



April 10 2025

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

Re: **Proposal for Professional Services for the Referendum for Union Township School District**

Dear Dr. Benaquista:

Spiezle Architectural Group Inc. (Architect) appreciates the continued opportunity to work with the Township of Union School District (Owner) and provide you with this proposal for professional services to support referendum, design, and implementation services for various projects anticipated to be included within an upcoming referendum. Our efforts would encompass the pre-referendum services and follow-up implementation of the projects following a successful referendum.

Proposed Scope of Professional Services:

Spiezle Architectural Group, Inc., will provide architecture, and interiors services, with engineering services from Spiezle and T&M. This would include structural, mechanical, electrical, plumbing, and fire protection, including routing and boxes for AV/IT with system equipment and communication/data support.

Site engineering services have not been included within this proposal as the scope of the improvements is still being finalized. Upon finalization, a proposal will be solicited on behalf of the district and this agreement amended accordingly.

As discussed, we understand the scope of work to include advancement of the following preliminary projects through design, approvals, NJDOE approval, documentation, bidding, and implementation:

- Burnett Middle School: Expansion and renovation.
- New Academic Academy: New 250 student school and potential relocation of the Board of Education offices.
- New Academic Academy: New 300 student school anticipated to be located on the current Township owned parking lot adjacent to the Boys and Girls Club.
- Early Childhood Center: New early childhood center targeting up to 30 classrooms with a potential location within an existing building located at 855 Lehigh Ave.
- Renovations and upgrades to other schools within the district (scope to be determined following completion of a district-wide facility assessment currently being initiated under separate agreement. Scope is anticipated to include HVAC improvements, security and IT/Communication improvements and roof upgrades along with other scope.
- Potential reconfigurations at other schools in support of district re-alignment efforts with scope to be determined.

A preliminary date of March 2026 is targeted for a special referendum election and to support this date, submission of projects for the referendum to NJDOE is targeted for early October 2025.

Additionally, the district's Long-Range Facilities Plan (LRFP) is currently being updated under separate agreement, however, if required, further minor amendment of the LRFP would be part of our efforts under this proposal should changes occur prior to submission of these projects to the New Jersey Department of Education (NJDOE) for the referendum.

Preliminary Project Budget:

As previously discussed, the estimated total project budget is approximately \$300 million (assumed to include construction cost, contingency, and soft costs but to be confirmed, see below). Environmental impacts that may need to be included within this budget are not currently known and support from the district's environmental consultant will be required to provide recommended budgets for environmental and abatement work associated with the above projects. Environmental services are not included within this proposal.



Preliminary Project Schedule:

A preliminary date of March 2026 is targeted for a special referendum election and to support this date, submission of projects for the referendum to NJDOE is targeted for early October 2025.

We have structured our proposal into three phases. We propose moving forward with phase 1 immediately to meet the required timelines. Upon authorization to proceed, or the passage of a successful referendum, we would advance the balance of phase 1 work, phase 2, and 3. It is anticipated that the work would be completed in multiple construction phases between mid-2026 through 2028 (estimated) depending on the final referendum date, scope, and phasing needs. As planning proceeds, specific project schedules will be developed for the different component projects within the referendum.

Considering this, we have outlined the following preliminary project schedule. Please note, this schedule is based on the information available to us at present and is subject to adjustments during project development.

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| • Award of Contract to Professional: | April 2025 |
| • LRFP Submission (Major update) | September 2025 |
| • DOE Submission | October 2025 |
| • DOE approvals (anticipated) | January 2026 |
| • Referendum: | March 2026 |
| • Full Design/Documentation/Bidding/Construction: | TBD |

Please be advised that while we have endeavored to develop realistic scheduling, various factors outside of our control may impact its timeline including, but are not limited to, market uncertainties, timely responses from other parties, access to the project sites, and any directives or delays imposed by regulatory authorities. In the event that any of the foregoing results in schedule disruptions, adjustments to the timeline shall be necessary.

Proposed Professional Services: Proposed services are structured into multiple efforts as discussed and outlined below:

Phase 1 – Schematic Design Pre-Referendum Services:

Our efforts would include the following to finalize the anticipated referendum scope and schedule, develop referendum project plans and budgets, prepare necessary documentation for NJDOE approval, and provide graphics, supporting efforts, and information development to communicate the referendum with the public. These pre-referendum efforts would be structured in concert with the district to help inform your community about the planned referendum and work with the district in organizing and carrying out the pre-referendum information process. Upon authorization to proceed for this phase, efforts would include the following tasks:

- Conduct a kick-off meeting with District personnel.
- Develop a preliminary construction approach to implement the upgrades. This schedule will evaluate how best to undertake construction while minimizing impacts on students, teachers, visitors and staff.
- Develop estimated budgets for the proposed scope of work, along with preliminary schedule information, with the district and present this information to the Board and public as part of this process.
- Update of the district LRFP: a separate effort is underway to assess the district's facilities and we would anticipate these projects being included within the LRFP update that is part of that process. However, should changes develop that need to be addressed, we would undertake a minor LRFP update as par to this project
- Prepare, update, and finalize schematic designs and NJDOE application packages for review and approval (Target submission date October 2025).
- Support the site engineer in preparation of land acquisition approval packages for submission to NJDOE along with project submissions (anticipated to apply to the (2) academy and potentially ECC projects).
- Complete the submissions to the NJDOE for approval and provide the required distributions, including submission of the application packages to the local planning board, county superintendent, and other agencies.
- Facilitate regular progress review meetings with the district during these efforts.



Support the District's Pre-Referendum Information Campaign

- Prepare graphic materials to show the scope of the referendum, school expansions, and represent the nature of the improvements. We anticipate this to include presentation materials, renderings, video media, model graphics, and other materials through the design and pre-referendum process.
- Communications and public information: Facilitate a kick-off and planning meeting to develop an overall pre-referendum information strategy including key actions, coordination dates, participation with the district in planning these efforts, and coordination with any other district consultants.
- Meet with the district and their referendum information team. Assist them in organizing information efforts which will support the pre-referendum information campaign.
- Meet with District and municipal representatives and maintain up-to-date understandings of status and information through the process.
- Attend and conduct presentations at schools, public meetings, and community events. We would anticipate this to include periodic Board meetings, public information sessions and general information sessions at the school.
- Prepare supporting materials for presentations that reflect the referendum scope.
- Assist in developing support materials such as a newsletter mailer and vote reminder post card in addition to the above presentation materials. Our efforts would include the design and development of these materials and coordination with a printer of your selection. Printing and mailing costs would be covered directly by the district or would represent a reimbursable cost as described below.
- Develop an anticipated question/answer script and FAQ with the Board and/or community participants, which will support and prepare Board members, community members, and District personnel for questions they may be asked during the process.
- Assist with development of other communication ideas and material (email, websites, print, presentations, etc.) to help get the message out to the public, counter misinformation, respond to press inquiries, and reach stakeholder groups.
- Assist the district in responding to questions throughout the referendum process.
- Coordinate with bond counsel, board attorney, and other consultants the Board may retain in association with the referendum and Project effort.

The below services relate to furthering the design and documentation for projects that are subject to approval within the referendum and would be advanced upon approval by the district.

Phase 2 - Schematic Design (As authorized or Post Referendum), Design Development, Construction Documentation, and Bidding Services: Finalize project requirements, schedule, and process.

- Survey building areas to establish conditions, dimensions, and general characteristics related to scope.
- Develop design development documents for review.
- Submit to and support the review and final educational approval with NJDOE for projects.
- Create updated 3-Dimensional imagery in Revit as design progresses on projects.
- Develop construction documents and specifications for public bidding.
- Develop phasing plans and coordinate a proposed bid approach and schedule with the district and the district's team. Structure bid packages and documents based on this phasing approach, including language in the specifications outlining schedule milestones and building access restrictions.
- Prepare technical specifications for bidding including preparation of a contractual front end. We would review front end (contractual) documents with the district's attorney and construction manager, incorporating their feedback.
- Facilitate, if applicable, NJ Office of the State Comptroller (NJ OSC) pre-bid submissions 30 days prior to target bid dates for approval on projects with values exceeding \$5M.
- Conduct our in-house 'Fresh-Eye' quality control review of bid packages.
- Identify, and submit for, potential NJ Smart start or other rebates if applicable. Other rebates and grants may be reviewed if applicable but submission is not included under this proposal.



- Submit to and support the permit review and approval process with NJDCA/Local Code Office.
- Facilitate public bidding of the projects.
- Respond to requests for information (RFI) during bidding and issue addenda as necessary.
- Assist in review and recommendation of low bidder.
- Prepare estimates of probable construction cost at major milestones.

Phase 3 - Construction Administration and Close Out:

- Prepare AIA contracts between contractor and District based on review by the Owner's counsel.
- Issue Notices of Award on behalf of the Owner.
- Monitor construction for conformance with construction documents and requirements through the construction process.
- Attend a preconstruction meeting and job meetings once every two weeks during construction.
- Conduct on-site observations of construction activity in concert with these meetings and at other intervals based upon our assessment of the progress of the work.
- Maintain records of correspondence, submittals, minutes, etc. during construction
- Review and monitor the contractor(s) construction schedule(s).
- Review and process payment applications and shop drawings, issue Architect's Supplemental Instructions (ASI), and respond to RFI's.
- Process closeout documents.
- Develop detailed punch lists and follow-thru on completion of each bid package.

Construction Administration and Close Out Phase Services extending more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

Optional - Proposed Professional Services:

Other optional services that may be appropriate for district consideration are outlined below:

Optional - Enhanced Existing Condition Investigation Services:

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

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

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

- Conduct further detailed review of your available as built/record and historic documentation/archives related to the



building, prior approvals, prior shop drawings, etc.

- Recommendation for Condition Assessment/Material Testing/Surveys/Feasibility Studies to be conducted. This may include hazardous material surveys by your abatement consultant, but may also include other testing such as infrared roofing, other scans, exploratory demolition, etc.
- Conduct a more detailed or follow-up survey of the building. Access will be required for the design team and/or Construction Manager (CM) to conduct an additional onsite survey and investigation based on how the developed design impacts the existing building. This survey would require access to all areas of the building. Inaccessible areas could conceal conditions with the potential to impact cost or schedule. In the case of limited or unavailable access to areas, it may be recommended that a contractor be hired for selective destructive (soft) demolition/testing, invasive inspection or other pre-bid exploratory construction work.
- Photography and scanners can be useful tools for documenting existing conditions and recommendations will be made where access is limited.
- As with the initial survey efforts, we recommend that the design team, Construction Manager (CM), and Owner survey existing conditions together.

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

Proposed Professional Services Fees:

Estimated Budgets for Overall Scope of Work:

While a final scope and budget associated with work to be advanced under the referendum has not yet been finalized, our understanding is that a budget as identified below represents the current estimated budget for the referendum:

Est Material/Labor Costs Budget:	\$	234,375,000
Est. Contingency (10%):	\$	23,437,500
Est Construction Costs (CCE) Budget:	\$	257,812,500
Est Other Soft Costs Budget (18%):	\$	42,187,500
Total Estimated Referendum Budget:	\$	300,000,000

The estimated Construction Cost (CCE) budget designated above would be used as the basis for the below outlined proposed fees. Should these estimated costs change as the project is developed, the fees under this proposal are subject to adjustment.

Part 1 – Schematic Design Pre-Referendum Fees:

Schematic Design phase services to be provided prior to referendum, as outlined above shall be provided for the Lump Sum Fee of One Hundred Sixty-Eight Thousand Dollars (\$168,000). This Pre-Referendum fee represents a portion of the overall Schematic Design fee for the project under this proposal. To help the district manage costs prior to referendum approval, the balance of the Schematic Design fee will be deferred by Spiezle, to be due upon successful passage of a referendum and/or authorization to proceed with project development. This fee arrangement is proposed with the understanding that Spiezle would proceed with the balance of services (All services in Phase 1 through 3 as described above) under this agreement following a successful referendum and this initial amount would be credited against those costs. The remaining Schematic Design phase fees as described in Part 2 below would be due should Spiezle be authorized to proceed with design and documentation services prior to passage of a referendum. Additionally, If Spiezle is not retained for the balance of services following a successful referendum, the full Schematic Design phase fees as described in Phase 2 below would be due to Spiezle under this Agreement.



Part 2 – Schematic Design Post Referendum, Design Development, Construction Documentation, and Bidding Services Fees:

Full Schematic Design Services outlined above (Phase 1) shall be provided based on a fee structure of 1.25% of the approved construction cost budget, including budgeted contingency, as outlined in the approved referendum budget. The Part 1 Pre-Referendum fee paid per above would be credited against the initial invoice on this part of the services following passage of a successful referendum and upon authorization for Spiezle to proceed with the balance of services.

Design Development, Construction Documentation, and Bidding services outlined above shall be provided based on 3.75% of the approved construction cost budget, including budgeted contingency.

Phase 3 - Construction Administration and Close-out Fees:

We propose to undertake the Construction Administration & Closeout Phase under a fee structure based on 1.25% of final construction costs plus contingency budgeted in the approved final scope of work

We would propose that the above percentages be used to establish a mutually agreeable lump sum fee following approval of the budget and scope for the referendum at the initiation of Construction Documentation services. Fees are inclusive of the services outlined above and include the efforts of Spiezle Architectural Group, Inc. and our mechanical, electrical, plumbing, and structural engineering consultants. Site/Civil fees are not included within these proposed fees but upon finalization of the scope, can be contracted through Spiezle as an add service fee.

Alternates prepared for bidding would be based on the above percentage fees if awarded. If not awarded after bid, only the documentation and bidding portion of these fees would apply (80%).

If the services covered by this proposal have not been completed within thirty-six (36) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

Optional Proposed Professional Services Fees:

Optional Service: Enhanced Existing Conditions Survey Support Fees:

Those initial services outlined above shall be provided for the specified fees but any recommended enhanced condition survey and analysis services would represent additional services and would be the subject of a follow-up proposal, specific to the conditions of concern.

Exclusions:

Proposed fees or example fee ranges assume the provision of architectural, structural, mechanical, electrical, and plumbing engineering services. Other professional services can be contracted through Spiezle, including specialized engineering or assessment services if needed, however; these are not included in the above fee ranges. Exclusions and assumptions include:

- Services related to hazardous materials of any kind, including material testing and abatement.
- Engineering services not specifically included above, such as site engineering, are not included within this proposal.
- Site related studies: freshwater wetlands and ecology study, traffic study, offsite utility and traffic improvements.
- Environmental assessment services are not included.
- Geotechnical survey and reports are not included.
- Application fees from relevant agencies having jurisdiction of approval. If paid on behalf of the Owner, such fees would be submitted as reimbursable costs without markup.
- Preparation of photo-realistic 3-D renderings and/or models beyond those included above.
- Third party testing (While excluded we would assist the owner in securing a third-party testing agent during construction activities).
- Furniture design, selection, coordination, and procurement.
- Landscape design is not included.



- Detailed construction budgeting, estimating, and scheduling beyond the described scope.
- Any other services not specifically included above.

Assumptions and Clarifications

The following is a list of assumptions and clarifications upon which this proposal is based. Some of the services listed may be provided as an additional service, but are not included within our proposed basic services:

- Our basic services, as outlined, do not extend beyond the defined scope of work.
- All assessments will be based on visual, non-destructive inspection, review of existing documentation, and facilities.
- Engineering of any kind including but not limited to Civil, Mechanical, Electrical, Plumbing, Fire Protection, are not included in this proposal.
- Value engineering, redesign and changes subsequent to Owner approval of documents would be additional services.
- Documentation of an emergency generator back-up or UPS systems is not included in this proposal.
- Preparation of as-built record documents is not included in this proposal but such documents would be required to be submitted by Contractor(s) for review by Spiezle.
- Arc flash studies are not included in this proposal.
- Design of low voltage systems such as data/telephone, nurse call and security are not included. Conduit and back boxes to support those systems are included in this proposal.
- Network Infrastructure design i.e., network core, wired network or wireless network equipment design is not included in this proposal. Design and installation of network servers, client computers, and software are not included in this proposal.
- LEED certification, energy modeling, and commissioning are additional services if requested.
- Energy Star certification is not included but can be provided as an additional service.
- Analysis and/or survey of adjacent sites or properties beyond those considered above are not included.
- This proposal is based on the incorporation of the terms of this proposal into an AIA "Standard Form of Agreement Between Owner and Architect" (B101-2017). Upon its approval we will prepare this document for your review.
- Reimbursable costs, additional services or work undertaken outside of the anticipated scope, would be billed according to the attached hourly rate schedule

Digital Bidding:

In an effort to reduce bidding-related printing costs for our clients, as well as making the process less wasteful, Spiezle has structured a digital document bidding process whereby we prepare and issue PDF format digital drawings and specifications to bidders via WeTransfer service through our website. During bidding, updates are also distributed digitally. To support this process, a lump sum reimbursable cost would be charged for the document preparation and distribution process of One Hundred Fifty Dollars (\$150) per project bid.

Terms and Conditions and Standard Hourly Rates:

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

Should this proposal be acceptable please note your acceptance by signing below and returning an executed copy to us at your earliest convenience.



On behalf of Spiezle we appreciate the opportunity to work with the Township of Union Schools and the potential to pursue these planned educational enhancements with your district. Should you have any questions please do not hesitate to contact me.

Sincerely,

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

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

Accepted:

Ms. Yolanda Koon, Business Administrator/Board Secretary
or
Dr. Gerry Benaquista, Superintendent

Township of Union School District

Attachments:

Hourly Rates
Terms and Conditions



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

2025 HOURLY RATE SCHEDULE:

<u>Title:</u>	<u>Rate:</u>
Chief Executive Officer	\$190
Principal	\$190
Associate Principal	\$175
Director	\$170
Senior Project Manager	\$165
Project Manager	\$155
Construction Administrator	\$155
Mechanical Engineer	\$155
Senior Mechanical Designer	\$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).



TERMS AND CONDITIONS TO PROPOSAL AGREEMENT

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

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

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

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

The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

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

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

Design Professional's Standard of Care.

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

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

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



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

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

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

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

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

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

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

Successors and Assignment. The Owner and Design Professional, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Design



Professional shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for that Project. In such event, the lender shall assume the Owner's rights and obligations under the Agreement, including full payment of all sums due for services rendered. The Design Professional shall execute all consents reasonably required to facilitate such assignment.

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

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

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

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

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

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

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

In the event the Design Professional provides any construction contract administration services that include site visits as a representative of the Owner, then the Design Professional shall visit the site as agreed upon to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, and to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be substantially in accordance with the Contract Documents. However, unless expressly agreed upon in writing, Design Professional shall not be



required to make exhaustive or continuous on-site observations, or any inspections (except those to determine substantial and final completion) to check the quality of the Work. Design Professional shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

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

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

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

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

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



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

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

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

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

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

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