



NEWARK UNIFIED SCHOOL DISTRICT

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Olivier Wong Ah Sun, Ed.D.

Request for Statements of Qualifications and Proposals (“RFQP”)
For Architect Services For
Master Planning and Design of Projects

RFQP Issued:	December 22, 2017
Responses Due:	January 9, 2018
Interviews:	January 11-12, 2018
Selection by Governing Board:	January 16, 2018

The Governing Board (the “Board”) of the Newark Unified School District (the “District”) is seeking statements of qualifications and proposals from qualified providers of architect services for master planning, and the design and contract administration of Measure G projects within the District.

1. Critical Dates

Submittal Due Date:

An original + two (2) copies and one USB flash drive of the submittal shall be delivered **no later than January 9, 2018, at 2:00 p.m. (PDT)** to:

Newark Unified School District
5715 Musick Avenue
Newark, CA 94560-2554
Attention: Bryan Richards, Chief Business Official

Submittals not received by the deadline will be returned unopened.

Interview Date:

January 11 or 12, 2018.

Selection Date: January 16, 2018

As currently scheduled, the Governing Board of the District will select an architect for the Project at its regular Board meeting on January 16, 2018. The meeting will be held at 7:00 PM in the District Office’s Board Room, 5715 Musick Avenue, Newark, CA 94560. However, the District may choose to select the architect at another meeting.

2. Project Description

The District plans to produce a comprehensive Facilities Master Plan, Energy Master Plan and Five-Year Deferred Maintenance Plan and then, if added by amendment to the agreement, contract for design and contract administration for one or more construction projects on District-owned sites located in Alameda County, California (to be referred to in this RFQP as “the Project”).

3. Scope of Work

The Scope of Work includes master planning services as requested by the District, including but not limited to a long-term facilities master plan, with a process for community input thereon, designed to aid the District in preparation for potentially significant growth from development and to address long-term needs for its school and district-wide facilities, including an evaluation of the need for a potential new school facility at a site known as “area 3” on southern end of the City of Newark, defining educational facility goals for the next 10-20 years, and suggesting financial strategies to fund future needs; a district-wide energy master plan; and a new five-year deferred maintenance plan, to assist the Maintenance & Operations Department in setting annual goals to address shorter-term needs that have accrued over time. If design and contract administration services for specific pro-

jects are added by amendment to the agreement attached to this RFQP (*Attachment A*), the services will include those outlined in the agreement.

The architect will be expected to perform the scope of master planning services described in the architect agreement accompanying this RFQP (*Attachment A*), which will be the form of agreement that the architect must execute. If the District elects to use the architect for design and contract administration for a particular project, the District and architect must execute, and the District's governing board must approve, an amendment to the agreement for that particular project. Any statement of qualifications and proposal submitted in response to this RFQP (including the proposed contract price) must be based on the scope of services, obligations, and other terms of this architect agreement.

4. Statement Format and Content

The statement of qualifications should be clear, concise, complete, well organized, and demonstrate respondent's ability to follow instructions.

An original + two (2) copies and a USB flash drive of the statement must be provided, with no more than 30 single-sided pages in total length.

All respondents are requested to follow the order and format specified below. Please tab each section of the submittal to correspond to the numbers/headers shown below.

The cover shall include the RFQP's title and submittal due date, the name, address, fax number, and the telephone number of responding firm (or firms if there is a joint venture or association). The cover should also identify the proposed lead architect for the Project.

The table of contents shall include complete and clear listings of headings and pages to allow easy reference to key information.

The following sections should be included in the statement in the order listed:

A. Cover Letter

A cover letter signed by an authorized officer of the firm submitting the statement, or signed by another person with authority to act on behalf of and bind the firm. Indicate contact person(s) for this Project.

B. Mandatory Qualifications

Respondents must hold an architect's license which is current, valid and in good standing with the California Architects Board. Respondents must have the necessary qualifications to provide the requested services in accordance with California law. Provide the following information for each license:

1. Name of license holder exactly as on file.
2. License number, issuance date, and expiration date.
3. Whether license has been suspended or revoked in the past 5 years. If so, explain.

C. Organization, Credentials, and General Background

Please provide a brief history of your organization, including:

1. Number of years the organization has been in business.
2. Location of office that will perform the work required by this Request for Statements of Qualifications.
3. List of basic services provided by your organization.

D. School Facilities Planning and Design Experience

Describe the experiences/background of your organization in providing master planning and design services for public school facilities required by this Request for Statements of Qualifications. Provide a list of similar public works projects performed over the last 5 years, and every public works project over the last 3 years, including start and finish dates, project cost, contractor, owner, and owner contact information.

E. Past Performance Record

If any of the following has occurred, please describe in detail the circumstances for each occurrence:

1. Failure to enter into a contract once selected/awarded.
2. Withdrawal of a proposal as a result of an error.
3. Termination or failure to complete a contract.
4. Debarment by any municipal, county, state, federal or local agency.
5. Involvement in litigation, arbitration or mediation.
6. Conviction of the firm or its principals for violating any federal or state law related to architecture practice or contract performance.
7. Knowing concealment of any deficiency in the performance of a prior contract.
8. Falsification of information or submission of deceptive or fraudulent statements in connection with a contract.
9. Willful disregard for applicable rules, laws or regulations.

F. Project Team

1. Identify key team members for this Project and provide their qualifications.
2. Describe how the Project would be staffed.
3. Identify all of your proposed consultants for the Project and provide their qualifications.
4. Provide an organization chart for the Project.

G. Client Satisfaction/References

Provide a list of at least five educational client references for which your organization has performed master planning and design services similar to those required by this RFQP. References must include:

1. Name, address, telephone number, and a contact person of the project owner.

2. Name, address, telephone number and a contact person for the contractor(s) working on the project(s).
3. Describe the project(s) on which your organization provided services, including costs.

H. Insurance

Attach a letter from your insurance company indicating your firm's ability to provide insurance. The following is a tentative schedule:

1. A.M. Best financial rating of A- or better.
2. Commercial General Liability Insurance: Commercial general Liability Insurance shall be at least as broad as Insurance Services office General Liability Coverage (Occurrence Form CG 0001), with coverage limits of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage/ Four Million Dollars (\$4,000,000) aggregate.
3. Automobile Liability Insurance: Automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto), with coverage limits of at least One Million Dollars (\$1,000,000) for bodily injury and property damage each accident limit.
4. Workers' Compensation and Employer's Liability Insurance: The selected Architect shall insure (or be a qualified self-insured) under the applicable laws relating to workers' compensation insurance, all of their employees working on the Project, in accordance with the "Workers Compensation and Insurance Act," Division IV of the California Labor Code. The selected Architect shall provide employer's liability insurance in the amount of at least One Million Dollars (\$1,000,000) per accident for bodily injury and disease.
5. Errors and Omissions Insurance: errors and omissions insurance on an claims made basis with a limit of at least Two Million Dollars (\$2,000,000) with a deductible in an amount not to exceed the sum of Ten Thousand Dollars (\$10,000).
6. All insurance will be in a form and with insurance companies acceptable to the District.
7. Insurance carriers shall be qualified to do business in California and maintain an agent for process within the State.

I. Current and Contracted Projects

Attach a list of your firm's projects currently underway and contracted for but not yet underway. List actual or expected start and completion dates of the projects, and explain how your firm will be able to effectively manage and perform the District's Project while also managing and performing the listed projects.

J. Proposed Compensation

Attach a proposal for compensation to Architect for the architectural services for the master planning services, including all services required by this RFQP and the enclosed agreement (*Attachment A*). The proposed compensation must cover all of the Architect's expenses (including overhead), and its profit, for the master planning Project. As outlined in *Attachment A*, the proposed compensation for the master planning Basic Services must

be in the form of hourly rates with a not-to-exceed cap, the proposed compensation for Additional Services must be in the form of hourly rates, and the proposed compensation for reimbursable expenses must be a not-to-exceed cap. The proposal must include a detailed breakdown and explanation of how the proposed compensation was calculated by Architect for this particular Project, including a detailed spreadsheet showing the estimated hours of work and applicable rates for each phase of the Project, and a list of all expected reimbursable expenses and each one's expected cost.

5. Selection Process

- A. The purpose of this RFQP is to enable the District to select the firm with whom the District intends to enter a contract for master planning services and, potentially, the design and contract administration of particular construction projects, all pursuant to the attached architect agreement.
- B. The District will use the selection and negotiation process outlined below. A review and selection committee composed of key District officials and consultants will review and evaluate all submittals and may conduct interviews.
- C. Statements and proposals will be opened privately to assure confidentiality and to avoid disclosure of the contents to competing respondents prior to and during the review, evaluation, and negotiation processes. However, to the extent that the submittals are public records under California law, they may be subject to release to members of the public if specifically requested under applicable law.
- D. The following items will be considered by the District in the evaluation and selection process:
 - Conformance of the submission to the specified format.
 - Organization, presentation, and content of the submission.
 - Qualifications and experience, especially on public school construction.
 - Ability to work with diverse decision makers.
 - Creative problem-solving capabilities.
 - Experience with a variety of construction delivery methods.
 - Strength of client recommendations.
 - Performance on past projects.
 - Proposed methods and overall strategic plan to accomplish the work in a timely and competent manner within the District's financial constraints and time frames.
 - Reasonableness of proposed compensation for all architect services for the entire Project.

6. Interviews, Selection, and Contract Negotiations

The District may, but is not obligated to, conduct interviews with the architects that respond to this RFQP. If conducted, the interviews will be held on a date and time to be determined at the District Office, 5715 Musick Avenue, Newark, CA 94560. At the time of the interview, the architect's design team will be required to attend.

The District will enter negotiations with one or more of the proposing entities regarding the contract price. Other than the amount of compensation, the terms of the architect agreement (*Attachment A*), including the compensation structure, are not negotiable. Should the District be unable to negotiate a satisfactory contract with one of the proposing entities, the District is under no obligation to enter an agreement with any of the entities. The District reserves the right to award the Project to the entity the District deems most suitable to undertake the Project based on many factors, including demonstrated competence and qualifications for the types of services to be performed, and a fair and reasonable price. The District further reserves the right to reject any or all statements, or waive any irregularities in any of the statements submitted pursuant to this RFQP.

7. General Information

Amendments: The District reserves the right to cancel or revise this RFQP in part or in its entirety. If the District cancels or revises the RFQP, all Respondents will be notified by addenda. The District also reserves the right to extend the date responses are due, or postpone the interview date.

Inquiries: Any questions concerning this RFQP or selection process may be directed to Bryan Richards, Chief Business Official, Newark Unified School District; telephone: 510-818-4115; Fax: 510-797-6003. Replies involving any substantive issues will be issued by addenda and mailed to all parties recorded by the District as having received the RFQP documents.

8. Special Conditions

Non-Discrimination: The District does not discriminate on the basis of race, color, national origin, religion, age, ancestry, medical condition, disability, or gender in consideration for an award of contract.

Costs: Costs of preparing a statement in response to this RFQP are solely the responsibility of the Respondent.

Limitations: This RFQP does not commit the District to award a contract, to defray any costs incurred in the preparation of a statement pursuant to the RFQP, or to procure or contract for work. The District reserves the right to waive any irregularities in the statements received pursuant to this RFQP, or in the process outlined herein for selection of an architect for the Project.

ATTACHMENT A
AGREEMENT

FOR

ARCHITECTURAL SERVICES

BETWEEN

NEWARK UNIFIED SCHOOL DISTRICT

AND

January ____, 2018

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**AGREEMENT
FOR
ARCHITECTURAL SERVICES**

This Agreement for Architectural Services (“Agreement”) is between the Newark Unified School District, a California public school district (the “District”), and _____ license number _____ (the “Architect”), with respect to the following recitals:

- A. District proposes to undertake the construction of multiple improvement projects under the Measure G bond construction program which require the services of a duly qualified and licensed architect.
- B. Architect represents that Architect is licensed to provide architectural/engineering services in the State of California and is specially qualified to provide the services required by the District, specifically the design and construction oversight of public school projects.
- C. The Parties have negotiated the terms under which Architect will provide program planning and other predesign services, as well as design and contract administration for some or all of the individual construction projects under Measure G, and the Parties have reduced such terms to writing by this Agreement. As each Project arises that District wishes to assign to Architect, the District and Architect shall fully execute, and the District’s governing board shall approve, an addendum to this Agreement in the form of *Exhibit A or B*.

The Parties therefore agree as follows:

ARTICLE 1

DEFINITIONS

1.1 **Additional Services.** “Additional Services” shall mean those services in addition to the Basic Services that are provided by Architect and authorized in writing by the District, and as further defined in Article 6 below.

1.2 **Agreement.** “Agreement” shall mean this Agreement for Architectural Services.

1.3 **Architect.** “Architect” shall mean _____, and its officers, shareholders, owners, partners, employees, agents and authorized representatives.

1.4 **Basic Services.** Architect’s Basic Services consist of the predesign and design services, including landscaping architectural services and landscape irrigation design, civil, structural, mechanical, and electrical engineering services, normally required to complete the Project, as further defined in Article 5.

1.5 **Contract Documents.** “Contract Documents” shall mean those documents which are required for the actual construction of a Project, including but not limited to the Agreement between Owner and Contractor, complete working drawings and specifications setting forth in detail sufficient for construction the work to be done and the materials, workmanship, finishes and equipment required

for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work.

1.6 **Contractor.** “Contractor” shall mean one or more contractors ultimately selected to perform work on the Project or any replacement.

1.7 **District.** “District” shall mean the Newark Unified School District, and its governing board members, employees, agents and authorized representatives.

1.8 **Project.** “Project” shall mean the program planning and other predesign services Project described herein, as well as each work of improvement added by an amendment in the form of *Exhibit A or B*, as described in Article 3 and the design and construction thereof, including the Architect's services thereon, as described in this Agreement.

1.9 **Project Construction Cost.** “Project Construction Cost” shall mean the estimate of the District’s total construction costs for a Project as initially submitted by the Architect under this Agreement and accepted by the District, as subsequently revised by changes to the Project Construction Cost under Article 5 of this Agreement, and as subsequently revised at the time the District enters a construction contract to equal the construction contract amount.

1.10 **Wrongful Acts or Omissions.** “Wrongful Acts or Omissions” shall mean Architect’s acts or omissions in breach of this Agreement, the applicable standard of care, or law.

ARTICLE 2 RETENTION OF ARCHITECT; STANDARD OF CARE

2.1 District retains Architect to perform, and Architect agrees to provide to District, for the consideration and upon the terms and conditions set forth below, the architectural and engineering services specified in this Agreement and subsequent amendments for each Project, and related incidental services. The Architect agrees to perform such services as expeditiously as is consistent with professional skill and care and the orderly progress of each such Project. All services for a Project performed by the Architect under and required by this Agreement shall be performed (a) in compliance with this Agreement and subsequent amendments for such Project, and (b) in a manner consistent with the level of care and skill ordinarily exercised by architects in the same discipline, on similar projects in California with similar complexity and with similar agreements, who are specially qualified to provide the services required by the District; and all such services shall be conducted in conformance to, and compliance with, all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the Americans with Disabilities Act (“ADA”). Architect shall be responsible for the completeness and accuracy of the plans and specifications for each Project.

ARTICLE 3
DESCRIPTION OF PROJECT

3.1 Architect shall provide program planning and other predesign services for the District's facilities in general. In addition, each Project that is a specific construction project for which Architect will provide architectural services shall be set forth in the form of *Exhibit A or B* to this Agreement, and upon full execution and approval of an amendment in such form it shall amend this Agreement to include such Project, and the Parties' rights and obligations for that Project shall be governed by this Agreement, except as specifically provided in the amendment for that Project.

ARTICLE 4
COMPENSATION

4.1 Basic Services.

For the Basic Services related to the program planning and other predesign services Project, the Architect's compensation for its Basic Services shall be hourly with the total compensation not exceeding _____ dollars (\$_____). The Scope of Work includes master planning services as requested by the District, including but not limited to a long-term facilities master plan, with a process for community input thereon, designed to aid the District in preparation for potentially significant growth from development and to address long-term needs for its school and district-wide facilities, including an evaluation of the need for a potential new school facility at a site known as "area 3" on southern end of the City of Newark, defining educational facility goals for the next 10-20 years, and suggesting financial strategies to fund future needs; a district-wide energy master plan; and a new five-year deferred maintenance plan, to assist the Maintenance & Operations Department in setting annual goals to address shorter-term needs that have accrued over time. For the Basic Services satisfactorily performed under this Agreement for any other Project, Architect shall be compensated as provided in the fully executed addendum that has been approved by the District's governing board based on *Exhibit A or B* for that Project. Rather than add a future Project to this Agreement via *Exhibit A or B*, District may retain another architect for services on such Project. District is not obligated to use Architect for any or all of its future Projects.

However, Architect will not be compensated for any Basic Services required as a result of Wrongful Acts or Omissions. Architect acknowledges that the amount for Basic Services, above, includes contingency compensation in the event that more time and costs than originally anticipated may be necessary to complete the Basic Services.

4.2 Additional Services. Architect may invoice separately for Additional Services if provided by Architect under Article 6, to be paid on an hourly basis using the rates stated in Section 4.8. However, Architect will not be compensated for any Additional Services required as a result of Wrongful Acts or Omissions.

4.3 Reimbursable Expenses

4.3.1 Reimbursable Expenses are those actual out-of-pocket expenses directly incurred as a result of Architect's performance of Basic or Additional Services under this Agreement. Architect may not charge a mark-up on Reimbursable Expenses. Reimbursable Expenses are limited to these expenses related to the Project: Fax, reproduction expense (excluding such expense for reproductions for office use by Architect and its consultants), postage, messenger, transportation, living expenses in connection with out-of-town travel, long distance communications, expense of renderings, models and mock-ups requested by District, expense of publishing under Section 5.6.5, expense of data processing and photographic production techniques when used in connection with Additional Services, and, if authorized in advance by the District, expense of overtime work requiring higher than regular rates. Reimbursable Expenses do not include indirect costs, such as general overhead (for example, home office overhead [including technology hardware and software] or insurance premiums), for which Architect must pay out of its compensation for services under Section 4.1, above; nor do they include expenses incurred in connection with Basic or Additional Services that result from Wrongful Acts or Omissions.

4.3.2 For the program planning and other predesign services, Architect's total reimbursement for Reimbursable Expenses shall not exceed \$_____, which is Architect's estimate of the maximum total cost of Reimbursable Expenses on the Project. Architect shall be reimbursed by District for its Reimbursable Expenses on any other Project as provided in the fully executed and approved *Exhibit A or B* for that Project.

4.4 For services satisfactorily performed on a Project, payment for Basic Services, Additional Services and Reimbursable Expenses shall be made on a monthly basis after receipt and approval by the District of the Architect's properly documented and submitted invoices. To be "properly documented and submitted," an invoice shall be timely, be accompanied by all necessary documentation, list all activities performed, and for each activity performed list the person performing it and the person's rate of compensation. Architect's invoice shall be submitted within ten (10) days of the end of the monthly billing period. Invoices, receipts and other documentation to establish the validity of all Reimbursable Expenses shall be a prerequisite to District payment of such expenses. If District disputes a portion of a properly submitted invoice, it shall notify Architect of the dispute and, upon Architect's request, arrange for a meeting to confer about, and potentially resolve, the dispute. Prior to this meeting, Architect shall provide all documentation requested to support disputed portions of a properly submitted invoice. Regardless of any such dispute about an invoice or payment, Architect shall continue to provide all services required by this Agreement and law until the end of the Project, even if District and Architect cannot resolve all such disputes. Payments of undisputed portions of a properly submitted invoice shall be made within 60 days of receipt of the invoice; Architect otherwise waives all rights and remedies under law related to receipt of payment of undisputed amounts.

4.5 The Architect's compensation for a Project shall be paid notwithstanding a Contractor-caused delay in completion of the Project or reduction of final construction cost by reason of penalties, liquidated damages, or other amounts withheld from the Contractor. However, District may withhold from payments to Architect to the extent that (i) Basic and Additional Services remain to be performed, including but not limited to those required for project closeout and payments to Contractor, and (ii) Wrongful Acts or Omissions caused District to incur damages, losses, liabilities

or costs, including but not limited to withholding any amounts for which Architect is responsible under Section 5.7.20. Five Thousand Dollars (\$5,000) will be withheld from any Construction Phase payments until District receives certification of Field Act approval.

4.6 Should District cancel a Project under section 12.1 of this Agreement at any time during the performance of this Agreement, Architect shall, upon notice of such cancellation, immediately cease all work under this Agreement. In such event, Architect's total fee for all services performed shall be computed as set forth in Section 12.1.

4.7 District has the right to audit Architect's records and files regarding, or relating to, any of the work performed by Architect for District on a Project during or after the Project. Architect shall keep complete records showing all hours worked and all costs and charges applicable to its work under this Agreement. Architect will be responsible for Architect's consultants keeping similar records. District shall be given reasonable access to Architect's Project-related records and files for audit purposes within ten (10) days of receipt of District's request. Architect shall keep and maintain those records and files for ten (10) years.

4.8 Architect's hourly rate schedule for its services is attached as *Exhibit C*.

4.9 Architect shall not accept compensation or other benefits from other persons related to a Project, including payments from manufacturers of construction materials that are specified in the design.

ARTICLE 5 BASIC SERVICES TO BE RENDERED BY ARCHITECT

5.1 General

5.1.1 Architect's Basic Services consist of (a) the Facilities Master Plan and other predesign services Project described in Section 4.1 of this Agreement, and (b) the design services, including landscaping architectural services and landscape irrigation design, civil, structural, mechanical, and electrical engineering services, normally required to complete the Project that is described in the fully executed and approved amendment to this agreement for that Project (see Exhibit A or B). The Basic Services for each Project also include the services described in this Agreement, especially Article 5, below, including but not limited to bid package preparation, bid handling, preparation and processing of change orders, requests for information, and other contract administration duties. The District shall have the right to add or delete from the Architect's scope of services as it may determine is necessary for the best interests of the Project and/or the District. Architect shall expeditiously and diligently perform all of its work and obligations under this Agreement. Architect may not cease, delay or reduce, or threaten to cease, delay or reduce, its performance based on a payment dispute with District under Section 4.4, above. The Architect acknowledges that its priority is to complete the Project and the Architect's services, and that any payment disputes with the District under Section 4.4, if not resolved during the Project, must wait for resolution after the Project.

5.1.2 The Architect shall review the estimate described more fully below at each phase of Architect's services, also as defined below. If such estimates are in excess of the Project

budget, the Architect shall revise the type or quality of construction to come within the budgeted limit.

5.1.3 Whenever the Architect's services include the presentation to the District of Project Construction Cost, the Architect shall include a reasonable amount for contingency costs arising from, among other things, higher bids than anticipated, future increase in construction costs, and change orders based on unforeseen site conditions.

5.1.4 The Architect shall notify the District if there are any indicated adjustments in previously provided Project Construction Cost arising from market fluctuations or approved changes in scope or requirements based upon a mutually agreed upon index.

5.1.5 At the District's request, the Architect and Architect's consultants shall cooperate with District and the District's consultants in verifying that Architect's plans, specifications, studies, drawings, estimates or other documents relating to the Project are constructible and otherwise comply with the Contract Documents. If there are project meetings during the design and construction phases, Architect shall attend those meetings.

5.1.6 The Architect shall investigate existing conditions of facilities and thoroughly account for, and list in the construction documents, any pertinent conditions of such facilities, all in a manner that satisfies the standard of care and level of performance required by this Agreement. Architect's investigation required by this provision shall be limited to non-destructive evaluation.

5.1.7 All personnel provided by Architect shall be qualified to perform the services for which they are provided. Architect shall obtain District's written approval of each employee of Architect who provides services under this Agreement, and written approval of each change of employees who are providing such services. District may, upon ten (10) days' written notice, cause Architect to remove a person from the Project if he/she has failed to perform to District's satisfaction. Should additional employees be required to timely perform all of the services required under this Agreement and/or to avoid delay, Architect shall provide them immediately.

5.1.8 Architect is an agent of District and shall reasonably represent the District at all times in relation to the Project.

5.1.9 Architect shall be fully licensed as required by law at all times when providing services under this Agreement.

5.2 Consultants

5.2.1 Architect's Consultants. The Architect shall employ or retain at Architect's own expense, engineers and other consultants necessary to Architect's performance of this Agreement and licensed to practice in their respective professions in the State of California. Engineers and consultants retained or employed by Architect for this Project shall be approved by District prior to their commencement of work. The Architect's consultants shall be employed or retained to provide assistance during all aspects of the Project and will include, in addition to design services: review of schedules, shop drawings, samples,

submittals, and requests for information. The Architect's Consultants shall also conduct periodic inspections of the site to determine conformance with the Project design and specifications and shall participate in the final inspections and development of any "punch list" items. Architect must disclose to District all such consultants employed or retained, and the compensation paid to those retained.

5.2.2 District's Consultants. Architect shall confer and cooperate with consultants retained by District as may be requested by District or as reasonably necessary. District may retain a construction manager to assist District in performance of District's duties for the Project.

5.2.3 The Architect shall procure a certified survey of the site if required, including grades and lines of streets, alleys, pavements, adjoining properties and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the building site, locations, dimensions and floor elevations of existing buildings, other improvements and trees; and full information as to available utility services and lines, both public and private above and below grade, including inverts and depths. All the information on the survey customarily referenced to a project benchmark shall be referenced to a Project benchmark. The cost of any such survey shall be borne by the District, and the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Architect any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the survey.

5.2.4 Architect shall procure chemical, mechanical or other tests required for proper design, tests for hazardous materials and borings or test pits necessary for determining subsoil conditions. The cost of any such tests shall be borne by the District, and the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Architect any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the testing.

5.2.5 Architect shall assist the District and its consultants to apply for funding for the Project from the State Allocation Board. Architect shall be responsible for all submittals required of the Architect by the Division of the State Architect ("DSA"), OPSC and California Department of Education in connection therewith.

5.3 Schematic Design Phase

5.3.1 The Architect shall review all information concerning the Project delivered or communicated by the District to the Architect to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the District.

5.3.2 The Architect shall provide a preliminary evaluation of the District's Project, schedule and construction budget requirements, each in terms of the other.

5.3.3 The Architect shall review with the District alternative approaches to the design and construction of the Project, and shall include alternatives that may reduce the cost of the Project.

5.3.4 Based on a mutual understanding of the District's budget and scope of work requirements, the Architect shall prepare for the District's governing board's written approval, schematic design documents, which include but are not limited to, schematic design studies, site utilization plans, a description of the Project showing, among other things, the scale and relationship of the components of the Project, preparation of a written estimated statement of Project Construction Cost and a written schedule for the performance of the work that itemizes constraints and critical path issues. The schematic design documents shall represent a 15% complete design. The Project Construction Cost shall be based on current area, volume and other unit costs, shall conform to District's total construction cost budget, and shall include reasonable contingencies for all construction and construction management work. The written schedule shall conform to District's milestone and completion deadline requirements. Nevertheless, Architect is encouraged to make recommendations to District regarding additional benefits that could be realized by increasing the District's total construction cost budget, or by altering the District's completion deadlines. If District incorporates any recommended changes, then Architect shall revise the schematic design documents, including but not limited to the written statement of Project Construction Cost and written schedule for the performance of work, as necessary until District's governing board approves them in writing. Architect shall attend, and present at, as many meetings of the District's governing board as may be necessary to obtain the board's approval of the schematic design documents.

5.3.5 The Architect shall submit to the District a preliminary Project Construction Cost based on current area, volume and other unit costs.

5.4 **Design Development Phase**

5.4.1 Following District's governing board's written approval of the schematic design documents, including the estimate of Project Construction Cost and schedule, Architect shall provide all necessary architectural and engineering services to prepare design development documents for the District's governing board's written approval, which fix and describe the size and character of the project and which shall include, but are not limited to, site and floor plans, elevations and other approved drawings and shall outline the specifications of the entire Project as to kind and quality of materials, categories of proposed work such as architectural, structural, mechanical and electrical systems, types of structures and all such other work as may be required. During the design development phase, Architect will keep the Project within all budget and scope constraints set by the District. The design development documents shall represent a 50% complete design. The design development documents shall include a revised Project Construction Cost, and a revised construction schedule. The revised Project Construction Cost shall be based on current area, volume and other unit costs. The revised Project Construction Cost shall conform to District's total construction cost budget and shall include reasonable contingencies for all construction and construction management work. The revised construction schedule shall conform to District's milestone and completion deadline requirements. Nevertheless, Architect is encouraged to make recommendations to District regarding additional benefits that could be realized by altering the District's total construction

cost budget or completion deadlines. If District incorporates any recommended changes or otherwise does not approve the submitted design development documents, then Architect shall revise the design development documents, including but not limited to the written statement of Project Construction Cost and written schedule for the performance of work, as necessary until District's governing board approves them in writing. Architect shall attend, and present at, as many meetings of the District's governing board as may be necessary to obtain the board's approval of the design development documents.

5.4.2 The Architect shall assist the District and its consultants in the preparation and/or modification of the Storm Water Pollution Prevention Plan if any such plan is required for this Project.

5.4.3 Architect shall prepare necessary documents for and oversee the processing of District's application for and obtaining of required approvals from the DSA, the OPSC (if applicable), the Department of Education, the State Fire Marshall and other agencies exercising jurisdiction over the Project. Architect shall also be responsible for the preparation and submission of any required applications, notices or certificates to public agencies as required by law. Architect shall provide a copy of all such documents to the District.

5.4.4 The Architect shall advise the District of any adjustments to the preliminary Project Construction Cost.

5.4.5 Architect shall identify areas of construction for which unit pricing shall be required as part of the Contractor's bid.

5.4.6 Architect shall provide at no expense to the District one complete set of preliminary plans for the review and written approval of the District and one set for each public agency having approval authority over such plans for their review and approval at no expense to the District.

5.5 **Contract Documents Phase**

5.5.1 Following the District's governing board's written approval of the design development documents, including the Project Construction Cost and construction schedule, the Architect shall prepare Contract Documents for the written approval of District's governing board consisting of 100% complete working drawings and specifications setting forth the work to be done in detail sufficient for construction, including but not limited to the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work. Architect shall ensure that the drawings and specifications are, among other things, complete, accurate, and coordinated so as to eliminate errors, omissions and conflicts, especially between the work of a (sub)consultant and other (sub)consultants or the Architect; and Architect may not shift its responsibility for completeness, accuracy and coordination to the Contractor, except on a clearly designated design-build project. Architect shall also update the construction schedule and the Project Construction Cost for written approval of District's governing board. The Contract

Documents shall conform to, comply with, and satisfy all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the Americans with Disabilities Act (“ADA”). As part of the Contract Documents, Architect shall prepare an accurate set of drawings indicating dimensions and locations of existing buried utility lines, which shall be included in the bid packages. If the project is intended to be split into multiple prime contracts, then the Contract Documents shall be structured in order to maximize the ability to create multiple prime bid packages for the Project, and shall identify the bid packages to be created.

5.5.2 Architect shall consult with, and involve, the District in development of the bid documents and bid package, and shall forward them to the District for written approval prior to their use. If the District is using a multiple prime delivery method for the Project with multiple bid packages, then Architect shall consult with and involve the District in identification and development of the bid documents and bid packages, and shall forward them to the District for written approval prior to their use.

5.5.3 Prior to submission of the Contract Documents to DSA for plan check, the Architect shall submit the Contract Documents to the District for an opportunity to review them for various issues, including but not limited to constructability, scheduling, general completeness, clarity, consistency, coordination, cost-effectiveness, value engineering, identification of possible add/delete bid alternatives, time of construction, and suitability for separation of the Project design, plans and specifications into bid packages for various categories and/or portions of the work. However, such review by District is not required and does not affect Architect’s obligations under this Agreement.

5.5.4 After approval by the District’s governing board and any constructability review, the Architect shall submit the Contract Documents to DSA for plan check, and make the necessary corrections to secure DSA approval. At Architect’s expense, Architect shall arrange for the scanning of the DSA approved Contract Documents and for the return of the originals and an electronic copy to DSA.

5.5.5 The Architect shall give the District, at the time of DSA approval of the final form of the Contract Documents, Architect’s final estimate of Project Construction Cost and construction schedule, which shall be given final written approval by District’s governing board along with the Contract Documents. The revised Project Construction Cost shall be based on current area, volume and other unit costs, and on a mutually acceptable recognized building cost index, and shall include a reasonable contingency. In preparing the revised estimate of Project Construction cost and construction schedule for the Contract Documents, the Architect shall consult with, and involve, the District in the process to maximize accuracy and completeness. If the District is intending to enter multiple prime contracts, the Project Construction Cost shall include separate bid estimates for each bid package, plus a reasonable contingency; and the construction schedule shall reflect that multiple contractors will be performing separate bid packages, including a general conditions bid package. The revised Project Construction Cost estimate shall conform to District’s total Project budget, and the revised construction schedule shall conform to District’s milestone and completion deadline requirements. Architect shall attend, and

present at, as many meetings of the District's governing board as may be necessary to obtain the board's written approval of the Contract Documents.

5.6 Bidding and Negotiations Phase

5.6.1 Following DSA's and District's governing board's written approval of Contract Documents, and District's governing board's written acceptance of Architect's final estimate of Project Construction Cost and construction schedule, Architect shall continue to work with the District in finalizing the bid documents and bid package, as described in Section 5.5.2, above. Architect shall reproduce the bid documents and bid package in the number requested by the District and distribute them among interested contractors. Architect shall also assist the District in obtaining bids, and shall assist the District in evaluating contract proposals or bids and substitutions proposed by contractors, and in awarding the bids. All sets of Contract Documents, which does not include those for the use of the Architect or its consultants, requested by the District in excess of five (5) shall be reproduced at District's expense.

5.6.2 Architect's estimate of Project Construction Cost at the time of DSA approval of the Contract Documents shall be current as of that date. Should bids be received more than ninety (90) days after the date of that Project Construction Cost, the Architect's total construction cost shall be escalated by the cost-of-construction in the then current mutually agreed upon recognized building cost index.

5.6.3 Should the lowest responsible and responsive bid received on a bid package exceed Architect's most recent approved estimate of Project Construction Cost for that bid package (or amount adjusted according to the then current mutually agreed upon recognized building cost index) as accepted by District by more than ten percent (10%), Architect shall, on request by District and as part of Architect's Basic Services, make such changes in the plans and specifications as shall be necessary to bring new bids within ten percent (10%) of such Project Construction Cost. In making such changes, Architect will exercise Architect's best judgment in determining the balance between the size of the Project, the type of construction, and the quality of the construction to achieve a satisfactory project within ten percent (10%) of Architect's Project Construction Cost. To avoid the potential for bids to exceed the estimate by more than 10% at bid opening, the Architect may, as an alternative, include in the Contract Documents one or more deductive alternatives so that Architect and District may evaluate different means to achieve a satisfactory project within ten percent (10%) of the Architect's Project Construction Cost.

If this project is a financial hardship project, and should the lowest responsible and responsive bid received on a bid package exceed Architect's most recent approved estimate of Project Construction Cost for that bid package (or amount adjusted according to the then current mutually agreed upon recognized building cost index) as accepted by District, Architect shall, on request by District and as part of Architect's Basic Services, make such changes in the plans and specifications as shall be necessary to bring new bids that are less than such Project Construction Cost. In making such changes, Architect will exercise Architect's best judgment in determining the balance between the size of the Project, the type of construction, and the quality of the construction to achieve a satisfactory project at less than the Architect's Project

Construction Cost. To avoid the potential for bids to exceed the estimate at bid opening, the Architect may, as an alternative, include in the Contract Documents for a bid package one or more deductive alternatives so that Architect and District may evaluate different means to achieve a satisfactory project at less than the Architect's Project Construction Cost.

5.6.4 Either on its own or in cooperation with the District, the Architect shall review the qualifications of all bidders for the construction of the Project, and shall make recommendations to the District as to whether, in the Architect's professional opinion, a bidder meets the minimum requirements.

5.6.5 If, in the District's discretion, the District will seek total or partial State funding for this Project, the Architect shall, in addition to the above, publish the invitation to bid in the appropriate regional trade papers and publications devoted to Disabled Veteran Business Enterprises. The Architect shall also prepare and submit the appropriate documentation to the OPSC.

5.7 Construction Phase

5.7.1 The construction phase shall begin on the date stated in the official Notice to Proceed.

5.7.2 All instructions to the Contractor shall be forwarded through the Architect unless otherwise directed by the District. The Architect shall advise and consult with the District in the general administration of the Project. The Architect will have authority to act on behalf of the District only to the extent provided in the Contract Documents, unless District grants additional authority in writing.

5.7.3 The Architect shall timely provide District with copies of all of its correspondence with the Contractor.

5.7.4 The Architect shall provide prompt and timely direction to the District, Project inspectors and/or Contractor as to the interpretation of Contract Documents. Architect shall respond to all requests for information ("RFI's") from a Contractor within fourteen (14) calendar days of receipt, unless the subject of the RFI is impacting, or may impact, the critical path of the Project and is causing, or may cause, delay, in which case the Architect shall respond as soon as reasonably possible, if not immediately. If the Architect is not able to take action within the time required due to reasons beyond Architect's control, the Architect may take action within a reasonable period of time under the circumstances; however, the Architect shall make such determination within seven (7) calendar days of receipt of the RFI, and shall notify the District and Contractor immediately after such determination with an explanation as to why the Architect cannot take action within the time required, what the Architect is doing to expedite its response, when the Architect expects to be able to issue a response, and what action, if any, should be taken by District or Contractor in the meantime to mitigate delays and/or costs.

5.7.5 Based on information provided by the Contractor and Architect's own knowledge of the Project (including documents in Architect's possession or reasonably available to it),

Architect shall prepare an accurate set of as-built record drawings indicating dimensions and locations of all work, including but not limited to buried utility lines and mechanical, electrical and plumbing layouts, which shall be forwarded to the District upon completion of the Project. While Architect cannot guarantee precise accuracy of such drawings, Architect shall exercise reasonable care in reviewing such drawings to determine their general compliance with the Contract Documents. Architect shall have no responsibility for their conformity to field conditions, except that in the event that the Architect, consistent with standards of due care, becomes aware of non-conformity with field conditions, Architect shall have a duty immediately to notify the District in writing. Architect shall also assemble and deliver to District all written guarantees, instruction books, operation and maintenance manuals, diagrams, charts and other documents required of Contractor.

5.7.6 The Architect shall be responsible for the preparation and submission of any notifications regarding excavation in areas which are known or suspected to contain subsurface installations under Government Code section 4216, *et seq.* The Architect may delegate this responsibility to a Contractor if such power to delegate was included in the Contract Documents and bid package, but Architect shall remain responsible for supervising such Contractor to ensure performance of this task. Architect shall provide a copy of all such notifications to the District.

5.7.7 The Architect shall, at all times, have access to the Project wherever it is in preparation and progress. To the extent reasonably possible given Contractor's work in progress, the District shall provide such access so that the Architect may perform its functions under the Agreement and Contract Documents.

5.7.8 In the discharge of its duties of observation and interpretation, the Architect shall require Contractors to comply with the Contract Documents, and shall guard the District against defects and deficiencies in the work of the Contractor. The Architect shall advise and consult with the District and inspectors concerning the Contractor's compliance with the Contract Documents and shall assist the District and inspectors in securing the Contractor's compliance.

Unless otherwise assigned, Architect has the primary responsibility for the Project to supervise, coordinate and manage the compliance of all parties, including the District's Inspector of Record/Project Inspector ("IOR"), Contractor, any Construction Manager, laboratories, District and Architect itself, with the DSA Construction Oversight Process.

The Architect must comply with the applicable requirements of the DSA Construction Oversight Process, including but not limited to (a) submitting the inspection card request form (DSA 102-IC), (b) providing a verified report (DSA 6-AE) at the completion of each block and section of each inspection card, and (c) directing and monitoring the IOR and laboratories of record, and (d) coordinating with the Owner, Contractor, any Construction Manager, laboratories, and the IOR to meet the DSA Construction Oversight Process requirements without delay or added costs to the Project.

The Architect shall be responsible for any additional DSA fees and delay damages related to review of proposed changes to the DSA-approved construction documents, to the extent Architect's negligence, recklessness or willful misconduct caused the additional DSA fees, and for delay damages to the extent required under Section 5.7.20.2 below.

5.7.9 The Architect shall visit the site, both as the Architect deems necessary and as requested by the District, but under no circumstances less than weekly, to maintain familiarity with the quality and progress of the Project, to determine that the Contractor's work substantially complies with all documents, drawings, plans and specifications and that the Project is progressing in substantial accordance with the Contract Documents. Such observations are to be distinguished from the continuous inspection provided by the Project Inspector unless Architect has agreed in writing to serve as the District's Project Inspector.

5.7.10 The Architect shall notify the District promptly of any significant defect in materials, equipment or workmanship, and of any default by any Contractor in the orderly and timely prosecution of the Project. Architect will exercise reasonable care in the discharge of Architect's obligation to discover significant defects and faults.

5.7.11 The Architect shall review and approve, take exception to, or take other appropriate action upon all schedules, shop drawings, samples and other submissions of the Contractor to determine general conformance with the Project design and specifications as set forth in the Contract Documents. All such action shall be taken within fourteen (14) days of receipt of the submittals, unless the critical path of the Project is impacted in which case Architect shall take such action as soon as possible. If Architect is not able to take such action within the required time due to reasons beyond Architect's control, the Architect may take action within a reasonable period of time under the circumstances; however, the Architect shall make such determination within four (4) calendar days of receipt of the submission, and shall notify the District and Contractor immediately after such determination with an explanation as to why the Architect cannot take action within the time required, what the Architect is doing to expedite its response, when the Architect expects to be able to issue a response, and what action, if any, should be taken by District or Contractor in the meantime to mitigate delays and/or costs. The Architect will have the authority to reject work and materials which do not conform to the Contract Documents. The Architect's approval of a specific item shall not be an approval of an assembly of which the item is a component. Whenever, in the Architect's reasonable judgment, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the Architect will have authority to require special inspection or testing of the work or materials in accordance with the Contract Documents whether or not such work or materials be then fabricated, installed or completed. The Architect will also recommend substitution of materials or equipment when, in the Architect's reasonable judgment, such action is necessary to the accomplishment of the intent and purpose of the Contract Documents. Such actions as are described in this paragraph shall be taken with reasonable promptness.

5.7.12 Architect shall assist the District in requiring Contractor to provide assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals and training personnel for operation and maintenance.

5.7.13 The Architect shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the work. The Architect shall not be responsible for acts or omissions of the Contractor, subcontractors, or their agents or employees or of any other persons performing portions of the Project not employed or retained by Architect, unless due to Wrongful Acts or Omissions.

5.7.14 The Architect shall make such regular reports as shall be required by agencies having jurisdiction over the Project and keep the District informed in writing of the progress of the Project.

5.7.15 The Architect will, consistent with standards of due care, make reasonable professional efforts to exclude hazardous materials from new construction. In the event the District or Architect is or becomes aware of the presence of, or exposure of persons to, asbestos, polychlorinated biphenyl (PCB) or any other toxic or hazardous contaminants, materials, air pollutants or water pollutants at the Project site ("Hazardous Substances"), or the substantial risk thereof, each shall have a duty immediately to notify the other in writing. The parties recognize, however, that neither Architect nor the District is trained or licensed in the recognition or remediation of Hazardous Substances.

Unless indicated otherwise, with respect to asbestos and asbestos containing materials, the parties acknowledge that the Architect has recommended and the District has agreed to retain a qualified consultant to evaluate the presence of such materials at certain District facilities which are included in the scope of this Agreement. In the event that said consultant recommends a procedure to deal with such materials, said consultant shall have the responsibility to draft specification language for the removal or other remediation of such materials, and subsequently may be required to certify that they have been properly removed or otherwise remediated. Architect shall include consultant's recommendations and specifications in the appropriate design documents for modernization and shall, as part of its Basic Services, provide designs and other bid documents consistent therewith.

When construction is properly completed, Architect shall provide such certification as to Hazardous Substances as is required of architects for such projects by the OPSC.

5.7.16 Based on the Architect's observations, and an evaluation of each Project Application for Payment, the Architect will estimate the amount of work completed by Contractor, and assist the District in (a) determining the amount owing to the Contractor, and (b) issuing Project Certificates for Payment incorporating such amount, all in accordance with the Contract Documents. The Architect's estimation of the amount of work completed by Contractor shall constitute representations by the Architect to the District that the quality of the completed work is in accordance with the Contract Documents based upon Architect's observations of the completed work, and that the Contractor is entitled to payment for the completed work.

5.7.17 Notwithstanding anything else in this Agreement, as a part of its Basic Services the Architect shall assist the District in evaluating and responding to claims, disputes and other

matters in question between the Contractor and the District, including but not limited to claims made against the District as a result of alleged or claimed Wrongful Acts or Omissions, and shall in all instances provide such truthful testimonial assistance as may be required by the District at no cost to the District. Architect agrees to toll all statutory periods of limitations for District's claims, lawsuits or other proceedings against Architect which arise out of, or are related to, any claims by Contractors against District until Contractors' claims are fully and finally resolved. This tolling period commences upon a Contractor's initial submission of a notice of claim, change order request or claim. At any time, District may terminate the tolling period effective ten (10) days after written notice to Architect, and after such termination, District may pursue claims, lawsuits or other proceedings against Architect.

5.7.18 The Architect will provide construction advice to the District on apparent deficiencies in construction, both during construction and after acceptance of the Project.

5.7.19 The Architect shall recommend, prepare and process the necessary change orders. Payment of fees to the Architect as a result of change orders shall be handled as follows:

5.7.19.1 District-initiated change orders. If a change order is initiated by the District, the Architect's fee for services related to such change order shall be paid as an Additional Service under Articles 4 and 6. If a change order is solicited by the District but not subsequently authorized by the District, the Architect shall be paid for time spent on the proposed change order.

5.7.19.2 Change orders due to Architect. When a change order is necessitated as a result of Wrongful Acts or Omissions, the Architect's services in connection with that change order are not compensable and Architect shall not include those services on any invoice.

5.7.19.3 Change orders beyond District or Architect control. If a change order is necessitated as a result of changes in law, in-field changes required by governing agencies after document approval, unknown, unforeseeable or hidden conditions, or actual conditions inconsistent with available drawings of existing conditions, such change orders shall be handled in the same manner as District-initiated change orders.

5.7.20 Notwithstanding any other provision of this Agreement, in the event a change order is caused by, or necessitated as a result of, Wrongful Acts or Omissions, or the District otherwise incurs costs or damages as a result of Wrongful Acts or Omissions, the Architect shall be responsible for the following:

5.7.20.1 In the event of such a change order, Architect shall be responsible for the difference between (a) what the contractor would have added to its original bid for the Project if the Wrongful Act or Omission had not occurred (i.e., the "added value" portion of the change order), and (b) what the contractor charges the District in the change order. The amount of added value of any change order work shall be based on the circumstances of the Architect's Wrongful Act or Omission and the change order work necessitated by the Wrongful Act or Omission. It is the parties' intent that the District should pay no more than what the District would have paid if the Wrongful Act or Omission had not occurred.

5.7.20.2 In addition, Architect shall be responsible for any other costs or damages which the District incurs as a result of Wrongful Acts or Omissions, including but not limited to any delay damages the District pays to, or cannot collect from, Contractor or any third party.

The District may back charge, and withhold payment from, the Architect for these costs and damages, and may seek reimbursement for any amount which exceeds any retention of the contract amount at the time of collection. When District so back charges and withholds, upon Architect's request District and Architect shall meet and confer in good faith in an effort to reach agreement on (a) whether a Wrongful Act or Omission occurred, (b) whether it caused the change order expense, (c) what damages have been incurred by District, and (d) what portion of the damages are attributable to Architect as described above. If District and Architect do not reach agreement on all four of these items when meeting and conferring, then District and Architect shall use mediation in good faith to resolve the dispute. If mediation fails, then either District or Architect can initiate a court action to resolve the dispute.

5.7.21 The Architect shall provide a color schedule of all finish materials in the Project for the District's review and approval.

5.7.22 The Architect shall assist District in determining the date of final completion and make a final detailed on-site review of the job with representatives of the District and the Contractor. Architect shall also perform a warranty review with District 30-60 days before expiration of the specified warranty on the Project.

5.7.23 The Architect shall assist the District in issuing the final certificate for payment and any other documents required to be recorded by law or generally accepted architectural or construction contract practice upon compliance with the requirements of the Contract Documents, provided that such certification shall not constitute an admission that the Project has been completed in accordance with Contract Documents or in conformance with this Agreement.

5.7.24 Architect shall make reasonable professional efforts so that the finished project complies with all standards imposed by the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, disability access requirements of the State Building Code and any other laws applicable to disability access. If a court, administrative agency or other trier of fact later determines that Architect has violated any of the above-referenced laws, or District, because of Wrongful Acts or Omissions, has violated any of the above-referenced laws, Architect shall remedy the violation at its own cost. **Architect shall indemnify, defend and hold the District harmless under Article 18.1 of this Agreement for any breach of this paragraph due to Architect's negligence, recklessness or willful misconduct.** The Architect shall not be responsible for acts or omissions of the Contractor or of any other persons performing portions of the Project not employed or retained by Architect, nor shall Architect be responsible for any subsequent changes in the law or any regulation applicable to disabled access or any subsequent differing interpretation of the laws or regulations applicable at the time Architect's design is reviewed by DSA. In the event that the Architect is or becomes

aware of possible non-compliance with the foregoing standards, Architect shall have a duty immediately to notify the District in writing of the possible non-compliance.

5.8 Use of Previously Prepared Materials. In the event that there exist previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Architect, whether supplied by District or by Architect, which are relied upon, altered or otherwise utilized by Architect, Architect shall be responsible for giving appropriate recognition to such other design professionals in any materials prepared by Architect under this Agreement.

ARTICLE 6 ADDITIONAL SERVICES TO BE RENDERED BY ARCHITECT

6.1 "Additional Services" shall be provided by Architect on a Project if authorized in writing by District. No additional compensation shall be paid to Architect for performing these Additional Services unless the District and the Architect agree in writing as to the amount of compensation for such services prior to such services being rendered. Such compensation shall be paid based on the hourly rates in Section 4.8 and as otherwise set forth in this Agreement. Any work performed by Architect without written authorization OR without written agreement on compensation shall be presumed to be Basic Services.

6.2 The following is a list of services that are not included in the Basic Services to be provided under this Agreement for a Project, and will be performed only in accordance with Article 6.1, above:

6.2.1 providing financial feasibility or other special studies;

6.2.2 providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase;

6.2.3 providing coordination of Project performed by separate contractors or by the District's own forces;

6.2.4 providing analyses of owning and operating costs, or detailed quantity surveys or inventories of material, equipment and labor;

6.2.5 making revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given, are required by the enactment or revision of codes, laws or regulations subsequent to the District's approval of Contract Documents or are due to other causes not within the control of the Architect;

6.2.6 providing consultation concerning replacement of any work damaged by fire or other cause during construction of the Project, and furnishing services as may be required in connection with the replacement of such work;

- 6.2.7 providing services made necessary by the default of the Contractor;
- 6.2.8 preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding, other than when resulting from Architect's or its consultants' alleged Wrongful Acts or Omissions;
- 6.2.9 providing services of consultants for other than the normal architectural, civil, soils, structural, mechanical and electrical engineering services for the Project;
- 6.2.10 at the District's request, selecting moveable furniture, equipment or articles which are not included in the Contract Documents;
- 6.2.11 providing services related to change orders requested by the District, but which are not subsequently authorized (see second sentence of Section 5.7.19.1), above; and
- 6.2.12 providing any other services not otherwise included in the Agreement and not customarily furnished in accordance with generally accepted architectural practice.

**ARTICLE 7
RESPONSIBILITIES OF DISTRICT**

It shall be the duty of District to:

- 7.1 pay all fees required by any reviewing or licensing agency;
- 7.2 designate a representative authorized to act as a liaison between the Architect and the District in the administration of this Agreement and the Contract Documents;
- 7.3 furnish, at the District's expense, the services of a Project Inspector;
- 7.4 review all documents submitted by the Architect and advise the Architect of decisions thereon within a reasonable time after submission;
- 7.5 issue appropriate orders to Contractors through the Architect;
- 7.6 furnish existing soil investigation or geological hazard reports, which the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Architect;
- 7.7 furnish the services of a hydrologist or other consultants not routinely provided by the Architect when such services are reasonably required by the scope of the Project and are requested by the Architect;
- 7.8 provide asbestos review and abatement, identifying materials which may qualify for same;
- 7.9 furnish available as-built drawings for buildings and utilities systems related to the Project, which the District shall own and, upon termination of this Agreement or completion of the Project,

shall have returned to it by the Architect. The District will also provide information regarding programmatic needs and specific equipment selection data;

7.10 furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents, which the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by the Architect; and

7.11 furnish prompt notice of any fault or defects in the Project or nonconformance with the Contract Documents of which the District becomes aware. However, the District's failure to do so shall not relieve the Architect of Architect's responsibilities under Title 21, Title 24, and the Field Act for this Project and under this Agreement.

ARTICLE 8 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

8.1 Prior to the commencement of services for each Project under this Agreement, the Architect shall furnish to the District a certificate of insurance, Additional Insured Endorsement and Declarations Page for the period covered by this Agreement, for public liability and property damage with an insurance carrier satisfactory to the District, under forms satisfactory to the District, to protect the Architect and District against loss from liability imposed in relation to such Project for damages (1) on account of bodily or personal injuries, including death, disease and sickness, accidentally suffered or alleged to have been suffered by any person or persons that may be caused directly or indirectly by the performance of this Agreement, and (2) on account of injury to or destruction of property, including the resultant loss of use of the Project or other District facilities or equipment, resulting from acts of commission or omission by the Architect, or otherwise resulting directly or indirectly from the Architect's operations in the performance of this Agreement. The District shall be named as an additional insured on all such policies.

8.2 The following insurance shall be maintained by the Architect for each Project in full force and effect during the entire period of performance of such Project, including any extensions, and shall be written, to the extent reasonably available, on an "occurrence" basis: Commercial general liability insurance shall be in amounts not less than Four Million Dollars (\$4,000,000) general aggregate, Four Million Dollars (\$4,000,000) personal and advertising injury aggregate, with a per occurrence limit of Two Million Dollars (\$2,000,000); and Automobile liability insurance covering motor vehicles shall be in an amount not less than One Million Dollars (\$1,000,000) combined single limit. If liability insurance is not reasonably available on an occurrence basis, Architect shall provide liability insurance on a claims-made basis.

8.3 Said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the Declarations Page and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability. Said insurance shall also include a waiver of any subrogation rights as against the District.

8.4 Should any of the required insurance be provided for a Project under a claims-made form, Architect shall maintain such coverage continuously throughout the term of this Agreement, and

without lapse, for a period of at least ten (10) years beyond the Agreement expiration or the completion of the Project (whichever is later), to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies. Nothing herein shall in any way limit or diminish Architect's obligations to the District under any provision, including any duty to indemnify and defend the District.

8.5 The Architect's insurance policies for each Project shall contain a provision for thirty (30) days written notice to the District of cancellation or reduction of coverage. The Architect shall name, on any policy of insurance required for a Project, the District as an additional insured. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability for a Project shall not be reduced by the existence of such other insurance. Architect shall not commence work on a Project under this Agreement until all required insurance certificates, declarations pages and additional insured endorsements for that Project have been obtained and delivered in duplicate to the District for approval subject to the following requirements. Thereafter Architect shall produce a certified copy of any insurance policy required under this Article upon written request of the District.

8.6 At the time of making application for any extension of time on a Project, Architect shall submit evidence that all required insurance will be in effect during the requested additional period of time.

8.7 If the Architect fails to maintain such insurance for a Project, the District may, but shall not be required to, take out such insurance to cover any damages of the above-mentioned classes for which the District might be held liable during the Project on account of the Architect's failure to pay such damages, and deduct and retain the amount of the premiums from any sums due the Architect under this Agreement.

8.8 Nothing contained in this Agreement shall be construed as limiting, in any way, the extent to which the Architect may be held responsible for the payment of damages resulting from the Architect's operations during a Project.

8.9 Each of Architect's consultants on a Project shall comply with this Article, and Architect shall include such provisions in its contracts with them.

8.10 Insurance companies providing the above policies on a Project shall be legally authorized, licensed and admitted through the California Department of Insurance to engage in the business of furnishing insurance in the State of California. All such insurance companies shall have no lower than an "A-, VIII" in Best's Rating Guide and shall be satisfactory to the District.

8.11 Any failure to maintain any item of the required insurance on a Project may, at District's sole option, be sufficient cause for termination of this Agreement.

**ARTICLE 9
WORKER'S COMPENSATION INSURANCE**

9.1 Prior to the commencement of services for each Project under this Agreement, the Architect shall furnish to the District satisfactory proof that the Architect and all engineers, experts, consultants and subcontractors the Architect intends to employ have taken out, for the period covered by this Agreement, workers' compensation insurance for each Project with an insurance carrier satisfactory to the District for all persons whom they may employ in carrying out the work contemplated under this Agreement in accordance with the Workers' Compensation Laws of the State of California. All such insurance shall include a waiver of any subrogation rights as against the District. If the Architect employs any engineer, expert, consultant or subcontractor which it did not intend to employ prior to commencement of services, it must furnish such proof of workers' compensation insurance to the District immediately upon employment. Such insurance shall be maintained in full force and effect during the period of any Project covered by this Agreement including any extensions of time. If the Architect is self-insured, the Architect shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the District for each Project.

9.2 Prior to the commencement of services for each Project under this Agreement, the Architect shall furnish to the District satisfactory proof that the Architect and all engineers, experts, consultants and subcontractors the Architect intends to employ have taken out employer's liability insurance for that Project with an insurance carrier satisfactory to the District. During the course of Architect's services, if Architect ever intends to employ additional or different engineers, experts, consultants or subcontractors, before so employing them Architect shall furnish such satisfactory proof of insurance to the District. Such insurance shall be maintained in full force and effect during the period covered by this Agreement including any extensions of time. If the Architect is self-insured, the Architect shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the District for each Project.

**ARTICLE 10
ERRORS AND OMISSIONS INSURANCE**

10.1 Prior to the commencement of services for each Project under this Agreement, the Architect shall furnish to the District satisfactory proof that the Architect has, for the period of such Project, errors and omissions insurance on an occurrence basis, with limits of at least Two Million Dollars (\$2,000,000) and with a deductible in an amount not to exceed the sum of Ten Thousand Dollars (\$10,000). If errors and omissions insurance is not reasonably available on an occurrence basis, Architect shall provide errors and omissions insurance on a claims-made basis.

10.2 Each of Architect's professional sub-consultants (including consultants of Architect's) on each Project shall comply with this Article 10, and Architect shall include such provisions in its contracts with them.

10.3 Said errors and omissions insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the Declarations Page and such insurance shall apply separately to each

insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability.

10.4 Should any of the above required insurance be provided for a Project under a claims-made form, Architect shall maintain coverage continuously throughout the term of this Agreement, and without lapse, for a period of at least ten (10) years beyond the Agreement expiration or the filing of a Notice of Completion (whichever is later), to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policy. Nothing herein shall in any way limit or diminish Architect's obligations to the District under any provision, including any duty to indemnify and defend the District.

10.5 Architect shall not commence work on a Project under this Agreement until all required insurance certificates, declarations pages and additional insured endorsements have been obtained and delivered in duplicate to the District for approval. Thereafter Architect shall produce a certified copy of any insurance policy required under this Article upon written request of the District.

10.6 At the time of making application for any extension of time on a Project, Architect shall submit evidence that all required insurance policies will be in effect during the requested additional period of time.

10.7 If the Architect fails to maintain such insurance on a Project, the District may, but shall not be required to, take out such insurance, and may deduct and retain the amount of the premiums from any sums due the Architect under this Agreement.

10.8 Nothing contained in this Agreement shall be construed as limiting, in any way, the extent to which the Architect may be held responsible for the payment of damages resulting from the Architect's operations on a Project.

10.9 Each of Architect's consultants on a Project shall comply with this Article, and Architect shall include such provisions in its contracts with them.

10.10 Insurance companies providing the above policies on a Project shall be legally authorized, licensed and admitted through the California Department of Insurance to engage in the business of furnishing insurance in the State of California. All such insurance companies shall have no lower than an "A-, VIII" in Best's Rating Guide and shall be satisfactory to the District.

10.11 Any failure to maintain any item of the required insurance on a Project may, at District's sole option, be sufficient cause for termination of this Agreement.

ARTICLE 11 COMPLIANCE WITH LAWS

11.1 Architect shall be familiar with, and Architect and Architect's design shall comply with, all State and Federal laws and regulations applicable to the Project or lawfully imposed upon the Project by agencies having jurisdiction over the Project, including but not limited to statutes, decisions,

regulations, building or other codes, ordinances, charters, prevailing wage law, and the Americans with Disabilities Act (“ADA”).

ARTICLE 12 TERMINATION OF AGREEMENT

12.1 Termination by District – This Agreement in its entirety, or only as to an amendment for a Project (see *Exhibits A and B*), may be terminated, or the Project may be canceled, by the District for the District’s convenience and without cause at any time immediately upon written notice to the Architect. In such event, the Architect shall be compensated for (a) all Basic or Additional Services completed, and Reimbursable Expenses incurred, on such Project(s) under this Agreement through the date of termination, (b) such Basic or Additional Services performed, and Reimbursable Expenses incurred, on such Project(s) after termination which are authorized by the District in writing, and (c) any costs incurred on such Project(s) by reason of such termination; but less any amounts the District is entitled to withhold under law or this Agreement. Upon the District’s written request and authorization, Architect shall perform any and all Basic and Additional Services on a Project necessary to complete the work in progress as of the date of termination.

For any material breach of contract by the Architect, the District may also terminate the Agreement in its entirety, or only as to an amendment for a Project (see *Exhibits A and B*), for cause by delivering written Notice of Intent to Terminate to the Architect. Such Notice shall include the following: (1) A description of such material breach, and (2) a date not less than fourteen days (14) after delivery of the notice by which the Architect must cure such breach. In response to such Notice, if the Architect fails to cure, and fails to reasonably commence to cure, the breach(es) by the deadline set by the Notice, then the District may terminate the Agreement in its entirety, or only as to an amendment for a Project (see *Exhibits A and B*), through written notice delivered to the Architect, which shall be effective upon such delivery. In such event, the Architect shall be compensated for all services completed on such Project(s) under this Agreement through the date of termination, together with compensation for such services performed after termination on such Project(s) which are authorized by the District in writing, but less any amounts the District is entitled to withhold under law or this Agreement. Upon the District’s written request and authorization, Architect shall perform any and all services necessary to complete the work in progress on a Project as of the date of the termination.

12.2 Termination by Architect – For any material breach of contract by the District on a Project other than one related to a payment or invoice dispute as described in Section 4.4 of this Agreement, the Architect may partially terminate the Agreement as to that Project (but not as to other Projects) by delivering written Notice of Intent to Terminate to the District. Such Notice shall include the following: (1) A description of such material breach, (2) a date not less than fourteen (14) days after delivery of the notice by which the District must cure such breach or reasonably commence to cure such breach, (3) the status of work on the Project completed as of the date of the Notice of Intent to Terminate, and (4) a description and cost estimate of the effort necessary to complete the work in progress on the Project. In response to such Notice, if the District fails to cure, and fails to reasonably commence to cure, the breach by the deadline set by the Notice, then Architect may partially terminate the Agreement as to that Project (but not as to other Projects) by written notice

delivered to the District within ten (10) days of the cure deadline, which shall be effective upon such delivery.

In the event of such termination by Architect as to a Project, Architect shall be compensated for all Basic and Additional Services completed, and Reimbursable Expenses incurred, on that Project under this Agreement through the date of termination, together with compensation for such Basic and Additional Services performed, and Reimbursable Expenses incurred, on that Project after termination which are authorized by the District in writing. Upon the District's written request and authorization, Architect shall perform any and all Basic and Additional Services necessary to complete the work in progress on that Project as of the date of termination.

12.3 Miscellaneous Termination Provisions

12.3.1 Following the termination of this Agreement in its entirety, or only as to an amendment for a Project (see *Exhibits A and B*), for any reason whatsoever, the District shall have the right to utilize any designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by the Architect, not only as they relate or may relate to the Projects under the Agreement (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to other projects, provided that any invalidity of such license in relation to such other projects shall not affect the validity of such license in relation to the Project under the Agreement (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316. Architect shall promptly make any such documents or materials available to the District upon request without additional compensation.

12.3.2 In the event of the termination of this Agreement in its entirety, or only as to an amendment for a Project (see *Exhibits A and B*), for any reason whatsoever, all designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect or any of its agents for any Project under this Agreement shall immediately upon request by the District be delivered to the District. Architect may not refuse to provide such writings or materials for any reason whatsoever, including but not limited to a possessory interest lien for any claim the Architect may have against the District or a claim by the Architect to an ownership interest in the intellectual property embodied in the documents or materials.

ARTICLE 13 ARCHITECT AN INDEPENDENT CONTRACTOR

13.1 It is specifically agreed that in the making and performance of this Agreement, the Architect is an independent contractor and is not and shall not be construed to be an officer or employee of the District.

ARTICLE 14
STANDARDIZED MANUFACTURED ITEMS

14.1 The Architect shall consult and cooperate with the District in the use and selection of manufactured items to be used in a Project under this Agreement. Manufactured items, including but not limited to paint, finish hardware, plumbing fixtures and fittings, mechanical equipment, electrical fixtures and equipment, roofing materials, and floor coverings, shall be standardized to the District's criteria so long as the same does not interfere seriously with the building design or cost.

ARTICLE 15
OWNERSHIP OF DOCUMENTS

15.1 All designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect for a Project under this Agreement shall be and shall remain the property of the District for all purposes, not only as they relate or may relate to such Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to such Project) but as they relate or may relate to any other project, provided that any invalidity of such ownership in relation to any other project shall not affect the validity of such ownership in relation to such Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to such Project) under Education Code Section 17316.

15.2 The Architect will provide the District with a complete set of reproducible designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect for a Project under this Agreement, and will retain, on the District's behalf, the original documents or reproducible copies of all such original documents, however stored, in the Architect's files for a period of no less than fifteen (15) years. Architect shall promptly make available to District any original documents it has retained under this Agreement upon request by the District.

ARTICLE 16
LICENSING OF INTELLECTUAL PROPERTY

16.1 This Agreement creates a non-exclusive and perpetual license for the District to copy, use, modify, reuse or sublicense any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect for a Project under this Agreement, not only as they relate or may relate to such Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to such Project) but as they relate or may relate to other projects, provided that any invalidity of such license in relation to such other projects shall not affect the validity of such license in relation to such Project (including but not limited to any repair,

maintenance, renovation, modernization or other alterations or revisions to such Project) under Education Code Section 17316. The Architect shall require any and all subcontractors and consultants to agree in writing that the District is granted a similar non-exclusive and perpetual license for the work of such subcontractors or consultants performed on a Project under this Agreement.

16.2 The compensation for a Project under this Agreement includes compensation not only for any use in connection with such Project and use or re-use for repair, maintenance, renovation, modernization or other alterations or revisions to such Project, but also for any re-use by the District in relation to other projects. The only other term or condition of such re-use shall be that if the District reuses the plans prepared by the Architect for a Project and retains another certified architect or structural engineer for the preparation of those plans for the re-use, the District shall indemnify and hold harmless the Architect and its consultants, agents, and employees from and against any claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from, in whole or in part, the re-use to the extent required by Education Code section 17316, subdivision (c).

16.3 Architect represents and warrants that Architect has the legal right to license any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates or other documents that Architect or its consultants prepares or causes to be prepared for a Project under this Agreement. **Architect shall indemnify, defend and hold the District harmless under Article 18.1 of this Agreement for any breach of Article 16 due to Architect's negligence, recklessness or willful misconduct.** The Architect makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Architect and provided to Architect by the District.

ARTICLE 17 ACCOUNTING AND OTHER RECORDS OF ARCHITECT

17.1 Architect's records of accounts regarding a Project under this Agreement shall be kept in accordance with generally accepted accounting principles. District has the right to audit Architect's records and files regarding any of the work Architect performed for District on a Project during or after the Project. District shall be given reasonable access to Architect's records and files for audit purposes within ten (10) days of receipt of District's request. Architect shall keep and maintain these records and files for ten (10) years.

ARTICLE 18 INDEMNITY

18.1 Architect Indemnification. To the fullest extent permitted by law, including California Civil Code section 2782.8, the Architect shall defend, indemnify, and hold harmless the District, the governing Board of the District, each member of the Board, and their officers, agents and employees ("District Indemnitees") against claims arising out of, pertaining to, or relating to negligence, recklessness or willful misconduct of the Architect, the Architect's officers, employees, or consultants in performing or failing to perform any work, services, or functions

provided for, referred to, or in any way connected with any work, services, or functions to be performed on a Project under this Agreement.

For purposes of this Article 18.1 only, (a) “claims” means all claims, demands, actions and suits brought by third parties against the District Indemnitees for any and all losses, liabilities, costs, expenses, damages and obligations, and (b) the Architect’s defense obligation shall include but not be limited to (i) provision of a full and complete defense of the District Indemnitees by an attorney chosen or approved by the District, and (ii) payment of the District’s attorneys’ fees, experts’ fees, and all other litigation costs incurred in the District’s defense (“Defense Costs”) within thirty (30) days of Architect’s receipt of each invoice for such Defense Costs. After conclusion of the action against the District Indemnitees (including all appeals), the District shall reimburse Architect for the portion of the Defense Costs proportionate to the percentage of fault of parties other than the Architect (“Other Parties”) for the amounts paid or owed to the third party by the District Indemnitees, but this duty of reimbursement shall only be owed by the District if there are specific findings in a settlement agreement, arbitration award, or verdict as to the Other Parties’ percentage of fault, and the Architect’s percentage of fault, for those amounts paid or owed to the third party.

If one or more defendants is/are unable to pay its/their share of Defense Costs due to bankruptcy or dissolution of the business, the Architect shall meet and confer with other parties regarding unpaid Defense Costs.

This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Architect.

18.2 District Indemnification for Use of Third Party Materials. The District shall defend, indemnify, and hold harmless the Architect and its employees against any and all copyright infringement claims by any design professional formerly retained by the District arising out of Architect's completion, use or re-use of that former design professional's designs or contract documents in performing this Agreement. Architect shall be entitled to such indemnification only if each of the following conditions are met: (a) Architect actually re-draws or completes such other designs or contract documents; (b) Architect complies with the provisions of Article 5.8 regarding use of materials prepared by other design professionals; (c) District has supplied Architect with the previously prepared documents or materials; and (d) District expressly requests that the Architect utilize the designs or contract documents in question. By providing this or any other indemnification in this Agreement, District does not waive any immunities.

ARTICLE 19 TIME SCHEDULE

19.1 Time for Completion. Time is of the essence of this Agreement. The Architect shall timely complete its Basic and Additional Services for a Project as expeditiously as possible and according to the schedule provided in the fully executed and approved amendment for that Project (see *Exhibits A and B*).

19.2 **Delays.** The District recognizes that circumstances may occur beyond the control of either the District or the Architect and extensions for such delays may be made to the schedule for a Project if approved by the District. Any time during which the Architect is delayed in the Architect's work on a Project by acts of District or its employees or those in a direct contractual relationship with District or by acts of nature or other occurrences which were not or could not have been reasonably foreseen and provided for, and which are not due to any Wrongful Acts or Omissions, shall be added to the time for completion of any obligations of the Architect. District shall not be liable for damages to the Architect on account of any such delay.

**ARTICLE 20
MISCELLANEOUS PROVISIONS**

20.1 This Agreement shall be governed by and construed in accordance with the laws of the State of California excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County in which the District maintains its district office, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

20.2 The Architect shall not assign or transfer any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of the District.

20.3 All notices, certificates, or other communications hereunder shall be deemed given when personally delivered or mailed by certified mail, postage prepaid, to the parties at the addresses set forth below:

District: Newark Unified School District
5715 Musick Avenue
Newark, California 94560
Attention: Bryan Richards, Chief Business Official

Architect: _____ [*Name of firm*]

_____, California 9_____
Attention: _____ [*name or title*]

20.4 This Agreement shall inure to the benefit of and shall be binding upon the Architect and the District and their respective successors and assigns.

20.5 If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

20.6 The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties. No action or failure to act by the District shall constitute a waiver of any right or duty afforded the District under this Agreement, nor shall such action or failure to act constitute approval of, or acquiescence in, a breach

under this Agreement, except as may be specifically agreed to in a written amendment to this Agreement.

20.7 Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either the District or the Architect.

20.8 This Agreement constitutes the entire agreement between the parties, and supersedes any prior agreement or understanding. There are no understandings, agreements, representations or warranties, expressed or implied, not specified in this Agreement. The Architect, by the execution of this Agreement, acknowledges that the Architect has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

20.9 The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's professional materials. The Architect's materials shall not include the District's confidential or proprietary information if the District has previously advised the Architect in writing of the specific information considered by the District to be confidential or proprietary.

20.10 Prior to executing this Agreement or an amendment based on Exhibit A or B, the Architect shall submit a certification if required by Public Contract Code section 3006(b) for roofing projects.

20.11 If a party to this Agreement commences a legal action against the other party to enforce a provision of this Agreement or seek damages related to the services provided under this Agreement, the prevailing party in the legal action will be entitled to recover all of its litigation expense, costs and fees from the other party, including reasonable attorneys' and experts' fees.

* * * * *

ARCHITECT:
_____ [Name of firm]

DISTRICT:
NEWARK UNIFIED SCHOOL DISTRICT

By: _____
_____ [name or title]

By: _____
Superintendent

Exhibit A

**FORM OF AMENDMENT TO ADD PROJECT TO AGREEMENT
(NOT-TO-EXCEED FEE)**

Pursuant to the agreement between the Newark Unified School District (“District”) and _____ (“Architect”) effective _____, 201__ (“Agreement”) for the _____ construction program, the District and Architect agree to amend the Agreement to add architectural services for design and construction administration of the following project (“Project”): _____ *[insert description of Project]*.

The terms of the Agreement are incorporated into, and govern, this amendment except as may be provided otherwise by this amendment. In the event of a conflict between the Agreement and this amendment, the terms of this amendment shall control.

For the Project, Architect shall perform the Basic and Additional Services specified in the Agreement and this amendment. Multiple prime construction contracts _____ *[insert “are” or “are not”]* being used as the delivery method for the Project.

For the architectural services to be provided under this amendment to the Agreement, Architect shall complete such services according to the following schedule: _____ *[insert description of schedule, including milestone deadlines]*.

For the Basic Services satisfactorily performed under this amendment to the Agreement, Architect shall be compensated according to its hourly rate schedule (*Exhibit C* to the Agreement). Architect’s total compensation for its Basic Services shall not exceed \$_____, which is Architect’s estimate of the maximum total cost of its Basic Services on the Project, based on its _____, 201__, fee estimate.

If the total amount invoiced by Architect reaches the not-to-exceed Basic Services amount before Architect’s Basic Services under this Agreement are complete, Architect must complete the Basic Services without submitting additional invoices, or receiving additional payment, for Basic Services.

Architect’s total reimbursement for Reimbursable Expenses shall not exceed \$_____, which is Architect’s estimate of the maximum total cost of Reimbursable Expenses on the Project.

Architect shall provide a minimum of ___ () full-time employees for the Project before construction commences, and ___ () full-time employee after construction commences, to perform its duties and responsibilities under this Agreement.

For the Project, Architect shall provide the following insurance in addition to the insurance that is required by the Agreement: _____.

ARCHITECT:

DISTRICT:

_____ *[Name of firm]*

NEWARK UNIFIED SCHOOL DISTRICT

By: _____
_____ *[name or title]*

By: _____
Superintendent

Exhibit B

**FORM OF AMENDMENT TO ADD PROJECT TO AGREEMENT
(PERCENTAGE FEE)**

Pursuant to the agreement between the Newark Unified School District (“District”) and _____ (“Architect”) effective _____, 201__ (“Agreement”) for the _____ construction program, the District and Architect agree to amend the Agreement to add architectural services for design and construction administration of the following project (“Project”):
_____ *[insert description of Project]*.

The terms of the Agreement are incorporated into, and govern, this amendment except as may be provided otherwise by this amendment. In the event of a conflict between the Agreement and this amendment, the terms of this amendment shall control.

For the Project, Architect shall perform the Basic and Additional Services specified in the Agreement and this amendment. Multiple prime construction contracts _____ *[insert “are” or “are not”]* being used as the delivery method for the Project.

For the architectural services to be provided under this amendment to the Agreement, Architect shall complete such services according to the following schedule: _____ *[insert description of schedule, including milestone deadlines]*.

For the Basic Services satisfactorily performed under this amendment to the Agreement, the total compensation paid to the Architect for the Project shall be no more than _____ percent (___%) *[sliding scale percentages may be used]* of the final adjusted Project Construction Cost for the Project. This compensation shall be paid pursuant to the following schedule:

Initial Payment	None
Payment Upon Completion of:	
Schematic Design	20%
Design Development Phase	20%
Contract Documents Phase	30%
DSA Back Check	5%
Bidding Phase	5%
Construction Phase	<u>20%</u>
TOTAL BASIC COMPENSATION	100%

Upon any adjustment (increase or decrease) to the Project Construction Cost as contemplated by section 1.9 of the Agreement, including but not limited to any adjustment made at such time as bids are received, the Architect’s total compensation for Basic Services for the Project shall also be increased or decreased, including retroactively for Basic Services already performed and payments already made. Such adjustments may be effected by the District by either (a) adjusting any future payment due under the payment schedule immediately above, or (b) issuing a revision notice to Architect that either tenders any additional payment owed or demands reimbursement from the Architect of any overpayment to date.

[SR270267]

Architect's total reimbursement for Reimbursable Expenses shall not exceed \$_____, which is Architect's estimate of the maximum total cost of Reimbursable Expenses on the Project.

Architect shall provide a minimum of ___ () full-time employees for the Project before construction commences, and ___ () full-time employee after construction commences, to perform its duties and responsibilities under this Agreement.

For the Project, Architect shall provide the following insurance in addition to the insurance that is required by the Agreement: _____.

ARCHITECT:
_____ *[Name of firm]*

DISTRICT:
NEWARK UNIFIED SCHOOL DISTRICT

By: _____
_____ *[name or title]*

By: _____
Superintendent

Exhibit C
HOURLY RATES