

**MODEL SCHOOL CONTRACT FOR DESIGNER SERVICES**  
**(BASE CONTRACT FOR DESIGN BID BUILD OR CM at RISK PROJECT)**

This Contract is made as of this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ between  
(day) (month) (year)  
 the \_\_\_\_\_,  
(Owner) (street)  
 \_\_\_\_\_, **Massachusetts**, \_\_\_\_\_,  
(City) (State) (Zip Code)  
 hereinafter called "the Owner" and \_\_\_\_\_  
(Designer)  
 \_\_\_\_\_  
 \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,  
(street) (city) (State) (Zip Code)  
 hereinafter called the "Designer" for the Designer to provide the designer services required to complete the Basic and  
 Extra Services described herein at \_\_\_\_\_  
(name/description of Project)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The Designer is authorized to perform the services required by this Contract through the Schematic Design. At the Owner's option, the Designer may be authorized to perform services for subsequent design phases and/or the Construction Phases and Completion Phase, at which time a mutually agreed upon amendment to this Contract will be executed between the Owner and the Designer. If the Owner elects to construct the Project using the CM at Risk ("CM-R") construction delivery method pursuant to M.G.L. c. 149A, this Contract shall be amended using the Authority's Standard Amendment for CM-R, as it may be amended from time to time by the Authority. If the Owner elects to construct the Project using the Design-Bid-Build ("DBB") construction delivery method pursuant to M.G.L. c. 149, this Contract shall be amended using the Authority's Standard Amendment for DBB, as it may be amended from time to time by the Authority.

For the performance of the services required under this Contract for the Schematic Design Phase, and excluding those services specified under Articles 7.5, 7.6, 7.7, 7.8, 7.9, 7.10, and 8.3, the Designer shall be compensated by the Owner for Basic Services in accordance with the Payment Schedule included as Attachment A.

Designer's Project Architect/Engineer: \_\_\_\_\_

The Subconsultants to provide services, either as Basic or Extra Services, to the Designer under this contract may include the following, as identified in the Commonwealth of Massachusetts Standard Designer Application Form:

	Name of Firm	Name of Principal	SDO Cert.
Educational Programming			
Architecture			
Civil Engineering			
Landscape Architecture			
Structural Engineering			
Fire Protection Engineering			
Plumbing Engineering			
HVAC Engineering			
Electrical/Lighting/			

Data/Communications			
Environmental Permitting			
Geotechnical Engineering			
Hazardous Materials			
Cost Estimating			
Kitchen/Food Service Consultant			
Laboratory Consultant			
Acoustical Consultant			
Specifications Consultant			
Library/Media/Audio Visual Consultant			
Technology Consultant			
Theatrical Consultant			
Sustainable/Green Design/Renewable Energy Consultant			
Code Consultant			
Accessibility/Universal Design Consultant			
Traffic Consultant			
Furniture, Fixtures and Equipment Consultant			
Site Surveying			
Security Consultant			

IN WITNESS WHEREOF, the Owner and the Designer hereby agree to the terms of the Contract and have caused this Contract to be executed by their respective authorized officers or other authorized representatives.

OWNER

\_\_\_\_\_  
(print name)  
\_\_\_\_\_  
(print title)  
By \_\_\_\_\_  
(signature )  
Date \_\_\_\_\_

DESIGNER

\_\_\_\_\_  
(print name)  
\_\_\_\_\_  
(print title)  
By \_\_\_\_\_  
(signature)  
Date \_\_\_\_\_

## TABLE OF CONTENTS

<b>PROJECT DESCRIPTION, FEE AND SIGNATURES</b>	<b>1</b>	
<b>ARTICLE 1</b>	<b>DEFINITIONS</b>	<b>4</b>
<b>ARTICLE 2</b>	<b>RELATIONSHIP OF THE PARTIES</b>	<b>9</b>
<b>ARTICLE 3</b>	<b>RESPONSIBILITIES OF THE OWNER</b>	<b>9</b>
<b>ARTICLE 4</b>	<b>RESPONSIBILITIES OF THE DESIGNER</b>	<b>10</b>
<b>ARTICLE 5</b>	<b>SUB-CONSULTANTS</b>	<b>15</b>
<b>ARTICLE 6</b>	<b>COMPENSATION</b>	<b>15</b>
<b>ARTICLE 7</b>	<b>BASIC SERVICES</b>	<b>17</b>
<b>ARTICLE 8</b>	<b>EXTRA SERVICES</b>	<b>25</b>
<b>ARTICLE 9</b>	<b>REIMBURSABLE EXPENSES</b>	<b>28</b>
<b>ARTICLE 10</b>	<b>COMPENSATION AND RESPONSIBILITY FOR CHANGE ORDERS</b>	<b>29</b>
<b>ARTICLE 11</b>	<b>RELEASE AND DISCHARGE</b>	<b>29</b>
<b>ARTICLE 12</b>	<b>ASSIGNMENT, SUSPENSION, TERMINATION, NO AWARD</b>	<b>29</b>
<b>ARTICLE 13</b>	<b>NOTICES</b>	<b>31</b>
<b>ARTICLE 14</b>	<b>INDEMNIFICATION</b>	<b>31</b>
<b>ARTICLE 15</b>	<b>INSURANCE</b>	<b>31</b>
<b>ARTICLE 16</b>	<b>OWNERSHIP OF DOCUMENTS</b>	<b>35</b>
<b>ARTICLE 17</b>	<b>STATUTORY REQUIREMENTS</b>	<b>36</b>
<b>ARTICLE 18</b>	<b>MISCELLANEOUS</b>	<b>38</b>
<b>ATTACHMENT A</b>	<b>PAYMENT SCHEDULE</b>	
<b>ATTACHMENT B</b>	<b>REQUEST FOR DESIGNER SERVICES (Does not apply)</b>	
<b>ATTACHMENT C</b>	<b>SDO PARTICIPATION SCHEDULE</b>	
<b>ATTACHMENT D</b>	<b>LETTER OF INTERNAL CONTROL (DESIGNER)</b>	
<b>ATTACHMENT E</b>	<b>LETTER FROM CPA ON INTERNAL CONTROLS</b>	
<b>ATTACHMENT F</b>	<b>FORM OF DESIGNER CONTRACT AMENDMENT</b>	
<b>ATTACHMENT G</b>	<b>MODEL SCHOOL ADMINISTRATIVE PROCEDURES</b>	

## **ARTICLE 1: DEFINITIONS**

All terms that this Contract defines may be used with or without initial capital letters. Other terms, abbreviations and references are defined as they appear herein. Words and abbreviations that are not defined in the Contract Documents, but which have recognized technical or trade meanings, are used in accordance with those recognized meanings.

**APPLICABLE LAWS** – All applicable laws, statutes, ordinances, by-laws, codes, rules and regulations of the Commonwealth of Massachusetts, its political subdivisions, and the Federal Government are applicable to the Project.

**APPROVAL** -- A written communication from the Owner approving the work of the current Phase, as identified on Attachment A, or authorizing the Designer to proceed to the next Phase or approving the scope and compensation for either Extra Services or Reimbursable Expenses.

**AUTHORITY** – Massachusetts School Building Authority or its authorized representative, created by St. 2004, c. 208.

**BASIC SERVICES** – The scope of services to be provided by the Designer under this Contract as described in Article 7 and as it may be amended pursuant to Article 18.4, unless the Contract is otherwise terminated pursuant to Article 12.

**CERTIFICATE OF FINAL COMPLETION** – The certificate prepared by the Designer and approved by the Owner to the effect that the Work has reached Final Completion.

**CERTIFICATE OF SUBSTANTIAL COMPLETION** – The certificate prepared by the Designer and approved by the Owner to the effect that the Work has reached Substantial Completion.

**CHANGE ORDER** – A written instrument prepared by the Designer and signed by the Owner, Owner's Project Manager, Contractor or CM at Risk, and Designer, stating their agreement on a change in the Construction Contract Documents, including, but not limited to, a change in the Contract Sum and/or Contract Time, and/or any other specification in the Construction Contract Documents.

**COMMISSIONING CONSULTANT** – A person or firm engaged by the Authority to provide building commissioning services, including advisory services during design, construction, construction completion, and post occupancy.

**CONSTRUCTION CONTRACT DOCUMENTS** – The Owner-Contractor or Owner-CM at Risk Agreement, Advertisement, Instructions to Bidders, Bidding Documents, Contract Forms, Conditions of the Contract, Drawings, Plans, Technical Specifications, all addenda issued prior to execution of the Construction Contract, and other documents approved after execution of the Owner-Contractor or Owner-CM at Risk Agreement relating thereto.

**CONSTRUCTION MANAGEMENT AT RISK or CONSTRUCTION MANAGEMENT AT RISK SERVICES or CONSTRUCTION MANAGEMENT AT RISK DELIVERY METHOD or CM at RISK DELIVERY METHOD** - a construction method described in M.G.L. c. 149A wherein a Construction Management at Risk firm provides a range of preconstruction services and construction management services which may include cost

estimation and consultation regarding the design of the building project, the preparation and coordination of bid packages, scheduling, cost control, and value engineering, acting as the general contractor during the construction, detailing the Trade Contractor scope of work, holding the trade contracts and other subcontracts, prequalifying and evaluating Trade Contractors and subcontractors, and providing management and construction services, all at a Guaranteed Maximum Price, which shall represent the maximum amount to be paid by the public agency for the building project, including the cost of the work, the general conditions and the fee payable to the Construction Management at Risk Firm.

**CONSTRUCTION MANAGER AT RISK, CONSTRUCTION MANAGEMENT at RISK FIRM or CM at RISK** – the individual, corporation, partnership, sole proprietorship, joint stock company, joint venture or other entity with whom the Owner has contracted pursuant to M.G.L. c. 149A, §§ 6 & 7, to provide Construction Management at Risk Services.

**CONTRACT** – This Contract, inclusive of all Attachments, between the Owner and the Designer; all written amendments to this Contract; and all Approvals issued pursuant to this Contract.

**CONTRACTOR OR GENERAL CONTRACTOR** – The person or firm with whom the Owner has contracted pursuant to M.G.L. c. 149, §§ 44A-44M to perform the construction for this Project.

**CONTRACTOR APPLICATION AND CERTIFICATE FOR PAYMENT** – The form prescribed by the Owner which contains the Contractor's or CM at Risk's application or requisition for periodic or final payment for Work performed in accordance with the Construction Contract Documents and the Designer's certificate for payment as approved by the OPM and the Owner.

**DESIGNER** – The individual, corporation, partnership, sole proprietorship, joint stock company, joint venture or other entity identified as such on page one of this Contract performing architecture, landscape architecture, and/or engineering services under this Contract and which meets the qualifications set forth in M.G.L. c. 7C § 44.

**DESIGNER SERVICES** – The services to be performed by the Designer and its Subconsultants under this Contract including developing and providing all data, designs, drawings, specifications and estimates required for the Project.

**DISTRICT** – see “OWNER.”

**EXTRA SERVICES** – Services requested by the Owner to be performed by the Designer, but which are additional (or "extra") to the services performed as Basic Services.

**FEASIBILITY STUDY AGREEMENT** – The agreement between the Owner and the Authority that sets forth the terms and conditions pursuant to which the Authority will collaborate with the Owner in conducting a feasibility study, which agreement shall include the budget, scope and schedule for the feasibility study.

**FEE FOR BASIC SERVICES** – The fee to be paid to the Designer for satisfactorily performing the Basic Services required under this Contract, exclusive of the compensation to which the Designer may be entitled pursuant to Articles 8 (Extra Services) and 9 (Reimbursable Expenses).

**FINAL COMPLETION** – The Work has been completed in accordance with the Construction Contract Documents and the educational specifications, schematic plans and drawings and the Project Funding Agreement approved by the Authority.

**FINAL DESIGN PROGRAM** – A description of the programmatic, functional, spatial, and environmental requirements of the Project in written and graphic form indicating the scope of work and design requirements of the Project.

**FINAL REQUEST AND CERTIFICATE FOR REIMBURSEMENT**- The form prescribed by the Authority which contains the certification of the Designer, OPM, and the Owner that the Project has reached Final Completion.

**GENERAL LAWS** – The Massachusetts General Laws as amended, including any rules, regulations and administrative procedures implementing said laws.

**GUARANTEED MAXIMUM PRICE or GMP** - The agreed total dollar amount for the Construction Management at Risk services, including the cost of the Work, the general conditions and the fees charged by the Construction Management at Risk firm.

**GUIDELINES AND STANDARDS** – Documents published by the Authority including regulations and procedures that supplement the tasks of Designers contracting with Owners for projects receiving any funding from the Authority, as they may be amended from time to time by the Authority.

**MATERIALS** – The designs, drawings, project manual specifications, and other materials prepared by the Designer as defined in Article 16.1.

**MBE/WBE/VBE/SDVOBE** – A minority business enterprise (MBE), a women business enterprise (WBE), a veteran business enterprise (VBE), or a service-disabled veteran business enterprise (SDVOBE) certified by the Supplier Diversity Office (SDO), in accordance with M.G.L. c. 7 and 425 CMR 2.00 et seq.

**NOTICE TO PROCEED** – The written communication issued by the Owner to the Contractor or CM at Risk authorizing him to proceed with the construction contract and establishing the date for commencement of the contract time.

**OWNER** – The entity identified as such on page one of this Contract, or its authorized representative, that owns the property that is the site of the Project, or has or will have exclusive control over the site for at least the duration of the useful life of the school facility that is the subject of the Project, and is responsible for administering this Contract.

**OWNER-CONTRACTOR AGREEMENT or OWNER – GENERAL CONTRACTOR AGREEMENT** – The contract between the Owner and one or more General Contractors and/or

goods or services providers for construction of a whole or part of the Project, including approved change orders.

**OWNER-CM at RISK AGREEMENT** – The contract between the Owner and the CM at Risk, including, but not limited to, the GMP Amendment, for the provision of Construction Management at Risk Services for the Project.

**OWNER'S PROJECT MANAGER or OPM** – The individual, corporation, partnership, sole proprietorship, joint stock company, joint venture or other entity with whom the Owner has contracted to perform the Project Management Services for this Project, and who meets the qualifications of M.G.L. c. 149, § 44A ½ and has been approved by the Authority.

**PHASE** – A distinct portion of the work of this Contract and its associated duration, as identified on Attachment A. Prior Approval to proceed for each Phase is required from the Owner.

**PRINCIPALS** – The owner(s) and/or officer(s) of the Designer or Subconsultant who are in responsible charge of the Project.

**PROJECT** – All work that pertains to the study, planning, programming, design, construction, reconstruction, installation, demolition, maintenance and repair, if any, as described in the Project Scope and Budget Agreement and Project Funding Agreement.

**PROJECT ARCHITECT AND/OR PROJECT ENGINEER** – The individual designated by the Designer as its Project Architect or Project Engineer. Such Project Architect or Project Engineer shall be a registered architect, engineer or landscape architect as required by the Request For Designer Services, shall be the person who shall oversee the performance of all services provided on the Project and shall be certified in the Massachusetts Certified Public Purchasing Official Program as administered by the Inspector General of the Commonwealth of Massachusetts at the time of application.

**PROJECT CONSTRUCTION BUDGET** – The portion of the Total Project Budget that enumerates the cost of constructing the Project inclusive of all designed construction, demolition, and renovation work, all supportive and preparatory construction work required for the Project, the General Contractor or the CM at Risk and all subcontractors, suppliers, materials, equipment, general conditions, insurance, overhead and profit and all other expenditures that are ordinarily considered as construction cost allocations. The Project Construction Budget includes the design contingency, bidding contingency, and price escalation contingency, as appropriate to the phase of the Project.

**PROJECT FUNDING AGREEMENT** – The Project Funding Agreement described in 963 CMR 2.00 and executed by the Authority and the Owner.

**PROJECT SCHEDULE** – A complete list of all activities, time and sequence required to complete the Project, as defined in the Project Scope and Budget Agreement or Project Funding Agreement.

**PROJECT SCOPE AND BUDGET AGREEMENT** – The Project Scope and Budget Agreement described in 963 CMR 2.00 and executed by the Authority and the Owner.

**RECORD DRAWINGS** – The drawings prepared by the Designer and its Subconsultants pursuant to Article 7.10.5 of this Contract which incorporate the design changes made during the construction period and which incorporate information on the marked-up prints, as-built drawings and other data furnished by the General Contractor or CM at Risk and any subcontractors. The drawings shall incorporate any design coordination revisions from the original project Record Drawings.

**REIMBURSABLE EXPENSES** – Costs and expenses incurred by the Designer that are reimbursable pursuant to the provisions of Article 9 of this Contract.

**REQUEST FOR DESIGNER SERVICES or RFS** – The written document appended hereto as Attachment B specifying various requirements including the project goals and general scope, project site, scope of services, submission requirements, schedule, and construction budget. In the event of any conflict between the terms and conditions set forth in this Contract and any provision(s) set forth in the RFS or other amendment hereto, the terms of this Contract shall control unless and until amended.

**STANDARD OF CARE** – The generally accepted professional standard of care ordinarily used by design professionals performing a similar scope of services in the same geographic area on projects of comparable size and complexity.

**SUBCONSULTANT** – The Subconsultants listed on page 1 and 2 of this Contract, together with any additional Subconsultants engaged by the Designer from time to time, which shall be an individual, company, firm, or business having a direct contractual relationship with the Designer, who provides services on the Project.

**SUBCONTRACTOR** – The person or entity having a direct contractual relationship with the Contractor, or CM at Risk who has the contract to perform the construction of the Project, except as otherwise specifically provided or required herein or by Law. Subcontractor when used also means “Trade Contractor” except when otherwise specified.

**SUBSTANTIAL COMPLETION** – The Work, as evidenced by the Certificate of Substantial Completion, is fully complete or substantially complete so that the value of the Work remaining to be done is, in the estimate of the Owner, less than one percent of the original contract price, or (2) the Contractor substantially completes the work and the Owner takes possession for occupancy, whichever occurs first.

**TOTAL PROJECT BUDGET** – A complete and full enumeration of all costs of the Project, as defined in the Project Scope and Budget Agreement or Project Funding Agreement.

**TRADE CONTRACTOR** – A subcontractor having a direct contractual relationship with a Contractor or CM at Risk to perform one or more so-called sub-bid classes of work listed in M.G.L. c.149, §44F, and any other sub-bid classes of work selected by the Owner for the Project in accordance with the provisions of either M.G.L. 149, §44F(1)(a) or M.G.L. c. 149A, §8(a).

**WORK** – The entire construction required to be furnished under the Construction Contract Documents. Work includes performing and furnishing any and all services, obligations, duties,

responsibilities, labor, materials, equipment, temporary facilities, and incidentals necessary to complete the construction assigned to, or undertaken by the Contractor or the CM at Risk pursuant to the Construction Contract Documents.

## **ARTICLE 2: RELATIONSHIP OF THE PARTIES**

- 2.1 The Owner's Project Manager shall act as an independent contractor of the Owner in providing certain project management services required for the Project except where the OPM is an existing public employee of the Owner as described in M.G.L. c. 149, § 44A 1/2.
- 2.2 The Designer is solely responsible for providing the design for the Project and for performing in accordance with this Contract.
- 2.3 The Contractor or CM at Risk, as the case may be, shall be solely responsible for construction means, methods, techniques, sequences and procedures, the Contractor's or CM at Risk's schedules, and for safety precautions and programs in connection with the Project and for performing in accordance with the Owner-Contractor or Owner-CM at Risk Agreement. The Designer shall be responsible for the Designer's negligent acts or omissions but shall not have control over or charge of acts or omissions of the Contractor or CM at Risk, Subcontractors, or the agents or employees of the Contractor or CM at Risk or Subcontractors, the Owner's Project Manager, the Authority or its Commissioning Consultant or other technical consultants.
- 2.4 Nothing in this Contract shall be construed as an assumption by the Designer of the responsibilities or duties of the Contractor or CM at Risk or the Owner's Project Manager. It is the intention of the parties that the Designer's services shall be rendered in a manner compatible with and in coordination with the services provided by the Owner's Project Manager and the Commissioning Consultant. It is not intended that the services of the Designer and the Owner's Project Manager or the Commissioning Consultant be competitive or duplicative, but rather complementary. The Designer shall be entitled to rely upon the Owner's Project Manager, Commissioning Consultant and Contractor or CM at Risk for the proper performance of their obligations pursuant to their respective contracts with the Owner.

## **ARTICLE 3: RESPONSIBILITIES OF THE OWNER**

- 3.1 The Owner shall have the right to approve the Designer's work.
- 3.2 The Owner shall designate an individual who shall have the authority to act on behalf of the Owner under this Contract and who shall be responsible for day-to-day communication between the Owner and the Designer.
- 3.3 Upon satisfactory completion of services performed, the Owner shall make payments to the Designer as provided in Articles 6, 7, 8, 9, 10, and 11.
- 3.4 To the extent such data is available, the Owner shall furnish to the Designer existing surveys of the site, building plans, borings, test pits, structural, mechanical, chemical or other test

data, tests for air and water pollution and for hazardous materials, photographs, reports and utility information. The Designer shall be entitled to reasonably rely upon the sufficiency and accuracy of the information furnished to the Designer under this Article 3.4 and under Article 4.11, provided that the Designer shall coordinate its services with the services of the Owner's consultants and shall notify the Owner in writing of any deficiencies in such data of which the Designer becomes aware.

- 3.5 Except as otherwise provided in this Contract, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor or CM at Risk and the Designer's consultants through the Designer about matters arising out of or relating to the Construction Contract Documents. The Owner shall promptly notify the Designer of any direct communications that may affect the Designer's services.
- 3.6 The Owner shall provide the Designer access to the Project site prior to commencement of the Work and shall obligate the Contractor or CM at Risk to provide the Designer access to the Work wherever it is in preparation or progress.
- 3.7 If the Owner requests the Designer to execute any certificates that are not readily available as of the effective date of this Contract, the proposed language of such certificates shall be submitted to the Designer for review at least 14 days prior to the requested dates of execution. The Designer shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Contract.
- 3.8 The Owner shall deliver to the Designer in a timely manner written copies of all Approvals required by this Contract. If Approval is withheld, the Owner shall notify the Designer in a timely manner, in writing, as to why such Approval is being withheld.
- 3.9 The Owner shall not unreasonably withhold, delay, condition, or deny any approval, acceptance, or consent required under this Contract, including any Approval.

#### **ARTICLE 4: RESPONSIBILITIES OF THE DESIGNER**

- 4.1 The Designer shall perform the Designer Services in accordance with the requirements of this Contract, and in accordance with the Standard of Care. The Designer shall exercise due care and diligence in the rendition of all services under this Contract in accordance with such professional standards and shall exercise the Standard of Care to provide the services required under this Contract in conformity with all Applicable Laws.
- 4.2 The Designer shall be responsible for the Designer Services including any changes to such Services that may be required in accordance with this Contract. The Designer shall furnish appropriate competent professional services for each of the Phases in accordance with the Standard of Care. Any changes, corrections, additions or deletions requested by the Owner and the Authority shall be incorporated into the design of the Project unless detailed objections thereto are issued in writing by the Designer, subject to Article 8.2.2. Nothing herein shall be construed as an assumption by the Owner or the Authority of the responsibilities or duties of the Designer.
- 4.3 The Designer Services shall be performed as expeditiously as is consistent with orderly progress of the work, consistent with the agreed upon project design schedule as

established under Article 7.4.2 and as it may thereafter be amended by the parties from time to time. In the event of delays due to causes outside of the Designer's control, the project design schedule may be extended as necessary, and Designer's compensation may be equitably adjusted pursuant to Article 6.6 to the extent that Designer incurs additional direct costs caused by the delay. Time is of the essence for the duration of this Contract.

- 4.4 The Designer shall provide the scope of services required by this Contract, as described in more detail in Attachments A and G.
- 4.5 The Designer shall comply with the terms and conditions of all project agreements executed between the Owner and the Authority and any and all administrative directives issued by the Authority, now in effect or hereafter promulgated during the term of this Contract, without any additional compensation, that are applicable to Designer's Services under this Contract and that have been provided or are readily available to Designer prior to such Services being performed. The Owner shall reasonably compensate the Designer for complying with any term or condition of a project agreement executed between the Owner and the Authority or any administrative directive issued by the Authority, that was not provided to or was not readily available to the Designer prior to such Services being performed and that materially impacts the Designer's scope or other aspect of its Services, Fee, schedule, or any obligations and responsibilities under this Contract.
- 4.6 The Designer acknowledges the importance that the Owner attributes to the abilities and qualifications of the key members of the Designer's team, including Subconsultants, and the continuity of key members' participation in the services to be provided under this Contract. This Contract has been entered into in reliance on the Designer's representation that the individuals, consultants, assignments and responsibilities will be maintained throughout the duration of this engagement. No substitution or replacement of individuals or change in the Subconsultants, listed on pages 1-2 of this Contract, shall take place without the prior written approval of the Owner, except when necessitated by causes beyond the Designer's control (such causes shall include if an individual leaves or is no longer associated with the Designer's firm). If the Designer proposes to replace one of the members of the Designer's team, the Designer shall propose a person or consultant with qualifications at least equal to the person or firm the Designer proposes to replace. The Owner shall have the right to approve any substitution or replacement or change in status for the persons or Subconsultants listed on page 1-2 of this Contract and such approval shall not be unreasonably withheld. At the request of the Owner, the Designer shall consult with the Owner to resolve any situation in which the Owner determines that a member of the Designer's team is failing to perform services in an acceptable manner to the Owner. The Owner shall have the right to direct the removal of any such person or consultant. The Owner shall work in good faith with the Designer to resolve any material problems identified by the Owner in writing regarding performance of the Designer's obligations under this Contract. No act or omission of the Owner made or permitted under this Article shall relieve the Designer of its responsibility for the performance of the services specified in this Contract.
- 4.7 The Designer shall compile and distribute a job directory which includes all names, addresses, phone, and e-mail addresses of the representatives of the Designer and their Subconsultants. This shall be distributed upon commencement of the services and shall be updated and redistributed as project participants and/or contact information change.

4.8 The Designer shall employ at all times adequate professional and support personnel with requisite expertise and adequate numbers to assure the complete, timely performance of the obligations of the Designer. The Designer shall acquaint its employees and Subconsultants with all provisions of the General Laws governing public construction projects, including but not limited to M.G.L. c. 149, M.G.L. 149A, and M.G.L. c. 30, that are relevant to the performance of Designer's obligations under this Contract. When directed by the Owner, the Designer shall fully cooperate with the Owner in obtaining the Criminal Offender Record Information (CORI) of the Designer and its employees and of any Subconsultants and their employees in accordance with the provisions of M.G.L. c. 71, § 38R, M.G.L. c. 6, §§ 167-178B (the so-called CORI Law), any other applicable law, and District policy. All contracts between the Designer and each Subconsultant shall include appropriate provisions requiring the Subconsultant to fully cooperate with the Owner in obtaining the Criminal Offender Record Information (CORI) of the Subconsultant and its employees as aforesaid. Designer shall also fully cooperate with the Owner in obtaining any other out-of-state criminal record information, if applicable, pursuant to relevant state or federal laws.

4.9 The Designer shall be and shall remain liable to the Owner for all damages incurred by the Owner as a result of the failure of the Designer or its Subconsultants to perform in conformance with the terms and conditions of this Contract.

4.10 Design Within the Project Construction Budget as determined in the Schematic Design Phase

4.10.1 The Designer shall prepare cost estimates for the Project as described in Article 7 of this Contract. The cost estimates shall be considered Basic Services and the Designer is not eligible for any additional compensation for preparing the same. The format for cost estimates shall be in accordance with the requirements of the Authority.

4.10.2 The Designer shall produce a design for the Project meeting the requirements of the scope of work to be constructed within the Project Construction Budget of the Total Project Budget, provided that the Designer shall be permitted to recommend to the Owner such adjustments to the Project's design, consistent with the Project Funding Agreement, as the Designer reasonably believes may be required to adhere to the Project Construction Budget. In the event the Designer's cost estimate for the Project (as reconciled in accordance with the provisions of this Contract) exceeds the Project Construction Budget, the Owner may require the Designer to revise the design, drawings and specifications to keep the cost estimate for the Project within the Project Construction Budget. The Designer shall not be entitled to extra compensation for making such revisions to contain costs within the Project Construction Budget.

4.10.3 In a Project constructed pursuant to M.G.L. c. 149, §§ 44A-44M, if the Project Construction Budget is exceeded by the lowest bona fide, responsible bid by any amount, the Owner shall direct the Designer to review and compare the Project Construction Budget with the bids received to identify the variances. Upon completion of this review and submission of the Designer's report to the Owner and Authority, the Owner shall, with the approval of the Authority:

(a) direct the Designer to revise the Final Design Program, Project scope and quality as required to reduce the estimated construction costs to be within the Project Construction Budget, in accordance with Article 4.10.5 of this Contract; or

(b) give written approval to the Designer of an increase in the Project Construction Budget; or

(c) authorize rebidding of the Project within a reasonable time; or

(d) terminate this Contract in accordance with Article 12.3; or

(e) implement any other mutually accepted alternative that the Owner and the Designer may agree on.

4.10.4 In a Project constructed pursuant to M.G.L. c. 149A, the Designer shall be responsible for managing the design of the Project to stay within the Project Construction Budget. If the GMP proposal submitted by the CM at Risk exceeds the Project Construction Budget, the Designer shall review and compare the Project Construction Budget with the GMP proposal submitted by the CM at Risk to identify the variances. Upon completion of this review, if directed by the Owner, the Designer shall assist the Owner in negotiating a GMP within the Project Construction Budget in accordance with Article 7.7.9. If a GMP cannot be successfully negotiated between the Owner and the CM at Risk within the Project Construction Budget, the Owner shall, with the approval of the Authority:

(a) direct the Designer to participate with the Owner, OPM, and CM at Risk in design reviews and revise the design, including appropriate revisions to drawings and specifications, as necessary in order to reach an agreement on a GMP within the Project Construction Budget; in accordance with Article 4.10.5; or

(b) give written approval to the Designer of an increase in the Project Construction Budget and resume negotiating a GMP with the CM at Risk; or

(c) terminate this Contract in accordance with Article 12.3; or

(d) implement any other mutually accepted alternative that the Owner and the Designer may agree on.

4.10.5 (a) If the Owner chooses to proceed under Article 4.10.3(a) or 4.10.4(a), the Designer and its Subconsultants, without receiving additional compensation, except if fewer than three bona fide, responsible bids were received (in the case of a Project constructed pursuant to M.G.L. c. 149, §§ 44A-44M) or (in the case of a Project constructed pursuant to G.L. c. 149A) if fewer than three bona fide responsible Trade Contractor or so-called non-trade contractor bids for each category of work were received, or if 4.10.5(b) and/or (c) applies, shall cooperate in revising the designs, drawings and specifications as may be required to reduce or modify the quality or

scope or both, of the Project so that they will comply with the Project Construction Budget as approved at the conclusion of the Construction Documents Phase or as amended. Any changes to the educational program or the approved space summary shall be subject to the written approval of the Authority. Upon completion of these revisions, the Designer shall also be required to produce a revised cost estimate demonstrating that the estimated cost of the Project does not exceed the Project Construction Budget. Revising the designs, drawings, and specifications and updating the cost estimate shall be the sole obligation on the part of the Designer with respect to 4.10.3(a) or 4.10.4(a); (b) If the Owner elects to proceed with revisions that significantly increase the complexity either of the Construction Contract Documents themselves or the Construction Administration Phase services that the Designer will have to provide, then the Designer shall be entitled to an equitable adjustment in its Fee to reflect the impact on its services; (c) If the bid or proposal referenced in 4.10.3 or 4.10.4 above was submitted on a date that is more than three (3) months after approval of the Construction Contract Documents then such revisions shall be Extra Services.

4.10.6 The Designer must receive written approval of the Owner and the Authority before the Project Construction Budget shall be considered amended.

4.11 Additional Tests and Surveys: The Designer shall be responsible under Article 7 for reviewing the surveys, investigations, testing, and reports completed by the Owner and as provided under Article 3.4, and determining the types of additional or expanded surveys, investigations, or testing required for the Project. Additional or expanded surveys, investigations, or testing required for the Project shall be provided by qualified specialty Subconsultants as necessary. Both the types of services and the Subconsultants shall be approved by the Owner. See Article 8.2.14 Extra Services.

4.12 Commissioning Consultant: The Authority may engage the services of a Commissioning Consultant to provide building commissioning services, including advisory services, during design, construction, and post-occupancy of the Project. Commissioning activities may start from the Schematic Design Phase and continue through preparation of construction documents, bidding, construction, close-out, and warranty period.

The Designer and its Subconsultants shall collaborate with the Authority's Commissioning Consultant to develop design criteria to support the purposes of building commissioning and energy/resources conservation concepts as commonly understood and as prescribed by the Commissioning Consultant.

The Commissioning Consultant may review and provide input on the development of the design documentation, including but not limited to, design intent, basis of design, commissioning specifications, sequences of operation, and testing requirements as prepared by the Designer. Any changes, corrections, additions, or deletions requested by the Commissioning Consultant to which the Designer makes no objection shall be incorporated into the design of the Project as part of Basic Services.

## **ARTICLE 5: SUBCONSULTANTS**

- 5.1 The Designer may engage Subconsultants, subject to the prior written approval of the Owner and subject to Article 9.3, in order to perform services under this Contract. If Subconsultants are engaged, the person responsible for, and in control of, the Subconsultant services to be provided must be professionally registered or licensed in Massachusetts in the necessary disciplines for the services if such registration or licensing is required under the applicable General Laws. The engagement of Subconsultants shall not in any way relieve the Designer from its duties and responsibilities for its work, including, without limitation, coordinating all Designer Services furnished under this Contract by the Subconsultants.
- 5.2 Upon request, the Designer shall provide the Owner with copies of its agreements with Subconsultants, including any amendments thereto and copies of the Subconsultant's applicable certificates of insurance.
- 5.3 No substitution of Subconsultants and no use of additional Subconsultants or assignment of services shall be made without prior written approval of the Owner, which approval shall not be unreasonably withheld.

## **ARTICLE 6: COMPENSATION**

- 6.1 For the satisfactory performance of all services required pursuant to this Contract, excluding those services specified under Articles 8 and 9, the Designer shall be compensated by the Owner in the amounts specified in Attachment A as that Fee may be amended by written amendment to this Contract.
- 6.2 When the Designer receives payment from the Owner, the Designer shall promptly make payment to each Subconsultant whose work was included in the work for which such payment was received unless payment has been theretofore made. The Owner shall have the contractual right to investigate any breach of performance of a Subconsultant and to initiate corrective measures it determines are necessary and in the best interest of the Owner. All contracts between the Designer and its Subconsultants shall include a provision in which the Owner's rights to initiate corrective action shall be stipulated.
- 6.3 Payment Schedule
  - 6.3.1 Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each Phase. The amount of fees attributable to each Phase shall be as set out in the schedule in Attachment A. Payment for approved Reimbursable Expenses and/or Extra Services shall be made monthly upon receipt of an approved invoice from the Designer.
  - 6.3.2 The Owner shall make payments to the Designer within 30 days of the Owner's approval of an invoice from the Designer. The Owner's payment for any services provided under this Contract shall not be construed to operate as a waiver of any rights under the Contract or any cause of action arising out of performance of the Contract. The Owner shall not withhold payments to offset costs alleged to have been incurred by the Owner on account of allegedly negligent acts, errors or omissions unless the Designer agrees or has been found liable for specific amounts in a binding agreement or court judgment, or unless the Designer fails to maintain the professional liability insurance required under Articles 15.7.1 and 15.7.2. The Owner may withhold approval of invoice items the Owner reasonably believes have not been performed in accordance with this Contract, including adjustments to payment

amounts in instances where required submittals to the Authority may be found to be missing or incomplete. If Owner and Designer continue to disagree, the disagreement shall be immediately submitted to mediation in accordance with Article 18.5(b).

#### 6.4 Installment Payments During Construction Administration Phase:

6.4.1 During the Construction Administration Phase, the Designer shall be paid the Fee for Basic Services stipulated in Attachment A.

6.4.2 Payments to the Designer during the Construction Administration Phase shall be made in equal monthly installments for the duration of the Construction Administration Phase. The amount of each payment shall be determined by dividing 95% of the fee for Construction Administration Phase as stipulated in Attachment A, by the number of months between the Notice to Proceed and the scheduled issuance of the Certificate of Substantial Completion, as indicated in the Project Schedule approved by the Owner. The Designer shall be entitled to Extra Services in accordance with Article 8.3 if the Project is delayed beyond the 60-day period described in Article 8.3 for reasons beyond the control of the Designer.

6.5 Final Installment: The Designer shall be paid the unpaid balance of the fee for Completion Phase as stipulated in Attachment A (as that fee may be amended), upon compliance with the following requirements:

6.5.1 Execution of the Final Request and Certificate for Reimbursement (such Certificate to be in the form developed by the Authority). In cases where a Certificate of Partial Release of Retainage is approved, the Designer shall be paid up to an amount commensurate with the percent of retainage released until a Final Request and Certificate for Reimbursement is approved; and

6.5.2 Delivery by the Designer to the Owner of the Record Drawings required by this Contract; and

6.5.3 Verification of payment to Supplier Diversity Office (SDO) Certified (MBE/WBE/VBE/SDVOBE) Subconsultants or Subconsultants identified on Attachment C and as required by Article 17.4; and

6.5.4 A written evaluation of the General Contractor or CM at Risk by the Designer from which the Owner shall be able to complete its submission of the Contractor Evaluations as required by M.G.L. c.149 § 44D(7).

6.5.5 In the event the Designer is unable to comply with Articles 6.5.1 and 6.5.2 above due to reasons beyond the Designer's control, as determined by the Owner, Final Installment shall not be unreasonably withheld or delayed beyond 60 days after the date of Substantial Completion, provided that the Designer has complied with all other requirements.

#### 6.6 Substantial Change

- 6.6.1 If there is a substantial change in the services to be provided by the Designer under this Contract, the Designer and the Owner will mutually agree to a written amendment describing the services and an amended Fee for Basic Services to reflect the change and reasonable cost of such change. Such changes shall be designated on Attachment F and shall be executed by the Designer and the Owner.
- 6.6.2 Should the Designer and the Owner be unable to negotiate a mutually acceptable amendment to the Fee for Basic Services when there has been a substantial change in the specified services, the Owner shall unilaterally and promptly determine, in good faith and supported by a written explanation in sufficient detail, a reasonable maximum dollar amount for the services as amended and process payments to the Designer subject to said maximum amount, until an amendment to the Fee for Basic Services for such change is set by later agreement between the parties, provided, that the Designer's acceptance of such payments shall not be considered a waiver by the Designer of its right to pursue a claim for additional compensation related to the change in services, and provided that such disagreement shall be immediately submitted to mediation in accordance with Article 18.5(b). In no event shall the Designer stop work under this Contract due to a disagreement with the Owner regarding an amendment in the Designer's Fee for Basic Services, provided that the Owner complies with its payment obligations under this Article 6.6.
- 6.6.3 Notwithstanding the foregoing, the amendment to this Agreement described in Article 7.4.8 shall be negotiated and executed by both parties prior to the start of the subsequent Phase.

## **ARTICLE 7: BASIC SERVICES**

- 7.1 The Designer shall discuss with the Owner and the Authority the requirements for each Phase before beginning work on that Phase. Basic Services include, but are not limited to, verification of existing record information including preparing measured drawings, details and general existing conditions, cost estimating, architecture, civil, sanitary, mechanical, electrical, plumbing, fire protection, structural, site planning and landscape architecture, basic environmental permitting, graphics, lighting design, acoustics, fire alarm, data and communication, educational programming, any specialty consultants for sustainable/renewable energy design (LEED), preliminary FF&E layouts, laboratory, library/media and kitchen space, specifications, elevator, theatrical, historical preservation, security, code compliance, accessibility/universal design, energy evaluations, detailed cost estimates, and other design and consulting services incidental and required to fulfill project goals.
- 7.2 The Owner and the Authority will promptly review and approve the Designer's submittals. Upon completion of its review, the Owner shall promptly and in writing:
- (a) approve the submittal as made; or
  - (b) approve that part of the submittal that is acceptable and reject the remainder; or
  - (c) reject the submittal; or

(d) require the Designer to submit additional information or details in support of its submittal.

7.2.1 The description of Designer Services required during the various Phases may include specification of the number of submittals the Designer will be required to make and estimate of the approximate number of meetings that the Designer will be required to prepare for and attend during each Phase.

7.2.2 As a part of Basic Services, the Designer shall provide four copies of each submittal to the Owner; one hard copy and one electronic copy of each submittal to the Authority, and, if the Owner elects to proceed with the CM at Risk construction delivery method, one copy of each submittal to the CM at Risk. Drawings submitted to the Authority shall be reproduced at half full size. A graphic scale shall be placed upon all such drawings prior to construction documents phase submittals. If the Designer is required to make submittals in excess of the number specified or if the Designer is required to prepare for and attend meetings in excess of the number specified for a Phase, the Designer shall be entitled to compensation for Extra Services, provided, however, that the Designer shall not be entitled to such compensation if and to the extent the Owner or the Authority shall have reasonably determined that the additional submittals or the additional meetings were required due to either the Designer's lack of preparation, or other fault due to deficiencies or omissions in documents prepared by the Designer.

7.2.3 All document submittals shall be in the form of neatly bound printed material, and delivered to the location or locations as indicated by the Owner and Authority. One or more document submittal components may be submitted in an approved electronic format, subject to specific authorization by the Owner and/or Authority.

7.2.4 Electronic Submittals: The Designer shall submit electronic copies on compact disks, thumb drives, or other approved electronic devices for all required submissions of Deliverables called for by this Contract ("Electronic Submittals"). All Electronic Submittals shall be deemed to be Materials that are subject to all provisions of Article 16. The Electronic Submittals shall be provided in a format as approved by the Owner and Authority and as follows:

- (a) All drawings shall be provided in PDF format or other industry-standard format as approved by the Owner and acceptable to the Authority. Electronic file naming convention shall be acceptable to the Owner.
- (b) All other documents shall be provided in PDF format, Microsoft Word, Excel, Project, or PowerPoint, as applicable to the particular submittal.
- (c) All submittals shall be labeled identifying project name and number, file name, drawing title, software and release.
- (d) The Owner reserves the right to require the Designer to provide all electronic media as may be required at any time during the duration of this Contract due to technology upgrades and/or

changes to the electronic systems used by the Owner or Authority, provided that if such requirement demands that the Designer purchase new software or train existing employees for the application of media or software such costs shall be a Reimbursable Expense but only to the extent that such purchase of new software or training of existing employees is unique or exclusive to the particular requirements of the Owner or the Authority for this particular Project.

- (e) The Designer's compliance with the terms of this Article shall be performed as part of the Basic Services under the Contract, and the Designer shall not receive any additional compensation for providing the Electronic Submittals, (including but not limited to conversions or copies of software), except as specified herein. The Designer shall not be responsible for any use of Electronic Submittals on hardware or software for which it was not intended.

- 7.2.5 In reviewing and preparing all documents for evaluation as part of the Schematic Design Phase and/or any other design phase for which the Designer may be authorized, the Designer shall determine gross area and net areas in the following manner in order to maintain uniformity in computation and consistency of both gross and net square foot areas of buildings:

Gross Area: The area included within the outside faces of the exterior walls for all stories. Custodial areas such as janitor closets, building maintenance and building employees' locker rooms, circulation areas such as corridors, lobbies, stairs, and elevators, and mechanical areas such as those designated to house mechanical and electrical equipment, utility services, and non-private toilets shall be considered as part of the gross area, but not part of the net area.

Net Areas: In general, those areas which have a specific assignment and functional program use as determined by the facility, including, but not limited to, areas such as cafeterias, auditoriums, libraries, administrative and classrooms. These shall be measured from the inside finish of permanent outside walls to the inside finish of corridor walls, and to the inside finish of intermediate partitions.

### 7.3 [Intentionally Omitted]

### 7.4 Schematic Design Phase

- 7.4.1 Upon receipt of an Approval to proceed to Schematic Design Phase, the Designer shall meet with the Owner to arrive at a mutual understanding of the requirements of the Final Design Program approved in writing by the Owner and the Authority. The Designer shall review the design coordination revisions from the original project Record Drawings with the Owner and the Owner's Project Manager.
- 7.4.2 The Designer shall submit a proposed design work plan pursuant to this Contract including anticipated tasks and submittals. The Designer shall also submit to the

Owner a proposed schedule consistent with the requirements of Attachment G and the Owner's executed Feasibility Study Agreement modified as required by any subsequent schedule changes or delays outside of Designer's control. The schedule shall contain dates for submittals, deliverables, actions, milestones, design workshops, meetings and the critical path through all design service activities. It shall include time for the Owner's and the Authority's review and approval of submittals and for necessary submissions for permits in connection with the Project. The work plan shall also include a work plan schedule of values consistent with Attachment A, which shall be the basis for which payments of the Fee for Basic Services within each Phase shall be made. The work plan schedule of values shall identify deliverables within each Phase and percentages of the phase fee payable upon completion of such deliverable. When approved by the Owner as provided in Article 7.4.8, the work plan schedule of values shall govern the timing of payments of the Fee for Basic Services upon completion of deliverables within each Phase and as each Phase progresses.

- 7.4.3 The Designer shall conduct the following: Prepare a preliminary evaluation of the Recommended Preferred Solution from the Feasibility Study, the Final Design Program, and Proposed Total Project Budget; collect and study all available drawings, reports, maintenance reports, and other existing data pertaining to the Project; conduct a thorough on-site review of conditions relating to the Project; assure that the "Recommended Preferred Solution" complies with all applicable codes and regulations, including any special design standards supplied by the Authority and its Commissioning Consultant; and meet with local building officials to identify and confirm applicable standards, codes and any project specific criteria.
- 7.4.4 The Designer shall develop the Model School design to a full schematic design level. Schematic design level documentation shall be based on the Final Design Program, shall incorporate Owner and Authority comments and shall include each of the following, to the extent applicable to the Recommended Preferred Solution:
- (a) Traffic Analysis – review the Traffic Study described in Article 3.4 and the impact of anticipated vehicular and pedestrian traffic, including impacts to existing infrastructure, to determine efficient and safe site access and make any recommendations as may be required to complete the project site design.
  - (b) Site Survey(s) and Environmental Assessment(s) – review the Site Survey(s) and Environmental Assessment(s) described in Article 3.4 and make any recommendations as may be required to complete the project site design.
  - (c) Geotechnical and Geoenvironmental Analysis –review the Geotechnical and Geoenvironmental Investigations and Reports described in Article 3.4 and make any recommendations as may be required to describe soil conditions, remediation requirements and appropriate foundation design as required to complete the project site design.
  - (d) Program Analysis - a space measurement analysis for the design which shall verify that the sum of all program floor areas plus all other floor areas equal the gross floor area of the Final Design Program.

- (e) Code Analysis – determine the impact of all applicable federal, state, regional and local codes, regulations and ordinances, including a listing of permitting and other regulatory filing requirements. Develop design criteria and a written report to assure compliance with the Massachusetts Stretch Energy Code and the International Energy Conservation Code. Demonstrate compliance with technical criteria as applicable for Project work scope.
- (f) Utility Analysis – based on a review of the information provided in the Site Survey, determine the availability and capacity of all required building utilities. Provide soils analysis and preliminary design for on-site septic/sewage treatment facilities, if required.
- (g) Massing Study – an analysis of the building’s integration into its surroundings and neighborhood with drawings, models, or photographs.
- (h) Building Information Modeling – creation of a Building Information Model and quality control documents.
- (i) Built-in furniture and preliminary Furniture, Fixtures, and Equipment (“FF&E”) layouts as shown in plans, elevations, and room data sheets.
- (j) LEED Scorecard – pursuant to the Authority’s Green Schools Program guidelines, complete a LEED Scorecard and describe sustainable design features and each high performance green school prerequisite and credit included in the proposed design and a plan for implementation or inclusion of any appropriate public utility energy conservation design programs.
- (k) Security – consult with local emergency responders for input regarding building and site security design and operations.
- (l) Accessibility - an analysis of the design's compliance with the Americans with Disabilities Act (ADA) and the Massachusetts Architectural Access Board requirements (MAAB).
- (m) Building Systems Descriptions – describe in narrative and on schematic plans basic information relative to:
  1. Building Structure - a written narrative of the design approach to the structural systems including discussion of the feasible options for foundations and superstructure as well as treatment of special situations such as unusual soils conditions or long spans.
  2. Plumbing and HVAC - written narratives of the basic systems and proposed energy source(s) and a preliminary life cycle cost analysis pursuant to the criteria of M.G.L. c. 149 § 44(m). Provide schematic plans indicating basic distribution concepts and the location of major equipment items such as boilers, heat pumps, water heaters, cooling towers, chillers, air handling units, heat recovery units, exhaust stacks, building automation

systems/building management systems, and special systems (e.g. fume exhausts, geothermal wells).

3. Fire Protection - written narratives of the basic systems and design criteria. Provide schematic plans indicating basic distribution concepts and the location of major equipment items such as fire pumps, standpipes, and fire department connections.
  4. Electrical (including power, lighting, communications, fire alarm, video/CATV, audio and visual security/surveillance, and solar readiness) - written narratives of the proposed electrical and communications systems resources, needs, and proposed scope. Provide schematic plans indicating basic distribution concepts and the location of major equipment items such as switchgear, standby generator, and control centers/panels.
  5. Information Technology - written narratives of the proposed information technology system resources, needs, and proposed scope. Provide schematic plans indicating basic distribution concepts, and location of major equipment items such as switches and hubs.
- (n) Outline/Summary Level specifications in accordance with applicable CSI Divisions that clearly define the scope of construction, identify the sub-trades pursuant to M.G.L. c. 149 § 44F, establish the quality of materials, finishes, products, equipment and workmanship, and the special or unique conditions of construction.
- (o) Project Schedule - provide a reasonable level of design-related input to the OPM such that the OPM can prepare a draft schedule for the proposed project for the Owner in the form of a graphic representation (Gantt Chart) of the duration of all tasks, activities and phases of the design and construction processes against the progression of time up to a proposed occupancy date. Dependencies between activities and tasks will be delineated. Individual tasks and activities will be rolled up to the major project milestones. Provide input to the OPM regarding priority actions and activities that may have a major impact on the schedule. The OPM, not the Designer, is responsible for preparing and maintaining the draft and updated project schedule document, except as it pertains to the project design schedule developed under Article 7.4.2.
- (p) Construction Cost Estimate - in Unifomat II Level 3 format with aggregated unit rates and quantities supporting each item and the CSI MasterSpec format to Summary Level. If independent cost estimates are prepared for the Owner by the OPM in this or subsequent phases, then the Designer shall work with the OPM to resolve such any differences in a cost reconciliation process and shall involve any relevant parties in such process.
- (q) Siting analysis of the proposed site design, including context, traffic and access, topographic and utilities recognition, based on a review of the existing

conditions information provided in the surveys and studies as described in Article 3.4 .

- (r) Site Development Plan – Site plan shall be based on a review of the information provided in the Site Survey, shown at a minimum scale of 1 inch equals 40 feet and include property lines with bearings and distances, building setbacks, site acreage, wetlands information, proposed and existing topography, proposed and existing buildings and site features, floor and roof elevations for all buildings, proposed and existing utilities and utility connections, and emergency equipment access.
- (s) Schematic Building Floor Plans of all floors and roof at a minimum scale of 1/16" = 1'-0" showing all elements of the building including overall dimensions, gross square footage of each floor and net square footage of each space, response to functional requirements of program, major and minor access, circulation, and room data sheets.
- (t) Schematic Exterior Building Elevations for all sides and orientations indicating all exterior finishes and fenestration.

7.4.5 Schematic Design phase drawings, specifications, construction cost estimates and other submittals shall be subject to the written Approval of the Owner, which Approval shall not be unreasonably delayed, withheld, conditioned, or denied. Unless a lesser number is requested by the Owner, the Designer shall submit to the Owner for approval four (4) copies of schematic design drawings, specifications, cost estimates, and other submittals. One (1) additional copies shall be submitted to the Authority by the Designer. One (1) additional electronic copy shall be submitted to the Commissioning Consultant by the Designer.

7.4.6 The Designer shall present and explain the Schematic Design to the Owner, the OPM, the Authority, and at a local public meeting, if any such meeting is scheduled, or in conference.

7.4.7 The Designer shall meet with the Owner every other week during the Schematic Design Phase in accordance with the agreed upon project work plan.

7.4.8 Prior to the issuance of an Approval to proceed to the Design Development Phase, the Designer and the Owner shall meet to finalize the design work plan, project schedule, and schedule of values described in Article 7.4.2. If necessary, they shall execute an amendment to the Contract to include all required modifications to govern the subsequent phases of the Designer's services.

#### 7.4.9 Construction Delivery Method Evaluation and Selection

- (a) The Designer shall assist the Owner in determining the appropriate construction delivery methodology for the Proposed Project. In providing such assistance, the Designer, in conjunction with the Owner's Project Manager, shall advise the Owner on the relative advantages and disadvantages associated with each of the construction delivery methods provided in M.G.L. Chapters 149 and 149A.

The decision to pursue a particular construction delivery method shall be within the sole discretion of the Owner, subject to the approval of the Inspector General as provided in M.G.L. c. 149A, §4. The services provided by the Designer in assisting and advising the Owner in its determination of the appropriate construction delivery methodology shall be included in Basic Services.

- (b) If the Owner elects to construct the Project using the CM at Risk construction delivery method pursuant to M.G.L. c. 149A, and has obtained the approval of the Office of the Inspector General to do so, with the Approval of the Owner, this Contract shall be amended using the Authority’s Standard Amendment for CM-R which includes Articles 7.5 through 7.10. If the Owner elects to construct the Project using the Design-Bid-Build (“DBB”) construction delivery method pursuant to M.G.L. c. 149, with the Approval of the Owner, this Contract shall be amended using the Authority’s Standard Amendment for DBB, which includes Articles 7.5 through 7.9.

7.5 INTENTIONALLY OMITTED

7.6 INTENTIONALLY OMITTED

7.7 INTENTIONALLY OMITTED

7.8 INTENTIONALLY OMITTED

7.9 INTENTIONALLY OMITTED

7.10 INTENTIONALLY OMITTED

## **ARTICLE 8: EXTRA SERVICES**

### **8.1 General**

8.1.1 Extra Services are those services requested by the Owner to be performed by the Designer but which are additional (or “extra”) to the services performed as Basic Services. Such services are not included in the Fee for Basic Services and shall be invoiced and paid for separately. Extra services shall not be deemed authorized until a written Approval is received from the Owner, which Approvals shall not be unreasonably delayed, withheld, denied, or conditioned.

8.1.2 The proposed cost, scope and schedule of all Extra Services shall be presented and approved by the Owner in writing prior to the performance of any Extra Services.

8.1.3 Cost proposals for Extra Services shall be computed in accordance with Attachment A.

8.2 Unless specifically stated elsewhere and only with the prior written Approval of the Owner, the Designer shall perform any of the following services as Extra Services:

- 8.2.1 Preparing measured drawings and detailed construction investigations documentation for existing buildings when such documentation does not exist;
- 8.2.2 Substantially revising previously approved reports, drawings, specifications or other documents to address changes authorized or requested by the Owner, including substantial changes in its size, quality, complexity, design, Budget, and/or bidding method or bid packages, and changes in Applicable Laws;
  - (a) Notwithstanding the provisions of 8.2.2, revisions prepared by the Designer to keep construction costs within the Project Budget that are required pursuant to Article 4.10 of this Contract to be without additional compensation, or to correct incorrect items for which the Designer has responsibility, shall not be Extra Services;
  - (b) Modifications to the Model School design and construction documents (as agreed upon in the Schematic Design Phase) are not considered Extra Services, and will be performed by the Designer within the Basic Services fee.
- 8.2.3 Preparing documents for separate bid packages or bidding alternates requested by the Owner, except for a reasonable number and extent of alternates to keep construction costs within the Project Budget which shall be Basic Services;
- 8.2.4 Revising Construction Contract Documents which have been initially submitted and approved in their final and complete form, if general bids (M.G.L c. 149) or subcontractor bids (M.G.L. c. 149 or 149A) for work required thereunder are not advertised based on such Construction Contract Documents within four months after initial submission;
- 8.2.5 Services in connection with rebidding if the need to rebid is not attributable to the Designer;
- 8.2.6 Attending meetings with the Owner, Owner's Project Manager, the Authority, Department of Labor and Workforce Development, the Office of Attorney General, the Office of the Inspector General, or the CM at Risk (if the project is constructed pursuant to M.G.L. c. 149A) in matters of dispute if attendance is required by the Owner, provided such dispute did not arise due to the fault of the Designer;
- 8.2.7 Furnishing other services in excess of Basic Services made necessary by the default or failure of performance of the General Contractor or CM at Risk or Subcontractors;
- 8.2.8 Providing consultation with respect to replacement of work damaged by fire or other casualty during construction;
- 8.2.9 Preparing change orders and supporting data in accordance with Article 10, or modifying the Construction Documents in response to an unreasonable amount of substitutions proposed by the Contractor or CM at Risk, or responding to unreasonable and excessive requests for information (RFIs) by the Contractor or CM at Risk, where such information is available from a careful study and review of the Construction Documents;

- 8.2.10 Assisting the Owner in litigation or claims arising out of the Owner-Contractor Agreement or Owner-CM at Risk Agreement, provided such litigation or claims did not arise due to the fault of the Designer;
- 8.2.11 Performing Construction Administration Phase services during a construction period extended beyond the additional 60 calendar day period, specified in Article 8.3;
- 8.2.12 Performing professional services which are not otherwise required under this Contract as Basic Services;
- 8.2.13 Providing services in connection with partial completion or partial systems completion inspections at the time of Substantial Completion of the Work or of a project construction phase and/or separate bidding package due to delay by the Contractor or CM at Risk in completing the Work on schedule;
- 8.2.14 Additional Tests and Surveys: In the event that the Designer employs the services of a Subconsultant to provide additional or expanded surveys, investigations, or testing required for the Project as described in Article 4.11, the Designer shall employ such Subconsultants who have the professional liability insurance coverage described in Article 15.8.1 covering such services, to the extent that such insurance coverage is generally available to Subconsultants. The Designer shall, upon the Owner's written request, assign to the Owner the Designer's contractual right to pursue a claim against such Subconsultants. Such additional tests and surveys may include, but need not be limited to:
- (a) Site surveys and environmental assessments;
  - (b) Structural tests and materials tests;
  - (c) Geotechnical and geoenvironmental investigations and reports, including existing hazardous material reports, boring tests, test pits, observation wells, testing and chemical analysis of site substrate conditions;
  - (d) Traffic studies; and
  - (e) Hydrant flow tests.
- 8.2.15 FF&E services not already provided in Article 7, Basic Services, in connection with providing detailed equipment schedules, cut sheets, specifications, procurement and installation of FF&E;
- 8.2.16 Presentation renderings, models, mock-ups, photographs and any other presentation materials;
- 8.2.17 Providing services related to identification, testing, or remediation of existing building hazardous materials;
- 8.2.18 Providing master planning services;
- 8.2.19 Providing specialized environmental permitting not already provided in Article 7, Basic Services;
- 8.2.20 Providing specialized foundation design not already provided in Article 7, Basic Services; and
- 8.2.21 Providing services in connection with Contractor, CM at Risk or Bidder disputes or questions arising out of the bidding process, unless such protest is a result of an act or omission of the Designer. Such services include research and preparation for and appearance at bid protest hearings and similar proceedings.

### 8.3 Construction Phase Services Provided after the Original Construction Completion Date

8.3.1 If construction of the Work, or of a project construction phase and/or separate bidding package has not reached substantial completion within the original construction period (as set forth in the Owner-Contractor or Owner-CM at Risk Agreement and as agreed to by the Designer), there shall be added to said construction period a period of sixty (60) calendar days, during which period the Designer shall continue to provide Construction Administration Phase services for which no extra compensation shall be paid for the services described in Article 7.9 and 7.10.1 through 7.10.4 in a CM at Risk Project or for the services described in Articles 7.8 and 7.9.1 through 7.9.4 in a DBB Project.

8.3.2 If construction has not reached Substantial Completion after the 60 additional calendar days, the Designer shall thereafter be entitled to Extra Services compensation for providing the services described in Articles 7.10.3 (which are fully defined under Article 7.9.2) and 7.10.4 in a CM at Risk Project or for the services described in Articles 7.9.3 (which are fully defined under Article 7.8.2) and 7.9.4 in a DBB Project. The Designer may also be entitled to Extra Services compensation for tasks performed beyond the added sixty (60) calendar days period for tasks related to Article 7.9.1 (d) through (i) in a CM at Risk Project or 7.8.1(d) through (i) in a DBB Project. In any event, the Designer is required to identify and present the anticipated Extra Services contemplated under Article 8.3.2 in accordance with Article 8.1. In no event shall the Designer be entitled to any additional compensation on account of an extended construction period if and to the extent that a binding agreement or decision that results from a dispute resolution proceeding determines that the Designer's acts or inactions caused the construction period to be extended.

8.4 In the event of an emergency the Designer may proceed to perform Extra Services as required to meet the emergency after obtaining the verbal approval of the Owner. The Designer shall provide a written report to the Owner, as soon as possible after the emergency arises. This report shall describe the emergency and the Extra Services that were performed.

8.5 Invoices for Extra Services shall be accompanied by a breakdown listing the name, payroll title, date, number of hours by day, hourly rate and extended amount, per specified task of Extra Services performed. Hourly rates shall be in accordance with the Hourly Rate Schedule in Attachment A.

### **ARTICLE 9: REIMBURSABLE EXPENSES**

9.1 For coordination and responsibility for the services, materials and costs described in 9.1.1 through 9.1.6, the Designer shall be reimbursed its actual costs and those of its Subconsultants, supported by invoices or receipts, plus 10%. The following are reimbursable expenses, when previously approved in writing by the Owner:

- 9.1.1 The cost of printing more than six (6) sets of design submittals for a CM at Risk project, or more than five (5) sets of design submittals for a project pursuant to M.G.L. c. 149, or more than two electronic versions thereof per design submission deliverable phase or sub-phase.
- 9.1.2 The related copying, postage, and handling services during a prequalification or bid period.
- 9.1.3 The cost of reproducing the mylar reproducible of the construction drawings for use by the General Contractor or CM at Risk in preparing the record drawings.
- 9.1.4 Out of pocket expenses paid by the Designer such as filing fees, testing, and permit fees if such fees would be normally paid by the Owner.
- 9.1.5 LEED registration fees.

9.1.6 Other expenses deemed necessary or appropriate by the Owner in writing.

- 9.2 Non-Reimbursable Expenses: The Owner shall not reimburse the Designer or its Subconsultants for travel expenses, sustenance, telephone, copying, facsimiles, electronic mails, postage and delivery expenses, unless specifically required.
- 9.3 The Designer shall not be entitled to compensation under this Article for the services of Subconsultants hired to perform Basic Services under this Contract.

## **ARTICLE 10: COMPENSATION AND RESPONSIBILITY FOR CHANGE ORDERS**

- 10.1 The Designer shall be entitled to Extra Services compensation for preparing Change Orders initiated by the Owner except as provided in Article 10.3.
- 10.2 The Designer shall not be entitled to Extra Services compensation for preparing Change Orders to adjust the scope of construction work which arises from existing conditions for which unit prices have been specified in the Construction Contract Documents.
- 10.3 The Designer shall not be entitled to Extra Services compensation for preparing Change Orders necessary to address errors or omissions by the Designer.
- 10.4 Change Orders for which the Designer is not entitled to compensation are to be referred to as “no fee change orders.”
- 10.5 The fact that the Designer is not entitled to compensation for preparing a Change Order shall not limit any legal remedies which the Owner may have for recovering its additional costs necessitated by the Change Order.

## **ARTICLE 11: RELEASE AND DISCHARGE**

- 11.1 The acceptance by the Designer of the last payment under the provisions of Article 6.5 or Article 12 in the event of termination of the Contract, shall in each instance, operate as and be a release to the Owner and the Authority and their employees and officers, from all

claims of the Designer and its Subconsultants for payment for services performed and/or furnished, except for those written claims submitted by the Designer to the Owner with, or prior to, the last invoice.

## **ARTICLE 12: ASSIGNMENT, SUSPENSION, TERMINATION, NO AWARD**

### 12.1 Assignment:

12.1.1 The Designer shall not assign or transfer any part of its services or obligations under this Contract (other than as specified in Article 12), without the prior written approval of the Owner. Likewise, any successor to the Designer must first be approved by the Owner before performing any services under this Contract. Such written consent shall not in any way relieve the Designer or their assignee from its responsibilities under this Contract. The Owner and the Authority shall have the right to approve any assignment or transfer or change in status for the persons or Subconsultants listed on pages 1-2 of this Contract and such approval shall not be unreasonably withheld. The Owner shall not assign this Contract without the written consent of the Designer.

### 12.2 Suspension:

12.2.1 The Owner may, at any time, effective upon fifteen (15) business days written notice to the Designer, suspend this Contract. If the Owner provides such written notice, the Designer shall be compensated for Services satisfactorily performed in accordance with the Contract terms prior to the effective date of such suspension; invoices for such Services shall be properly submitted, but may be submitted after the date of such notice up to the effective date of suspension.

12.2.2 If a written notice of suspension issued pursuant to Article 12.2.1 lasts for more than ninety (90) consecutive calendar days, the Designer may, upon resumption of the Contract, be entitled to additional compensation for actual costs incurred due to such suspension provided that the suspension was not attributable to the Designer's fault.

### 12.3 Termination:

12.3.1 (a) By written notice to the Designer, pursuant to Article 13 Notices, the Owner may terminate this Contract effective on five (5) calendar days notice without cause. All compensation and reimbursement due to the Designer in accordance with the Contract terms, for services satisfactorily performed up to the date of termination, including proportionate payment for portions of the services started but incomplete at the time of termination, shall be paid to the Designer, provided no payment shall be made for services not yet performed or for anticipated profit on unperformed services.

12.3.2 (b) Pursuant to Article 13 Notices, the Owner may terminate this Contract effective on five (5) calendar days notice for cause, and no further payment shall be due to the Designer to the extent the Owner can reasonably identify damages in specific amounts for which the Designer is liable under this Contract; Owner shall pay other amounts otherwise due and owing to the Designer.

12.4 Suspension or Termination by Designer: The Designer may suspend or terminate this Contract by providing written notice to the Owner and the Authority, pursuant to Article 13 Notices, at the Designer's sole option, under the following circumstances:

- 12.4.1 If the Owner, within thirty (30) days following written notice from the Designer of any material default by the Owner under the Contract (including failure to pay in accordance with the Contract), fails to cure such default; or
- 12.4.2 If, after the Designer has performed all services required during any Phase prior to construction and at least three (3) months have elapsed without the Designer receiving receipt of Approval to proceed with the next Phase of the Project, provided the delay was not the fault of the Designer. This provision shall not apply to a Designer who has received a notice of suspension pursuant to 12.2.
- 12.4.3 Upon a proper termination by the Designer, the Designer shall be compensated as provided in 12.3.1 above regarding termination without cause.

12.5 No Award of Owner-Contractor Agreement: If the Project is constructed pursuant to M.G.L. c. 149, §§ 44A-44M, the Owner-Contractor Agreement is not awarded by the Owner within one hundred twenty (120) days after the receipt of general bids for the Project and the bids have not been rejected and the Project has not been suspended, the Designer shall be paid through the Bidding Phase as if a contract for construction were awarded according to the payment schedule provided in Attachment A. This Article 12.5 does not apply, however, if the Designer has been directed to perform design revisions pursuant to 4.10.2, for the purposes of bringing the design of the Project within the Project Construction Budget.

**ARTICLE 13: NOTICES**

13.1 Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person (b) by certified mail, postage prepaid, return receipt requested (c) by facsimile or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

If to \_\_\_\_\_;

If to \_\_\_\_\_;

If to \_\_\_\_\_;

or to such other address as the Owner, Authority and Designer may from time to time specify in writing. Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice that has been received by the party to whom it is sent as evidenced by confirmation slip that bears the time and date of request.

**ARTICLE 14: INDEMNIFICATION**

14.1 For claims arising out of or relating to negligent errors and omissions in the performance of professional services rendered by the Designer, the Designer shall indemnify and hold harmless the Owner and its officers and employees to the fullest extent permitted by the law. This includes all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney’s fees and costs of investigation and litigation, whatsoever which may be incurred by the Owner to the extent caused by the negligence of, or the breach of this Contract by, the

Designer or a person employed by the Designer, or Subconsultant for whom the Designer is responsible under this Contract.

- 14.2 For all other claims, Designer shall defend, indemnify, and hold harmless the Owner and the Authority and their officers and employees to the fullest extent permitted by the law. This includes all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Owner or the Authority to the extent they result from the performance of its services provided that such claims, damages, liabilities, injuries, costs, fees, expenses, or losses are attributable to bodily injury or death or injury to or destruction of tangible property and are caused by an act or omission of the Designer or a person or Subconsultant for whom the Designer is responsible under this Contract.

### **ARTICLE 15: INSURANCE**

- 15.1 The Designer Applicant shall obtain and maintain at its sole expense all insurance required by law and as may be required by the Owner and by the Authority under the terms of this Contract. The insurance required hereunder shall be provided at the sole expense of the Designer or its Subconsultant, as the case may be, and shall be in full force and effect for the full term of the Contract between the Owner and the Designer or for such longer period as required under this Contract.
- 15.2 All policies shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts with a financial strength rating of "A" or better as assigned by A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the Owner and the Authority.
- 15.3 The Designer, and any of its Subconsultants, shall submit to the Owner originals of the required certificates of insurance simultaneously with the execution of this Contract. Certificates of insurance evidencing the coverage required hereunder, together with evidence that all premiums for such insurance have been fully paid, shall be filed with the Owner and shall be made available to the Authority upon request. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, and policy effective and expiration dates. The Designer shall submit updated certificates to the Owner prior to the expiration of any of the policies referenced in the certificates so that the Owner shall at all times possess certificates indicating current coverage and said certificates shall be made available to the Authority upon request. Failure by the Designer to obtain and maintain the insurance required by this Article, to obtain all policy renewals, or to provide the respective insurance certificates as required shall constitute a material breach of the Contract and shall be just cause for termination of the services of the Designer under this Contract.
- 15.4 Termination, cancellation, or modification or reduction of coverage or limits by endorsement of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the Owner and the Authority at least thirty days prior to the effective date thereof, which shall be expressed in said notice.

15.5 The Designer or its Subconsultant, as the case may be, is responsible for the payment of any and all deductibles under all of the insurance required below. Neither the Owner nor the Authority shall be responsible for the payment of deductibles, self-insured retentions or any portion thereof.

15.6 Workers' Compensation, Commercial General Liability, Automobile Liability, and Valuable Papers

15.6.1 The Designer shall purchase and maintain at its own expense during the life of this Contract, or such other time period as provided herein, the following types and amounts of insurance, at a minimum:

- (a) Workers' Compensation Insurance in accordance with M.G.L. c. 152. The policy shall be endorsed to waive the insurer's rights of subrogation against the Owner and the Authority.
- (b) Commercial General Liability Insurance (including Premises/Operations; Products/Completed Operations; Contractual; Independent Contractors; Broad Form Property Damage; and Personal Injury) with a minimum limit of \$1,000,000 per occurrence, \$2,000,000 aggregate. The Designer shall maintain such insurance in full force and effect for a minimum period of one year after final payment and shall continue to provide evidence of such coverage to the Owner and the Authority. The Owner and the Authority shall be included as an additional insured in this policy. The policy shall be endorsed to waive the insurer's rights of subrogation against the Owner and the Authority.
- (c) Automobile Liability Insurance (including owned, non-owned and hired vehicles) at limits of not less than \$1,000,000 combined single limit per accident.
- (d) Valuable Papers Insurance in an amount sufficient to assure the restoration of any plans, drawings, computations, field notes, or other similar data relating to the work covered by the Agreement between the Owner and the Designer in the event of loss or destruction while in the custody of the Designer until the final fee payment is made or all data is turned over to the Owner, and this coverage shall include coverage for relevant electronic media, including, but not limited to, documents stored in computer-aided design drafting (CADD) systems.

15.7 Professional Liability

15.7.1 The Designer shall maintain professional liability insurance covering negligent errors and omissions and negligent acts of the Designer and of any person or entity for whose performance the Designer is legally liable at all times while services are being performed under this Contract and for a period of six (6) years thereafter (as

calculated in accordance with the terms below in 15.7.2). The minimum amount of such insurance shall be \$2,000,000 per claim/\$2,000,000 annual aggregate.

15.7.2 If the policy is in a “claims made” format, it shall include a retroactive date that is no later than the effective date of this Contract, and an extended reporting period of at least six years after the earlier of: (1) the date of official acceptance of the completed Project by the Owner; (2) the date of the opening of the Project to public use; (3) the date of the acceptance by the general contractor or the CM at Risk of a final pay estimate prepared by the Owner pursuant to M.G.L. c. 30; or (4) the date of substantial completion of the Owner-Contractor Agreement or Owner-CM at Risk Agreement and the taking of possession of the Project for occupancy by the Owner, which requirement can be met by providing renewal certificates of professional liability insurance to the Owner as evidence that this coverage is being maintained.

## 15.8 Subconsultants

15.8.1 The Designer shall require by contractual obligation, and shall exercise due diligence to enforce, that any professional engineering or landscape architecture Subconsultant hired in connection with the services to be provided under this Contract shall, unless otherwise agreed in writing by the Owner, obtain and maintain all insurance required by law and as may be required by the Owner under the terms of this Contract, except that the limit of Subconsultant’s professional liability insurance shall be not less than \$2,000,000 per claim/\$2,000,000 annual aggregate.

15.8.2 All professional liability policies obtained by Subconsultants shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts with a financial strength rating of “A” or better as assigned by A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the Owner and the Authority.

15.8.3 If the Subconsultant’s insurance policy is in a “claims made” format, it shall include a retroactive date that is no later than the effective date of its contract with the Designer, and an extended reporting period of at least six years after the earlier of: (1) the date of official acceptance of the completed Project by the Owner; (2) the date of the opening of the Project to public use; (3) the date of the acceptance by the General Contractor or CM at Risk of a final pay estimate prepared by the Owner pursuant to M.G.L. c. 30; or (4) the date of substantial completion of the Owner-General Contractor Agreement or the Owner-CM at Risk Agreement and the taking of possession of the Project for occupancy by the Owner, which requirement can be met by providing renewal certificates of professional liability insurance to the Owner as evidence that this coverage is being maintained.

15.8.4 Other nonprofessional Subconsultants shall be required to maintain insurance in the types and amounts that they routinely carry in the course of their practice.

## 15.9 Liability of the Designer

Insufficient insurance shall not release the Designer from any liability for breach of its obligations under this Contract. Without limitation, the Designer shall bear the risk of any loss if its valuable papers insurance coverage is insufficient to cover the loss of any work covered by this Contract.

#### 15.10 Asbestos and Hazardous Materials

- 15.10.1 Unless otherwise provided in Article 8, the Designer shall have no responsibility for the discovery, presence, handling, removal or disposal of or for the exposure of persons to oil or hazardous materials in any form at the Project, including but not limited to asbestos-containing materials or other hazardous materials, as defined in M.G.L. c. 21E, §2.
- 15.10.2 In the event that the Designer employs the services of a sub-consultant to provide services related to either the testing for asbestos-containing materials or oil or hazardous materials or related to the specification of methods and procedures for the removal or remediation of such asbestos-containing materials or oil or hazardous materials, the Designer shall employ such Subconsultants who have liability insurance coverage covering such services, to the extent that such insurance coverage is generally available to Subconsultants. Upon the Owner's written request, the Designer shall assign to the Owner the Designer's contractual right to pursue a claim against such Subconsultants. Such services shall be paid for as provided in Article 8 – Extra Services.
- 15.10.3 Certificates of insurance evidencing the coverage required hereunder, together with evidence that all premiums for such insurance have been fully paid, shall be filed with the Authority prior to the Authority making any payments to Applicant District. All policies shall contain a provision that coverages afforded by them will not be cancelled or amended until at least thirty (30) days prior written notice has been given to the Applicant District and the Authority.
- 15.10.4 All such insurance shall name the Authority and such other parties as the Owner shall require as additional insured parties with endorsements providing protection to the Authority as though separately issued and shall provide that such insurance is primary to any insurance carried by the Owner.

### **ARTICLE 16: OWNERSHIP OF DOCUMENTS**

- 16.1 Unless provided otherwise by law, ownership and possession of all information, data, reports, studies, designs, drawings, specifications, materials, computer programs, documents, models, inventions, equipment, and any other documentation, product of tangible materials to the extent authored or prepared, in whole or in part, by the Designer pursuant to this Contract (collectively, the "Materials"), other than the Designer's administrative communications, records, and files relating to this Contract, shall be the sole property of, and shall vest in, the Owner and the Authority as "works made for hire" or otherwise, provided that the Owner complies with its payment obligations under this Contract. The Owner and the Authority will own the exclusive rights, worldwide and

royalty-free, to and in all Materials prepared and produced by the Designer pursuant to this Contract, including, but not limited to, United States and International patents, copyrights, trade secrets, know-how and any other intellectual property rights, and the Owner and the Authority shall have the exclusive, unlimited and unrestricted right, worldwide and royalty-free, to publish, reproduce, distribute, transmit and publicly display all Materials prepared by the Designer. The Owner and the Authority shall provide appropriate credit to the Designer, in terms agreed upon by the Designer, in any publicity about or plaque at the Project. The Designer shall have a license to publish and publicly display all Materials prepared by the Designer in its normal marketing and related professional and academic activities. The Designer shall have a license to use the typical or standard details and all other replicable elements of the Materials for this Project on other future projects. At the completion or termination of the Designer's services required pursuant to this Contract, copies of all original Materials shall be promptly turned over to the Owner and the Authority.

- 16.2 The Owner and the Authority agree to waive any and all claims against the Designer and, to the fullest extent permitted by law, to jointly and severally defend, indemnify and hold the Designer harmless from and against any and all claims, losses, liabilities and damages incurred by the Owner or asserted by any other entity or individual arising out of or resulting from any use of the Materials on other projects, modifications of the Materials made by the Owner or others and used on this Project, or any reuse or modification of the Materials or any of Designer's designs, drawings and specifications. The Authority shall be a party to this Contract solely for the purposes of enforcing its rights and obligations under this Article 16.

## **ARTICLE 17: STATUTORY REQUIREMENTS**

- 17.1 Agent for Service of Process: If the Designer's principal place of business is outside of the Commonwealth of Massachusetts, the Designer shall appoint an agent for the service of process as provided in M.G.L. c.227, §5. The power of attorney reflecting such appointment shall be filed with the Secretary of State as provided in M.G.L. c.227, §5. Copies of the power shall be provided to the Owner. There shall be no lapse in such agency for as long as the Designer may have potential liability.
- 17.2 Truth-in-Negotiations Certificate (M.G.L. c.7C, §51)
- 17.2.1 If the Designer's fee has been negotiated, the Designer must file a truth-in-negotiations certificate prior to execution of this Contract by the Owner. The certificate shall contain the following certifications:
- (a) that wage rates and other costs used to support the Designer's compensation are accurate, complete, and current at the time of contracting; and
  - (b) that the Contract price and any additions to the Contract may be adjusted within one year of completion of the Contract to exclude any significant amounts if the Owner determines that the fee was increased by such amounts due to inaccurate, incomplete or noncurrent wage rates or other costs.

- 17.3 Certification Pursuant to M.G.L. c.7C §51 (d): In accordance with M.G.L. c.7C, §51(d), the person signing this contract certifies, as a duly authorized signatory of the Designer, that the Designer has not given, offered or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Contract; no Consultant to or Subconsultant for the Designer has given, offered or agreed to give any gift, contribution or offer of employment to the Designer, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the Designer or Subconsultant of a contract by the Designer; and no person, corporation or other entity, other than a bona fide full-time employee of the Designer, has been retained or hired by the Designer to solicit for or in any way assist the Designer in obtaining this Contract upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Contract.
- 17.4. Diverse Business Participation: Pursuant to M.G.L. c. 7C, § 6, M.G.L. c. 7, §61, and all associated regulations and guidance from the SDO, the Designer shall subcontract with MBEs, WBEs, and VBEs/SDVOBEs or otherwise demonstrate, to the satisfaction of both the Owner and SDO, diligent good faith efforts to subcontract with such firms. Business participation goals shall be established by the SDO. In the event that a pre-qualified Designer is selected to provide design services for a District invited into the Model School Program, that Designer will be obligated to meet or exceed any business participation goals (MBE, WBE, and VBE/SDVOBE) that are required under Massachusetts Law on the date that the Designer enters into an agreement with a District for Design Services. If the Designer is an SDO-certified MBE, WBE, VBE, or SDVOBE, the Designer may apply its net self-performance towards that goal, but must still comply with the MBE, WBE, and VBE/SDVOBE business participation goals for the project.
- 17.4.1 The Designer shall complete and submit at the time of contract execution a completed Participation Schedule which is attached to this contract as Attachment C in order to be in compliance with Article 17.4 above.
- 17.4.2 The Designer shall utilize the Supplier Diversity Office’s online reporting system, presently known as ‘The Hub.’
- 17.4.3. The Designer shall regularly report information pertaining to the businesses engaged in work under this contract, for both prime and subconsultants, in the forms and formats required by the Owner and by the SDO.
- 17.4.4. The Designer agrees to provide the SDO with, and to permit the SDO access to, any information, records, accounts, or documents requested by the SDO regarding the setting of or compliance with the diverse business participation goals in this contract. The Designer shall include this provision in any contract or agreement used to fulfill any aspect of this contract.
- 17.5 Accounting Requirements: The Designer shall cause to be maintained complete, accurate and detailed records of all time devoted to the Project by the Designer and each

Subconsultant employed by the Designer. The Owner, the Authority, and the Commonwealth's Inspector General may at all reasonable times audit such records that directly pertain to this Contract. On a Contract where the Fee for Basic Services exceeds \$100,000 the Designer shall comply with M.G.L. c.30, §39R which requires the Designer to:

- 17.5.1 Maintain accurate and detailed accounts for a six-year period after the final payment;
- 17.5.2 File with the Owner annual audited financial statements or statements from their accountants that their reviews are consistent with state laws.
- 17.5.3 File with the Owner a statement of management on internal accounting controls on its letterhead as prescribed in Attachment D and a statement from an independent certified public accountant (CPA) on its letterhead as prescribed in Attachment E to this Contract.
- 17.6 Revenue Enforcement and Protection Program (REAP): Pursuant to M.G.L. c. 62C §49A, the undersigned certifies under the penalties of perjury that to the best of his/her knowledge and belief that the firm and/or individuals in the firm are in compliance with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.
- 17.7 Interest of Designer: The Designer hereby certifies that it is in compliance with the provisions of M.G.L. c. 268A whenever applicable. The Designer covenants that 1) neither he/she nor any member of the Designer firm presently has any financial interest and shall not acquire any such interest direct or indirect, which would conflict in any manner or degree with the services required to be performed under this Contract or which would violate M.G.L. c. 268A, as amended from time-to-time; 2) in the performance of this Contract, no person having any such interest shall be employed by the Designer; and 3) no partner or employee of the Designer firm is related by blood or marriage to any officer, official, or employee of the Owner.
- 17.8 Equal Opportunity: The Designer shall not discriminate in employment against any person on the basis of race, color, religion, national origin, sex, sexual orientation, age, genetics, ancestry, disability, marital status, veteran status, membership in the armed forces, presence of children or political beliefs. Each shall comply with all provisions of Title VII of the Civil Rights Act of 1964 and M.G.L. c. 151B.
- 17.9 Certification of Non-Collusion: The signatory certifies under penalties of perjury that the Designer's proposal has been made in and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.
- 17.10 Minority and Women Workforce Participation: Pursuant to M.G.L. c. 7C, § 6 and M.G.L. c. 149, § 44A(2)(G) the Designer shall be required to provide regular reports of the gender and race/ethnicity of employees engaged in work under this contract, for both prime and subconsultants, in the form and format required by the District, including but

not limited to, by electronic reporting through the requested means and with the frequency required by the District.

## **ARTICLE 18: MISCELLANEOUS**

- 18.1 Governing Law: This Contract shall be governed by the laws of the Commonwealth of Massachusetts.
- 18.2 Venue: Any suit by either party arising under this Contract shall be brought only in the Superior Court in the county where the Project is located. The parties hereto waive any argument that this venue is improper or that the forum is inconvenient.
- 18.3 Non-Waiver: Neither the Owner's review, approval, or acceptance of, nor payment for any of the services furnished under this Contract shall be construed to operate as a waiver of any rights under the Contract or any cause of action arising out of the performance of the Contract.
- 18.4 Entire Agreement: This Contract represents the entire and integrated agreement between the Owner and the Designer and, except as otherwise provided herein, supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written agreement signed by both the Owner and the Designer, and approved by the Authority, which approval shall not unreasonably be delayed, denied, conditioned, or withheld.
- 18.5 Dispute Resolution: If a dispute arises between the parties related to this Contract, the parties agree to use the following procedures to resolve the dispute: (a) Negotiation. A meeting shall be held between representatives of the parties with decision-making authority regarding the dispute to attempt in good faith to negotiate a resolution of the dispute; such meeting shall be held within fourteen calendar days of a party's written request for such a meeting; (b) Mediation. If the parties fail to negotiate a resolution of the dispute, they shall submit the dispute to mediation as a condition precedent to litigation and shall bear equally the costs of the mediation. The parties shall jointly appoint a mutually acceptable mediator; they shall seek assistance from an independent third party in such appointment if they have been unable to agree upon such appointment within 30 days of the meeting just noted in (a) above; (c) Litigation. If the parties fail to resolve the dispute through mediation, then either party may file suit in accordance with Article 18.2; and (d) This Article of dispute resolution provisions shall survive termination of this Contract.
- 18.6 Waiver of Subrogation: (a) To the extent damages are covered by property insurance, the Owner and the Designer waive all rights against each other and against the General Contractor or CM at Risk, Subcontractors, consultants, agents, and employees of the other for damages caused by fire or other causes of loss, except such rights as they may have to the proceeds of such insurance as set forth in the Owner-Contractor Agreement or Owner CM at Risk Agreement. The Owner shall require of the General Contractor or CM at Risk, Subcontractors, Owner's Project Manager, consultants, Subconsultants, and

agents and employees, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. (b) Nothing in this Contract shall create a contractual relationship with or create a cause of action in favor of a third party against the Owner or the Designer.

# ATTACHMENT A

## PAYMENT SCHEDULE

Payments shall be made in accordance with the provisions outlined in the Contract and with the following schedule:

### Basic Services

Schematic Design Phase .....	
Construction Documents Phase .....	
Early Bid Packages.....	
Bidding Phase.....	
Construction Administration Phase .....	
Completion Phase .....	
<b>TOTAL</b> .....	

### Extra Services

Extra Services provided pursuant to Article 8 shall be compensated as determined by the Owner (a) by a lump sum fee agreed upon in advance in writing by the Owner and the Designer, or (b) on an hourly basis in accordance with the rate schedule set forth below for time expended, up to a not to exceed amount.

Hourly Rates:

**Attachment B**  
**Request for Designer Services**  
**Not applicable**

**ATTACHMENT C**  
**PARTICIPATION SCHEDULE FOR DESIGNER CONTRACTS**  
**BY SDO CERTIFIED BUSINESS ENTERPRISES**

This form shall be submitted to the Owner by the Designer upon execution of the Contract for Designer Services attached hereto.

Owner \_\_\_\_\_

Project No: \_\_\_\_\_

<u>Name of Company</u>	<u>Description of Work</u>	<u>SDO Cert.</u>	<u>Dollar Value Participation</u>
1. _____	_____	_____	\$ _____
2. _____	_____	_____	\$ _____
3. _____	_____	_____	\$ _____
4. _____	_____	_____	\$ _____
5. _____	_____	_____	\$ _____
6. _____	_____	_____	\$ _____

Dollar Value of MBE Commitment: \$ \_\_\_\_\_

Dollar Value of WBE Commitment: \$ \_\_\_\_\_

Dollar Value of VBE Commitment: \$ \_\_\_\_\_

Dollar Value of SDVOBE Commitment: \$ \_\_\_\_\_

**Total Dollar Value Commitment: \$ \_\_\_\_\_**

**Original Fee for Basic Services Amount \$ \_\_\_\_\_**

**DESIGNER CERTIFICATION**

The undersigned certifies under the penalties of perjury that (1) it intends to subcontract with the above listed firms for the identified work and dollar amounts and (2) certifies that he/she has read the terms and conditions of the Designer Contract with regards to SDO certified entities participation and is authorized to bind the Designer to the commitment set forth above.

Date \_\_\_\_\_

\_\_\_\_\_  
Name of Architect/Engineer

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State & Zip Code

# **ATTACHMENT D**

**M.G.L. c.30 §39R - INTERNAL ACCOUNTING CONTROLS  
APPLIES TO CONTRACTS OF \$100,000 OR MORE  
SAMPLE LETTER TO BE PREPARED ON DESIGNER'S LETTERHEAD**

Date

CEO  
Owner  
123 Reservoir Street  
Enfield, MA 01234

RE: Enfield High School

Dear:

This Statement of Internal Accounting Controls is being submitted in accordance with Article 17.5.3 of the Contract for Design Services for the above captioned project. Please be advised that our firm, the Designer under the Contract, has a system of internal accounting controls which assures that:

1. transactions are executed in accordance with management's general and specific authorization;
2. transactions are recorded as necessary, to permit preparation of financial statements in conformity with generally accepted accounting principles, and to maintain accountability for assets;
3. access to assets is permitted only in accordance with management's general or specific authorization; and
4. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.

Sincerely,

# **ATTACHMENT E**

**MGL c.30 §39R – INTERNAL ACCOUNTING CONTROLS  
APPLIES TO CONTRACTS OF \$100,000 OR MORE  
SAMPLE LETTER TO BE PREPARED ON CPA'S LETTERHEAD**

CEO  
Owner  
123 Reservoir Street  
Enfield, MA 01234

RE:

Dear

Please be advised that we have reviewed the Statement of Internal Accounting Controls prepared by the \_\_\_\_\_ in connection with the

**Name of Designer**

above-captioned project. This statement is required under M.G.L. c.30 §39R. In our opinion, representations of management are consistent with our evaluations of the system of internal accounting controls. In addition, we believe that they are reasonable with respect to transactions and assets in the amount which would be material when measured in relation to the firm's financial statements.

Sincerely,

(CPA)

# ATTACHMENT F

## CONTRACT FOR MODEL SCHOOL DESIGNER SERVICES

AMENDMENT NO. \_\_\_\_\_

**WHEREAS**, the \_\_\_\_\_ (“Owner”) and \_\_\_\_\_, (the “Designer”) (collectively, the “Parties”) entered into a Contract for Designer Services for the \_\_\_\_\_ Project (Project Number \_\_\_\_\_) at the \_\_\_\_\_ School on \_\_\_\_\_ “Contract”; and

**WHEREAS**, effective as of \_\_\_\_\_, the Parties wish to amend the Contract:

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained in this Amendment, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. The Owner hereby authorizes the Designer to perform services for the Construction Documents Phase, the Construction Phases, and the Final Completion Phase of the Project, pursuant to the terms and conditions set forth in the Contract, as amended.
2. For the performance of services required under the Contract, as amended, the Designer shall be compensated by the Owner in accordance with the following Fee for Basic Services:

<b>Fee for Basic Services:</b>	Original Contract	After this Amendment
Schematic Design Phase	\$ _____	\$ _____
Design Development Phase	\$N/A _____	\$N/A _____
60% Construction Document Phase	\$ _____	\$ _____
Bidding Phase	\$ _____	\$ _____
Construction Phase	\$ _____	\$ _____
Completion Phase	\$ _____	\$ _____
<b>Total Fee</b>	\$ _____	\$ _____

This Amendment is a result of: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. The Construction Budget shall be as follows:

Original Budget: \$ \_\_\_\_\_

Amended Budget \$ \_\_\_\_\_

4. The Project Schedule shall be as follows:

Original Schedule: \$ \_\_\_\_\_

Amended Schedule \$ \_\_\_\_\_

5. This Amendment contains all of the terms and conditions agreed upon by the Parties as amendments to the original Contract. No other understandings or representations, oral or otherwise, regarding amendments to the original Contract shall be deemed to exist or bind the Parties, and all other terms and conditions of the Contract remain in full force and effect.

IN WITNESS WHEREOF, the Owner, with the prior approval of the Authority, and the Designer have caused this Amendment to be executed by their respective authorized officers.

**OWNER**

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(print title)

By \_\_\_\_\_  
(signature)

Date \_\_\_\_\_

**DESIGNER**

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(print title)

By \_\_\_\_\_  
(signature)

Date \_\_\_\_\_

# **ATTACHMENT G**

TO: Maureen G. Valente, Chief Executive Officer  
John K. McCarthy, Executive Director, Deputy Chief Executive Officer  
FROM: Karl Brown, Senior Architect  
John Junpe Jr., Director of Project Management  
Mary Pichetti, Director of Capital Planning  
SUBJECT: Model School Program Administration Recommendation  
DATE: September 1, 2016

---

## **Introduction**

This memo describes updated procedures to administer the Model School Program (“Program”) as established by the Massachusetts School Building Authority (“MSBA”) that are consistent with the goals of the Program. The MSBA seeks to adapt and re-use the designs of successful, recently constructed schools to meet the requirements of a school district that has been approved by the MSBA’s Board of Directors to construct a new (versus renovated) school. To maximize the benefits of an existing proven design, it is important to minimize design changes of the model school. The MSBA believes the adaptation of successful existing designs will have many benefits, including:

- Proven designs meeting certain criteria will contain many best practices that should be perpetuated in school design.
- Adaptation of an existing design, versus development of a completely new design, will streamline the design process and result in reduced design fees.
- The pre-construction schedule will be compressed and will accelerate the start of construction and thus reduce the impact and uncertainty of inflation in construction costs on the overall cost of the project.
- Except for unforeseen site conditions, re-use of the design should limit construction change orders.

## **Background**

The Program, introduced in 2008, has been utilized by 18 districts between 2009 and 2012. It had 16 pre-qualified models, prior to the 12 selected model schools recently approved by the Board of Directors on July 20, 2016 (Attachment 1 - Board Memorandum dated July 13, 2016). In March 2016, the MSBA Board of Directors approved the staff recommendation to eliminate the additional reimbursement incentive associated with the Program effective for all districts receiving an invitation into eligibility period January 1, 2016 or later (Attachment 3 - Board Memorandum dated January 20, 2016). Since its inception, the MSBA has periodically updated the list of pre-qualified model schools and anticipates continuing this practice to ensure available model schools remain relevant and adaptable to current building codes and school needs.

As indicated in the staff memorandum for recommendations to approve new model schools and to remove the incentive points, the MSBA convened a joint task force together with representatives from the Boston Society of Architects in November of 2011 to evaluate potential improvements to the existing Program. The findings and comments (Attachment 2) of this task

force informed request for qualifications issued to approve new model schools and staff have incorporated these updates into the administrative procedures presented below.

### **Recommendation**

Attached is a more complete set of recommended administrative procedures, below is a summary of the recommendations for the proposed Model School Program Administration Procedures.

- A district should signal interest in the Program prior to issuing its designer request for services, if possible;
- A district must complete a feasibility study that demonstrates new construction is the most educationally appropriate and cost effective solution;
- A district must notify the MSBA of its interest in participating in the Program on or before the deadline for submitting the preferred schematic report to the MSBA;
- MSBA staff would simultaneously review (1) the district's preferred schematic report for enrollment, educational programming, and site conditions, and (2) perform a separate review process to determine if any of the model schools could meet the educational needs identified by the district;
- MSBA staff would present its model school review at the same Facilities Assessment Subcommittee meeting where the district presents its educational program, feasibility study, and preferred solution;
- MSBA staff must recommend, and the Board of Directors must authorize, the district's preferred solution to replace the existing school facility with new construction and invite the district to consider a list of potential model school candidates, if any;
- A district must invite the designers of the recommended model schools, as well as the designer of its original preferred solution, to interview for the proposed project;
- A district must (1) evaluate, interview, and select one of the recommended model school designers and then negotiate a designer fee and engage the selected model school designer, or (2) choose to proceed with the designer of the original preferred solution;
- Should a district select a model school designer, the MSBA would limit its reimbursement for Designer Basic Services to 4.75% of construction cost and Owner's Project Management basic services to 3.30%;
- Should a district choose to continue with the designer of its original preferred solution, the MSBA would limit its reimbursement for Designer Basic Services to 10% of construction cost and Owner's Project Management basic services to 3.5% in accordance with current practices for Core Program projects;
- A district generates a schematic design submittal and submits it to the MSBA for review and approval of a proposed project scope and budget;
- A district secures local authorizations and approvals and proceeds with an accelerated detailed design and bid schedule; and
- The MSBA requires one instead of three detailed design submittal (a 60% CD Submittal).

Refer to the attached Administrative Procedures for more detail.

# **Model School Administrative Procedures**

## Overview

This overview provides a summary of the steps a district should take if it is interested in the MSBA's consideration for an invitation into the Model School Program (the "Program"). A general timeline of the process is provided in summary with more specific steps outlined below.

If a district is interested in understanding more about the Program or may wish to be considered for an invitation to the Program, the district should plan to include this potential interest in the designer request for services. The district, with the assistance of its owner's project manager and designer, will conduct a feasibility study including the development and submittal of a preliminary design program and a preferred schematic report in accordance with Module 3 – Feasibility Study. Should the district determine through its feasibility study that new construction is the most educationally appropriate and cost effective solution and is interested in the Program, the district would request, in writing, consideration for invitation into the Program. This written certification would initiate an MSBA review process to determine if any of the model schools could meet the district's needs. In parallel, the MSBA would review the district's preferred schematic report.

In accordance with the MSBA's grant process, the district and its consultants would present its preferred schematic to the MSBA Facilities Assessment Subcommittee. The MSBA staff would present its model school review at the same Facilities Assessment Subcommittee meeting. Should one or more model schools fit, the district could select a model school and its designer or it could choose to proceed with its current designer and its preferred schematic. The district would proceed into schematic design and submit its proposed project for approval of the MSBA Board of Directors.

Further details regarding key elements of district and MSBA actions for the Program are noted below.

## Module 3 Feasibility Study

Prior to submission of the preferred schematic report submittal to the MSBA, all Core Program projects will follow the standard process for a typical MSBA feasibility study as outlined in the Module 3 Feasibility Study Guidelines. If the preferred schematic report submittal indicates a district preference for all new construction, the district may provide a certification as a part of the submittal that requests consideration for participation in the Program. The MSBA's receipt of the certification noted above should not be construed as an acceptance of the district's preferred schematic, nor be considered an invitation into the Program.

The decision by the MSBA to invite a district into the Program is entirely discretionary and participation by the district is voluntary. The MSBA staff will review the preferred schematic report submittal, prepare written comments for the district, and prepare a Board recommendation. The district and design team will complete the feasibility study phase by responding to the MSBA preferred schematic report submittal review comments, participate in a

## **Model School Administrative Procedures**

presentation at the Facilities Assessment Subcommittee meeting, and prepare for the upcoming Board meeting. During this Facilities Assessment Subcommittee meeting, the district can describe why consideration for invitation into the Program may benefit the district. Typical for all feasibility study projects, the Facilities Assessment Subcommittee presentation will include a preliminary new construction building option, including comparative cost data, based on the design requirements outlined in the submittal by the design team. This new building design and cost data may be used later by the district as a basis for the comparison to the model school.

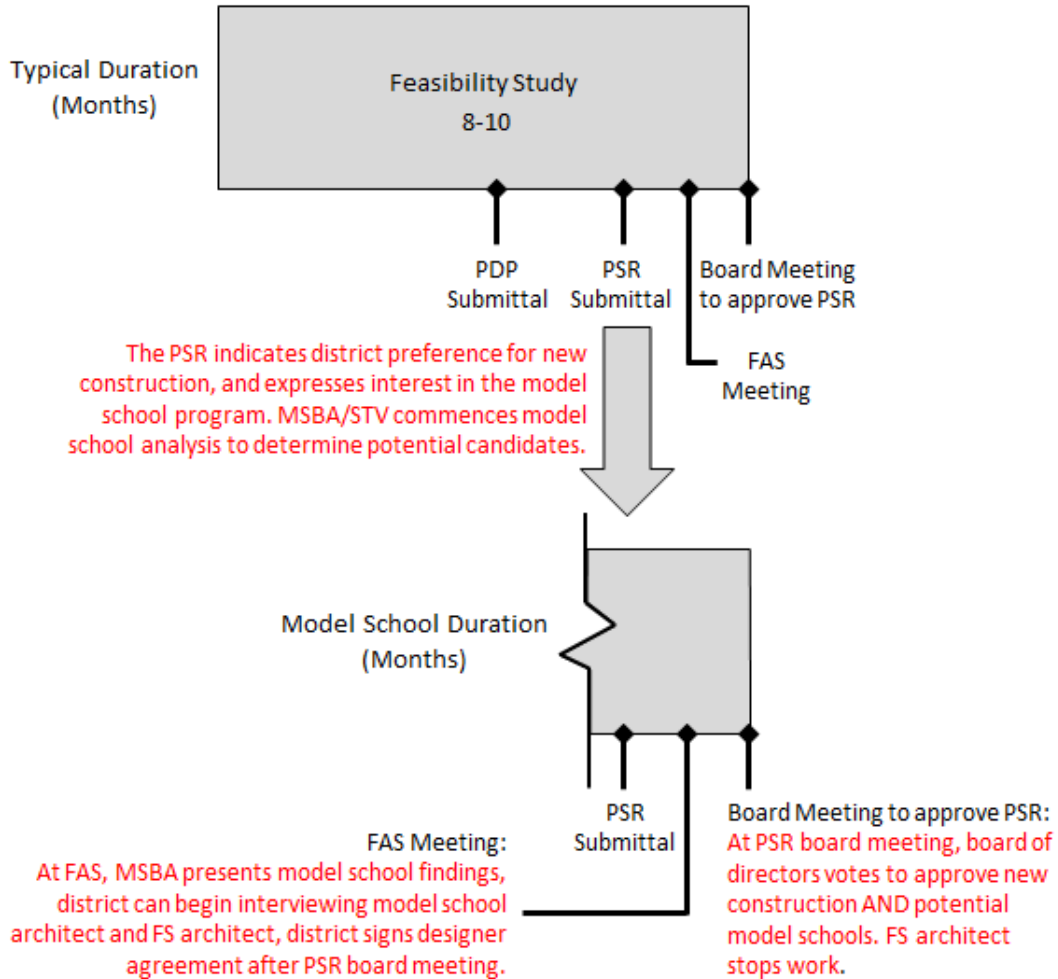
### Eligibility for Participation in the Program and Model School Selection

Upon receipt of the district's certified request as part of its preferred schematic report and independent of the preferred schematic report submittal review process noted above, the MSBA staff will make an initial determination whether the grade configuration, design enrollment, educational program, or site conditions present obvious barriers to the district's participation in the Program (Attachment 4). This initial determination would include the next steps:

- a) Districts with preferred schematics that do not pass this initial determination will not be considered. Results of this initial determination will be provided to the district and design team prior to the Facilities Assessment Subcommittee meeting.
- b) If no obvious barriers exist, the MSBA staff and its technical services consultant will perform a detailed analysis of the district's proposed project as it compares to the available model school designs to identify potential models for further consideration. This analysis is an established process that is based on conformance with grade configuration, design enrollment, space summary, the district's educational program, and site configuration (Attachment 5 - Model School Evaluation Template). The MSBA staff will present its findings at the same Facilities Assessment Subcommittee meeting in which the district describes its preferred schematic and interest in the Program. The MSBA staff will provide the district with a list of model schools that meet the requirements listed above, if there are any, and describe allowable changes to the model school space summaries.

Based upon the discussion at the Facilities Assessment Subcommittee, the MSBA staff may prepare a recommendation to the Board of Directors at its next meeting to approve the district's preferred schematic and also include a recommendation to consider the district to participate in the Program. The recommendation would include a list of the viable model schools for consideration by the district.

## Model School Administrative Procedures



### Designer Interviews

Following an approval by the Board of Directors, the district will be given a defined time limit to contact and interview the potential model school designers, select a model school (or continue with the original designer that prepared the feasibility study submittals), and provide the MSBA with either an executed contract with the selected model school designer or written notification of its decision to proceed with its preferred schematic as described in the preferred schematic report. This time limit will be based on the expectation that the district must be prepared to execute a designer services contract following the approval by the MSBA Board of Directors of the district's preferred schematic design and consideration into the Program. By participating in the interviews, each potential model school designer must agree to the terms of the model school designer contract or decline the invitation to interview. The MSBA staff will not participate in the interviews; they will be organized and administered by the district, with assistance from the owner's project manager, at a location determined by the district. In preparation for the interviews, the district should provide each potential designer with a complete electronic copy of the feasibility study submittals, the MSBA review comments, and district responses, to the extent

## **Model School Administrative Procedures**

that they have been completed. The district should be able to describe the extent of allowable modifications to the model school designs as expressed by the MSBA during the Facilities Assessment Subcommittee meeting. The original feasibility study designer should also be given the opportunity to interview, and present any advantages of the custom design defined in the preferred schematic report. The original feasibility study designer may also have a model school, and present it as an option for the district, if the MSBA had previously determined that this model school is a viable option for this district using the process described above. Because many owner's project manager firms also provide designer services, and may have approved model schools, the district must ensure that there is no conflict of interest between the project owner's project manager and the model school selection process.

### Designer and owner's project manager contracts

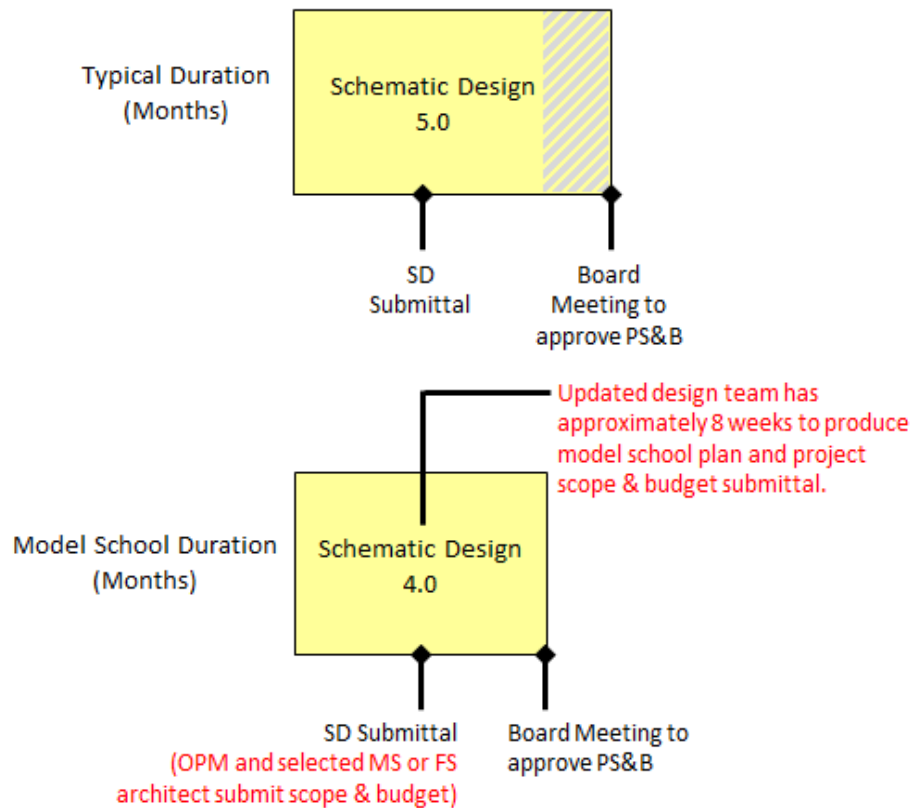
If a model school is selected, the district and its owner's project manager will be responsible for negotiating the designer's fee. In calculating its grant, the MSBA staff will apply its funding limit to its reimbursement to the district to an amount that is equal to 4.75% of the estimated construction cost for basic services. This reimbursement amount is in addition to and does not include any of the MSBA reimbursement to a district for designer services that are provided for a feasibility study. In addition, the MSBA will limit its reimbursement for owner's project manager to an amount that is equal to 3.30% of construction cost for basic services. This amount will include the owner's project manager fee for the feasibility study phase. All other MSBA funding limits and caps will apply to districts utilizing the Program. The selected designer must update the list of sub-consultants to comply with the current minority / women business enterprise requirements, if necessary. Note that, if the district is interested in the Program during the eligibility period phase of the project, it should include this information in the designer request for services, and the district or owner's project manager may want to consider procuring existing site conditions and hazardous materials sub-consultant reports directly (rather than the feasibility study designer) to ensure continuity between the original designer and model school designer.

### Schematic Design Submittal

The model school schematic design submittal, review by the MSBA, staff recommendation and the MSBA Board of Directors approval will proceed in compliance with the Module 4 Schematic Design Guidelines in the same way as all Core Program projects. For example, the design team must submit the design to the MSBA for Department of Elementary and Secondary Education review of the special education program and layout, and revise the design if necessary. The model school must comply with the MSBA's current sustainability policies and high school science lab guidelines, if applicable. Design modifications to the model school must be approved by the MSBA, and will include adaptations to the number of classrooms required to accommodate the appropriate design enrollment, and any adaptations related to site requirements. Typically, districts require 4 months (2 MSBA Board meeting cycles) to 6 months (3 MSBA Board meeting cycles) to complete the schematic design submittal. Because

## Model School Administrative Procedures

adjustments to the model school design will be limited, it is anticipated that the design team may require less time to complete the SD submittal, including the schematic design, cost estimates and total project budget information.

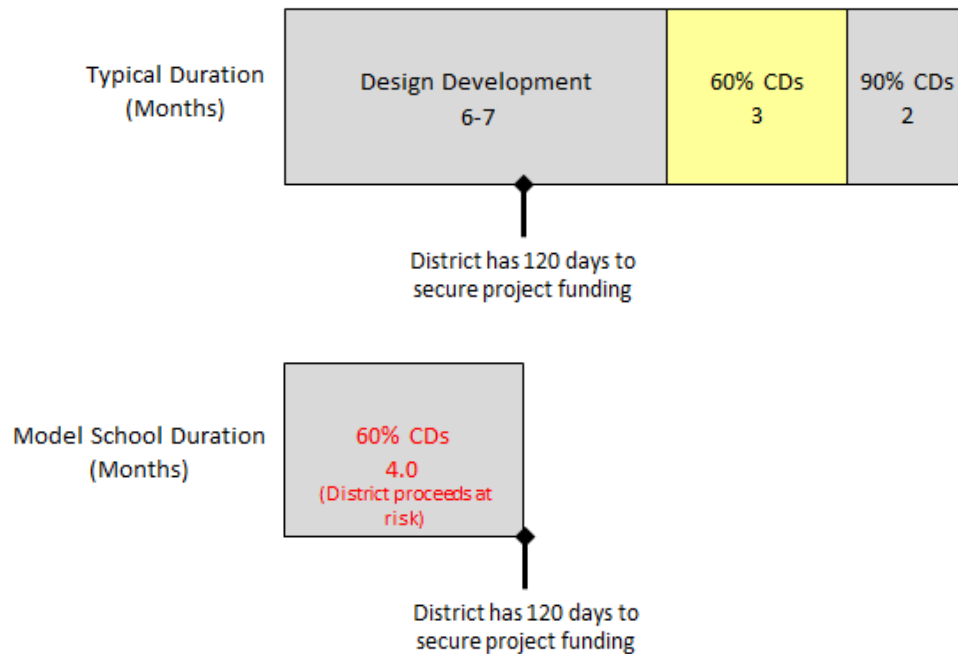


### Construction Documents

Because the model school construction documents have already been developed, the district may choose to reduce the number of design submittals required. For districts participating in the Program, the MSBA will not require the design development and 90% construction document submittals to be submitted to the MSBA. The MSBA will require 60% construction documents to be submitted for its review and comment. The designer must update the bid documents to comply with all applicable building and energy codes, receive and incorporate the structural peer review and commissioning agents review comments, and incorporate all design coordination revisions from the original project record drawings (note that record drawings are provided by the designer in the original project contract). The designer will conduct a post occupancy evaluation with the original building staff, and modify the construction documents as appropriate and as described in the model school acceptance letter certified by each selected designer. Because the design team could potentially provide significant portions of the designer services

## Model School Administrative Procedures

(and incur associated fees) before the district may have procured local funding for the project, the district must ensure that funding is in place to compensate the designer and owner's project manager for services provided, regardless of the outcome of the local approval. Because the MSBA does not enter into a project funding agreement with the district until the district has secured local funding for the project, the MSBA will not reimburse costs associated with post schematic design fees if the project fails local approvals. If the district hasn't already procured adequate funds for this in the eligibility period phase of the project, they may have to re-appropriate for additional funding.



**END**

Included with this memorandum are:

- Attachment 1 - Model School Program Recommendations memo presented at the Board meeting on July 20, 2016;
- Attachment 2 - Model School Task Force Final Summary of Comments dated September 26, 2012;
- Attachment 3 - Staff Recommendation to Remove Incentive Points for Model School Program Memo presented at the Board meeting on January 27, 2016;
- Attachment 4 - Model School Timeline Graphic; and,
- Attachment 5 - Model School Evaluation Template dated January 19, 2013.

# Attachment 1

## MEMORANDUM

TO: Board of Directors  
FROM: Maureen G. Valente, Chief Executive Officer  
John K. McCarthy, Executive Director, Deputy Chief Executive Officer  
SUBJECT: MSBA Model School Program Recommendations  
DATE: July 13, 2016

---

The purpose of this memorandum is to seek the Board of Directors approval of 12 project designs, as indicated on page 3, for the MSBA's Model School Program. The MSBA issued a Request for Qualifications ("RFQ") dated December 16, 2015, requesting project designs for consideration to be included in the Model School Program. In accordance with established practices, staff has completed its review of the Model School Program applications submitted by Designers in response to the RFQ. The information and recommendations below were presented at the Facilities Assessment Subcommittee meeting on June 15, 2016.

### Background

The MSBA's Model School Program seeks to adapt and re-use the design of successful, recently constructed schools to meet the requirements of a school district that has been invited by the MSBA's Board of Directors to construct a new (versus renovated) school. Under the Model School Program, the MSBA intends to select from existing school designs meeting the appropriate criteria and to pre-qualify the designer of each selected Model School. The District, in collaboration with the MSBA, may then select one of the pre-qualified Model Schools and its designer. The school district will then enter into a contract with the selected designer for design services. It is anticipated that the list of pre-qualified Model Schools will be updated periodically.

The recommended Model Schools listed below meet the following minimum requirements:

1. The proposed Model Schools are new, PK-12 construction facilities, located within a 125 mile radius of Worcester, MA;
2. The proposed Model Schools were permitted using the 7<sup>th</sup> edition or 8<sup>th</sup> edition of the 780 CMR Massachusetts State Building Code;
3. The proposed Model Schools were registered with either U.S. Green Building Council "LEED-S" or Collaborative for High Performance Schools ("CHPS"), and;
4. The proposed Model Schools have been open for full occupancy for a minimum of 12 months as of March 1, 2016 (using the substantial completion date as the starting date of occupancy; for phased occupancies, using the final substantial completion date).

## Attachment 1

In addition, the recommended Model Schools were evaluated favorably using the following criteria:

1. Completeness of the requested submission materials;
2. The extent to which the schools can be adapted to other sites without substantial re-design or expense;
3. The extent to which the school classroom wing/areas may be adapted to a 20% addition and reduction in design enrollment by adding or reducing the number of classrooms. The Core Academic portion of the design can be adaptable to expansion or contraction to meet a specific design enrollment, with minimal re-design effort;
4. The extent to which the school may be adapted to variations in educational programs. In particular, the designs are adaptable to various teaching methodologies, grade configurations, class offerings, and reconfiguration of core classroom space with minimal re-design effort;
5. The extent to which the spaces in the schools allow for maximum flexibility for multiple and/or future uses;
6. The extent to which the designs include differentiated learning spaces and student and teacher collaboration areas;
7. The efficiency of the designs; how closely the schools conforms to current MSBA space summary guideline standards, including net square footage by category, total net square footage, total gross square footage, overall grossing factor (GSF/NSF) , and space utilization of capacity generating spaces;
8. The extent to which the schools incorporate energy efficiency and sustainable design elements, based on the current MSBA Sustainable Building Design Guidelines;
9. The schools' environmental qualities and natural lighting;
10. The extent to which the schools comply with the MSBA Guidelines for Science Labs in High School Facilities (if applicable);
11. The construction cost per gross square foot exclusive of site development, Furnishings, Fixtures & Equipment ("FF&E"), and soft costs;
12. The extent of change orders as a percentage of the original bid price (exclusive of Owner directed change orders or change orders related to differing or unforeseen site conditions);
13. The ability of the proposed design teams to comply with the goals of the Model School Program (design "best practices", accelerated production schedule, reduced fees, reduced change orders, etc.), based on previous project experience with MSBA; and,
14. Any other criteria that the MSBA deemed relevant to the evaluation of proposed Model Schools.

The MSBA received 20 responses to the RFQ on February 4, 2016. Staff reviewed each response in accordance with the above stated criteria. MSBA staff and its architectural consultant, STV, conducted visits to each of the schools. During the visits, the team sought to

## Attachment 1

receive input from the districts regarding the benefits of the building and to gain an understanding of any challenges associated with the building. Site visits were attended by several MSBA Board members and members of the Designer Selection Panel. In addition, regular updates regarding the Model School reviews and visits were provided at Facilities Assessment Subcommittee meetings (on February 24, 2016, March 9, 2016, and May 4, 2016) and were presented to the Designer Selection Panel Chair and Co-Chair on March 8, 2016 and June 7, 2016. A full presentation and staff recommendations were presented at the Facilities Assessment Subcommittee meeting on June 16, 2016.

### Recommendation

Based on the review and findings described above staff recommends that the following 12 project designs be included in the Model School Program:

- Andover – Bancroft Elementary School, by Symmes Maini & McKee Associates
- Burlington – Memorial Elementary School, by Knight, Bagge & Anderson, Inc.
- Lexington – Joseph Estabrook Elementary School, by DiNisco Design Partnership
- New Bedford – Lincoln Elementary School, by Mount Vernon Group Architects, Inc.
- Norfolk – Freeman-Kennedy Elementary School, by Flansburgh Architects
- Hudson – Quinn Middle School, by OMR Architects, Inc.
- Shrewsbury – Sherwood Middle School, by Lamoureux Pagano & Associates, Inc.
- Longmeadow High School, by OMR Architects, Inc.
- Grafton High School, by Symmes Maini & McKee Associates
- Monomoy Regional High School, by Mount Vernon Group Architects, Inc.
- Hanover High School, by HMFH Architects
- Uxbridge High School, by Raymond Design Associates, Inc.

The following eight project designs, which were submitted for consideration, are not recommended to be included in the Model School Program:

- Ashburnham-Westminster – John R. Briggs Elementary School, by Lamoureux Pagano & Associates, Inc.
- Belmont – Wellington Elementary School, by Jonathan Levi Architects
- Billerica – Parker Elementary School, by Symmes Maini & McKee Associates
- Douglas Elementary School, by DiNisco Design Partnership
- Berlin-Boylston – Tahanto Regional Middle/High School, by HMFH Architects
- Duxbury Middle/High School, by Mount Vernon Group Architects, Inc.
- Wellesley High School, by Symmes Maini & McKee Associates
- Hampden-Wilbraham – Minnechaug Regional High School, by Mount Vernon Group Architects

## Attachment 2

### Model School Task Force Meeting Final Summary of Comments

*Note:*

*This document is a compilation of the various comments and suggestions made at the meeting on April 25 and May 23, 2012 for the MSBA's considerations. These comments are not coordinated and do not suggest a comprehensive policy; some comments are contradictory or may be inconsistent with others.*

The Model School Task Force met on April 25 and May 23, 2012 to discuss ideas and recommendations for a Model School program that incorporates the current program's established goals. Task Force members made a number of suggestions for the MSBA's consideration, including the following:

1. Ensuring that all Model School designs closely track MSBA space standards by limiting oversized spaces or making that portion of the oversized space ineligible for reimbursement.
2. Ensuring that Model School designs are functionally flexible in order to accommodate future changes in pedagogy and/or grade structures (an example of functionally flexible could include design considerations for future uses of spaces that may become obsolete such as computer labs re-purposed into research labs, foreign language labs, etc).
3. Defining a role for the Designer Selection Panel (DSP) in the pre-qualification of Model School designs.
4. Considering whether mechanisms should be in place to eliminate Model School designs from the list of pre-qualified Model Schools due to lack of use, non-compliance with newer building codes, or other reasons. Newer updated designs could potentially replace the original versions.
5. Requiring a feasibility study (Module 3 - Preferred Schematic Study) to be conducted before inviting a District into the Model School program. At a minimum, the feasibility study should confirm that:
  - a. A new facility is the most cost-effective and educationally sound solution;
  - b. The District has developed a detailed educational plan;
  - c. The site will accommodate one or more of the Model School designs without substantial modification to the site or the design and construction; and
  - d. One or more of the Model School designs conforms with the requirements of the District's educational program, grade configurations, and enrollment without substantial modification to the design.

## Attachment 2

It was also suggested that the feasibility study could be performed by an MSBA “house doctor,” technical services consultant to accelerate the study schedule and reduce any potential bias of the designer and/or District.

6. Reevaluating the 5 incentive reimbursement percentage points for participating in the program. The MSBA should consider whether it is appropriate to continue, reduce, eliminate, or modify the 5 incentive reimbursement percentage points that Districts receive for participating in the program. One suggested modification includes the implementation of a sliding scale of an additional 1 - 4% reimbursement points for meeting specific program goals such as:
  - a. Compliance with all categories of the MSBA space summary standards – additional 1% reimbursement points.
  - b. Compliance with model school consultant fee standards – additional 1% reimbursement points.
  - c. Compliance with a pre-determined bid date and a reasonable number of addenda – additional 1% reimbursement points.
  - d. Compliance with limits on owner-directed change orders or change orders due to errors and omissions – additional 1% reimbursement points.
  
7. Establishing criteria to allow **any** completed new, MSBA-funded school facility to be considered to serve as a pre-qualified Model School, with MSBA approval, based on MSBA review of attributes such as:
  - a. cost effectiveness
  - b. soundness of the design’s educational programming
  - c. flexibility regarding future changes in pedagogy and/or grade configurations
  - d. energy efficiency and sustainability
  - e. post-occupancy evaluations
  - f. operational and maintenance qualities
  - g. Flexibility to be expanded or reduced in size to meet other enrollment capacities.
  - h. Acceptance by its users, based upon MSBA interviews with a representative sampling of its teachers, administrators, maintainers, parents and students

END

## Attachment 3

### MEMORANDUM

**TO:** Board of Directors, Massachusetts School Building Authority  
**FROM:** Maureen G. Valente, Chief Executive Officer  
John K. McCarthy, Executive Director, Deputy Chief Executive Officer  
**DATE:** January 20, 2016  
**RE:** Staff Recommendation to Remove Incentive Points for Model School Program

---

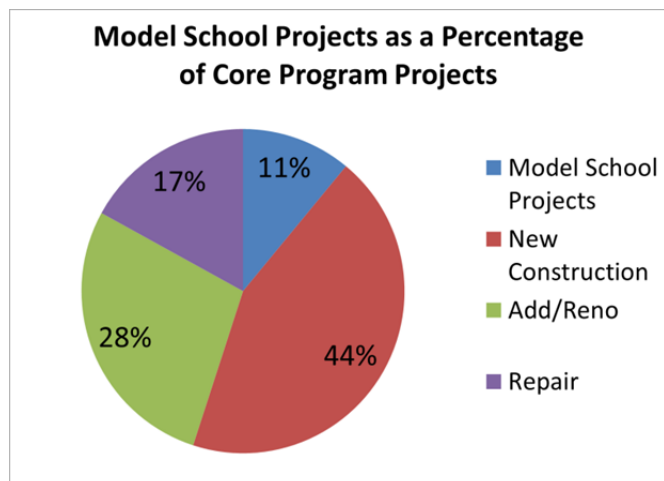
#### Introduction

The Massachusetts School Building Authority (the "MSBA") initially developed the Model School Program (the "Program") in 2008 to effectively adapt and re-use the design of successful, recently constructed high schools, and has since expanded the Program to include elementary, middle and other combinations of grade configurations. To raise awareness of the Program, the MSBA Board of Directors authorized up to an additional five incentive points for school districts that participate in the Program. Model Schools are efficient in design and easy to maintain, contain optimal classroom and science lab space, can easily accommodate higher or lower enrollments, incorporate sustainable "green" design elements when possible, and are flexible in educational programming spaces.

To maximize the benefits of the program, the amount of design changes to the model school must be minimized. A potential candidate for the Program would need an available site that is free of constraints or other adverse conditions. Many of our districts are challenged by site availability, site size, and adverse site conditions; therefore, the Program is not a good fit for every district. In considering district requests for an invitation into the Program, the MSBA must review the available site and understand the enrollment and educational program of the applicant. That information then must be compared to the available model schools to ensure that the MSBA invites districts that could benefit from and use a model school with minimum design changes.

Of the 170 Core Program grants issued since 2008, only 18 districts or 11% have participated in the Program. Seventeen districts have now successfully completed the construction of their new facilities and have benefitted from the Program and its stated objectives, which are to:

- Maximize the value of existing, proven school designs and best practices;
- Encourage schools that reflect enduring and educationally sound designs;
- Allow for compressed project schedules and accelerated construction start times, thus reducing uncertainty of inflation in construction and project costs;



### Attachment 3

- Shorten and streamline the design process to reduce design fees;
- Enhance predictability of project costs and performance resulting in improved quality control and reduced change orders; and
- Provide an opportunity for districts to experience the model before selecting a design.

Although not suitable for all districts, MSBA staff considers the Program to be one of several types of programs that the MSBA offers to benefit the varied needs of districts. For instance, districts that have a large inventory of schools requiring updating or that are experiencing overcrowding and/or increasing enrollment may benefit from the compressed project schedule offered by the Program. To keep the model schools in the Program up to date, MSBA staff has issued a Request for Qualifications and is expecting responses by February 4, 2016.

#### **Recommendation**

In November 2011, the MSBA, together with representatives from the Boston Society of Architects, convened a joint Model School Task Force (the “Task Force”). The Task Force set out to review the Program and to make recommendations for modifications to the existing Program that may be needed to better meet the MSBA’s stated goals. The Task Force considered the benefits and challenges of the Program and noted the following regarding the incentive points:

<b>Benefits</b>	<b>Challenges</b>
<ul style="list-style-type: none"> <li>• May assist districts with local support</li> <li>• Incentivizes districts to try a new approach or consider regionalization</li> </ul>	<ul style="list-style-type: none"> <li>• Increases the MSBA grant at the expense of other districts and projects</li> <li>• May distort the process by placing an undue emphasis on district share</li> <li>• May minimize the importance of district specific educational programming</li> <li>• May encourage new construction when it may not be the most appropriate solution</li> </ul>

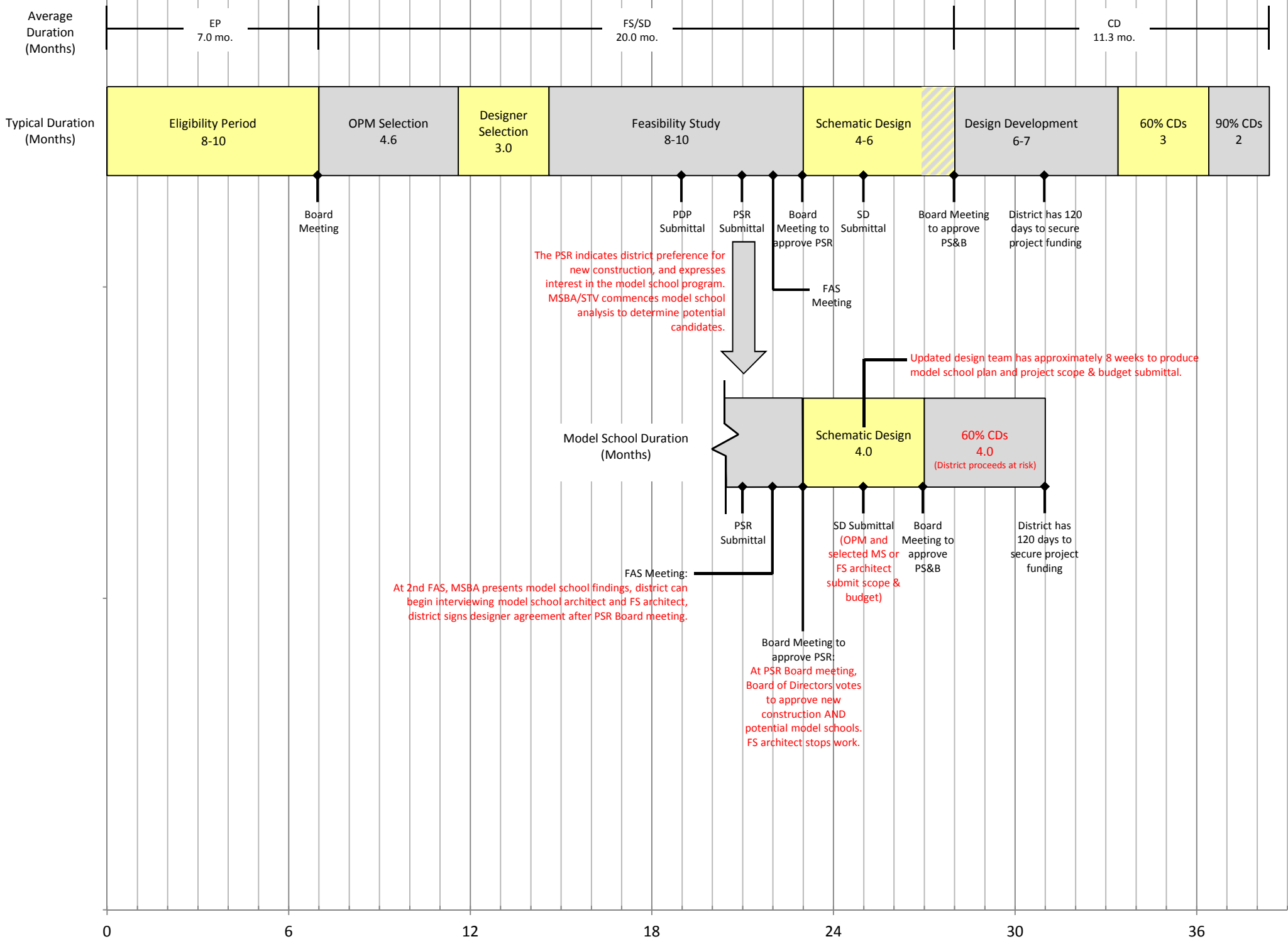
Of note, not all districts that have requested to be invited into the Program have received an invitation, and not all grants for districts in the Program have included the full value of the five additional incentive points. For example, pursuant to M.G.L. c. 70B, § 10, the MSBA’s statute, 80% is the maximum reimbursement rate for any district participating in the MSBA’s Grant Program. Consequently, districts that already have a reimbursement rate close to the 80% maximum rate, absent any Model School points, will likely not realize the full value of some or all of the Model School incentive points.

MSBA staff has reviewed the advantages and challenges associated with incentive points for the Program, along with the recommendations of the Model School Task Force. Based on this review, MSBA staff recommends that, effective for all districts receiving an invitation into Eligibility Period January 1, 2016 or later, the MSBA will no longer offer Model School Program incentive points for the following reasons:

### **Attachment 3**

- The Program is not available to all districts and, therefore, the incentive points are not available to all districts;
- The incentive points have served the MSBA's original intended purpose of raising awareness of the possibility of using a model school design; and
- The reallocation of MSBA funding from the current Model School incentive point structure may offer the MSBA opportunities to allow for additional project invitations into the Core Program and the Accelerated Repair Program, or may allow the MSBA to offer a new program.

# Attachment 4



## Model School Evaluation Template Massachusetts School Building Authority

**(Insert School District)**  
**Proposed (Insert School Name) Study**

---

### School Data

Draft Submitted:                      **Date**

Prepared by:                              **(MSBA Consultant Name) or  
(Project Manager's Name) or  
(Project Architect's Name)**

MSBA:                                      **(Name), Director of Capital Planning  
(Name), Director of Project & Construction Management  
(Name), MSBA Project Manager**

---

### **Study Scope**

MSBA has authorized the **(School District)** to conduct a feasibility study to determine the most cost-effective and educationally-sound solution to the deficiencies at the existing **(School Name)** facility. The District has requested and the MSBA has agreed that the MSBA will consider whether a new model school might be an appropriate solution. For all options, including renovation, renovation and addition, new construction, and model school, the MSBA and the District have mutually agreed upon a design enrollment of **(Design Enrollment)** students in Grades **(Grade Configuration)**.

The MSBA has contracted with **(Consultant Name)** as a technical services consultant to perform the role of "House Doctor" in accordance with the current Model School Program policy. The scope of the House Doctor's study is to examine the potential for implementing the Model School Program for the proposed school using one or more of the existing approved models.

The study includes:

- Program review for programmatically similar and physically appropriate models for further study.
- Review of selected Model School Program plans to determine the extent of design adaptation required to adapt the model to the proposed program.

- Site evaluation of selected model schools, as modified, to determine their potential fit on the proposed site and determine the extent of required site adaptation.

The Model School Program may offer several benefits to the Districts and to the MSBA.

- Proven designs meeting certain criteria will contain many best practices that should be perpetuated in school design.
- Adaptation of an existing design, versus development of a completely new design, will streamline the design process and result in reduced design fees.
- The pre-construction schedule will be compressed and will accelerate the start of construction and thus reduce the impact and uncertainty of inflation in construction costs on the overall cost of the project.
- Except for unforeseen site conditions, re-use of the design should limit construction change orders.

When a model school is determined to require extensive adaptation, the potential benefits may not be fully realized, and an original design will better serve the project. The MSBA's review will determine if a proposed project for a school district will benefit from the Model School Program, and if the model serves the project with a limited amount of adaptation.

**Capacity Review** The first evaluation of the model options is to review enrollment capacity and grade structure. Models selected for the Model School Program have demonstrated flexibility to be adaptable within +/- 20% of the original model enrollment. Models that fall in the capacity range will receive further consideration. Models outside the range will be excluded from further review.

**Capacity Analysis Table**

<b>Approved Design Enrollment</b>	#	Pre-K Enrollment (if applicable): <b>xx</b>			
Planning Low Range - 20%	#				
Planning High Range +20%	#				
<b>Approved Grade Structure</b>	(E.G. PK-8)				
<b>Review Planning Range</b>					
<b>Model Options Enrollment With Similar Grade Structure</b>	Model Enrollment	Model Grade Str.	Below Range	Within Range	Above Range
Option 1 - ABC School	xx	e.g. k-8	Check appropriate box		
Option 2 - XYZ School					
Option 3 - Etc.					
Option 4					
Option 5					
Option 6					
Option 7					
Option 8					

**Model Selection** Models identified for further review based on capacity are:

- Model School Name ABC
- Model School Name XYZ

**Program Review** The program review compares the proposed school space program as presented in the approved preferred scheme against the MSBA Guidelines for a school with a similar grade structure and identical enrollment. The analysis compares the proposed school program to the models schools selected for study.

**Program Analysis Table**

	MSBA Guideline		Proposed	Selection 1		Selection 2	
	Guideline	Variance		Model	Variance	Model	Variance
<b>Enrollment</b>	-	-	-	-	-	-	-
<b>Net Square Feet</b>	-	-	-	-	-	-	-
<b>Gross Square Feet</b>	-	-	-	-	-	-	-
<b>Ed Spaces</b>							
<b>Core Academic</b>	-	-	-	-	-	-	-
General Classrooms							
Science Labs							
<b>SPED</b>	-	-	-	-	-	-	-
<b>Art &amp; Music</b>							
Art Classroom							
Music/Band/Chorus							
<b>Health &amp; Phys. Ed.</b>	-	-	-	-	-	-	-
Gymnasium							
<b>Vocations &amp; Technology</b>							
Tech Classrooms							
Tech Shops							
<b>Media Center</b>	-	-	-	-	-	-	-
<b>Auditorium/Drama</b>							
Auditorium							
<b>Computer Labs</b>							
<b>Dining &amp; Food Service</b>	-	-	-	-	-	-	-
<b>Custodial/Maint.</b>							
<b>Admin. &amp; Guidance</b>							
<b>Medical</b>							
<b>Totals</b>							

**Conclusion of Program Review:**

**Plan Review – Conformance to the District’s Educational Plan**

Develop a Narrative based on the following minimum criteria for each model selection.

For each component, describe the intent of the educational plan and how the proposed model school supports or does not support the intent of the plan.

**A. Academic Program Suitability**

- Building Organization (Program Zoning/Proximities)
- Classroom/Lab/Academic Layout
- Academic Support Space
- SPED Program Layout
- Art and Music
- Vocations

**B. Core Facilities**

- Admin/Access Control
- Gymnasium & Outdoor Play Space
- Dining and Food Service
- Media Center
- Computer Labs
- Auditorium and Public Assembly
- Public/After School Programs
- Support Services, Custodial, Deliveries and Trash Removal

**Site Review**

Develop a Narrative based on the following minimum criteria for each model selection.

For each component, describe the intent of the educational plan and how the proposed model school supports or does not support the intent of the plan.

**A. Site Qualities**

- Topography
- Building Fit and Orientation
- Site Access
- Soil Conditions

**Conclusion Matrix**

Summary Model School Evaluation

Model	Educational Program Variances	Building Design Adaption	Site Adaptation
SELECTION	<ul style="list-style-type: none"> <li>Describe Variance</li> <li>Describe Variance</li> <li>Describe Variance</li> </ul>	<ul style="list-style-type: none"> <li>Describe Adaptation</li> <li>Describe Adaptation</li> <li>Describe Adaptation</li> </ul>	<ul style="list-style-type: none"> <li>Describe Adaptation</li> <li>Describe Adaptation</li> <li>Describe Adaptation</li> </ul>
Rating	Minor/Moderate/Major	Minor/Moderate/Major	Minor/Moderate/Major

SELECTION	<ul style="list-style-type: none"> <li>Describe Variance</li> <li>Describe Variance</li> <li>Describe Variance</li> </ul>	<ul style="list-style-type: none"> <li>Describe Adaptation</li> <li>Describe Adaptation</li> <li>Describe Adaptation</li> </ul>	<ul style="list-style-type: none"> <li>Describe Adaptation</li> <li>Describe Adaptation</li> <li>Describe Adaptation</li> </ul>
Rating	Minor/Moderate/Major	Minor/Moderate/Major	Minor/Moderate/Major

**EDUCATIONAL PROGRAM VARIANCE**

**Minor Program Variance**

- The educational program and educational plan for the proposed school substantially fits in the model.
- The organization and distribution of classrooms, educational spaces, core areas, and administration conform to the stated educational plan.
- Only Minor Design Modifications are required to adapt the model school to the district’s educational plan and program.

**Moderate Program Variance**

- While there are variances between the proposed model and the educational plan, they do not compromise the stated educational plan and objectives of the district.
- Moderate Design Modifications are required to adapt the model school to the district’s educational plan and program.

**Major Program Variance**

- The educational program for the proposed school does not fit the model.
- The organization and distribution of the classrooms and educational spaces do not conform to the stated educational plan needs.
- The model school would require Major Design Modifications to be adapted to meet the proposed educational program.

**BUILDING DESIGN ADAPTATION**

**Minor Design Modifications**

- Addition or removal of a wing, bay, or structurally isolated element of a building with no impact on space within the impacted area or adjacent areas (example – removing a bay from a gymnasium or adding an additional classroom block. The change is limited to the add/deletion only).

**Moderate Design Modifications**

- Redesign, addition, or removal of wing or bay or redesign of departments with spatial impacts limited to the impacted wing, bay or department only. Adjacent spatial relationships are not impacted. (example – adding space to a media center or library that requires redesign of those areas only with no impact on adjacent departments).

**Major Design Modification**

- Redesign, addition, or removal of a wing or bay or redesign of departments or components that require reordering of spaces and spatial relationships in the impacted program element as well as revisions to adjacent program elements and large areas of the plan. (example – adding classrooms or media center space that requires altering the design of adjacent departments or reconfiguration to meet site limits/topography).

**SITE ADAPTATION – Ratings:**

**Minor Site Modifications**

- Modifications or grading of the topography of the site is limited to not more than three vertical feet over the total horizontal span of the proposed building design.
- Limited modifications to stairs and/or ramps.
- No requirement to break or step the model to conform to site conditions.
- No clearing or major site remediation or modification is required to accommodate the proposed design.

**Moderate Site Modifications**

- Modifications or grading of the topography of the site is limited to three to six vertical feet over the total horizontal span of the proposed building design.
- Moderate modifications to stairs and/or ramps.
- Requirement to break or step the floors of the model to conform to the site condition is limited to a total of three vertical feet.

**Major Site Modification**

- Modification or grading of the topography of the site is greater than six vertical feet over the total horizontal span of the proposed building design.
- Or the requirement to break or step the floors of the model to conform to the site conditions is greater than a total of three vertical feet.
- Soil conditions require a major modification of the model's foundation design.

**Conclusion**