

**State of Maine  
ARCHITECT / ENGINEER AGREEMENT**

**Core Consulting Services**

Agreement entered into by and between the **Cape Elizabeth School Department** hereinafter called the **Owner** and **insert company name of Architect or Engineer**, hereinafter called the **Consultant**. (The term "Consultant" means the Architect or Engineer individual or firm acting as the Professional-of-Record.)

**A Request for Qualifications and interviews** was the process used for the selection of the Consultant. An RFQ may be used for any project. The Professional Services Prequalification List protocol requires all Consultant fees for the entire project to not exceed \$25,000.

BGS Project No.: **N/A (locally funded project)**

Other Project No.: \_\_\_\_\_

For the following Project: **Cape Elizabeth Multiple School Project** at **Pond Cove Elementary School, Cape Elizabeth Middle School, and Cape Elizabeth High School, Cape Elizabeth, Maine.**

Brief Project Description: **New Construction and/or Renovations and Additons.**

Brief Scope of Services: **This contract includes Feasibility Study including development of alternative solutions, through early Schematic Design. Subject to referendum approval and funding authorization, the Owner may elect to amend this contract to include professional services through completion of design, bidding and award, construction administration, final closeout and warranty period (Attachment C contains the details)**

Upper limit of Consultant's Compensation including reimbursables: \$\_\_\_\_\_.00 (from § 1.1).

*(Use this Core Consulting Services Agreement when the BGS Professional Services Prequalification List is used for procurement of the Consultant, and other situations when the project scope is limited.)*

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The Owner and Consultant agree as follows:

**ARTICLE 1 COMPENSATION AND PAYMENTS**

*(When using this Agreement with the Standard Department of Education Supplement A complete section 1.1 in that document – do not fill in the form fields in section 1.1 below.)*

1.1 The Consultant's Compensation shall not exceed **\$0.00** and shall be computed as the sum of Basic Services, Additional Services and Reimbursable Expenses, as shown below.

1.1.1 Basic Services Fee **select the prime Consultant's service (Stipulated Sum)** .....**\$0.00**

For the purposes of this Agreement, the Basic Services Fee is the prime Consultant’s fee, even if Subconsultants provide some “basic services”. When procurement is by the Professional Services Prequalification List, the sum of the prime Consultant’s fee plus the Subconsultant’s fees shown in the table in 1.1.2 below shall total not more than \$25,000 for the entire project and a majority of the fee amount shall be allocated to the prime Consultant.

1.1.2 Additional Services Fee (sum of items below) **(not used) \$0.00**

.1	<b><u>select the Subconsultant's service (not used)</u></b>	<b><u>\$0.00</u></b>
.2	<b><u>select the Subconsultant's service (not used)</u></b>	<b><u>\$0.00</u></b>
.3	<b><u>select the Subconsultant's service (not used)</u></b>	<b><u>\$0.00</u></b>
.4	<b><u>Additional Service, if any (not used)</u></b>	<b><u>\$0.00</u></b>
.5	<b><u>Additional Service, if any (not used)</u></b>	<b><u>\$0.00</u></b>

Hourly rates shall be included in Attachment A, *Professional Rate Schedule* for use on this project based on rates negotiated by the Owner and the Consultant. When both Stipulated Sum fees and Hourly Rate fees are used select “Mixed fees, not-to-exceed” for the subtotal fee amount.

1.1.3 Reimbursable Expenses (sum of estimated items below) **\$0.00**

.1	Transportation in connection with this Project and other pre-authorized travel reimbursed at the prevailing State of Maine rate per mile at the time the expense is incurred (no mark-up allowed)	<b><u>\$0.00</u></b>
.2	Application fees paid for securing approval of Authorities Having Jurisdiction (AHJ) over the Project	<b><u>\$0.00</u></b>
.3	Paper reproductions- excluding those required for submissions to AHJ or for Consultant's or Subconsultant's in-office use	<b><u>\$0.00</u></b>
.4	Postage, handling and delivery of the Instruments of Service	<b><u>\$0.00</u></b>
.5	Other: <b><u>none</u></b>	<b><u>\$0.00</u></b>

1.2 Reimbursable Expenses are in addition to compensation for the Consultant's services and include actual, reasonable expenses incurred by the Consultant or their Subconsultants directly related to the Project, not to exceed the amount set forth above without the written approval of the Owner. Compensation for Reimbursable Expenses, except valid travel and subsistence expenses, shall be computed as a multiple of 1.1 times the expenses incurred by the Consultant or their Subconsultants. Compensation for eligible travel and subsistence expenses shall be for the actual expense incurred by the Consultant and their Subconsultants, without mark-up. The acceptable maximum per diem may be determined at the website of the State of Maine Office of the State Controller.

**1.3** The Consultant shall be reimbursed for the following items, only if each has had prior authorization by the Owner:

- 1.3.1** Reproductions of drawings and specifications, excluding those required for routine submissions to authorities having jurisdiction, and for the Consultant's in-office use.
- 1.3.2** Reproductions of drawings and specifications and the net expense of associated delivery and handling expenses required for the bidding of the Project. The net expense is defined as the difference between the actual costs to the Consultant less any deposits retained.
- 1.3.3** Application fees paid for acquiring necessary approvals from authorities such as the State Fire Marshal's Office or municipal planning offices.
- 1.3.4** Renderings not included in Basic Services, models, and mock-ups.
- 1.3.5** Transportation and lodging or living expenses incurred by the Consultant in the execution of any special duties in connection with the work.

**1.4** The Consultant shall be reimbursed as needed according to the following provisions:

- 1.4.1** Eligible transportation expenses directly related to Basic Services activities shall be compensated at the current State of Maine rate (currently \$0.44 per mile).
- 1.4.2** Lodging or living expenses and telecommunication expenses associated with Basic Services are the responsibility of the Consultant.
- 1.4.3** When the services of a Clerk of the Works or Architect's Project Representative is directed by the Owner, compensation shall be computed as a multiple of 1.1 times the expenses incurred for an individual who is a Subconsultant, or as a multiple of not more than 1.5 times the direct salary expense for an individual who is an employee of the Consultant.

**1.5** Compensation for a change in services of the Consultant or Subconsultants shall be based on the Consultant's Professional Rate Schedule (see Attachment A – *Professional Rate Schedule*), if feasible. Any change of the scope of services and compensation shall be negotiated by the Consultant and the Owner and defined in a fully executed Supplemental Agreement, approved by BGS, prior to commencement of such services.

**1.6** Compensation to the Consultant for Alternate Bid design services shall be included in the total fee compensation. The fee shall not vary whether or not the Owner accepts the Alternate Bid items for the Construction Contract.

**1.7** Payment shall be made to the Consultant according to these provisions, or in the event of suspension or cancellation of this Agreement, at a pro-rated or negotiated amount. Consultant's statement of services shall contain sufficient detail and supporting information for the Owner to evaluate and support the payment requested.

- 1.7.1** Payments are due and payable twenty-five working days from the date of receipt of a Consultant's invoice which is approved by the Owner.
- 1.7.2** The Owner shall notify the Consultant in writing of any items submitted but not approved and the reason for non-approval within fifteen calendar days of receipt of the Consultant's invoice.
- 1.7.3** Provisions for late payments will be governed by 5 M.R.S. Chapter 144, *Payment of Invoices Received from Business Concerns*, and interest shall be calculated at 1% per month.

## **ARTICLE 2 SCHEDULE**

**2.1** The Consultant shall complete all work of this Agreement according to Attachment B – *Project Schedule*.

**2.2** The Project Schedule allows for the periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not be exceeded by the Consultant or the Owner, except for reasonable cause and by the written approval of the other party.

**ARTICLE 3 PROJECT TEAM**

**3.1** The Owner's designated representative is:

<u>Name</u>	<u>Owner agency name</u>
<u>Title of person</u>	<u>Address</u>
	<u>City, State zip code</u>
<u>Telephone</u>	<u>e-mail address</u>

**3.2** The Consultant's designated representatives are:

<u>Name</u>	<u>Consultant firm name</u>
<i>Principal in Charge</i>	<u>Address</u>
<u>Name</u>	<u>City, State zip code</u>
<i>Project Manager</i>	
<u>Telephone</u>	<u>e-mail address</u>

**3.2.1** The Consultant agrees that insert name of individual will be available at all design workshops and public presentations.

**3.2.2** The Subconsultants retained at the Consultant's expense are:

<u>.1</u>	<u>Civil Engineering</u>	<u>Firm name and address or type "not used"</u>
<u>.2</u>	<u>Electrical Engineering</u>	<u>Firm name and address or type "not used"</u>
<u>.3</u>	<u>Mechanical Engineering</u>	<u>Firm name and address or type "not used"</u>
<u>.4</u>	<u>Structural Engineering</u>	<u>Firm name and address or type "not used"</u>
<u>.5</u>	<u>Landscape Architect</u>	<u>Firm name and address or type "not used"</u>
<u>.6</u>	<u>Cost Estimating Consultant</u>	<u>Firm name and address or type "not used"</u>
<u>.7</u>	<u>Technology Consultant</u>	<u>Firm name and address or type "not used"</u>
<u>.8</u>	<u>Kitchen Design Consultant</u>	<u>Firm name and address or type "not used"</u>
<u>.9</u>	<u>Acoustical Design Consultant</u>	<u>Firm name and address or type "not used"</u>

**ARTICLE 4 CONSULTANT'S RESPONSIBILITIES**

*(The standard provisions in this Article are applicable to this Agreement only to the extent they coincide with the phases of work, and the scope of services described in Attachment C - Project Requirements. Any exclusions to Article 4 provisions may be considered de facto exclusions, or defined in Article 12, or described in Attachment C.)*

**4.1 General**

**4.1.1** The Consultant shall provide appropriate architectural, engineering or other professional consulting services for the Project. The Consultant's services shall be performed expeditiously and consistent with standard professional skill and care and the orderly progress of the Project.

**4.1.2** The Consultant shall review laws, codes, and regulations applicable to the Consultant's services. The Consultant's work product shall reflect all requirements imposed by authorities having jurisdiction over the Project.

- 4.1.3** The Consultant shall be responsible for any design cost, construction cost, or other cost incurred on the Project to the extent caused by the negligent acts, errors or omissions of the Consultant or their Subconsultants in the performance of work under this Agreement.
- 4.1.4** The Consultant shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law or, create the risk of significant harm to the public. The Consultant shall require their Subconsultants to similarly maintain the confidentiality of information specifically designated as confidential by the Owner.
- 4.1.5** The Consultant shall not engage in any activity nor accept any employment, interest or remuneration that would reasonably appear to compromise the Consultant's professional judgment with respect to this Project.
- 4.1.6** The Consultant shall not enter into any subcontract for the work to be performed under this Agreement without the express written consent of the Owner. This provision shall not apply to contracts of employment between the Consultant and its employees. The Consultant is solely responsible for the performance of work under this Agreement. The approval by the Owner of a Subconsultant under this Agreement shall not relieve the Consultant of their responsibility for the performance of the work.

## **4.2 Project Evaluation**

- 4.2.1** The Consultant shall provide a preliminary assessment of the information provided by the Owner, including the program, schedule and budget requirements of the Project. Based on the assessment, the Consultant shall advise the Owner of any other information needed, or consultant services required, which may be needed to accomplish the Project.
- 4.2.2** The Consultant shall provide prompt written notice to the Owner if the Consultant becomes aware of any errors, omissions or inconsistencies in any services or information provided by the Owner.
- 4.2.3** The Consultant shall prepare a preliminary construction cost estimate of the Cost of the Work in order to confirm the initial premise of the cost and program of the Project as soon as possible during the Schematic Design Documents phase. This estimate may be based on area, volume or similar conceptual estimating techniques.

The Cost of the Work includes the construction cost for labor and materials, with all specified features and equipment, plus Contractor overhead and profit for the Project as defined by the Owner and designed by the Consultant. The initial Cost of the Work may eventually be modified by use of the bid contingency and project contingency.

- 4.2.4** The Consultant shall update and refine the preliminary construction cost estimate of the Cost of the Work at least one additional time at the end of the Construction Documents phase.
- 4.2.5** The Consultant shall make recommendations and advise the Owner of any proposed modifications to the design due to reconciliation of the Project Budget and estimates of the Cost of the Work, at each stage of design.

### **4.3 Project Administration**

- 4.3.1** The Consultant shall consult with the Owner and BGS as necessary, research applicable design criteria, attend Project meetings, communicate with members of the Project team and issue progress reports.
- 4.3.2** The Consultant shall assist the Owner in filing documents required for the approval of governmental authorities having jurisdiction over the Project which includes the Consultant attending up to two planning board meetings.
- 4.3.3** The Consultant shall arrange for approvals from the Office of State Fire Marshal on behalf of the Owner.
- 4.3.4** The Consultant shall coordinate the services provided by the Consultant and their Subconsultants with those services provided by the Owner and the Owner's other consultants.
- 4.3.5** The Consultant shall recommend updates to the Project Schedule as necessary to reflect changes in time or duration of services provided by the Consultant or items required of the Owner.
- 4.3.6** The Consultant shall submit design documents to the Owner for purposes of evaluation and approval at intervals appropriate to the design process and consistent with the Project Schedule, Requirements and Budget. The Consultant shall proceed to subsequent phases only after explicit approval by the Owner. The Consultant shall rely on written commentary and approvals received from the Owner in the further development of the design.
- 4.3.7** The Consultant shall provide the Owner Record Drawings showing all revisions made during construction. There shall not be any additional costs to the Owner for these modifications to the Drawings.
- 4.3.8** The Consultant shall preside at design phase meetings, the pre-bid and pre-construction conferences, and monthly construction pay application meetings and provide minutes of those meetings to the Owner and other attendees.

### **4.4 Design Services**

- 4.4.1** The Consultant's Basic Services shall include normal architectural, landscape architectural and engineering services consistent with the Project Requirements.
- 4.4.2** The Consultant shall consider the schedule, program, and budget as well as aesthetics and alternative materials, building systems and equipment in developing the design for the Project.
- 4.4.3** The Consultant shall submit Schematic Design Documents to establish the conceptual design of the Project illustrating the scale and relationship of the Project components and indications of major building systems and construction materials.
- 4.4.4** ~~The Consultant shall submit Design Development Documents based on development of the approved Schematic Design Documents. The Design Development Documents shall establish the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include outline specifications describing the~~

~~important items of work including the structural, mechanical, and electric systems, materials and such other items as may be appropriate.~~

*(This provision is stricken in the Core Consulting Services Agreement because limited scope projects typically do not include a formal Design Development phase.)*

- 4.4.5** The Consultant shall submit Construction Documents based on development of the previously approved design Documents. The Construction Documents shall have complete and detailed requirements for construction of the Project.
- 4.4.6** The Consultant's estimated construction cost at each phase of design shall match the Project Budget. The Consultant shall identify program or design modifications which significantly affect the estimated construction cost at each phase of design.
- 4.4.7** The Consultant shall assure the Owner that the value of the Base Bid design will not exceed the assigned construction contract amount in the Project Budget. Similarly, the value of Alternate Bid designs will not exceed the 5% bid contingency amount in the Project Budget.
- 4.4.8** The Consultant shall assist the Owner in the development and preparation of bidding and procurement documents which include the Drawings and Specifications, General Conditions, sample contract forms, bid forms, and, when required by the Project, Alternate Bids, allowances, construction phasing, Contractor pre-qualification and Filed Sub-bids and other items compiled in the Project Manual.
- 4.5 Construction Procurement**
- 4.5.1** The Consultant shall assist the Owner with arranging for Bidding Documents reproduction and distribution to prospective bidders. The Consultant shall assist in managing the distribution of Documents which includes the recording of plan holder information; recording, holding and returning deposits; and distributing Addenda.
- 4.5.2** The Consultant shall prepare responses to questions and provide clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of Addenda during the bid period.
- 4.5.3** The Consultant shall consider bidder requests for substitutions of products or materials, if permitted in the Construction Documents, and shall provide responses to such requests in the Addenda.
- 4.5.4** The Consultant shall assist the Owner in obtaining bids and conducting bid evaluations for conformity with the Bidding Documents.
- 4.5.5** The Consultant shall participate in the opening of the bids, and documentation and distribution of the bid results, as needed by the Owner.
- 4.5.6** The Consultant shall consult with the Owner regarding the evaluation and validation of bids and the award of a construction contract.
- 4.5.7** The Consultant shall follow the directive of the Owner in the event the lowest bona fide bid or negotiated bid exceeds the budgeted cost of the Work. No additional fee will be allowed for any of the following options unless and only to the extent the Consultant's efforts in option "b" responds to Owner-directed enhanced project scope. The Consultant shall:



- a. revise the design of the Project as needed to align with the project budget, based on the Owner's altered project scope or design parameters, or
- b. revise the design of the Project as needed to reflect an increased project budget, or
- c. assist in the re-bidding or renegotiating of the Project, or
- d. consult with the Owner regarding the implications of terminating the Project.

**4.5.8** The Consultant shall create a conformance set of documents at the close of the Construction Procurement phase which incorporates all Addenda items generated during that period of time into the drawings and specifications.

#### **4.6 Construction Contract Administration**

**4.6.1** The Consultant shall provide administration of the Contract between the Owner and the Contractor, commencing with the award of the Construction Contract and terminating at the end of the one-year warranty period. The warranty period commences upon the issuance of a Certificate of Substantial Completion. The Consultant shall be entitled to negotiate to an additional fee if the date of Substantial Completion of the Work has been extended by more than twenty percent of the construction project duration through no fault of the Consultant.

**4.6.2** The Consultant shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Consultant's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Consultant's professional judgment to permit adequate review.

**4.6.3** The Consultant shall specify appropriate performance and design criteria related to the systems, materials or equipment used in the Project if the Contract Documents specifically require professional design services or certifications by a third-party professional. The Contractor shall retain the third-party professional. Shop Drawings and other submittals related to the work designed or certified by the third-party professional shall bear the seal and signature of that professional when submitted to the Consultant. The Consultant shall rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such third-party professionals.

**4.6.4** If the Authority Having Jurisdiction requires Special Inspections reporting as an element of code compliance, the Consultant shall perform or oversee the necessary inspections, provide the report, affix the necessary seals, and otherwise provide all services to satisfy the requirement as part of Basic Services.

**4.6.5** The Consultant shall maintain a record of the Contractor's submittals and retain copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

**4.6.6** The Consultant shall provide general site observation visits at intervals appropriate to each stage of the Contractor's operations, or as otherwise agreed by the Owner and the Consultant. The Consultant shall become generally familiar with the progress and quality of the Work, keep the Owner informed about the progress and quality of the Work, endeavor to guard the Owner against defects and deficiencies in the Work, and determine

if the Work is being performed in a manner indicating that, when completed, the Work will be in accordance with the Contract Documents.

The Consultant shall not be required to make continuous inspections of the Work. The Consultant shall not be responsible for the Contractor's means, methods, techniques, sequences or procedures of construction, nor for the safety precautions and programs used in the Work. The Contract Documents assign these rights and responsibilities to the Contractor.

- 4.6.7** The Consultant shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. The Consultant, however, shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Consultant shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.
- 4.6.8** The Consultant shall have authority to reject Work that does not conform to the Contract Documents. The Consultant shall have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whenever the Consultant considers it necessary or advisable. However, neither this authority of the Consultant nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Consultant to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.
- 4.6.9** The Consultant shall fairly interpret and decide matters concerning performance of the Contractor under the Contract Documents upon written request of either the Owner or Contractor. The Consultant's response to such requests shall be made in writing with reasonable promptness.
- 4.6.10** The Consultant shall review and respond to Requests for Information about the Contract Documents by the Contractor in a timely manner. The Consultant shall provide or approve the RFI form. The Consultant shall prepare, reproduce and distribute supplemental Drawings and Specifications necessitated by any response.
- 4.6.11** The Consultant shall review requests by the Owner or the Contractor for changes in the Work and make recommendations to the Owner.
- 4.6.12** The Consultant shall not issue any orders for substantial changes in the construction contract unless and until approved in writing by the Owner and BGS.
- 4.6.13** The Consultant shall prepare Change Orders and Construction Change Directives for approval by the Owner and BGS and for execution in accordance with the Contract Documents. The Consultant may authorize minor changes in the Work consistent with the intent of the Contract Documents which do not modify the Contract Sum or the Contract Time. The Consultant shall prepare and distribute Drawings and Specifications which describe changes in the Work.
- 4.6.14** The Consultant shall develop a proposal for additional services, if necessitated by any proposed Change Order or Construction Change Directive, for approval by the Owner and BGS.

- 4.6.15** The Consultant shall maintain records of proposed and approved changes in the Work.
- 4.6.16** The Consultant shall review and certify the Contractor's Applications for Payment and shall issue Certificates for Payment as needed. The Consultant's certification for payment shall be a representation to the Owner that the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents, to the best of the Consultant's knowledge, information and belief. The foregoing representations are subject to:
- a. an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion,
  - b. results of subsequent tests and inspections,
  - c. correction of minor deviations from the Contract Documents prior to completion, and
  - d. specific qualifications expressed by the Consultant.
- 4.6.17** The Consultant shall maintain a record of the Contractor's Applications for Payment.
- 4.6.18** The Consultant, Owner and Contractor shall attend final inspection meetings arranged by the Consultant, after the Project or a designated portion of the Project is evidently complete, for the purpose of verifying the Work complies with the requirements of the Contract Documents. The Consultant shall create a punch list of items to be corrected by the Contractor. The Consultant shall confirm the final completion of the punch list by the Contractor.
- 4.6.19** The Consultant shall, at the completion of the punch list,
- a. determine the date or dates of Substantial Completion and the date of final completion; and
  - b. coordinate an informational meeting with the Owner and all appropriate Subconsultants and contractors to review the operation of systems in the building.
- 4.6.20** The Consultant shall receive from the Contractor and forward to the Owner, for the Owner's review and records,
- a. affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens;
  - b. written warranties and related documents required by the Contract Documents and assembled by the Contractor and Commissioning Agent; and
  - c. consent of surety documents, if any, to recommend partial release or full release of retainage.
- The Consultant shall issue a final Certificate for Payment based upon an observation that the Work complies with the requirements of the Contract Documents.
- 4.6.21** The Consultant shall review the Record Drawings prepared by the Contractor for accuracy, requesting modifications as necessary, and shall furnish the final Record Drawings prepared by the Consultant to the Owner in reproducible prints and in digital format acceptable to the Owner.
- 4.6.22** The Consultant shall continue Construction Contract Administration services during the one-year warranty period commencing with the date of Substantial Completion. The Consultant shall consult with the Owner prior to the expiration of the one-year warranty to review the facility operations and performance. The Consultant shall make appropriate written recommendations to the Owner, reporting on construction contract deficiencies

requiring correction by the Contractor prior to the expiration of the warranty period. The Consultant will inspect and either accept or reject any required remedial action by the Contractor.

## **ARTICLE 5 OWNER'S RESPONSIBILITIES**

**5.1** The Owner shall provide full information to the Consultant about the objectives, schedule, constraints and existing conditions of the project, and shall establish a budget with reasonable contingencies that matches the project requirements. The Owner shall provide design criteria, including space requirements and relationships, special equipment and systems, and site requirements.

**5.2** When required by the project, the Owner shall provide a survey which describes physical characteristics, legal limitations and utility locations for the site of the Project, plus a written legal description of the site. The survey and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions of existing buildings, other improvements and trees. All the information on the survey shall be referenced to a project benchmark. The Owner may direct the Consultant to obtain the survey and reimburse the Consultant for the cost.

**5.3** When required by the project, the Owner shall provide geo-technical engineering services which may include but are not limited to test borings, test pits, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations. The Owner may direct the Consultant to obtain the geo-technical engineering services and reimburse the Consultant for the cost. However, the Consultant shall be responsible as part of Basic Services for the development of the scope of work required to solicit information relative to subsoil conditions for the Project site, pertaining to foundation design and septic system design, if applicable.

**5.4** The Owner shall provide reasonable access to the Project site in order for the Consultant to perform the Consultant's responsibilities.

**5.5** The Owner shall communicate about matters relating to the Contract Documents primarily through the Consultant to the Subconsultants and through the Consultant to the Contractor.

**5.6** The Owner shall manage the Project Budget and inform the Consultant and the Contractor, as necessary, of revisions to the budget. Bid and Project Contingency funds may be expended only with written approval of the Owner.

**5.7** The Owner shall, in the event the lowest bona fide bid or negotiated bid exceeds the cost of the Work, implement one of the following options by written directive:

- a. instruct the Consultant to revise the Project design as needed, based on an altered scope or design parameters, to align with the project budget, or
- b. approve of an increase in the budget for construction, or
- c. authorize re-bidding or renegotiating of the Project within a reasonable time, or
- d. terminate the Project.

**5.8** The Owner shall advise the Consultant of any known Owner-related reviews or approval processes of third parties which the Consultant may not be aware, yet requires work of the Consultant.

**5.9** The Owner shall coordinate the services provided by the Owner's other consultants with those services provided by the Consultant and their Subconsultants.

**5.10** The Owner shall provide timely responses to the Consultant's recommendations and advice. The Owner shall perform all responsibilities as expeditiously as possible, consistent with normal skill and care and the orderly progress of the Project.

## **ARTICLE 6 INSTRUMENTS OF SERVICE**

**6.1** Drawings, specifications and other documents, including those in electronic form, prepared by the Consultant and their Subconsultants are Instruments of Service for use solely with respect to this Project. The Consultant and their Subconsultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights, except as expressly provided herein.

**6.2** Upon execution of this Agreement, the Consultant grants to the Owner a nonexclusive, assignable license to reproduce the Consultant's Instruments of Service solely for purposes of a) designing, constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement; b) completion of the Project if Owner has declared Consultant to be in default, including any modified or different project; and c) any subsequent addition to or renovation of the Project. The Consultant shall obtain similar nonexclusive licenses from their Subconsultants consistent with this Agreement. In the event the Owner contracts with a different Consultant for the completion of the design and construction of the Project contemplated by the Consultant's Instruments of Service, such use shall be at Owner's sole risk.

**6.3** Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Consultant and their Subconsultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Consultant and their Subconsultants.

**6.4** Notwithstanding the provisions of this Agreement, the Owner and the Consultant may, by separate written agreement, set forth specific conditions governing the sharing of electronic data, the format of Instruments of Service, or any third party special limitations or licenses not otherwise provided for in this Agreement.

## **ARTICLE 7 TERMINATION**

**7.1** This Agreement may be terminated at the Owner's convenience and without cause upon not less than seven days written notice to the Consultant.

**7.2** The Owner or the Consultant may terminate this Agreement upon not less than seven days written notice to the other party should such other party fail to perform in accordance with the terms of this Agreement. If the Consultant should fail to submit documents under this agreement at the times specified herein, or violate any of the stipulations herein, causing the Owner to incur expenses above and beyond those funds allocated in the approved budget, without prior written authorization for such from the Owner, the Owner may elect to terminate this Agreement by giving seven days' notice to them in writing by registered mail, return receipt requested.

**7.3** The Consultant shall deliver all finished work and all documentation, complete and incomplete, to the Owner in the event of termination. The Consultant shall not be held responsible for modifications to the Consultant's work or work subsequently completed by others beyond the point of termination and their submittal of documents.

**7.4** The Consultant shall not be entitled to special or exemplary damages of any kind, including, but not limited to, lost profits, consequential damages, or loss of business in the event of termination for any reason.

**7.5** The Consultant shall be compensated for services satisfactorily performed prior to termination, with Reimbursable Expenses then due, in the event of termination not the fault of the Consultant.

**7.6** If the Consultant is unable to continue to the completion of the project without successors or administrators or assigns competent in the Owner's judgment to carry the work to completion, or if the Owner terminates the contract prior to the completion of the Project due to the Consultant's failure to correct a material breach in its performance, the Owner shall have the right and license to use any and all finished and unfinished work product produced for the Project solely for the purpose of continuing the Project, which license and right of use shall in the case of unfinished work product, be at the Owner's sole risk. In such event the Consultant will be entitled to receive just and equitable compensation for services already satisfactorily performed and approved.

## **ARTICLE 8 INDEMNIFICATION**

**8.1** The Consultant shall indemnify and hold harmless the Owner and its officers and employees from and against any and all damages, liabilities, and costs, including reasonable attorney fees, and defense costs, for any and all injuries to persons or property, including claims for violation of intellectual property rights, to the extent caused by the negligent acts or omissions of the Consultant, its employees, agents, officers or subcontractors in the performance of work under this Agreement. The Consultant shall not be liable for claims to the extent caused by the negligent acts or omissions of the Owner or for actions taken in reasonable reliance on written instructions of the Owner.

**8.2** The Consultant shall notify the Owner promptly of all claims arising out of the performance of work under this Agreement by the Consultant, its employees or agents, officers or subcontractors.

**8.3** This indemnity provision shall survive the termination of the Agreement, completion of the project or the expiration of the term of the Agreement.

## **ARTICLE 9 INSURANCE REQUIREMENTS**

**9.1** The Consultant shall provide, with each original of this signed Agreement, an insurance certificate or certificates issued by companies acceptable to the Owner. The Consultant shall submit insurance certificates to the Owner at the commencement of this Agreement and at policy renewal or revision dates. The certificates shall identify the project name and project number, and shall name the Owner as certificate holder. The submitted forms shall contain a provision that coverage afforded under the insurance policies will not be canceled or materially changed unless at least ten days prior written notice by registered letter has been given to the Owner.

**9.2** The Owner does not warrant or represent that the insurance required herein constitutes an insurance portfolio which adequately addresses all risks faced by the Consultant. The Consultant is responsible for the existence, extent and adequacy of insurance prior to signing this Agreement.

**9.3** The Consultant shall procure and maintain primary insurance for the duration of the Project and, if written on a Claims-Made basis, shall also procure and maintain Extended Reporting Period (ERP) insurance for the period of time that any claims could be brought (see Maine Limitation of Actions statute (14 M.R.S. §752-A)). The Consultant shall ensure that all Subconsultants they engage or employ will procure and maintain similar insurance in form and amount acceptable to the Owner. At a minimum, the insurance shall be of the types and limits set forth herein protecting the Consultant from claims which may result from the Consultant’s execution of the Work, whether such execution be by the Consultant or by those employed by the Consultant or by those for whose acts they may be liable. All required insurance coverages shall be placed with carriers authorized to conduct business in the State of Maine by the Maine Bureau of Insurance.

**9.3.1** The Consultant shall have Workers' Compensation insurance for all employees on the Project site in accordance with the statutory workers’ compensation law of the State of Maine. Minimum acceptable limits for Employer’s Liability are:

- Bodily Injury by Accident .....\$500,000
- Bodily Injury by Disease .....\$500,000 Each Employee
- Bodily Injury by Disease .....\$500,000 Policy Limit

**9.3.2** The Consultant shall have Commercial General Liability insurance providing coverage for bodily injury and property damage liability for all hazards of the Project including premise and operations, products and completed operations, contractual, and personal injury liabilities. Minimum acceptable limits are:

- General aggregate limit.....\$2,000,000
- Products and completed operations aggregate .....\$1,000,000
- Each occurrence limit .....\$1,000,000
- Personal injury aggregate.....\$1,000,000

**9.3.3** The Consultant shall have Automobile Liability insurance against claims for bodily injury, death or property damage resulting from the maintenance, ownership or use of all owned, non-owned and hired automobiles, trucks and trailers. The minimum acceptable limit is:

- Any one accident or loss .....\$1,000,000

**9.3.4** The Consultant shall have Professional Liability insurance against claims arising out of all negligent acts, errors or omissions of the Consultant in rendering or failing to render professional services related to the Project. Minimum acceptable limits are:

- Each claim.....\$1,000,000
- Aggregate limit .....\$2,000,000

**ARTICLE 10 DISPUTE RESOLUTION**

**10.1** In the event of a dispute between the parties which arises under this Agreement which cannot be resolved through informal negotiation, the dispute shall be submitted to a neutral mediator jointly selected by the parties. The cost of the mediator shall be equally shared by the parties.

**10.1.1** Either party may file suit before or during mediation if the party in good faith deems it to be necessary to avoid losing the right to sue due to a statute of limitations. If suit is filed before good faith mediation efforts are completed, the party filing suit shall agree to stay all proceedings in the lawsuit pending completion of the mediation process, provided such stay is without prejudice.

**10.2** If the dispute is not resolved through mediation, the dispute shall be settled by arbitration. The arbitration shall be conducted before a panel of three arbitrators. Each party shall select one arbitrator; the third arbitrator shall be appointed by the arbitrators selected by the parties. The arbitration shall be conducted in accordance with the Maine Uniform Arbitration Act (“MUAA”), except as otherwise provided in this section.

**10.2.1** The decision of the arbitrators shall be final and binding upon all parties. The decision may be entered in court as provided in the MUAA.

**10.2.2** The costs of the arbitration, including the arbitrators’ fees shall be borne equally by the parties to the arbitration, unless the arbitrator orders otherwise.

**10.2.3** In any arbitration between the Owner and the Consultant, the Owner shall have the right to consolidate related claims between Owner and Contractor.

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**11.1** This Agreement shall be governed by the laws of the State of Maine.

**11.2** The Owner and Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to this Agreement. Neither party to this Agreement shall assign the contract as a whole without written consent of the other, which consent the Owner may withhold without cause.

**11.3** Professional Services not covered by this Agreement include, but are not limited to, unanticipated scope of services revisions due to changes in the scope, quality or budget of the Project.

**11.4** Suspected toxic or hazardous materials observed on the project site by the Consultant or Subconsultants requires the Consultant to promptly notify the Owner in writing. The Consultant shall not direct the Contractor to expose, disrupt, handle, remove or dispose of such materials.

**11.5** The Consultant shall provide the Owner with drawings in Adobe Portable Document Format (PDF) and AutoCAD format for all drawings of each phase of development, in addition to the paper copies necessary to review the design. AutoCAD drawings shall be provided complete- without X-references. Bind AutoCAD drawings using the insert option and do not explode the inserted block.

**11.6** The Owner has the right to use any product of services from this Agreement in a project in the future. Reuse of a product of services for purposes other than as specified in this Agreement without verification or adaptation by the Consultant is done at the sole risk of the Owner.

**11.7** A written agreement between the Consultant and the Owner, approved by BGS, shall be created prior to the commencement of any additional services by the Consultant. Such services may include the following, or other services:

- a. fundamental project programming documents or detailed program analysis,



- b. design changes directed by the Owner after the Owner's written approval of a design phase,
- c. design changes directed by authorities having jurisdiction over the project which contradicts previous direction, through no fault of the Consultant,
- d. interior design or other furniture, fixtures and equipment (FF&E) services,
- e. services for the Maine Department of Environmental Protection permits,
- f. professional services made necessary by the default of the Contractor,
- g. professional services made necessary by certain Change Orders, subject to negotiation,

**11.8** Notwithstanding any other provision of this Agreement, if the Owner does not receive sufficient funds to fund this Agreement or funds are de-appropriated, or if the Owner does not receive legal authority from the Maine State Legislature or Maine Courts to expend funds intended for this Agreement, then the Owner is not obligated to make payment under this Agreement; provided, however, the Owner shall be obligated to pay for services satisfactorily performed prior to any such non-appropriation in accordance with the termination provisions of this agreement. The Owner shall timely notify the Consultant of any non-appropriation and the effective date of the non-appropriation.

**11.9** The Consultant shall comply with the Maine Code of Fair Practices and Affirmative Action, 5 M.R.S. §784 (2).

**11.10** The Consultant is prohibited from releasing, publishing or allowing publication of narrative, graphic, photographic or artistic representations of the Project unless expressly allowed in writing by the Owner. The Consultant shall not include the Owner's confidential or proprietary information in any project representations if the Owner advises the Consultant in writing of the specific information considered by the Owner to be confidential or proprietary.

## **ARTICLE 12 OTHER PROVISIONS**

**12.1** *Notwithstanding anything to the contrary in this Agreement, the Project is a locally funded school project, and any provision of this Agreement requiring submission to or approval by BGS applies only to the extent required by law*

**12.2** *Notwithstanding anything to the contrary in this Agreement, Section 1.7.3 is deleted.*

**12.3** *Notwithstanding anything to the contrary in this Agreement, the Consultant shall not proceed with any Services beyond early Schematic Design, sufficient to develop a project concept and budget for the Owner to submit for town council bonding authorization and voter referendum project authorization. Subject to these approvals, the Owner may elect to amend this contract as provided on page 1, "Brief Scope of Services."*

**12.4** *Section 11.9 of this agreement is amended by addition of the following language at the end of that sentence: ". . . the provisions of which subsection 2 are incorporated by reference."*

## **ARTICLE 13 ATTACHMENTS**

- 13.1**
- A. Professional Rate Schedule
  - B. Project Schedule
  - C. Project Requirements
  - D. Project Budget
  - E. Insurance Certificates
  - F. *Standard Department of Education Supplement A*
  - G. *There are no other attachments.*

**Signature Sheet**

BGS Project No.: N/A (locally funded project)

The Agreement is effective as of the date executed by the approval authority.

**OWNER**

**CONSULTANT**

<i>(Signature)</i>	<i>(Date)</i>
<b><i>BY: Christopher Record, Superintendent of Schools</i></b>	

<i>(Signature)</i>	<i>(Date)</i>
<b><i>insert name and title</i></b>	

**Town of Cape Elizabeth School Department**

**insert company name**

*(Indicate names of the review and approval individuals appropriate to the approval authority.)*

<b>Locally-funded School project</b>			
Reviewed by:		Approved by:	
<i>(Signature)</i>	<i>(Date)</i>	<i>(Signature)</i>	<i>(Date)</i>
<i>Project Manager/ Contract Administrator</i>		<i>N/A</i>	