

**WARREN COUNTY SCHOOL DISTRICT
6820 MARKET STREET
RUSSELL, PA 16345**

**STANDARD FORM OF AGREEMENT
FOR PROFESSIONAL DESIGN SERVICES**

No. AE2401

AGREEMENT made as of this **15th day of January, 2024**, at Warren County, by and between Warren County School District (hereinafter called the "School District") AND

**HRLC Architects, LLC,
4380 W 12th Street #1, Erie, Pa 16505**

a corporation, Federal Identification No. # **25-1881262** (hereinafter called the "Professional" or "Architect" or "Architect/Engineer").

The Professional shall act as the designer and project administrator for the professional services prescribed in this Agreement for the duration specified for a project for the **Beaty Warren Middle School Paving Project** (hereinafter called the "PROJECT"), designated as Project No. **2401**, and as more particularly described in the "SCOPE" attached hereto as Rider A, which is made a part hereof.

The School District and the Professional in consideration of their mutual covenants herein agree in respect of the performance of professional architectural and engineering services by the Professional and the payment for those services by the School District as set forth below and in Riders A, B, C, D, E, and F.

WITNESSETH THAT:

The parties hereto, intending to be legally bound hereby, do agree as follows:

1. **Retainer of Professional.** The School District hereby retains the Professional to provide all necessary design services and to administer and review the Construction Phase for the Project.
2. **Time Schedule.** The time schedule established for the completion (including approval) of the several phases is:

<u>Project Design Schedule:</u>	<u>START DATE</u>	<u>FINISH DATE</u>
Schematic Design	January 17, 2024	January 31, 2024
Preliminary Design	February 1, 2024	February 16, 2024
Pre-Final Design	February 19, 2024	February 22, 2024
Final Design	February 23, 2024	February 23, 2024
Design documents to printer	February 26, 2024	
Advertise	February 28, 2024	March 13, 2024
Bid Date	March 19, 2024	March 19, 2024
Construction Period	June 10, 2024	August 23, 2024

3. Adherence to Time Schedule. The Professional shall strictly adhere to submission schedules set forth in Paragraph 2. Should the Professional become aware that he will be unable to meet any of the dates set forth in Paragraph 2; the Professional shall immediately notify the School District in writing. The Professional shall include in the notice the reason(s) for the Professional's inability to meet the date(s) and a request that the School District amend the time schedule. The School District shall review the Professional's notice and determine whether or not to amend the time schedule.

If the School District determines that the delay is due to the fault of the Professional, the School District may: 1) amend the schedule and direct the Professional to expeditiously proceed with the design of the Project, in which case the School District may hold the Professional responsible for any costs attributable to the delay, or 2) terminate the Agreement for default of the Professional, in accordance with the provisions of the General Conditions. If the School District determines that the delay is not due to the fault of the Professional, the School District may amend the time schedule. The Professional agrees that such an amendment of the time schedule is his exclusive remedy for a delay and that he may not make any claims against the School District for increased costs due to the delay.

4. Compensation and Cost. The Professional's compensation, to be rendered under this Agreement shall be \$39,152.33, to be paid according to the provisions of Rider B, Exhibit D-Basic Services Compensation and Payment Schedule and Rider D-Special Conditions. A not-to-exceed allowance of \$500.00 for reimbursable expenses is established in accordance with Rider B, Exhibit D.

The construction cost allocation for this project, including contingencies, is \$535,599.64. It is a condition of the Agreement that the Professional design this project within the Allocation unless that Allocation is changed in accordance with the terms and conditions of this Agreement.

The Professional agrees that the Professional's compensation indicated in this provision is based on the Pennsylvania Department of General Service's Fee schedule (hereinafter referred to as the "DGS Fee Schedule" or the "DGS Formula") and that, in the event the School District's Board of Directors modifies the cost allocation for this project prior to **August 23, 2024**, the Professional's compensation shall be proportionately increased or reduced in strict accordance with the DGS Fee Schedule and without the need for a written, signed amendment to this Agreement. In the event that the Professional's compensation is modified in accordance with this paragraph, the Parties further agree that all provisions of this Agreement, including but not limited to Exhibit D of Rider B and Rider D, shall also be modified to reflect the new Professional compensation amount without the need for a written, signed amendment to this Agreement. The Parties also agree that, in the event of conflict between this paragraph and any other provision governing the contractual relationship between the Parties, the terms of this paragraph shall govern and be controlling.

5. Incorporation by Reference. This Agreement is made subject to and is governed by the School District's General Conditions of the Standard Form of Agreement of Professional Design Services (Rider B) and all Plans, Specifications and other contract documents shall be prepared in conformity with the School District's Engineering/Architecture Instructions in effect at the time of execution of the Agreement which are hereto referenced and made a part hereof as if attached. The Agreement is also subject to and governed by any Special Conditions hereto attached (Rider D) and made a part thereof.

6. Assignment. This Agreement is for the personal/professional services of the Professional. Neither this Agreement, nor any of the Professional's rights or obligations hereunder, may be assigned to any other party without the prior written consent of the School District. This provision shall not prevent an assignment for financing purposes of moneys due,

or to become due under this Agreement, nor the retaining, by the Professional, on his own responsibility and at his own expense, of such specialized architects or professional engineers as may be necessary for the proper design and development of the Project.

7. Amendment. The Professional hereby acknowledges receipt of notice that no person has any authority to amend or modify this Agreement or waive any term or provision hereof except by written amendment hereto signed by an authorized representative of the School District. The Parties agree that this provision shall not apply to a modification to this Agreement that is encompassed by the above Section 4 of this Agreement.

8. Notices. Wherever the term “notice” is used, such notices to be effective shall be in writing and, if to the School District, shall be mailed certified mail, postage and fees prepaid, or delivered to the School District, and if to the Professional shall be similarly mailed or delivered to him at the address set forth in the caption of this Agreement, unless and until notice of another address shall be given hereunder, in which case notices shall be so delivered or mailed to the address last so given.

9. No Third Party Rights. Nothing in this Agreement or in the General or Special Conditions or in any other document incorporated herein by reference or issued hereunder, expressed or implied, is intended to or shall be construed to confer upon, or give to, any person, firm or corporation or any Governmental Agency other than the School District, its successors and assigns, and the Professional, any right, remedy or claim, legal or equitable, whether as third party beneficiary or otherwise; this Agreement and all provisions applicable hereto or incorporated herein being intended to be, and being for the sole and exclusive benefit of the School District, its successors and assigns and the Professional.

10. Hold Harmless Clause. To the fullest extent permitted by law, the Professional agrees to protect, indemnify, and save harmless the School District from and against any and all liabilities, losses, damages, costs, expenses (including reasonable Attorney’s fees), causes of action, suits, claims, demands, or judgments of any nature arising out of or resulting from performance by the Professional of this Agreement, provided that such liability, loss, damages, costs, expenses, causes of action, suits, claims, demands or judgments are caused in whole or in part by the negligent acts or omissions of the Professional, its employees, its agents, or its consultants or by the failure of the Professional to perform its obligations hereunder. The Professional’s duties and obligations in accordance with this provision shall survive the termination of this Agreement and shall cover all claims, regardless of when they are asserted.

11. Professional Evaluations. In signing this Agreement, the Professional consents to the evaluation of its performance by the School District and understands that any such evaluation may be used in future selections of Professionals. Furthermore, the Professional’s consultants will also be evaluated. The Professional is required to notify each of its consultants that in contracting with the Professional, the consultant consents to the School District’s evaluation of the consultant and to the use of any such evaluation in future selections of Professionals.

12. Governing Law and Forum. This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of law’s provisions) and the decisions of the Pennsylvania courts. The Professional further acknowledges and agrees that exclusive jurisdiction and venue to settle any dispute and/or controversy of whatever nature arising out of or relating to this Agreement shall be with the United States District Court for the Western District of Pennsylvania or the Warren County Court of Common Pleas. The Professional irrevocably agrees to submit to the jurisdiction and venue of said Courts and irrevocably agrees to waive any defense or objection that the Professional may otherwise have with respect to the same.

13. Riders: Additional terms, requirements, conditions, and considerations of this Agreement are specified in Riders A, B, C, D, E and F, which are attached herein and made a part of the Agreement.

Rider A (Scope of Work to be Performed) consisting of 1 page(s).

Rider B (General Conditions) consisting of 15 page(s).

Exhibit A consisting of 1 page(s).

Exhibit B consisting of 1 page(s).

Exhibit C consisting of 2 page(s).

Exhibit D consisting of 2 page(s).

Rider C (Nondiscrimination Clause) consisting of 2 pages(s).

Rider D (Special Conditions) consisting of 1 page(s).

Rider E (Standards of Practice) consisting of 1 page(s).

Rider F (Professional Integrity Provisions) consisting of 2 page(s).

14. Integration. This Agreement supersedes any and all other Agreements, either oral or written, between the parties hereto and with respect to the services to be provided herein. This Agreement contains all the terms and conditions agreed to by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement exist.

15. Drafting/Preparation. This Agreement and the provisions contained therein should not be construed or interpreted for or against any party to this Agreement because that party drafted any part of its provisions.

16. Savings Clause. All sections, sentences, and provisions contained in this Agreement are severable. Should any section, sentence, or provision of this Agreement be rendered void, invalid or unenforceable by any court of law (or arbitrator), for any reason, such a determination shall not render void, invalid, or unenforceable any other section, sentence, or provision of this Agreement, and the remainder of this Agreement shall remain in full force and effect and binding on the parties hereto.

IN WITNESS WHEREOF, This Agreement has been executed and delivered as of the date set forth in the caption hereof, for School District Project # **WCSD 2401 - Beaty Warren Middle School Paving Project**

FOR THE SCHOOL DISTRICT:

Attest
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

FOR THE PROFESSIONAL:

Attest
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STANDARD FORM OF AGREEMENT
FOR
PROFESSIONAL DESIGN SERVICES

TABLE OF CONTENTS

RIDER A - SCOPE OF WORK TO BE PERFORMED

RIDER B - GENERAL CONDITIONS

- Article 1 - Material Incorporated into Agreement
- Article 2 - The Professional's Responsibilities and Services
- Article 3 - The School District's Responsibilities and Duties
- Article 4 - The Professional's Compensation and Payment
- Article 5 - Observance of Laws and Proprietary Items
- Article 6 - Insurance
- Article 7 - Suspension, Termination, and Reactivation of Work
- Article 8 - Provisions Required by Pennsylvania Law or Federal Law to be Inserted
- Article 9 - Definitions
 - Exhibit A - School District's Options for Proceeding with Design When Cost Estimates Exceed Allocation
 - Exhibit B - Preparation and Reproduction of Bidding Documents
 - Exhibit C - Additional Services
 - Exhibit D - Basic Services Compensation and Payment Schedule

RIDER C - NONDISCRIMINATION CLAUSE

RIDER D - SPECIAL CONDITIONS

RIDER E - STANDARDS OF PRACTICE

RIDER F - PROFESSIONAL INTEGRITY PROVISIONS

WARREN COUNTY SCHOOL DISTRICT
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STANDARD FORM OF AGREEMENT
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RIDER A

SCOPE OF WORK TO BE PERFORMED

All scheduled design work for this project and subsequent remuneration, in strict accordance with the fee payment schedule enumerated in Rider D of this instrument, shall be dependent upon the "Notice to Proceed" issued by the School District. Schedules and payment for same will be adjusted in a reasonable manner but similarly scheduled in duration based upon the date of the "Notice to Proceed."

As part of its duties, the Architect/Engineer will meet with the Pennsylvania Department of Education Representatives as required by the Pennsylvania Department of Education to discuss the owner's program for this project.

As part of the basic services provided by Professional, Professional will be responsible for evaluating Contractor's proposals, evaluating substitutions proposed by the Contractor, evaluating claims by the Contractor, analyzing School District's needs and project requirements, coordinating the various contractors performing the work, making minor revisions to the documents, preparing reproducible drawings, recommending contractors, approving contractor submittals, evaluating change orders, preparing record drawings, developing life cycle maintenance profiles, issuing certificates of completion, construction administration, and maintaining job conference minutes. This list is not exclusive and works to incorporate various other agreed upon services throughout the body of the Agreement.

The Warren County School District recommends the architect/engineer firm, **HRLC Architects, LLC**, to be the architect/engineer firm of record for the project.

WARREN COUNTY SCHOOL DISTRICT
6820 MARKET STREET
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STANDARD FORM OF AGREEMENT
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RIDER B
GENERAL CONDITIONS

ARTICLE 1
MATERIAL INCORPORATED INTO AGREEMENT

- 1.1 These General Conditions, the Engineering/Architecture Instructions for Facilities Projects of the Warren County School District in effect when the Professional Design Services Agreement is executed, and any included Special Conditions, shall govern the Professional's work and shall be deemed a part of the Professional Agreement. The Engineering/Architecture Instructions shall be construed as supplementing these General Conditions. In case of any irreconcilable inconsistency, the General Conditions shall govern. The following Exhibits are included as part of these General Conditions:

- Exhibit A - Options for Proceeding With Design When Cost Estimate Exceeds Allocation
- Exhibit B - Preparation and Reproduction of Bidding Documents
- Exhibit C - Additional Services
- Exhibit D - Basic Services Compensation and Payment Schedule

ARTICLE 2
THE PROFESSIONAL'S RESPONSIBILITIES AND SERVICES

2.1 BASIC SERVICES: GENERAL

- 2.1.100 The Professional's Basic Services consist of phases hereinafter described, and include all architectural, structural, mechanical, and electrical engineering, and landscape architectural design and all other Professional services and administration of the design services during construction required for the project.
- 2.1.101 Limited Budget Agreement. This is a limited budget Agreement, meaning that it is the Professional's responsibility to promptly notify the School District if the Project cannot be designed and constructed within the Allocation as identified in Paragraph 4 – Compensation, on page 2 of the Agreement. The School District shall then choose one of the options described in Exhibit A, and the Professional shall proceed in accordance with the terms defined therein.
- 2.1.102 Professional Client Relationship. The Professional is directly responsible to the School District, and only the School District may give instructions binding the School District. No person can change a scope or direct that items be included in the design which will increase the cost above the allocation without prior written approval of the School District. The School District may demand, with written justification to the Professional, the withdrawal from the project of any person employed by the Professional who the School District deems to be insufficiently qualified for that portion of the work or incompetent or guilty of misconduct. The Professional shall comply with all such reasonable demands.
- 2.1.103 Consultants. The Professional's Compensation for Basic Services, except as otherwise specifically provided herein, includes the compensation for all necessary consultants in the several branches of the architectural and engineering professions, except the compensation and cost of any additional services as described in Rider D - Special Conditions. The Professional is responsible for the work performed by his

Consultants and all of their work must conform to the requirements of this Agreement and must be completed in accordance with the standards of the profession and the latest issued Engineering/Architecture Instructions Manual.

The relationship between the Professional and the Consultant limits the participation of the Consultant as follows:

- A. A Consultant cannot individually or as a firm submit a bid directly or indirectly to the School District, to any prime contractor, subcontractor or any contractor or firm submitting a bid on a project on which the Consultant has provided design or technical services for compensation.
- B. A Consultant cannot individually or as a firm have any personal interest or holding in any firm or company that bids as a prime contractor, subcontractor or sub-subcontractor, submitting a bid on a project on which the Consultant has provided design or technical services for compensation.
- C. A Consultant cannot individually or as a firm have any personal interest or holding, in any firm that bids as a manufacturer, distributor or supplier on any project on which the Consultant has provided design or technical services for compensation.
- D. Consultants must inform the School District of any current or former School District employees on his payroll.

2.1.104 Progress Reports During Design. For projects exceeding three months in length, the Professional shall, during all design phases, submit to the School District monthly progress reports showing percentage of completion of work and any change in cost or schedule of submissions.

2.1.105 Attendance at and Minutes of Conferences and Meetings. The Professional, or his qualified representative, and the Professional's Consultants when appropriate, shall attend all meetings and conferences as required by the School District, including conferences during the design phase, the bidding phase, the construction phase and the one-year maintenance period. The Professional shall, within one week after each conference and meeting, prepare and submit to the School District detailed minutes of all such meetings and conferences.

2.1.106 Attendance and Testimony as Witness. In the event of a dispute between the School District and any person concerning or involving the Professional's failure to design or administer the project in accordance with this Agreement, the Professional and/or the appropriate Consultant, or their qualified and authorized representative or representatives shall attend all conferences, hearing and/or court proceedings, and, if requested by the School District shall submit to joinder in all such proceedings and shall prepare testimony and shall testify, both as to facts and as to expert opinion, in all such proceedings on behalf of the School District without any additional charge to the School District. In circumstances other than those concerning or involving the Professional's failure to design or administer construction in accordance with this Agreement, should the School District ask the Professional to serve as an expert witness, the Professional shall provide the requested expert witness services for the actual cost of said services, and the Professional shall enter into an "expert Witness Agreement" upon receiving a request for expert witness services from the School District.

2.1.107 Coordination with Existing Facilities and Utilities. The Professional shall consult with the School District and when appropriate, the Pennsylvania Department of Education, to obtain all necessary data for coordinating the Project with existing structures and all support utilities, future plans of the School District and all like services provided by public or private companies. When utility systems are impacted, the Professional shall determine and shall obtain from the various public services and utility companies, such as gas, electric, water, steam, waste water treatment/disposal, surface water disposal, telephone and communication, a written commitment of their capability to service this Project, and shall submit same as part of the pre-planning submission. Any reservations to this commitment by the utility companies,

such as in-house engineering and project costs, shall be brought to the immediate attention of the School District by the Professional. If utility services are not available at the site, the Professional must identify the location of the nearest available utility service.

When involved, the Professional's design shall include provisions for adequate water and sewage disposal services. Where water or sewage disposal are not readily available from the public services, the Professional's design responsibility shall, unless otherwise directed by the School District, include the preparation of necessary plans and specifications for well drilling or for the sewage disposal systems, and the cost thereof shall be included in the Cost of the Project.

- 2.1.108 Visits to Site During the Design Phases. The Professional shall visit the Project Site a minimum of one time per week, with additional visits being made as required by the School District, and shall obtain and study available record drawings, visual topographic data, and the School District's available future plans for the purpose of obtaining any and all pertinent or necessary information as to local conditions shown on the Plat of Survey and Report of Surveyor furnished to him by the School District, that may affect the design of the Project and may require the necessity for special provisions in the specifications. Should corrective or additional work become necessary by reason of such failure to obtain all necessary and available data for a proper and correct design of the Project, the Professional shall reimburse the School District for the cost of such corrective or additional work to the extent that such costs exceed the costs that would have been payable had the initial design taken such data into proper consideration.
- 2.1.109 Scheduling of Submissions. The Professional shall schedule his work so that the School District has adequate time in which to make its review and an opportunity to approve the submission in all phases. All other approvals as may be required shall be the responsibility of the Professional to obtain in due time to permit the work to continue on schedule.
- 2.1.110 Coordination for Separate Contracts. The Professional shall coordinate the plans and specifications for all of the separate prime construction contracts as required for the proper completion of the project to guard against omissions, overlaps or duplications of any items of work or materials on the Project.
- 2.1.111 Representation as to Qualification. The Professional specifically represents to the School District that he and his consultants, agents, servants, employees, officers and subcontractors possess the experience, knowledge, and skills necessary to qualify them individually and collectively for the particular duties they perform. It is understood and acknowledged that this representation is and was a material consideration for the School District's decision to enter into this Agreement.
- 2.1.112 Claims and Disputes: The Owner and Architect/Engineer will attempt to resolve all claims and/or disputes between them arising out of this Agreement. Any legal action or proceeding relating to such claims and/or disputes, or in any way related to this Agreement, shall be brought only in the Court of Common Pleas of Warren County, Pennsylvania. This Agreement, and any legal action or proceeding related thereto, shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. During the pendency of any claim or dispute related to this Agreement, the parties shall continue to carry out their respective responsibilities under the Agreement.
- 2.1.113 Ownership of Documents. All preliminary studies, reports, working drawings, specifications, special requirements, cost estimates and all other data compiled by the Professional under this Agreement, shall not be copy written and shall be the sole property of the School District.

2.2 BASIC SERVICES: SCOPE OF WORK

2.2.100 Schematic Design Phase:

- 2.2.101 The Professional shall consult with the School District to more fully discuss the requirements of the scope for the project allocation as identified in Rider A. Based upon this consultation, and any feasibility study,

the Professional shall develop the program and alternatives, if any, and prepare and submit for approval sketches consisting of schematic design studies and other documents based on the Scope and the program required to be developed.

- 2.2.102 The Professional shall prepare a Schematic Cost Estimate with a detailed breakdown of the estimated construction costs projected to the estimated bid receipt date and its relationship to the allocation. Such costs shall be based on current area, volume and other unit costs.

If the Schematic Design Phase Cost Estimate is not within the Allocation, the School District, at its sole discretion, may choose one of the options outlined in Exhibit A.

2.2.200 Preliminary Design Phase:

- 2.2.201 The Preliminary Design Development Documents shall be prepared by the Professional, and shall consist of such drawings, outline specifications and other documents as may be necessary to fix and describe the approximate size and character of the entire Project, its exact site location, the nature of the work to be performed by trade disciplines, and such other essentials as may be appropriate or as may be required by the School District.

The School District requires a submission of progress drawings at the 50% completion stage of this design phase.

- 2.2.202 With the submission of the completed Preliminary Design Phase Documents, the Professional shall submit a Cost Estimate with a detailed cost breakdown to include material cost, labor man-hours, quantity takeoff and unit prices, of the estimated construction cost computed at present prices projected to the estimated bid receipt date, along with a Construction Time Frame Schedule indicating the estimated length of time to complete the work, taking into account local weather patterns, bidding market, etc., and a justification of the factors used for such projections.

If the Preliminary Design Phase Cost Estimate is not within the Allocation, the School District, at its sole discretion, may choose one of the options outlined in Exhibit A.

2.2.300 Pre-Final Design Phase:

- 2.2.301 Upon receipt of the School District's written approval of the Preliminary Design Phase Documents, Cost Estimate, and the Construction Time Frame Schedule, the Professional shall develop the Drawings, Plans, and Specifications on or before the time period provided in the Design Time Schedule, and shall submit the same for Pre-Final Design review and approval to the School District.

- 2.2.302 With the submission of the Pre-Final Design Phase Documents, the Professional shall submit a Cost Estimate with a detailed breakdown to include material cost, labor man-hours, quantity takeoff, and appropriate unit prices for each anticipated separate prime construction contract and the estimated construction cost computed at present prices projected to the estimated bid receipt date, and shall advise the School District of any changes necessitated by current market conditions and a justification for any change. The Pre-Final Design Phase Cost Estimate, if within the Allocation and approved by the School District, shall become the agreed basis upon which the design is completed. An estimated payout schedule shall also be submitted that shows the Professional's best estimated payouts of the project cost based on his best estimate of the construction period.

If the Pre-Final Design Phase Cost Estimate is not within the Allocation, the School District, at its sole discretion, may choose one of the options outlined in Exhibit A.

- 2.2.303 The Professional shall familiarize himself with the School District's normal operating and maintenance programs and shall submit with both the Pre-Final Design and Final Design Phase submissions, a report

on any special operating or maintenance procedures required by his design. If the design does not require departures from the School District's normal procedures, the Professional shall submit a signed statement to that effect to the School District with his Pre-Final Design Phase submission.

2.2.400 Final Design Phase:

2.2.401 Upon receipt of written approval of his Pre-Final Design Phase submission from the School District, the Professional shall make all corrections called for by such approval or required in the Professional's judgment, and prepare a Final Design Phase submission, complete and appropriate for solicitation of construction bids, which shall include tracings, specifications, and all documents which are required by the Engineering/Architectural Instructions to the School District for final approval.

2.2.402 In order to provide further assurance that bids will be within the Allocation, the Professional shall include one or more alternative base bids in the bidding documents for each contract as part of his Basic Services. This requirement is in addition to any deductive base bids as required in Exhibit A.

2.2.500 Bidding Phase:

2.2.501 The School District shall provide to the Professional all necessary instructions required to proceed with the Bidding Phase. The Professional shall prepare all bidding documents and procurement forms subject to the approval of the School District and PA Department of Education, and shall comply with the procedures in Exhibit B.

2.2.502 The Professional, together with his consultants, shall, as part of his Basic Services, attend all pre-bid conferences scheduled by the School District.

2.2.503 The Professional shall evaluate the reasonableness of the bids and their compliance with the requirements of the bidding documents, and shall render a confidential report to the School District on all information known to him, or ascertained by reasonable inquiry, bearing on the responsibility and experience of the two lowest responsible bidders on each contract, all of which shall be submitted within fifteen (15) calendar days after the bid opening.

2.2.504 Redesign Requirements Upon Receipt of Bids:

- A. If the aggregate of low bids for all prime construction contracts exceeds the Allocation plus five percent (5%), and the aggregate bid total cannot be brought within the Allocation plus five percent (5%) by the acceptance of one of the deductive base bids, and the Pre-Final Cost Estimate was within the Allocation, the Professional shall, at the direction of and without any expense to the School District, redesign and re-bid the Project until the aggregate of low bids is within the Allocation plus five percent (5%).
- B. If the aggregate of low bids for all prime construction contracts falls more than ten percent (10%) below the Allocation, and the Pre-Final Cost Estimate was within the Allocation, the Professional shall, at the direction of and without any expense to the School District, redesign and re-bid the Project until the aggregate of low bids is within the Allocation plus five percent (5%).

In this case, however, the School District may, at its option, award all or some of the bid proposals submitted, and the Professional shall, at the direction of and without any expense to the School District, provide design services and develop contract documents sufficient to allow the School District to bid additional work to the extent permitted by the Allocation minus the awarded contracts.

2.2.600 Construction Phase:

2.2.601 The Construction Phase will commence with the Notice to Proceed to the first Prime Contractor, and will terminate upon acceptance by the School District of the Professional's recommendation for final payment on the last prime contract to be completed.

2.2.602 Professional of Record. The Professional will be, in the first instance, the interpreter of the requirements of the contract documents and the initial evaluator of each prime contractor's performance thereunder. The Professional will, within ten (10) days after receipt of a written request from a prime contractor or the School District (or as otherwise necessary and appropriate to avoid delay to the project), render in writing such interpretation or evaluation which shall be consistent with the contract documents.

2.2.603 Administration of the Construction Contracts. The Professional shall review the performance of the work in accordance with the Drawings, Specifications and other contract documents for the project. Professional shall ensure all contractors' adherence to such documents. Professional bears the responsibility of rejecting any and all non-conforming work. Deviations from the contract documents will be reported to the School District project manager. The Professional, his authorized representatives, and any authorized School District representative shall have full access to the work at all times.

2.2.604 Visits to the Project Site. The Professional, or an authorized and qualified representative, shall visit the site at a minimum of one time per week, more frequently if the Project's progress dictates, or as required by the School District during periods of active construction, review the progress of the work and take such actions as are necessary or appropriate to achieve the requirements of the contract documents by the contractors, including advising the School District, in writing, as to particular matters to watch and guard against. It shall also be the duty of the Professional to have his Consultants visit the site periodically as required during their respective phases of the work, at such intervals as may reasonably be deemed necessary, to review their respective phases of the work in order to achieve the requirements of the contract documents. In addition to the above, the Professional shall be required to attend any and all project site conferences that may be necessary to clarify the contract documents, the requirements of which shall be at the determination of the School District.

The Professional shall, within ten (10) days of each site visit, make written reports to the School District relative to the progress of the work. The various consultants shall also report their respective findings on their respective visits to the site to the Professional, who, in turn, shall include such information in his progress reports to the School District.

The Professional shall not be responsible for developing the construction means, methods, techniques, sequences or procedures, or for developing safety programs in connection with the work.

2.2.605 Rejection or Stoppage of Work. The Professional shall recommend to the School District rejection or stoppage of work which does not conform to the contract documents, in writing, within 24 hours of the event, together with the reasons for such recommendation. If, in the opinion of the Professional, immediate action is required to either protect the work or to avoid future additional costs to the School District, the Professional shall immediately reject the work by verbally notifying the responsible contractor of the Professional's intention to recommend rejection of the work.

2.2.606 Approval of Payment to Contractors. The Professional shall review and analyze the detailed Schedule of Values submitted by all contractors. Professional shall then, within seven (7) business days from the date of receipt of any Schedule of Values, approve or disapprove the same. If Professional disapproves any Schedule of Values, Professional shall, within seven (7) business days, submit his Recommended Schedule of Values, along with an explanation thereof to the School District for its determination.

Based on the Professional's visits to the site and the contractor's applications for payment, the Professional will, within seven (7) working days from receipt of the contractor's application for payment,

either approve or disapprove the application for payment. If the Professional disapproves the contractor's application for payment, the Professional will forward in writing his reasons for the disapproval to the School District.

2.2.607 Estimated Expenditures. The Professional shall, upon request of the School District, furnish updates of the Professional's Estimated Payout Schedule, previously provided at the Pre-Final Design Phase, for the time period from the date of the request to the construction contract completion date. The Professional would then compare their updated Payout Schedule to the Contractor's Projected Payment Draw-down Schedule for the same time period, and advise the School District whether or not the remaining expenditures can realistically be accomplished in the remaining time period. The Professional shall inform the School District in writing if the remaining expenditures cannot be realistically accomplished in the remaining time period.

2.2.608 Change Orders. The Professional shall prepare all necessary change orders to the construction contracts, and, subject to the approval of the School District, shall place the same in effect. When submitting change orders for approval to the School District, the Professional shall provide a detailed Cost Estimate, prepared by their office or the affected professional consultant, and shall provide complete documentation, including a statement that indicates whether the change order is the result of a School District directed change, an unknown condition, or a Professional error and/or omission. The Professional shall fully explain the background of the change order and substantiate the reason(s) for his decision. Upon project completion, the Professional shall submit a Change Order Summary, which tabulates the change orders into the above-mentioned categories.

Should the School District be called upon by any prime contractor for additional compensation, or should it become necessary during the course of construction to issue change orders increasing the cost of the project, by reason of the failure, in either case, of the Professional due to design errors and omissions and/or failure to produce proper and coordinated plans, specifications or drawings, or any portions thereof relating to the project, in accordance with accepted standards and procedure, the Professional shall be liable to the School District for the difference between the amount of such extra costs or compensation, and what the School District would have incurred had the design been proper.

Change orders shall be prepared and submitted timely so as not to delay the work, or if delay has already occurred, to minimize the length of the delay, and, in every case shall be submitted not more than 15 days (or as otherwise mutually agreed) after determination that a change order is necessary and appropriate.

2.2.609 Review and Approval of Contractor's Shop Drawings and Submittals. The Professional shall review, approve, and process shop drawings and other submittals by the contractors and respond unequivocally and affirmatively in approving or rejecting the tendered shop drawings and submittals for compliance with the contract documents and for conformity to and harmony with the design concept of the project. The School District maintains a right of review of all submittals.

The Professional agrees that time is of the essence of this provision and shall, unless otherwise approved by the School District, return the approved shop drawings or detailed notation for resubmission if required, within fifteen (15) days after receipt from a contractor. The Professional shall act on any resubmissions within fifteen (15) calendar days of his receipt thereof. A detailed log shall be maintained by the Professional as to time of receipt of the submittals and time of return with adequate notes as to their disposition.

Each prime contractor is required to submit to the Professional a shop drawing submittal schedule on or before the first regular job conference. The Professional shall review and check the shop drawing submittal schedule within fifteen (15) calendar days of receipt from the contractor.

2.2.610 Record Drawings ("As-Built" Tracings). Upon completion of the project, the Professional shall revise the contract tracings ("Mylar"-type) reflecting all changes made during the course of construction and

shall deliver one (1) set of tracings for each construction contract to the School District at no extra cost to the School District. Required information shall be obtained from the contractors and project offices of the School District. When completed, the tracings shall reflect only the project completed. The tracings shall be identified as Record Drawings ("As-Built" tracings) and shall be delivered to the School District and become the property of the School District.

- 2.2.611 Life Cycle Maintenance Profile. The Professional shall prepare a life cycle maintenance profile for all projects for new construction and/or renovation of existing facilities. The profile shall include the estimated time and cost for replacement of the major components, equipment, and support systems used in construction of the project. The profile shall also show the minimum annual dollar amounts that should be reserved without inflation to maintain, repair and renovate the facility when due. The School District shall provide the forms for the Professional to utilize.

The Professional shall also prepare a Preventive Maintenance Plan for all equipment incorporated in the project, and an estimate of the operating costs to use the building for its intended purpose.

- 2.2.612 Substantial Completion. The Professional shall, together with each prime construction contractor and the School District, determine whether or not each prime construction contractor has complied with the Section 01700 Project Closeout requirements for Substantial Completion. The Professional shall participate in all inspections of the project necessary to accomplish this purpose, and shall advise each Contractor of work items that must be completed or corrected before the project can be considered substantially complete.

The Professional shall collect from each prime contractor, as required and provided for in the contract documents, all shop drawings, catalog data, manufacturer's operating instructions, manufacturer's or supplier's maintenance instructions, certificates, warranties, guaranties and other pertinent operating and maintenance data. The Professional shall assemble and correlate such materials and submit two (2) copies thereof to the School District. The Professional shall provide written indication of his evaluation of the adequacy of the data and if required, request resubmission of materials until adequate data is provided.

Before determining the project is substantially complete, the Professional shall prepare for the School District's review the Punch List of Uncompleted Work Items that shall be attached to the Certificate of Substantial Completion. The Professional shall determine the date of Substantial Completion and prepare and issue the Certificate of Substantial Completion upon School District's written approval.

- 2.2.613 Final Completion. The Professional shall, together with the prime construction contractors and the School District, determine whether or not each prime construction contractor has complied with the Section 01700 Project Closeout requirements for Final Completion. The Professional shall participate in all inspections of the project necessary to inspect the Punch List of Uncompleted Work Items, and to determine whether or not the Project has been completed in accordance with contract requirements.. The Professional shall advise the Contractor of work items that must be completed or corrected, or obligations that must be fulfilled, before the project can be considered completed and accepted by the School District. Upon determining the project is completed, the Professional shall determine the date of Final Completion, prepare and issue the Certificate of Final Completion.

- 2.2.614 Warranty Inspection. The Professional and their consultants are required to conduct an inspection of the Project, together with the School District, 10 months after the issuance of the Certificate of Substantial Completion for each construction contract. The Professional shall prepare and provide to the School District a punch list of scope of work items that are required to be replaced or otherwise repaired under the terms of the warranty provisions of the contractor's agreement.

The Professional and their consultants shall participate in all inspections of the punch list repair or replacement work, together with the School District and the affected contractors until contract and

warranty requirements are satisfied. The Professional, upon finding the remedial work satisfactory and acceptable, shall so indicate in writing to the School District.

2.3 ADDITIONAL SERVICES

The Additional Services described in Exhibit C are NOT covered by the compensation for Basic Services. If requested in writing by the School District and performed by the Professional, such Additional Services shall be the subject for additional compensation, pursuant to the provisions of Exhibit C or a negotiated Fiscal Adjustment to the Standard Form of Agreement for Professional Design Services.

ARTICLE 3 THE SCHOOL DISTRICT'S RESPONSIBILITIES AND DUTIES

- 3.1 The School District shall provide the Professional with the project scope and all available information as to the educational requirements of the project, including the amount of the allocation. If the information furnished is not sufficient for the initiation of design development, the Professional shall immediately notify the School District. The Professional shall rely on information provided by the School District.
- 3.2 Plat or Survey and Surveyor's Report. The School District will furnish to the Professional, when and to the extent required by the project, a plat or survey of the site and sufficient adjacent lands, certified by a qualified licensed surveyor, and a report of survey, giving, as applicable, grades and lines of streets, encroachments, boundaries and contours of the site; location, dimensions and other complete data as to the exterior of existing buildings, other improvements and trees; and full information concerning all services and all known utility lines crossing the site, which information must be included as necessary by the Professional in the contract drawings.
- 3.3. Interpretation of Instructions. The School District shall be the sole interpreter of any printed instructions, including the Engineering/Architectural Instructions furnished the Professional, and shall have the right to require conformance with same at all times during the development of the Project.
- 3.4 School District to Act Promptly. The School District shall act with reasonable promptness upon all submission and any failure of the School District to so act shall result in an extension of time to the Professional under the current Design Time Schedule equal to the number of days of the delay. Such a time extension shall be the Professional's exclusive remedy for any delay caused by the School District; i.e. under no circumstances shall the School District be liable to the Professional for any additional compensation attributable to delay, irrespective of the cause.
- 3.5 Effect of School District's Failure to Disapprove Design Work. Any approval issued by the School District or any failure of the School District to disapprove or reject design work submitted by the Professional shall not constitute such an acceptance of the work as to relieve the Professional of his full responsibility to the School District for the proper and professional performance of all design and related work on the project to the satisfaction of the School District.

ARTICLE 4 THE PROFESSIONAL'S COMPENSATION AND PAYMENT

- 4.1 Unless otherwise agreed by the School District, the Professional's compensation and payment for design services for construction projects will be paid after completion of the Professional's design work, according to the provision shown in Exhibit D - Basic Services: Compensation and Payment Schedule.

The Professional's compensation and payment shall not be adjusted based on the construction contract award amounts.

- 4.2 At the Project orientation meeting, or during the several design phases, the School District, in its sole discretion, shall determine whether or not the Project will be designed and the related construction contracts bid and/or constructed in one or more than one phase. Additional compensation for phasing of the design work and/or administration during the phased construction periods will be paid only in the event that phasing of the project was not part of the original concept of the Project, and if the new phasing designs constitute fifty percentage (50%) increase in overall costs.
- 4.3 Together with the School District, the Professional shall determine the estimated time frame of construction and accordingly reflect this time in Rider B, Exhibit D - Construction Phase. If the actual construction time exceeds the estimated time frame due only to an error or omission on the part of the School District, then the Professional shall be entitled to additional compensation. The amount of compensation will be a matter of negotiation between the Professional and the School District at the time of such an occurrence.

Payment for additional compensation under this paragraph shall be made in one lump sum amount. Professional shall submit an invoice to the School District following the substantial completion of the project, and upon approval of an invoice by the School District, a Fiscal Adjustment shall be necessary to provide for payment. Professional may, however, request payment of additional compensation for six (6) month intervals if the period of delay exceeds six (6) months. Should there be more than one work phase in the project, the calculation of additional compensation due the Professional under this paragraph shall be made separately for each phase.

The Professional shall not be entitled to additional compensation, under this paragraph, for delays in construction that are attributable to acts or failures to act on the part of the Professional.

- 4.4 Reimbursable expenses shall mean the actual expenses incurred by the Professional or the Professional's consultants, directly in connection with the Project, such as expenses for: transportation (with the mileage rate charged not to exceed the applicable IRS per mile reimbursement rate), lodging, reproduction of reports, drawings, specifications, bidding documents, and similar project-related items. Under no circumstances shall postage charges, telephone charges, or meals at which an employee of the School District is not present be charged to the School District as a reimbursable expense. It is mutually agreed that a not-to-exceed allowance for anticipated reimbursable expenses in the amount of **\$ 500** has been established and will be paid only to the extent that reimbursable expenses are incurred. Under no circumstances shall the District be responsible for the payment of any asserted reimbursable expense once the **\$ 500** not-to-exceed amount has been met.
- 4.5 The Professional's direct personnel costs, consultant costs, and all other expenses pertaining to the Project, shall be kept on a generally recognized accounting basis and with proper records shall be available to the School District at the Professional's office for inspection and copying at mutually convenient times. Cost incurred by Professional for providing additional services shall be kept separate and apart from all other project costs.

ARTICLE 5

OBSERVANCE OF LAWS AND PROPRIETARY ITEMS

- 5.1 **Basic Responsibility.** The Professional shall be responsible for the compliance of the drawings and specifications with all applicable laws, regulations and ordinances of all agencies and governments, federal, state and local, insofar as they are applicable to, and have jurisdiction over, the project. At all times throughout the project, Professional bears the responsibility of completing and ensuring that all work, both Professional's and others' is completed in a manner that is consistent with the acceptable and reasonable standard of care for the industry. The Professional shall make all required submittals to, and shall obtain all required approvals from, the applicable agency in a timely manner so as not to cause delays to the projects. The Professional shall pay all required fees and shall be reimbursed by the School District apart from compensation for Basic Services.

- 5.2 Cooperation with Local Government Entities. During the design of the project, the Professional shall keep informed and comply with the requirements of all local zoning, planning and supervisory governing bodies. Should these requirements substantially increase the cost of the Project, or should any required approvals be withheld by the local governing bodies, the Professional shall immediately notify the School District.
- 5.3 Proprietary Items, Copyrights, Patents. The Professional shall not include in the design of the project any equipment, material or mode of construction which is proprietary or which contains a copyright or patent right relating to designs, plans, drawings or specifications, unless the equipment, material or mode of construction is different and considered superior in quality and performance, and is not done primarily for the purpose of preventing or restricting competitive bidding.

In all cases, the Professional shall provide a list of such recommended proprietary, copyrighted or patented items to the School District during the design phases, including the justification for their use. The Professional must then receive the written approval from the School District to include any such equipment, material or modes of construction as proprietary items prior to including them as such in the bidding contract documents.

ARTICLE 6 **INSURANCE**

- 6.1 Professional Liability Insurance. The Professional shall secure and maintain, at his sole cost and expense, professional liability insurance to protect against loss resulting from design errors and omissions, failure to coordinate properly the drawings and specifications of the project, failure to properly execute the construction administration duties for the project, or failure to otherwise perform his obligations pursuant to this Agreement.
- A. Unless otherwise specifically provided in the Agreement, the Professional shall be required to secure and maintain professional liability insurance with a minimum coverage of \$3,000,000, or the total of the Professional's fee, based on current allocations, under all the contracts with the School District as of the date of this Agreement, whichever is greater.
 - B. If the Professional is a Joint Venture, one professional liability insurance policy covering the joint venture may be furnished, or two separate policies covering the individual joint ventures may be furnished. If, however, two separate policies covering the individual joint ventures are furnished, each policy must provide the minimum coverage as specified herein. In addition, the certificates of insurance, in the case of two separate policies, must include statements that the insurance covers joint venture projects.
 - C. The Professional is required to secure and maintain professional liability insurance, in accordance with this paragraph, up to and including two years after the date of the last final inspection of the construction contracts under the project.
- 6.2 General Liability Insurance. The Professional shall secure and maintain, at his sole cost and expense, general liability insurance to protect the School District and its employees, officers, and Board Members against claims arising out of the Professional's or the Professional's employees or agents acts or omissions during the design, construction, and warranty period of the project, for damages in law or equity for property damage and/or personal injury, including wrongful death.

The School District shall also be named as an Additional Insured in the Policy and an Additional Insured Endorsement shall be provided along with the Certificates of Insurance. Upon request, the professional shall submit a certified copy of the entire policy to the School District. The limits of coverage shall be at least \$1,000,000 per occurrence and \$3,000,000 aggregate

- 6.3 Additional Insurance. Professional shall secure, on behalf of himself, his agents and his employees, and maintain at his sole cost and expense during the design and construction phases, worker's compensation insurance in amounts required by law, automobile liability insurance in the minimum amount of \$1,000,000 million and sufficient to cover all automobiles utilized by the Professional, his employees or agents, and an umbrella policy in the amount of at least \$1,000,000.
- 6.4 Certificate of Insurance. Prior to beginning the initial phase of this project, and thereafter at the request of the School District, the Professional shall furnish to the School District annually, unless otherwise requested during the active terms of this Agreement, a Certificate from an Insurance Carrier authorized to do business in Pennsylvania indicating: 1) the existence of the insurance required under this Article 6, 2) the amount of the deductible, 3) the amount of coverage of such insurance, 4) the list of exclusions for all insurance coverage, including errors and omissions insurance. All exclusions to the policies shall be provided on the Certificate of Insurance, or attached to it as a list of exclusions. Such exclusions must be acceptable to and agreed upon by the School District. If no such listing is provided, it will be understood by the School District that there are no exclusions to the policy.
- The Certificate of Insurance shall contain a provision that **“coverage afforded under the policies will not be canceled, allowed to expire, or in any way changed, including alterations to the conditions of the policy, until at least thirty (30) days written notice has been given, by registered mail, to the School District.”**
- 6.5 Failure to Comply with Insurance Requirements. During any period in which the Professional is not in compliance with the terms of this Article, no compensation shall be paid by the School District to the Professional. Failure to maintain the required insurance coverage or failure to comply fully with the insurance provisions shall in no way act to relieve the Professional from the obligations of this Agreement including, but not limited to, the Hold Harmless Clause.

ARTICLE 7

SUSPENSION, TERMINATION, AND REACTIVATION OF WORK

7.1 SUSPENSION OF WORK

The School District may, at any time, direct the Professional to suspend all work on the Project, or any part thereof, pending receipt of further notice from the School District. In all such cases the School District and the Professional shall agree upon an appropriate phasing out of the work, or any part thereof, in such a manner that the work may be resumed with a minimum of added costs to the School District, but in no event shall the work be continued beyond the completion of the design phase in which it then is. The Professional shall be compensated for the reasonable value of all professional services provided to the date of suspension with no further recourse against the School District.

7.2 TERMINATION OF AGREEMENT

7.2.100 Termination for Convenience. The School District shall have the right at any time for any reason, to terminate the Agreement by written notice, which termination shall be effective as provided in said notice. The Professional shall comply with all instructions of the School District then or subsequently given, relating to such termination, including but not limited to: instructions concerning delivery of drawings, sketches, and other architectural/engineering data to the School District, discontinuance of the work on outstanding contracts, and furnishing to the School District information concerning all action to be taken respecting outstanding agreements with consultants, contracts, awards, orders or other matters.

7.2.101 Termination upon Disability of Professional. In the event of death, or mental or physical disability of Professional, or his inability to complete the contract for any reason over which Professional has no

control including military mobilization, or dissolution of the Professional firm, the School District shall have the right to terminate the Agreement and to select and employ a new professional to complete the work. This provision does not negate the School District's right to recover damages from the Professional for breach of the Agreement as may be appropriate.

7.2.102 Adjustment of Compensation Upon Termination. Upon termination of the Agreement, as herein before provided, the compensation of the Professional shall be adjusted in accordance with the following. Nothing set forth hereafter shall be construed as negating the School District's right to recover damages from the Professional for breach of the Agreement where appropriate.

- A. If the Agreement shall be terminated as of the end of any of the five stages of the Professional's work, for any reason except the material default by the Professional, all obligations of the School District to the Professional shall be discharged by the payment to the Professional of that percentage of the fee due under Article 4 for the compensation of the work through that phase, plus any reimbursable costs properly approved under the Agreement or otherwise authorized and properly incurred under any provision of these General Conditions.
- B. If the Agreement shall be terminated at any time during the construction phase, for any reason except the material default by the Professional, the obligation of the School District to the Professional shall be discharged by the payment of the monthly payment due for the month in which such termination occurs, plus any other unpaid items due and owing for work performed prior to the terminate date.
- C. If the Agreement shall be terminated for any reason except the material default by the Professional, at any time during the course of any Design Phase, all obligations of the School District to the Professional shall be discharged by the payment to the Professional of all sums due and unpaid in respect of all completed design phases, plus an appropriate portion of the payment due for the phase in which the Agreement is terminated.
- D. If the Agreement is terminated by reason of death or incapacity of the Professional, all payments due and owing shall be made to his personal representative. If the Agreement is terminated by reason of the liquidation of a partnership or the dissolution of a corporation, payment shall be made to the liquidating partner or trustees as the case may be.
- E. If the Agreement is terminated by reason of a material default of the Professional, continuing for the period specified in the written notice of such default and demand for cure, no further payments shall be made to the Professional until the School District shall have engaged another Professional to complete the project. If another Professional is engaged, the cost to the School District of the compensation and expenses of such other Professional shall be deducted from the remainder of the compensation otherwise payable to the Professional for completion of the work under the Agreement. Nothing in the preceding Section or Sections shall limit the remedies available to the School District which result from Professional's breach. The School District shall be entitled to all available remedies at law or in equity. Any shortage shall be recoverable from the Professional.

7.3 PROVISION FOR SPECIAL CASES

If the Agreement, in its Special Conditions, so provides, by a reference to this paragraph, then upon any suspension of work or termination of the Agreement, the School District and the Professional shall agree upon the amount to be reimbursed to the Professional to cover the costs, during any period of suspension, or incurred in effecting a termination, of any additional space specifically leased for the project and of holding or terminating the employment of any group of employees specially hired for the project. The Professional shall have given the School District notice prior to leasing such space or hiring such personnel as a prerequisite to receiving additional compensation hereunder. The Professional shall use

his best efforts to minimize all claims for additional compensation hereunder. The Professional shall not incur any claims for additional compensation hereunder without the prior written approval of the School District.

7.4 REACTIVATION OF PROJECT

Where the project has been terminated or suspended for a time period that is less than twelve (12) months, School District shall not be liable to Professional for any additional compensation, start up costs, or reimbursable expenses associated with reactivating the project. Where a Project has been suspended or terminated for a longer time than twelve (12) months and is subsequently reactivated, the School District and the Professional shall agree, prior to the beginning of the reactivation work, upon a lump sum, or other basis, of reimbursement to the Professional of his extra startup costs as result of the work having been suspended or terminated. If agreement as to the amount of reimbursement is not reached, the Professional shall proceed with the project and seek adjustment under the claims provisions of the contract. If the Professional does not proceed within 30 days from notice to proceed, the School District may terminate the Agreement for material default.

ARTICLE 8

PROVISIONS REQUIRED BY PENNSYLVANIA LAW

OR FEDERAL LAW TO BE INSERTED

- 8.1 Provisions Deemed Inserted. Each and every provision required to be inserted in Professional Agreements by the law of Pennsylvania, or the lawful regulations of any agency of the Commonwealth, and, if the Project involves the use of federal funds, by any law of the United States of America or the lawful regulations of any agency thereof applicable to the Agreement, shall be deemed to be inserted herein, and the Agreement shall be read, interpreted and enforced as if such provisions were set forth therein in full.
- 8.2 Physical Amendment of Agreement. If desired by the School District or by any State or Federal Officer having power to require the inclusion of provisions and terms in Professional Agreements, the Agreement shall be forthwith physically amended to include such provisions.

ARTICLE 9

DEFINITIONS

- 9.1 As used in these General Conditions and Special Conditions, and in the Agreement, the following definitions shall be as described herein, unless the context clearly dictates otherwise.
- A. Agreed Estimated Construction Cost shall mean the most recent estimate approved as such, or, in the absence of any other approved Agreed Estimated Construction Cost, the amount approved by the School District as the Allocation.
 - B. Agreement means the Standard Form of Agreement for Professional Design Services, of which these General Conditions are made a part.
 - C. Cost Allocation or Allocation shall mean the estimated construction costs or base amount set forth by the School District, or amended as provided for herein, and meant to be the same sum as the aggregate of low bids received on the bid date.
 - D. Bid Date means the last day upon which bids are received for construction contracts for the Project.
 - E. Contract Documents (for the prime construction contracts) refers to the School District's standard construction contract provisions, which consist of the construction agreement, notice to bidders,

the instructions to bidders, the bid proposal, the contract bonds, the conditions of the contract (General Provisions, General and Special Requirements, and Additional Contract Conditions), the drawings and specifications of all contracts, and all bulletins and addenda issued prior to execution of the construction agreement, and all modifications thereto.

- F. Program Development means the compilation of raw statistical space data, including basic functional units. Approximate number of persons and special equipment for each function will be provided by the School District. The Professional shall be responsible for translating the raw statistical data into organizational relationships, activities and functions to be housed within the building or buildings of this Project and shall develop layouts and building plans which establish net and gross space and volume requirements for the Project within the established allocation.
- G. Project Scope means the authorized and approved work to be included in the Project that defines the allocation, the property site and a description of the construction required, as outlined in Rider A of this Agreement.
- H. School District shall mean the Warren County School District.
- I. Error or Omission Change Order means a change order required to correct a professional's error in contract documents or an omission of information, material or construction necessary to complete the project.
- J. The Construction Phase is defined as commencing with the Notice to Proceed being issued to the first prime contract for the work of the Project or any part thereof, and terminating upon acceptance by the School District of recommendation of final payment on the last prime contract to be completed.
- K. Wasted Design. Wasted Design is that part of an approved design which was previously approved by the School District, which cannot be reused in a revised design, providing the design changes or revisions to the design were not necessitated by actions or inactions of the Professional.
- L. Qualified Representative. Registered Architect in the Commonwealth of Pennsylvania.
- M. Allowable Reimbursable Expense: Mileage and meals for project representative, printing, and hotel for project representative. All other are considered part of overhead and as such are not allowable.

RIDER B
GENERAL CONDITIONS

EXHIBIT A

SCHOOL DISTRICT'S OPTIONS FOR PROCEEDING WITH DESIGN
WHEN COST ESTIMATE EXCEEDS ALLOCATION

1. **REDESIGN:**
When the Cost Estimate exceeds the Allocation, it shall be the responsibility of the Professional to adjust the entire design, at no expense to the School District, to bring the Cost Estimate within the Allocation.
2. **DEDUCTIVE BASE BIDS:**
When the Cost Estimate exceeds the Allocation, the Professional, with the approval of the School District, may include Deduct Alternates from the Base Bid, at no expense to the School District, to bring the construction Cost within the Allocation.
3. **CHANGE IN SCOPE OF WORK:**
When the Cost Estimate exceeds the Allocation and the basis for the difference arises from factors which indicate the desired Program has been changed by the School District and, as such, is not reasonably attainable within the current Allocation, the School District may choose to adjust the Program and Scope of Work to bring the Cost Estimate within the Allocation. The School District shall instruct the Professional on how to proceed with the adjustment in the Design. The School District shall negotiate the Professional's compensation for adjusting the Design, subject to a negotiated credit for that portion of the original design which is applicable to the redesign.
4. **INCREASE COST ALLOCATION:**
When the Cost Estimate exceeds the Allocation and the Scope of Work (Rider A) has not changed, the School District, at its sole discretion, may increase the Allocation and direct the Professional to proceed with the Design. The Professional's compensation shall remain as negotiated on the original Allocation.
5. **DIRECTION TO PROCEED:**
When the Cost Estimate or subsequent Cost Estimates exceed the Allocation, and, in the opinion of the School District the estimate is considered high, the School District may direct the Professional to proceed with the design without a change in Scope of Work or in the Allocation. However, should the aggregate of low bids exceed the allocation plus five percent (5%), the Professional's obligation with regard to redesigning and re-bidding shall not apply. The Professional's compensation shall remain as negotiated on the current Allocation.

RIDER B
GENERAL CONDITIONS

EXHIBIT B

PREPARATION AND REPRODUCTION OF BIDDING DOCUMENTS

1. The Professional shall, as part of his Basic Services, assemble complete sets of Drawings and Specifications for each Construction Contract included in the Project.
2. The School District shall arrange for the necessary publication by advertisement of the notice to bidders, and shall notify the Professional when the advertisements are released for publication. Until so notified, the Professional shall not release contract documents to any proposed bidder.
3. The Warren County School District will arrange for the reproduction of complete sets of bid documents and provide information where documents may be purchased to all prospective bidders.
4. The bidding documents supplied to prospective bidders by the District shall include (1) the Drawings for each Construction Contract included in the Project, (2) a complete set of Specifications for each Construction Contract included in the Project, (3) Prevailing Wage Determination, (4) Notice to Bidders, (5) Special Requirements, (6) Bid Proposal Forms, (7) Bid Bond Forms, and (8) all Bulletins and Addenda issued to the date of request.
5. All Bulletins and/or Addenda issued after date of mailing of documents shall be forwarded to the bidder and bidders' services by the Professional.
6. The Professional shall furnish to the School District three (3) complete sets of reproducible Bidding Documents.

RIDER B
GENERAL CONDITIONS

EXHIBIT C

ADDITIONAL SERVICES

Unless incorporated as part of the Special Conditions to the Agreement (Rider D), the Additional Services described in Exhibit C are NOT covered by the compensation for Basic Services.

1. Revisions to Approved Drawings and Specifications. Any revisions to drawings or specifications will be part of the Professional's basic services and will result in no extra charges for compensation to the School District.
2. Detailed Estimates of Project Cost. Furnishing detailed estimates of construction project costs except as specifically provided in the agreement.
3. Replacement of Work Damaged by Fire or Other Causes. Evaluating and/or providing replacement studies of any work damaged by fire or other causes beyond the Professional's control during project accomplishment.
4. Default of Contractor. Preparation of Bidding Documents and review of work completed and/or yet to be done upon default of the contractor(s).
5. Project Representation
 - a. If more extensive representation at the site is required by the School District than is provided for in the Agreement, the Professional shall provide one or more Full Time Project Representative(s). Such Full Time Project Representative(s) shall be selected, employed and directed by the Professional, and such selection shall be approved by the School District.
 - b. The Full Time Project Representative(s) shall, through continuous on-site observations, exercise good faith and due care to provide further protection to the School District against defects or deficiencies in the performance of the construction contracts, but the furnishing thereof shall not relieve the Professional of the responsibilities under the Agreement.
6. Construction Scheduling. Providing services related to Construction Phase Scheduling requested by the School District.
7. Interior Design Services. Providing Interior Design Services of a specialized nature, such as: space planning, interior color and finish schedule, furnishing selections and specifications, window treatment, graphic wall design, art work selection, interior plants, and contract documents for bidding of the above.
8. Surveys. Providing, to the extent required by the project, a Plat of Survey of the site and sufficient adjacent lands, certified by a qualified licensed surveyor, and a Report of Survey, giving, as applicable, grades and lines of streets, alleys and pavements; the location of all rights of way restrictions, easements, encroachments, boundaries and contours of the site; location, dimensions and other complete data as to the exterior of existing buildings, or other improvements and trees; and full information concerning all services and utility lines crossing the site. Such services shall be performed in accordance with the Engineering/Architectural Instructions in effect at the time of the execution of the Agreement.

9. Change Orders. When the School District determines the design work is so extensive that negotiated compensation is required, the School District shall make the determination of the reasonableness of compensation prior to the commencement of the work, unless an emergency situation exists or failure to proceed with the work shall cause delay, in which case the Professional shall maintain an accurate record of his costs.
10. Field Tests. Providing sub-surface explorations, test borings, test pits, related work in accordance with Engineering/Architectural Instructions in effect at the time of the execution of the Agreement.
11. Soils Foundation Engineer. Engaging the services of a registered, qualified soils foundation engineer for furnishing necessary recommendations. Such services shall be performed in accordance with the Engineering/Architecture Instructions in effect at the time of the execution of the Agreement.
12. Laboratory Tests. Providing laboratory testing of soils, concrete or other materials and equipment in accordance with Engineering/Architectural Instructions in effect at the time of the execution of the Agreement.
13. Subsurface Utility Engineering. Providing the location and identification of unknown, unobservable underground facilities, utilities, tanks and other buried objects to the extent required for construction of the project. Prospecting techniques including radio frequency electromagnetic, magnetic acoustic emission sonic, terrain conductivity, ground penetrating radar and select excavation shall be used to provide a comprehensive horizontal map and give an indication of vertical position. Information obtained using this service shall be shown on the Plat of Survey of the project site.

COMPENSATION FOR ADDITIONAL SERVICES

The Direct Labor rates and Overhead costs and rates for reimbursable expenses that shall be used by the Professional and any consultants for the term of this Agreement shall be those Hourly Rates attached to or listed in Rider D.

1. For the additional services described in Exhibit C subparagraphs “1” through “11”, compensation shall be mutually agreed upon in advance by the School District and the Professional and reflected in the original Agreement or set forth in a Fiscal Adjustment to the Agreement. In the event an agreement in advance cannot be reached, the School District may direct the Professional to provide the additional services, in which case the Professional shall provide said services and shall keep a daily record of his cost for performing the additional services. After the additional services are completed by the Professional or are terminated by the School District, the Professional may submit an itemized claim for the cost incurred in performing the additional services.
2. For the additional services described in Exhibit C subparagraphs “12” through “17”, compensation shall be based upon the actual cost of services. If the services are performed by an entity other than the Professional, the School District shall consider the actual cost of such services to be the amount paid to that entity by the Professional after soliciting bids or proposals approved by the School District. Should the Professional perform these additional services, the actual costs of such services shall be at the hourly rates.

RIDER B
GENERAL CONDITIONS

EXHIBIT D

BASIC SERVICES COMPENSATION AND PAYMENT SCHEDULE

1. Payments During Design. The Professional's compensation and payments shall be based upon the amount of the Agreement as detailed in Paragraph 2 (below) --Schedule of Payments During Design. If, at any time, the cost estimate for the Project exceeds or falls below the Allocation by more than ten percent (10%), the School District or the Design Professional may request equitable adjustments. Any adjustments made will be determined by the adjustments made to the scope of the work.
2. Schedule of Payments During Design. The Professional's compensation shall be payable in installments as follows, unless otherwise agreed. As set forth below, the approval required is the written approval of the School District that the indicated phase has been satisfactorily completed. [Such approval shall not be construed as relieving the Professional of his obligation to provide professional services to the standard required by this Agreement or applicable law.]

	<u>PAYMENT</u>
A. Schematic Design Phase	\$ 5,872.85
B. Preliminary Design Development Phase	\$ 5,872.85
C. Pre-Final Design Documents Phase	\$ 7,830.45
D. Final Design Documents Phase	\$ 5,872.85
E. Bid and Award of Contracts	\$ 3,915.23
F. Construction Phase	
(1) Construction Administration:	\$ 7,830.45
(2) Product and Fabrication Shop Drawings.	\$ 391.53
(3) Record Drawings:	\$ 391.53
(4) Life Cycle Maintenance Profile:	\$ 391.53
(5) Final Completion:	\$ 391.53
G. Warranty Inspection:	\$ 391.53
SUBTOTAL: BASIC SERVICES	<u>\$ 39,152.33</u>

4. Reimbursable Expenses:

Reimbursable expenses are those listed on Form R-1-Basic Services. The total amount of the reimbursable expenses included in the agreement will be a **not-to-exceed amount** to be invoiced as the

expenses occur. It should be understood that expenses will be reimbursed only to the extent that they are incurred.

SUBTOTAL: REIMBURSABLE EXPENSES (not to exceed) \$500.00

5. Summary:

SUBTOTAL: BASIC SERVICES (not to exceed) **\$ 39,152.33**

SUBTOTAL: REIMBURSABLE EXPENSES (not to exceed) **\$ 500.00**

TOTAL COMPENSATION: **\$ 39,652.33**

WARREN COUNTY SCHOOL DISTRICT
6820 MARKET STREET
RUSSELL, PA 16345

STANDARD FORM OF AGREEMENT
FOR PROFESSIONAL DESIGN SERVICES

RIDER C
NONDISCRIMINATION CLAUSE

During the term of this contract, Professional agrees as follows:

1. The Professional shall not discriminate against any employee, applicant for employment, independent professional or any other person because of race, color, religious creed, ancestry, national origin, age, sex or handicap. The Professional shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment without regard to their race, color, religious creed, ancestry, national origin, age, sex or handicap. Such affirmative action shall include, but is not limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination, and selection for training. The Professional shall post in conspicuous places, available to employees, agents, applicants for employment and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.
2. The Professional shall, in advertisements or requests for employment placed by it or on its behalf, state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, sex, or handicap.
3. The Professional shall send each labor union or workers' representative with which it has collective bargaining agreement or other contract or understanding a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by the Professional.
4. It shall be no defense to a finding of noncompliance with this nondiscrimination clause that Professional had delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Professional was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.
5. Where the practices of a union or of any training program or other source of recruitment will result in the exclusion of minority group persons, so that the Professional will be unable to meet its obligations under this nondiscrimination clause, the Professional shall them employ and fill vacancies through other nondiscriminatory employment procedures.
6. The Professional shall comply with the all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of the Professional's noncompliance with the nondiscrimination clause of this contract or with any such laws, this contract may be terminated or suspended in whole or in part, and the Professional may be declared temporarily ineligible for further School District contracts, and other sanctions may be imposed and remedies invoked.
7. The Professional shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by the contracting agency and the Office of Administration, Bureau of Affirmative Action, for purposes of investigation to ascertain compliance with the provisions of this clause. If the Professional does not possess documents or records reflecting the necessary information

requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Affirmative Action.

WARREN COUNTY SCHOOL DISTRICT
6820 MARKET STREET
RUSSELL, PA 16345

STANDARD FORM OF AGREEMENT
FOR PROFESSIONAL DESIGN SERVICES

RIDER D
SPECIAL CONDITIONS

- 1) As a condition of this agreement, it is mutually agreed that **Christopher Coughlin**, is the Architect in charge of this project and that will oversee this project both in design and construction administration. Due to the size and scope of this project, the Professional will be obligated to provide a Project Representative registered as an architect in the Commonwealth of Pennsylvania who will attend and conduct all project meetings as described within this agreement. Both parties agree that **Christopher Coughlin** will be the above mentioned Project Representative.
- 2) The Warren County School District will prepare all construction contracts.
- 3) During the design phase of this project, the architect/engineer shall cooperate fully with the owner to adjust and change the size and character of the project to meet the owner's evolving project requirements.
- 4) The Warren County School District may, at its discretion, employ the services of a construction management firm to work on this project. It is mutually agreed and understood that the employment of a construction management firm does not constitute a change in this agreement or give cause for an increase in fee or change in personnel or responsibility.

WARREN COUNTY SCHOOL DISTRICT
6820 MARKET STREET
RUSSELL, PA 16345

STANDARD FORM OF AGREEMENT
FOR PROFESSIONAL DESIGN SERVICES

RIDER E

STANDARDS OF PRACTICE

The Professional agrees that it will exercise the care and diligence expected and required by law of a comparably situated professional in the application of its professional knowledge to accomplish the purpose for which it retained. The Professional represents that it has the experience, skill and knowledge to perform its responsibilities under the contract so as to attain the required standard of care and diligence. It is expressly agreed that any review or approval by the School District of the plans and/or specifications shall not diminish the Professional's obligation to provide plans and specifications that are adequate and sufficient to accomplish the purposes of the project. The Professional hereby represents that it has and will maintain the requisite insurance throughout the duration of this project for Errors and Omissions, and that nothing within this Rider shall exclude reasonable protection for the Professional or the School District under the coverage provisions afforded by the Professional's Insurance Policy.

WARREN COUNTY SCHOOL DISTRICT
6820 MARKET STREET
RUSSELL, PA 16345

STANDARD FORM OF AGREEMENT
FOR PROFESSIONAL DESIGN SERVICES

RIDER F

PROFESSIONAL INTEGRITY PROVISIONS

1. Definitions

- a. Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Warren County School District.
- b. Consent means written permission signed by a duly authorized officer or employee of the Warren County School District, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or contractual terms, the Warren County School District shall be deemed to have consented by virtue of execution of this agreement.
- c. Professional means the individual or entity that has entered into this agreement with the Warren County School District, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.
- d. Financial interest means:
 - (1) ownership of more than a five percent interest in any business; or
 - (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
- e. Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

- 2. The Professional shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Warren County School District.
- 3. The Professional shall not disclose to others any confidential information gained by virtue of this agreement.
- 4. The Professional shall not, in connection with this or any other agreement with the Warren County School District, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendations, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Warren County School District.
- 5. The Professional shall not, in connection with this or any other agreement with the Warren County School District directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Warren County School District.

6. Except with the consent of the Warren County School District, neither the Professional nor anyone in privity with him shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.
7. Except with the written consent of the Warren County School District, the Professional shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.
8. Professional shall waive all rights to file a mechanics lien or any type of lien on all or any portion of the project in the event that School District defaults as to any provision contained herein.
9. The Professional, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he has not violated any of these provisions.
10. The Professional shall, upon request of the Warren County School District, reasonably and promptly make available to that office and its representatives, for inspection and copying, all business and financial records of the Professional of, concerning, and referring to this agreement with the Warren County School District or which are otherwise relevant to the enforcement of these provisions.
11. For violation of any of the above provisions, the Warren County School District may terminate this and any other agreement with the Professional, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim additional damages for all expenses incurred in obtaining another Professional to complete performance hereunder, and debar and suspend the Professional from doing business with the Warren County School District. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Warren County School District may have under law, statute, regulation, or otherwise.