below to assist the district in developing and advancing a potential referendum for capital improvements.

Proposed Understanding of Scope and Professional Services Approach:

We understand the district is targeting a referendum to occur as soon as practical, considering the need to implement a community-based planning process, facilitate required updating of the district's Long-Range Facilities Plan (LRFP) and development of project applications for submission to the NJ Department of Education (NJDOE). As discussed, the NJDOE process represents an approximately six-month submission, review, and approval window but more importantly, ahead of this approval process we would need to develop and facilitate a community input and planning process to arrive at a plan that can achieve consensus support for a future referendum vote.

Based on our interactions to date we anticipate that a referendum may include a new educational facility as well as improvements to existing schools to enhance educational delivery and address operational concerns. We currently anticipate that the new facility or facilities may involve a land acquisition process and continued coordination with the Township on potential sites would be critical to development of the most educationally responsive and cost-effective solution possible.

We understand that the district's LRFP will require updating and this process would need to include interaction with the district and schools to understand physical plant needs as they currently stand, new needs that may not have been considered previously, and prior needs that may or may not have been fully addressed.

As a result, we have structured our proposal and efforts into several phase as follows:



Pre-Referendum

- Phase 1 **Discovery:** We would facilitate a kick-off meeting with the district and your leadership team to discuss the broadest range of potential needs/improvements that might be considered. This would be followed by visits to each school and meetings with core teams at each school (principal, facility personnel, other key staff) to discuss and elaborate on school operations and known operational and physical plant concerns. Following our interactive discovery process, we would summarize and document the input received. This would include development of order-of-magnitude initial budgets to provide context to the initial feedback received.
- Phase 2 **Community-based planning:** Starting with the administration and board, we would facilitate an interactive input and discussion process around the needs identified. The goal of this process would be to begin building common understanding around the range of needs, educational opportunities, priorities, and costs. Ultimately, we would use the feedback received to prioritize and finalize the scope to be advanced to referendum. The structure of this process, stakeholder groups, format, timeframes and schedule, etc. would be developed with you initially and then updated as needed depending on how the process proceeds.
- Phase 3 **Project Development and Approval Submissions:** Based on the input from the initial community process, we would work with the administration and board to develop a list of projects to be advanced. We would prepare NJDOE and related pre-referendum approval submissions and advance those with the district.
- Phase 4 **Community Information:** A broad community information program would be developed around the selected projects and the referendum process, costs, tax impacts, and other parameters. This would be developed with the administration and board and we would anticipate it involving a broad series of community sessions, events at the schools, information delivery around various other school events (sports, etc.), and development of web and printed material with the district. This process would be structured to ramp up interaction and information flow toward the planned referendum date.

Post-Referendum

- Phase 5 **Upon passage of a referendum, Design, Documentation, Bidding and Construction** Administration efforts would be implemented to realize the approved projects. We would initiate efforts to complete the planning, design, documentation, bidding and construction efforts associated with timely implementation of the projects as approved and as described below.

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

Proposed Professional Services:

Phase 1: Discovery and Reporting

We would undertake the review of the district's facilities and conduct a series of sessions with the district to confirm and finalize the anticipated referendum scope, budgets, and schedule, including visits/meetings at each school as outlined above. Our efforts would include the following:

- We would facilitate a kick-off meeting(s) with the administration and presentation to the Board about the process to receive initial input and facilitate planning of visits and meetings.



- Our teams would visit each school and meet with key leadership and operational personnel to be selected by the district.
- We would review each school facility and site and conduct walk-thru assessments with your facility staff to observe conditions. This would include photographing conditions as they exist to support future public communication around issues and why they need to be addressed. We would observe readily accessible and visible areas of the buildings (no destructive testing or observation of hidden conditions).
- Following our reviews, we would meet with your district leadership team to discuss findings.
- We would document these findings and provide a formal report that would include development of order-of-magnitude budgets associated with the needs and/or improvements.
- We would present our report to the Board in a public meeting and meet with the district administrative team to review Board input and revise and finalize the report.

Phase 2: Community-based Planning

A community-based process is the most effective way to begin building understanding about a possible referendum while also hearing critical input, concerns, and support feedback from the public who ultimately will be voting on the referendum. This process would unfold both prior to finalizing projects and submissions to NJDOE and then continuing through the months leading to the referendum.

- We would meet with your team to discuss and plan a community-based process including formats of sessions, schedule, groups to provide input, and information to be developed for, and from the process.
- Plan and facilitate meetings with district stakeholders: Following initial assessment and discussion and review of needs with the administration, we would develop a plan for community input. This would be advanced including facilitation of a number of sessions within the community and with different community groups. The format and schedule of these sessions would be developed with the administrative team and Board. We do not limit the number of meetings covered by our efforts under this proposal as the goal is to meet with, and receive input from, the groups that you feel are appropriate prior to finalizing the referendum scope.
- We will develop material for use in these sessions which might consist of handouts, digital and printed information, power point presentations, and similar materials.
- We will take notes of input and discussion at each session and document this information for record along with attendees and details related to each session.
- Following the initial round of sessions, and periodically throughout the pre-referendum process, we will meet with the administrative team and the Board to review input, feedback and discuss how to respond to concerns to the degree they are voiced.
- Following development of projects and submission of same to NJDOE, we would again meet with you to develop ongoing communication and community interaction strategies, including a schedule up to the referendum date.



Phase 3: Project Development and Approval Submissions

Once the district is comfortable with the prioritization of projects and details of what would be advanced for public approval in a referendum, we would prepare submissions for approval and submit these to NJDOE for action. Efforts would include:

- Coordination of land acquisition approval submissions with efforts by the district's civil engineer.
- Preparation of educational specifications, budgets, implementation schedules and other supporting information related to NJDOE submissions.
- Develop schematic designs for the various educational space improvements, additions, new buildings, and similar potential scope components which require development. We would present these to the district as design progresses for review and input.
- Upon finalization of scope and budgets, we would update the districts' LRFP website database to include the proposed projects. Given the scope anticipated and the fact that several years may have passed since a full major update of the district's LRFP, we would anticipate that this would be considered a 'major' update and would prepare information accordingly. This would include a request for a standard cohort enrollment projection from the NJDOE for use in submission of the plan. Should the district feel a separate, more in depth, demographic study should be considered, we have not included that effort within this proposal but would work with the district to solicit the services of a demographer as needed.
- Assess an initial construction approach: How work might be implemented or phased during construction can impact budgets. We would strategize schedule and implementation considerations with you and adjust budgets accordingly. Our goal would be to simultaneously manage budget costs while minimizing impacts on students, teachers, and general school operations.
- Prepare, update and finalize NJDOE application packages for review and approval. We would prep the district with template letters and guidance related to the submission process as well as a schedule to help plan required actions by the Board and others as part of this process.
- If necessary, we would attend and present at a local planning board meeting in association with the submission of project(s) to NJDOE.
- We would present the projects to the Board and seek a formal resolution authorizing: a) submission of the projects to NJDOE for review and approval, and b) updating of the district's LRFP and submission to NJDOE for review and approval.
- We would prepare materials for signature by the district business administrator, superintendent, and Board president as appropriate for various documents.
- We will meet with NJDOE following initial submission to review the project applications and solicit concerns or questions that we can address proactively.
- Once approved, we will prepare a summary of approvals and required actions for the district, including summary of any approved state share funding as applicable.



Phase 4: Community Information Campaign

Following finalization of projects and submission to the NJDOE, we would develop and facilitate a public information campaign with the district, Board and stakeholders leading up to the referendum.

- We would again meet with your team to discuss and plan the broader community-based information campaign including formats of sessions, schedule, groups to speak with, and information to be developed for the process.
- Plan and facilitate meetings with district stakeholders: Following initial discussion and development of a communication plan, we would work with you to facilitate that plan. This would be advanced including facilitating of a number of sessions within the community and with different community groups. The format and schedule of these sessions would be developed with the administrative team and Board but we do not limit the number of meetings covered by our efforts under this proposal as the goal is to meet with the groups that you feel are appropriate to building awareness of the referendum.
- We will develop material for use in these sessions which might consist of handouts, digital and printed information, power point presentations, and similar materials.
- Prepare and present received feedback along with the proposed scope of work, estimated budgets, and preliminary schedule information to the Board and public as part of this process. In these session(s) we would seek feedback and then work with the district to assess this feedback and adjust scope/budgets/etc. accordingly.
- We would work with the district leadership and communication team to assist the district in responding to questions throughout this process including maintaining an FAQ document, assisting with the development of web based and social media information. We would provide this information to the district but anticipate the district communication team would undertake web editing on the district website and social media output as part of this process.
- Meet with the district referendum committee(s), administration, and Board periodically.
- Meet with district and municipal representatives at key junctures to communicate up to-date information through the process. We would anticipate the need to attend a planning and or municipal board meeting to present the projects.
- Attend and conduct presentations at community events. We would anticipate this to include periodic Board meetings, public information sessions and general information sessions at the schools.
- Assist with developing communication ideas (email, websites, print, presentations, small group coffees, etc.) to help get the right message out to the public, counter misinformation, respond to press inquiries, and reach stakeholder groups.
- Coordinate with bond counsel, board attorney, and other consultants the Board may retain in association with the referendum and project effort. We would provide supporting information as needed by these parties.



Phase 5: Post Referendum Design, Documentation, Bidding, and Construction Administration Basic Services

Post referendum implementation scope only applies with authorization to proceed upon passage of a referendum. We would undertake the remaining design and documentation efforts to facilitate public bidding and construction associated with the approved scope of work and each project. We assume this would entail multiple bid processes and construction contracts for the work across various schools, sites and schedules. Our efforts would include the customary architectural, MEP engineering, and structural engineering services as summarized below:

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

- Conduct additional surveys of existing conditions, dimensions, and characteristics for the project.
- Develop schematic plans, design development, and construction documents for review.
- Work with the district to develop an overall approval, bidding, and construction schedule that would manage multiple bid processes across improvements at various schools and sites in a way that works to minimize interruptions to ongoing district operations.
- Conduct periodic coordination meetings to review project designs and budgets as work progresses.
- Review equipment and material options with the district.
- Facilitate design development meeting(s) at the completion of design development phase (approx. 50% documentation completion) to review material selections and material samples prior to completion of construction documents.
- Coordinate contractual front-end language for the specifications with the district and your attorney and CM (if applicable). This would include the formal Owner-Contractor contract to be used in bidding and the various front-end requirements of the project specifications.
- Based on approved design, develop construction documents and specifications for bidding,
- Conduct our in-house 'fresh-eyes' quality control review of each set of documents prior to bidding.
- Support additional permit review and approval processes with NJDOE, local code officials and/or NJDCA.
- Public bidding of the project(s) and/or procurement of components through coop purchasing.
- Respond to RFI's during each bidding process.
- Chair pre-bid meeting(s) for bid packages when issued.
- Attend the bid opening(s) and prepare a recommendation for action based on received bids and feedback from the Board attorney.

Construction Administration and Close Out:

- Output and issue AIA contract(s) between contractor(s) and the district based on your attorney's input.
- Issue Notices of Award on and Notice to Proceed documentation to contractor(s) on behalf of the district.
- Represent district interests through construction process, monitoring construction for conformance with designs, specifications, and construction requirements.
- Attend preconstruction meeting(s) and job meetings every two weeks during construction and prepare/inspect the punch list and final completion milestones for each project contract.
- We would conduct on-site visits to observe construction activity in the district bi-weekly and at other times based our assessment of need and the activity underway on site(s).



- Maintain records of correspondence, submittals, minutes, and related documents during construction
- Review construction schedule, payment applications and shop drawings as submitted by contractor(s).
- Respond to RFI's and process close out documents as submitted by contractor(s).
- Review/assess any proposed changes and/or substitutions from the contractor(s).

Optional Service: Enhanced Existing Condition Investigation Services (post referendum schematic phase)

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

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

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

- Recommendation for more in depth Condition Assessment/Material Testing/Surveys/Feasibility Studies. This may include additional hazardous material surveys by your abatement consultant, but may also include other testing such as infrared roofing, other scans, exploratory demolition, etc.
- Conduct more detailed or follow-up survey of the building. It may be recommended that a contractor be hired for selective destructive (soft) demolition/testing, invasive inspection or other pre-bid exploratory construction work.
- As with initial survey efforts, we recommend that the design team and the Owner's construction team survey existing conditions together.

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

Proposed Professional Basic Services Fees: Spiezle Architectural Group, Inc. proposes that the above basic services be provided based upon the following fee structures. The below assumptions and exclusions, attached Terms and Conditions, and attached Hourly Rates apply to all fees within this proposal.



Phase 1 through 4 - Pre-Referendum Basic Services:

Spiezle Architectural Group, Inc. proposes that the pre-referendum services outlined above as Phase 1 through 4 be provided for the Lump Sum Fee of Twenty-nine Thousand Five Hundred Dollars (\$29,500). This fee is inclusive of the services of Spiezle Architectural Group, Inc. and our team of mechanical, electrical, plumbing, and structural engineering consultants to the degree applicable.

Phase 5 - Post Referendum Design, Documentation, Bidding, and Construction Administration Basic Services:

Upon a successful referendum, we propose to provide the design, documentation, bidding, and construction administration basic services outlined above as Phase 5, based upon 6.25% of estimated hard construction costs. For scope designed and/or documented by Spiezle, upon completion of design development efforts (approximately 50%) and development and production of an updated cost estimate at the end of design development phase, this fee would be converted to a lump sum fee based upon this updated DD estimate of construction costs with budget contingency.

Schematic design, design documentation, construction documentation, and bidding efforts would be billed according to the below allocation of fees by project development phase:

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

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

Assumptions/Exclusions

Other Services - not included in Basic Services above: Our proposed fees are inclusive of the basic services described above and include the efforts of Spiezle Architectural Group, Inc. and our team of mechanical, electrical, plumbing, and structural engineering consultants. However, there are other services that may be required to implement or appropriate to the project. Some of these other services can be contracted under Spiezle as an additional service or directly by the district as desired. Spiezle can solicit proposals from qualified consultants on behalf of the district if desired:

- Services of any kind related to assessment or abatement of hazardous materials would be contracted to the district directly
- Civil/site, site environmental, and geotechnical engineering could be contracted through Spiezle if desired but is not included within this proposal.
- Roofing: for roofing replacement scope, an infrared scan is typically recommended once an initial roof assessment is undertaken. These scans can help identify insulation that can remain vs be replaced (resulting in savings) as well as wet insulation areas that need to be removed.
- Acoustic engineering: may be recommended related to additions, educational space improvements, and rooftop mechanical equipment to the degree it applies



- Design and Engineering services beyond those specifically included within this proposal are not included within the proposed fees.
- Printing of referendum information material for distribution. We would provide content for incorporation into web material prepared and posted by the district on the district website as such graphic design services have not been included.
- This proposal assumes that an AIA format Owner-Architect Agreement will be entered into based on the Terms and Conditions in this proposal within sixty days.

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

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

Sincerely,

Accepted:

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

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

Dr. Gerry Benaquista
Superintendent
Union township Public Schools

Date: _____

Attachments



ATTACHMENT 1: Standard Hourly Rates and Compensation

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

2023 HOURLY RATE SCHEDULE:

Title	2024 Billing Rate
Chief Executive Officer	\$190
Principal	\$190
Associate Principal	\$175
Director of Landscape Architecture	\$170
Director of Electrical Engineering	\$170
Director of Construction Administration	\$170
Director	\$170
Senior Project Manager	\$165
Project Manager	\$155
Construction Administrator	\$155
Senior Project Architect	\$145
Senior Interior Designer	\$145
Senior Landscape Architect	\$145
Project Architect	\$135
Landscape Project Architect	\$135
Senior Landscape Designer	\$130
Electrical Designer	\$125
Senior Project Coordinator	\$125
Project Coordinator	\$115
Landscape Designer	\$110
Interior Designer	\$105
Architectural Designer	\$105
Administrative Assistant	\$85
Marketing Coordinator	\$85
Engineers / Consultants	1.2 x actual costs

REIMBURSABLES:

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



STANDARD TERMS AND CONDITIONS TO PROPOSAL AGREEMENT

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

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

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

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

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

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

Architect's Responsibilities.

The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect makes no representations or warranties, whether express or implied, with respect to the services rendered hereunder.

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

Instruments of Service. Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service to be used solely with respect to the Project for which they were prepared. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights including copyright. The Architect grants to the Owner a non-exclusive license to reproduce the Architect's



Instruments of Service solely for the purposes of constructing, using and maintaining the Project for which they were prepared, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due. Any termination of this Agreement prior to its expiration, or termination of the Architect's services on any Project prior to completion of that Project shall terminate this license. Upon such termination, the Owner shall refrain from making any further reproduction of the Instruments of Service and shall return to the Architect with seven days of termination all original and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in default of this Agreement, by a court of competent jurisdiction, the foregoing license will be deemed terminated and replaced by a second nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for the purposes of completing, using and maintaining the Project for which they were prepared.

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

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

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

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

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



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

Successors and Assignment. The Owner and 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 Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for that Project. In such event, the lender shall assume the Owner's rights and obligations under the Agreement, including full payment of all sums due for services rendered. The Architect shall execute all consents reasonably required to facilitate such assignment.

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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



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

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