



# **AGREEMENT FOR ARCHITECTURAL AND RELATED SERVICES**

**BETWEEN**

**Capistrano Unified School District**

**And**

**WLC Architects, Inc.  
8163 Rochester Avenue  
Rancho Cucamonga, CA 91730**

**June 8, 2016**

**AGREEMENT FOR ARCHITECTURAL AND RELATED SERVICES**  
**Between Capistrano Unified School District and WLC Architects, Inc.**

**Shorecliff Middle School Library Demo and New AC Pavement**

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## **AGREEMENT**

This Agreement is made and entered into as of June 8, 2016 by and between the Capistrano Unified School District, herein called "DISTRICT" and, WLC Architects, Inc. herein called "ARCHITECT", for a project hereinafter called the (Project) described in the attached Exhibit "A" Shorecliff Middle School Library Demo and New AC Pavement . The DISTRICT and the ARCHITECT are sometimes referred to hereinafter as a "Party" or the "Parties" to this Agreement.

### **RECITALS**

A. DISTRICT proposes to undertake the construction of the (Project) (the Project) as herein described which requires the services of a duly qualified and licensed ARCHITECT to perform all of the services described herein and as required by the Department of State Architect, the California Code of Regulations, and all other laws applicable to the Project.

B. ARCHITECT is a firm qualified and willing to provide the services required by DISTRICT. ARCHITECT is an independent contractor and covenants with DISTRICT to provide services relating to the Architectural design and construction of the Project pursuant to all the terms and conditions hereinafter set forth.

C. If DISTRICT chooses to use a Construction Manager, ARCHITECT shall cooperate and coordinate with the Construction Manager as if dealing directly with the DISTRICT. Further, should this Agreement have the ARCHITECT performing services that a Construction Manager has been hired to provide, DISTRICT and ARCHITECT shall execute a change order to this Agreement deleting such scope of work/services from this Agreement and deduct the reasonable value of such services, including any markup, from the Agreement price as set forth herein below.

D. DISTRICT does hereby engage ARCHITECT for the Basic Services as defined and described herein and for any Additional Services when authorized in advance in writing by the DISTRICT'S Authorized Representative in accordance with the provisions hereinafter contained in this Agreement.

NOW, THEREFORE, in consideration of the recitals and mutual benefit to be derived by the Parties, it is hereby agreed:

### **ARTICLE 1 - ARCHITECT SERVICES AND RESPONSIBILITIES –BASIC SERVICES**

#### **1.0 GENERAL MATTERS**

##### **1.0.1 Basic Services**

ARCHITECT'S Basic Services shall consist of the six phases hereinafter described in Article 1, and include all architectural, structural, mechanical, electrical engineering, civil engineering (on site), interior finishes, landscape design and Statements of Probable Construction Cost required, or which can be reasonably inferred to be required by this Agreement and generally accepted architectural practice, for completion of the Project as a whole. Basic Services shall include all architectural and engineering services for all onsite and offsite improvements to/for the

Project. Basic Services shall include all services by ARCHITECT and its consultants and sub-consultants to comply with the new DSA inspection procedures applicable to the Project. DSA has and is implementing significant changes to the Construction Oversight Process for projects under its jurisdiction. These changes are designed to streamline the DSA construction phase process and to ensure that projects are certified at the completion of construction. Effective June 1, 2013, the DSA will utilize an Inspection Card Process similar to that used by virtually every building department throughout the State. These changes are described in DSA Procedure PR 13-01. Effective dates for the new process are explained in Section 5 of the Procedure.

Forms associated with the new process are now available on the DSA Forms page. They are:

- DSA 102-IC: Construction Start Notice/Inspection Card Request  
(Now to be used instead of DSA -102.)
- DSA 151: Project Inspector Notifications
- DSA 154: Notice of Deviations/Resolution of Deviations
- DSA 155: Project Inspector Semi-Monthly Report
- DSA 155-INSTR: Instructions for DSA 155

DSA 156: Commencement/Completion of Work Notification

These documents are also available, and have been since May 1 2013, on the "Construction Oversight Process Changes: Courtesy Preview of Documents" page, reachable from the DSA Home page, along with Internal form DSA 152: Project Inspection Card (PDF - 136 KB), and a Manual (PDF - 5.75 MB) for Inspector reference.

ARCHITECT and its consultants and sub-consultants represent and warrant that it and they will provide their services so as to be in compliance with these new processes, as part of ARCHITECT'S Basic Services.

### **1.0.2 Engagement of ARCHITECT**

Architect promises and agrees to furnish to the DISTRICT all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional architectural and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement ("Services"). All Services shall be subject to, and performed in accordance with this Agreement, consistent with the standard of care as defined in Article 16.1; any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by ARCHITECT shall be subject to the sole and discretionary approval of the DISTRICT.

### **1.0.3 Personnel**

ARCHITECT will appoint a Project Architect, who shall be subject to the District's acceptance and whose acceptance will not be unreasonably denied by DISTRICT. The Project Architect shall: (1) be available to DISTRICT on or off the site as required for the proper performance of all matters relating to the Project; (2) provide overall direction of the planning and design of the Project; (3) maintain oversight of the Project at all times; (4) have full authority to represent and act on behalf of ARCHITECT for all purposes under the Agreement; (5) supervise and direct the Services using his or her best skill and attention; (6) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (7) adequately coordinate all portions of the Services; and (8) act as principal contact with the DISTRICT and all contractors, consultants, engineers, and inspectors on the Project. The Project Architect may act on behalf of DISTRICT only to the extent set forth in this Agreement and in the Construction Contract. Any changes in assignment or replacement of the Project Architect or other personnel listed in Exhibit "B" may be done only with the prior written consent of DISTRICT. The new Project Architect shall be of at least equal competence as the prior Project Architect. ARCHITECT shall replace any person assigned to the Project as required by DISTRICT. In the event that the DISTRICT and ARCHITECT cannot agree as to the substitution of a new Project Architect, the District shall be entitled to terminate this Agreement for cause.

#### **1.0.4 Consultants**

In performing its Services under this Agreement, ARCHITECT has recommended and agrees to retain and use the professional consultants listed in the attached Exhibit C, for the listed services and ARCHITECT shall be responsible for their work. ARCHITECT shall provide DISTRICT with the details of ARCHITECT'S arrangement with the consultants, including the amount and manner of their compensation for design, construction and post-construction phases, for DISTRICT'S reasonable acceptance. Any changes in the consultants listed in Exhibit C may be done only with the prior written consent of DISTRICT. If a problem develops with any of ARCHITECT'S consultants, DISTRICT shall notify ARCHITECT and ARCHITECT shall take all steps as are necessary to resolve the problem to the satisfaction of DISTRICT. ARCHITECT shall be responsible for the work of its consultants, shall coordinate the work of its consultants, and shall review, approve and back-check all documents produced by its consultants for the DISTRICT.

#### **1.0.5 Additional Consultants**

DISTRICT reserves the right to retain other architects, engineers, and consultants in connection with the Project. ARCHITECT shall coordinate with these parties as a basic service.

#### **1.0.6 Qualification and License**

All architects, engineers, and other consultants retained by ARCHITECT in performance of this Agreement shall be qualified to perform the services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

#### **1.0.7 Compliance with Standards**

All architects, engineers, and other consultants hired by ARCHITECT shall be required to meet the same standards and requirements set forth in this Agreement. ARCHITECT'S agreements with its architects, engineers, and other consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

#### **1.0.8 Assignments or Staff Changes**

ARCHITECT shall promptly obtain written DISTRICT approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in this Agreement, any changes in ARCHITECT'S consultants and staff shall be subject to the DISTRICT'S approval.

#### **1.0.9 Draftsman and Clerical Support**

Draftsmen and clerical personnel shall be retained by ARCHITECT at ARCHITECT'S sole expense and not be charged to the DISTRICT. Such draftsman and clerical personnel shall be qualified to perform the services assigned to them.

#### **1.0.10 Construction Manager**

As used in this Agreement, "Construction Manager" shall refer to a consultant(s) who may be engaged by the DISTRICT to perform professional services for the Project. The term "Construction Manager" is used for convenience only. DISTRICT has no obligation to retain a Construction Manager nor perform any of the functions set forth in this Agreement for the "Construction Manager." The term "Construction Manager" shall not encompass the functions to be performed by the Contractor(s) to be selected by the DISTRICT to construct the Project. If DISTRICT does not employ a Construction Manager, DISTRICT shall be substituted in place of the words "Construction Manager" wherever they appear in this Agreement.

### **1.0.11 Compliance with Regulations**

ARCHITECT shall be responsible to see that the Project as designed can operate as a functional, efficient, high-quality facility. The ARCHITECT is responsible for ensuring that the Project design shall comply with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities bearing on the Work, and with all quasi-governmental, and other regulations bearing on the Work. To the extent any of the foregoing are inconsistent, ARCHITECT shall seek to identify and resolve the inconsistencies and advise DISTRICT in writing of its resolution of the inconsistency.

### **1.0.12 Project Schedule**

ARCHITECT'S Basic Services are to be provided in accordance with the DISTRICT – ARCHITECT Overall Project Schedule set forth in EXHIBIT “D” and which may be amended from time to time by mutual agreement (“Project Schedule”). The Project Schedule shall start from the date of executing this Agreement and indicate by month and year estimated completion times when the ARCHITECT is to complete each phase, inclusive of DISTRICT and State approvals, as shown on Exhibit “D.”

Schematic Design Phase  
Design Development Phase  
Construction Documents Phase (including D.S.A. and SCO approvals)  
Bidding and Award Phase  
Construction Administration Phase (as driven by the Construction Schedule)  
Post-Construction Evaluation Phase

The Project Schedule shall specify task milestones for the design and approval process sufficient to allow monthly status checking. ARCHITECT shall submit to DISTRICT monthly updates of the Project Schedule.

### **1.0.13 The Contract Documents**

The DISTRICT has a set of standard bid documents that it uses as a base to compile bid documents for each specific project (“DISTRICT Bid Documents”). ARCHITECT has been provided with the DISTRICT Bid Documents. The intent of this Agreement is to have the ARCHITECT develop a complete set of bid documents which upon award to the successful bidder shall become the Construction Contract for the Project and permit the proper execution and completion of the Project (“Bid Documents”). One of the ARCHITECT’S obligations under this Agreement is to develop a complete set of Bid Documents for that purpose. The following terms shall have the following definitions for purposes of this Agreement:

- A. “Contract Documents” consist of all of the documents to be developed by ARCHITECT, and include, without limitation, the Bid Documents/Construction Contract, and this Agreement.
- B. “Construction Documents” consist of all drawings and specifications required by this Agreement under Article 1.3 (See also, Article 1.3.2.B.)
- C. “Drawings” consist of all working drawings including elevations profiles, cross-sections and plan views as drawn by ARCHITECT.
- D. “Specifications” consist of the complete bound technical document, including special conditions, all technical requirements and addenda as assembled by ARCHITECT.
- E. “General Conditions”, and “Special/Supplemental Conditions” consist of contractual requirements provided to bidders on the Project and are found in the Bid Documents and in the Construction Contract after award of such is made.

If anything in the Bid Documents, or in any special and/or supplementary general conditions, or in any general requirements set forth in any of the Drawings or Specifications is inconsistent with any provisions of this Agreement, this Agreement shall govern. Subject to these understandings, the Contract Documents shall be construed as a whole according to their common meaning. The Drawings and Specifications shall be designed so as to be consistent with the Contract Documents.

#### **1.0.14 Relationship to DISTRICT**

ARCHITECT and DISTRICT accept the relationship of trust and confidence established between them by the terms of this Agreement, and ARCHITECT agrees to use its professional skill and judgment and to cooperate with the DISTRICT and the Contractor(s) in its responsibility to construct the Project in accordance with the Construction Contract and Contract Documents by the established completion date for not more than the Construction budget established by DISTRICT.

#### **1.0.15 Responsibility of ARCHITECT**

ARCHITECT shall have no responsibility for instructions given to Contractor(s) by DISTRICT. DISTRICT shall give a copy of such instructions to ARCHITECT at or near the same time they are given to Contractor(s). ARCHITECT shall report immediately to DISTRICT any instruction which ARCHITECT believes is contrary to the Contract Documents or will adversely affect the Project. DISTRICT has no obligations to ARCHITECT to discourage, indemnify from, or defend against claims of Contractor(s) or any subcontractors based upon any of the foregoing except when it is the sole fault of the DISTRICT.

#### **1.0.16 Meetings**

ARCHITECT and ARCHITECT'S consultants shall attend such meetings with DISTRICT, and others as DISTRICT may require for completing the Project. These include, but are not limited to, Project meetings, and meetings with governmental, quasi-governmental and other authorities with jurisdiction over the Project. Project meetings will be scheduled by DISTRICT and are expected to be weekly during the Schematic Design and semimonthly during the Design Development Phase; during such phases there will be meetings with owner's technical staff on technical issues and with educational groups on programmatic issues. The ARCHITECT will prepare and distribute minutes to all attendees for these meetings.

#### **1.0.17 Scheduling**

ARCHITECT understands that the DISTRICT may request that ARCHITECT proceed with services for more than one project at any given time and that ARCHITECT agrees that ARCHITECT can provide concurrent design services as may be required by the DISTRICT at any given time. ARCHITECT further understands that the DISTRICT may choose to postpone or abandon any phase of a Project at the DISTRICT'S discretion and that the DISTRICT may give notice to restart such phase at a later date subject to potential adjustment of fees or costs for architectural services. ARCHITECT understands that a portion of the Project funding may be State funds; the availability of which may not have been fully determined at the time of execution of this Agreement. ARCHITECT may be required to prepare drawings in a manner that facilitates the phasing of construction due to funding circumstances. Such phasing shall be based on DISTRICT-provided priorities, and shall allow completion and occupation of the Project at the completion of each phase. The base services includes preparation of drawings in a manner that facilitates the phased construction, due to funding circumstances, subject to the DISTRICT providing ARCHITECT with direction on which priorities shall be incorporated into a particular phase and that such direction occurs before commencement of the Construction Documents.

#### **1.0.18 Cost and/or Value Engineering**

ARCHITECT shall assist the DISTRICT and Construction Manager in developing cost and/or value engineering opportunities during the design and bidding phases of the Project. If the DISTRICT, in its sole judgment and determination, elects to incorporate Value Engineering concepts or solutions, ARCHITECT shall incorporate such into the Contract Documents without any additional charge.

### **1.0.19 Existing Non-Permitted Structures**

ARCHITECT shall provide services to the DISTRICT to correct existing deficiencies related to non-permitted structures that may exist on the Project site. These services shall comprise the following:

- Provide a detailed site investigation, review of available records, and with the DISTRICT'S cooperation determine if any existing structures are not properly approved by DSA.
- For existing structures that require paperwork processing of available documents to obtain correction of DSA deficiencies, the ARCHITECT shall furnish such applications and processing to applicable governmental agencies. This application and approval process shall occur concurrently with the Project design.
- ARCHITECT shall assist the DISTRICT in identifying existing structures that require preparation of designs, modifications, inspections and certifications to obtain appropriate DSA approvals. The ARCHITECT shall make recommendations on procedures for the DISTRICT to follow to proceed with correction of non-DSA Approved structures.

## **1.1 PROGRAMMING/PLANNING PHASE**

### **Administration of Programming Services**

- The Architect shall manage and administer the Programming Services. The Architect shall consult with the District, research applicable programming criteria, attend Project meetings, communicate with members of the Project team and issue progress reports and a final program document. The Architect shall coordinate the services provided by the Architect and the Architect's consultants with those services provided by the District and the District's consultants.
- The Architect shall confirm the scope and intent of the anticipated Project in consultation with the District.
- The Architect shall prepare, and periodically update, a schedule for Programming Services that identifies milestone dates for decisions required of the District, Programming Services furnished by the Architect, and completion of documentation to be provided by the Architect. The Architect shall coordinate the programming schedule with the District's Project schedule, if a Project schedule exists.
- Upon request by the District, the Architect shall make a presentation to representatives of the District to explain the Programming Services to be utilized in developing the Project.
- The Architect shall submit programming documents to the District for evaluation and approval at intervals appropriate to the process. The Architect shall be entitled to rely on approvals received from the District to complete the Programming Services and in the further development of the Project.
- Unless otherwise set forth in the Agreement, any service not identified as a Programming Service in this Article shall be an Additional Service.

### **Identification of Programming Participants**

- Based on the scale of the Project, the type of facilities, and the level of specialized functions that will be required, the Architect, shall assist the District in identifying the persons to participate in the programming process, including the Architect, the Architect's consultants, the District, the District's consultants, and users of the Project, as well as other stakeholders, if any as defined by the District.

### **Identification and Prioritization of District and User Group Values, Goals and Objectives**

- The Architect shall facilitate a visioning session with the programming participants to identify, discuss, and prioritize values and goals that will impact the Project, including institutional purposes, growth objectives, and cultural, technological, temporal, aesthetic, symbolic, economic, environmental, safety, sustainability, and other relevant criteria.
- The Architect shall prepare and provide to the District a written evaluation of the identified Project values and goals, addressing functional efficiency, user comfort, building economics, safety, environmental sustainability, and visual quality.
- After the Architect provides the evaluation, the Architect shall meet with the District to confirm and finalize the District's and user's priorities, values, and goals that will impact the Project.
- Following the determination of the District's and User Group's priorities, values and goals, the Architect, in conjunction with the District, shall identify and confirm the District's objectives for the Project, including such elements as image, efficiencies, functionality, cost and schedule.
- The Architect shall confirm the intended use of the program documents and services with the District and the intended results of information gathering.
- The Architect shall identify and evaluate the constraints and opportunities that will have an impact on the existing or proposed facility, such as governmental requirements, financial resources, location, access, visibility and building services.

### **Information Gathering**

- The Architect shall compile and review existing Project-related documentation, including the following:
  - Available reports on proposed facilities, site surveys, construction documents, and other District provided documents, including any existing program material, if any.
  - Relevant government documents such as applicable codes and ordinances
  - Applicable non-governmental building and planning standards (ie homeowner associations, developer standards, ect).
  - Relevant historical documents including Settlement Agreements and School Facility and Funding Agreements.
- The Architect shall identify, in consultation with the District, facilities and operations of a similar nature to be visited and observed by designated programming participants for purposes of evaluation and comparison.
- The Architect shall conduct group sessions with the District's Steering Committee and Educational Specifications Committee for the purpose of reviewing information obtained from literature reviews, interviews, observations and surveys; considering and discussing design and planning issues, including future growth and expansion projections; and endeavoring to achieve consensus as to which values, goals, facts, needs and ideas should influence the design of the facility.
- The Architect shall coordinate with the District's defined Educational Specification Committee six (6) work sessions. These sessions have been initially defined as the following:
  - **Session 1: Visioning + Exposure**
    - Introduction to planning process
    - Background information on project
    - Introductions exercise
    - Overview of Common Core/21<sup>st</sup> century learning by District
    - Exposure to what is happening in learning environments across the count



**Goal for session:** Exposure to 21<sup>st</sup> century learning environments and current research

- **Session 2: Developing Design Guiding Principles**
  - Understanding Guiding Principles and how they will be used
  - Guiding Principles should align with District mission
  - As a group develop a set of Design Guiding Principles

**Goal for session:** Proposed set of Design Guiding Principles for the District

- **Session 3: Identify/Validate Spaces in program**
  - Identify learning activities and culture that support 21<sup>st</sup> century student success
  - Identify spaces and attributes of the spaces that support learning activities/culture

**Goal for session:** Lists of facilities/spaces, size, and attributes for K-8 school

- **Session 4: Functional Relationships + Prioritize**
  - Identify functional relationships to each other and site
  - Prioritize list of spaces and criteria

**Goal for session:** Final list of spaces with relationships

- **Session 5: Sustainability Initiatives**
  - Explore sustainable opportunities for facilities and culture
  - Discuss and prioritize sustainable goals

**Goal for session:** Lists of prioritized sustainable initiatives

- **Session 6: Identified Desired Design Aesthetic**
  - Architect develops cost model to verify budget alignment with proposed program square footages.
  - Discuss desired design aesthetic and approach for school
  - If needed for budget alignment, input for final square footage priorities

## **Data Analysis**

- Based on the information gathered, the Architect shall develop performance and design criteria for the proposed facility.
- The Architect shall make a preliminary determination of space requirements, space relationships and circulation, including consideration of special requirements, such as ambient environment, safety and security, furnishings, flexibility and site information, where appropriate.
- The Architect shall identify any major unresolved programming issues and discuss preliminary options for their resolution with the District.
- Based on discussions with the District, the Architect shall make recommendations for solutions to the unresolved programming issues for approval by the District prior to preparation of the Architect's initial report.

## **Presentation and Initial Report**

- The Architect shall prepare an initial Program/Education Specification of its findings and analysis for the District and meet with the District to agree on the form of presentation appropriate to the needs of the District's organization and the Project.
- The Architect shall present its initial Program/Education Specification to the District Steering Committee or as otherwise directed by the District.

### **Development of Final Program/Education Specification of Project Requirements**

- The Architect shall recommend Project standards or incorporate District standards such as area allowances, space allocation, travel distances, and furniture and equipment requirements.
- The Architect shall establish general space quality standards for the Project related to such elements as lighting levels, equipment performance, acoustical requirements, security and aesthetics.
- The Architect shall determine specific space requirements for the Project by
  - identifying required spaces,
  - establishing sizes and relationships,
  - establishing space efficiency factors (ratio of net square footage to gross square footage), and
  - documenting particular space requirements such as special HVAC, plumbing, power, lighting, acoustical, furnishings, equipment, or security needs.
- The Architect shall prepare a final Program/Education Specification detailing all items identified in Sections \_\_\_\_ to \_\_\_\_, incorporating written and graphic materials that may include
  - an executive summary,
  - documentation of the methodology used to develop the program,
  - value and goal statements,
  - relevant facts upon which the program was based,
  - conclusions derived from data analysis,
  - relationship diagrams,
  - flow diagrams,
  - matrices identifying space allocations and relationships,
  - space listings by function and size, and
  - space program sheets including standard requirements and special HVAC, plumbing, power, lighting, acoustical, furnishings, equipment, or security needs.
  - The Architect shall provide a preliminary opinion of the program with respect to the District's stated budget objectives.

## **1.2 SCHEMATIC DESIGN PHASE**

### **1.2.1 Program Refinement**

ARCHITECT shall work with DISTRICT during the Schematic Design phase to further refine and define the program. ARCHITECT shall review the site and existing facilities and provide a preliminary evaluation of the program and Project budget requirements, each in terms of the other, and submit a conceptual Project cost model for approval. DISTRICT shall furnish such existing information regarding utility services and site features, related to the Project as are available from DISTRICT'S records. ARCHITECT shall recommend which information should be relied upon and which should be subject to field verification based on the relative costs of investigation and the possible costs of later correction.

### **1.2.2 Construction Matters**

ARCHITECT shall review with DISTRICT site use and improvements; selection of materials, building systems, and equipment; and discuss construction methods and methods of Project delivery.

### **1.2.3 Drawings and Specifications**

Based on DISTRICT'S program and Project budget requirements, ARCHITECT shall prepare, for review and acceptance by DISTRICT, Schematic Design Documents consisting of drawings, outline specifications, a general narrative description of basic systems and materials, and other documents illustrating the scale and relationship of Project components. Drawings will be prepared on standard 30" x 42" sheets. ARCHITECT shall first prepare drafts of Schematic Design Documents and review them with DISTRICT'S Project management team.

#### **1.2.4 Schematic Design Documents**

ARCHITECT shall prepare all necessary Schematic Design Documents, including but not limited to, the following:

A. Site plan, based on site information from the DISTRICT, indicating the proposed location of the building; major improvements such as proposed parking areas, walks, and location of exterior utilities and service lines.

B. Floor plans showing all rooms and areas, entrances, exits, stairways, elevators, circulation corridors, toilet rooms, major mechanical and electrical areas. A Tabulation of Areas, including net and gross areas of the various parts of the Project shall be included.

C. Building elevations showing, by block outline and breaks, the various building masses and how they coincide with the floor plans, including colors and typical fenestration pattern.

D. Building sections showing floor-to-floor dimensions sufficient to indicate interface with existing structures.

E. Preliminary drawings and descriptions of systems such as structural, electrical, mechanical, HVAC controls, plumbing, clock, paging, intercom, building protection, lighting, telecommunications and data, cable TV, closed-circuit TV, computer cabling, fire protection, fire and intrusion alarms, plumbing, special systems, gas, and others, and the general type and scope of construction and the equipment required therein.

F. Statement of Probable Construction Cost ("Statement") based on the Schematic Design Documents and available data, including appropriate design and construction contingencies. This Statement shall identify the cost impact of the potential add-on concepts specified under Subparagraph H. This Statement shall be developed independently of any DISTRICT Estimate of construction costs ("Estimate") since DISTRICT may compare the Statement and the Estimate as a means of compiling more information regarding the actual cost of the Project. ARCHITECT and its cost consultant shall sign its Statement of Probable Construction Cost to indicate agreement with the data presented in the Statement. (See, also, Article 4.)

G. Updated Project Schedule: Architect shall keep the Project Schedule (Exhibit "D") updated on a monthly basis showing all changes to the Project Schedule.

H. Add-Ons: ARCHITECT shall propose and discuss with DISTRICT a range of possible alternatives. ARCHITECT'S suggestions for alternatives shall maximize program content and describe their impact on the Project sufficient to increase or decrease the Statement of Probable Construction Cost by at least five (5%) percent.

#### **1.2.5 Governmental Approvals**

ARCHITECT shall in a timely manner provide architectural drawings, narrative description, and other pertinent data prepared by ARCHITECT to DISTRICT, and ARCHITECT shall review the documents with the governmental authorities having jurisdiction over the Project.

#### **1.2.6 Presentation Drawings**

Concurrent with submission of Schematic Design Documents, or thereafter, as directed by DISTRICT, ARCHITECT shall prepare and submit Presentation Drawings consisting of:

A. Plans and elevations as described in 1.2.4 A, B, C, and D, above, and

**B.** One or two sketch perspectives, appropriately colored, showing materials to be used, in an easy-to-see and clear format and mounted on rigid board. Additionally, ARCHITECT shall prepare documentation describing the Project in layman's terms.

#### **1.2.7 Copies**

ARCHITECT shall submit one master set of copies of the Schematic Design Documents, outlined in 1.2.4. All drawing masters will be at a reduced size of 8 1/2" x 11".

#### **1.2.8 State of California Approval**

The Schematic Design Documents constitute a portion of the preliminary plans required to be submitted to the State of California for project funding approval. The DISTRICT, assisted by the ARCHITECT, will submit and review the preliminary plans with State of California representatives as required in order to gain project approval.

#### **1.2.9 Construction Budget Determination**

ARCHITECT shall prepare the Schematic Design Documents based on the Construction Budget set forth in Exhibit "E." ARCHITECT shall provide a design which reasonably can be built within the Construction Budget.

#### **1.2.10 Coordination with Construction Manager**

ARCHITECT shall cooperate with the DISTRICT'S Construction manager, if any.

#### **1.2.11 Cost Determination**

Upon completion of the Schematic Design Phase, ARCHITECT shall provide DISTRICT with the documents set forth in Article 1.2.4 and all other documents used in preparing ARCHITECT'S Statement of Probable Construction Cost. DISTRICT shall review its own Estimate, if any, and compare it to ARCHITECT'S Statement of Probable Construction Cost. Any discrepancies between the Statement and the Estimate, if any, shall be identified and reconciled in accordance with Article 4, Construction Cost.

#### **1.2.12 District's Approval**

ARCHITECT shall not proceed to the Design Development Phase until ARCHITECT has obtained DISTRICT'S written acceptance of: the Schematic Design Documents (including the drawings, system checklist, general description, etc.); Statement of Probable Construction Cost; the Revised Tabulation of Areas; the updated Project Schedule; and the DISTRICT'S written authorization to proceed.

### **1.3 DESIGN DEVELOPMENT PHASE**

#### **1.3.1 Design Refinement**

Based on the accepted Schematic Design Documents and any adjustments authorized by DISTRICT to the program or the Construction Budget (Exhibit "E"), as governed by Article 4, ARCHITECT shall prepare, for acceptance by DISTRICT, Design Development Documents consisting of drawings, outline specifications, and other documents to fix and describe the size and character of the entire Project as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be required. The process for developing Design Development Documents shall be similar to the interactive process used in the Schematic Design Phase, involving semi-monthly group meetings and meetings on special issues.

### **1.3.2 Design Development Documents**

ARCHITECT shall prepare from the approved Schematic Design Documents, all necessary Design Development Documents, which shall include but not be limited to the following:

#### **A. Architectural Drawings**

- (1) Site plan showing proposed parking, exterior utilities, sidewalks, other site improvements, grades and drainage.
- (2) Floor plans, including roof, showing space assignments, sizes, and location of installed, fixed and moveable equipment which affect the design of the spaces, and the tabulation of areas, including net and gross areas of various parts of the Project. Floor plans should include utility system outlets (electrical, telecommunications, mechanical, plumbing, computer, etc.) to facilitate furniture and equipment layout and interior design.
- (3) Building elevations indicating exterior design elements and features including fenestration, colors, materials, mechanical and electrical features appearing on walls, roofs, and adjacent areas.
- (4) Interior elevations to establish functional requirements, equipment, and systems locations.
- (5) Typical building sections showing structural members, dimensions, accommodation of functional systems and other dimensions sufficient to indicate interface with existing structures.

#### **B. Structural Drawings**

- (1) Plans and sections of sufficient clarity to show the extent and type of structures and foundations.
- (2) Details and notes to show that the structure conforms to the provisions of applicable codes and is otherwise sufficient.
- (3) Notes to indicate foundation and structural design complies with the requirements of soils analysis and applicable seismic requirements.
- (4) Notes on provisions to meet special requirements such as vibration and acoustical constraints.
- (5) Calculations-Legible sheets showing the structural engineering calculations for all structural components of the Project.

#### **C. Mechanical Drawings**

- (1) Plans showing single line layouts with approximate sizing of major duct and piping systems on architectural plan backgrounds.
- (2) Plans showing space assignment, sizes, and outline of central heating, cooling and ventilation equipment.
- (3) Sections through critical areas showing coordination of architectural, structural, mechanical, and electrical elements.

(4) Riser diagrams showing plumbing, HVAC and special process piping distribution systems.

(5) Notes on provisions to meet special requirements such as vibration and acoustical constraints.

(6) Design calculations for equipment, duct and piping sizing, life cycle costs analyses for recommended and alternative systems, and energy conservation measures.

(7) Plans showing HVAC controls for each mechanical system to include a list of input/output devices, control schematics for each mechanical system, a written sequence of operations and functional logic diagrams to define the sequence of operation for programming all controls.

#### **D. Electrical Drawings**

(1) Plans showing space assignments, sizes, and outline of fixed equipment such as transformers, switchgear, and generator sets.

(2) Riser diagrams for construction, showing arrangements of feeders, subfeeders, bus ducts, load centers, and branch circuit panels.

(3) Typical lighting layout coordinated with previously established ceiling system.

(4) Typical electrical plan layout showing switches, outlets, etc.

(5) Typical electrical plan layout showing fire alarm, telecommunications, data, and security systems.

#### **E. Outline Specifications**

(1) Architectural -- Revised and expanded general description of the construction, including structural, interior and exterior finishes (including color), types and locations of acoustical treatment, typical and special floor and wall coverings.

(2) Mechanical -- Description of air-conditioning, heating, and ventilation systems, HVAC/EMS controls and commissioning and duct, and piping systems, including provisions to meet any special criteria such as acoustic, air changes, filtration, humidity, vibration isolation, and temperature controls.

(3) Electrical -- Description of electrical services, including voltage, type and number of feeders, lighting system, including lighting levels, fire alarm, telecommunications, data, and security systems as applicable.

(4) Equipment -- Recommendations to DISTRICT for purchases of specific equipment based upon Project requirements, DISTRICT's needs, and ARCHITECT's evaluation of the suitability, efficiency and durability of the equipment.

#### **F. Revised Statement of Probable Construction Cost.**

The Revised Statement of Probable Construction Cost is based on Design Development Documents and available data ("Revised Statement"). The Revised Statement shall include an estimate of the cost impact of the add-on alternatives specified in Subparagraph H, and, again, shall be developed independently of

DISTRICT'S Estimate, if any. ARCHITECT and its cost consultant shall sign the Revised Statement to indicate agreement with the data presented in the Revised Statement.

**G.** Project Schedule: Architect shall keep the Project Schedule (Exhibit "D") updated on a monthly basis showing all changes to the Project Schedule.

**H.** Add-Ons -- ARCHITECT shall propose and discuss with DISTRICT a maximum of five possible add-on alternatives sufficient to increase or decrease the Revised Statement of Probable Construction Cost by at least five percent (5%). ARCHITECT'S suggestions for add-on alternatives shall maximize program content, and describe their impact on the Project.

**I.** Value Analysis - Provide short description of decisions made based on value benefit to the owner for major systems and equipment. Include reasoning behind decision.

**J.** Energy Studies - Provide energy studies in the form of calculation consistent with Title 24 of California Building Code, latest edition. Complete standard forms for DISTRICT'S review.

**K.** Colored Rendering - Provide four (4) colored rendering of professional quality after acceptance of design development. Rendering should be no larger than 24" x 36" and be of sufficient detail to show the intended character and color of the complete complex.

### **1.3.3 Governmental Submissions**

ARCHITECT shall in a timely manner provide architectural drawings, narrative description, and other pertinent data prepared by ARCHITECT and shall assist DISTRICT in applying for and obtaining required approvals from all applicable governmental agencies.

### **1.3.4 Coordination with Construction Manager**

ARCHITECT shall involve the DISTRICT'S Construction Manager wherever possible in the design process and shall provide Design Development Documents for Construction Manager's review, at intervals appropriate to the progress of the Design Development Phase.

### **1.3.5 Cost Determination**

Upon completion of the Design Development Phase, ARCHITECT shall provide DISTRICT with the documents set forth in Article 1.3.2 and all other documents used to prepare ARCHITECT'S Revised Statement of Probable Construction Cost. DISTRICT shall review its Estimate, if any, and compare it to ARCHITECT'S Revised Statement of Probable Construction Cost. Any discrepancies between the Revised Statement and the Estimate, if any, shall be identified and reconciled in accordance with Article 4, Construction Cost.

### **1.3.6 Copies**

ARCHITECT shall provide one set of reproducible and CD Disc of the Design Development Documents, one master of the updated Statement of Probable Construction Cost, one master of the updated Project Development Schedule, and one master of the Revised Tabulation of Areas for approval of and reproduction by DISTRICT.

### **1.3.7 DISTRICT'S Approval**

ARCHITECT shall not proceed to the Construction Documents Phase until ARCHITECT has secured DISTRICT'S written acceptance of the Design Development Documents, Revised Statement of Probable Construction Cost and Revised Tabulation of Areas, updated Design Schedule, updated Project Development Schedule, and DISTRICT'S written instructions to so proceed.

## **1.4 CONSTRUCTION DOCUMENTS PHASE**

### **1.4.1 Design Refinement**

Based on the accepted Design Development Documents, DISTRICT'S comments, and changes in the Project requested by DISTRICT, ARCHITECT shall prepare for acceptance by DISTRICT, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. DISTRICT shall schedule regular and special meetings to be attended by ARCHITECT and (as appropriate) its consultants to review the progress of Construction Documents and discuss and resolve specific issues.

### **1.4.2 Services**

ARCHITECT shall provide all necessary services during the Construction Documents Phase, which ordinarily consist of the following.

**A.** ARCHITECT shall prepare all drawings and specifications sufficient for contractors to perform the Work including but not limited to:

- (1) Architectural drawings, details and specifications.
- (2) Structural plans, details, calculations and specifications.
- (3) Mechanical and HVAC controls, details and specifications including full HVAC controls design, airflow specifications and procedures for balancing and commissioning systems.
- (4) Electrical and telecommunications/data plans, details and specifications including complete and functional communications infrastructure system to provide voice and data communications to and through-out the building.
- (5) Plans showing installation of major systems and equipment.
- (6) Automatic fire protection and life safety specifications and requirements.
- (7) All appropriate schedules, such as doors, hardware, finishes, windows, etc.
- (8) Special conditions.

**B.** Construction Documents. ARCHITECT shall prepare Construction Documents setting forth in detail and prescribing the work to be done, as well as the materials, workmanship, and finishes required for the Project. The Construction Documents shall be in a form capable to: (1) secure any required approvals, obtain state funding grants, and secure permits and all other approvals for the Project; (2) obtain by open competitive bidding a responsible bid that fits within budgetary constraints as described in Article 4; and (3) permit any qualified, licensed contractor to perform the Project.

**C.** Cost: All prints of documents required for design, development and coordination by ARCHITECT and all consultants shall be furnished by ARCHITECT. All prints for Federal, State or local approval and bidding will be paid for by the DISTRICT. ARCHITECT shall provide the DISTRICT with four sets of Construction Documents in digital scans in tiff or pdf format for use by the DISTRICT at no cost to the DISTRICT.



**D. Bid Alternates:** ARCHITECT shall prepare all Construction Documents in a manner that includes and enables additive and deductive alternates for the Project work. ARCHITECT shall assist the DISTRICT in developing bid alternates and shall incorporate in the Construction Documents the DISTRICT approved additive and deductive bid alternates.

**E. Phasing of Work.** As part of the preparation of Construction Documents, and if so directed by the DISTRICT, the Construction Documents shall be prepared so that portions of the work may be deferred and performed at a later date under subsequent contracts. The DISTRICT shall provide such direction to ARCHITECT before commencement of work on the Construction Documents. In the event the DISTRICT provides direction after work on the Construction Documents has proceeded, such direction being to prepare the documents in a manner enabling the deferral of a portion of the work under a subsequent contract, ARCHITECT may be entitled to additional fees beyond the Basic Services Fees provided in this Agreement. In the event of the foregoing, the DISTRICT and the ARCHITECT shall mutually agree to the specific additional services that may be required and the corresponding fees. The phasing strategies to be indicated on the Construction Documents shall be consistent with the DISTRICT'S ability to fund the work. For the purposes of this Agreement the ARCHITECT may be required to furnish Construction Documents that enable the DISTRICT to bid and construct all of the work at a particular Project site in separate phases. The Construction Documents must be prepared in a manner that upon completion of each phase, the Project site is operable and can be approved by DSA and occupied by the DISTRICT. ARCHITECT shall review with Construction Manager and the DISTRICT and determine the requirements and approach for phasing of the work. ARCHITECT shall incorporate and prepare as part of the Construction Documents all design and documents necessary to enable construction phasing and logistics in order to obtain the minimum disruption of the educational program at the Project, to facilitate efficient construction, and to enable the construction of the Project within the duration prescribed by the Contract Documents.

**F. Finishes:** At the time Construction Documents are 50% complete, ARCHITECT shall select finish materials and colors to be incorporated in the work and shall prepare schedules and material boards on 36" x 24" presentation board of such materials and colors for DISTRICT'S approval. The schedule shall note any materials or finishes which will involve extraordinary delays in delivery. Interior design services of any broader scope shall be an Additional Service. Upon acceptance of the finish materials by the DISTRICT, the ARCHITECT shall provide three (3) complete schedules and three (3) complete presentation boards.

**G.** At the time Construction Documents are fifty percent (50%) complete, ARCHITECT shall so notify DISTRICT, prepare and submit to DISTRICT an updated Statement of Probable Construction Cost based on the Construction Documents being fifty percent (50%) complete ("50% CD Cost Statement") in accordance with Articles 4, and furnish documentation sufficient to allow the DISTRICT or its Construction Manager to prepare an updated Estimate to identify significant changes from previously-furnished construction cost estimates prepared in accordance with Article 4.

**H.** Upon completion of Construction Documents, ARCHITECT shall prepare and submit to DISTRICT an updated Statement of Probable Construction Cost based on the Construction Documents being one hundred percent (100%) complete ("100% CD Cost Statement") in accordance with Article 4. This Statement shall include an estimate of the cost impact of the add-on alternatives specified in Article 1.4.3 and, again, shall be developed independently of DISTRICT'S Estimate, if any. ARCHITECT and its cost consultant shall sign the 100% CD Cost Statement to indicate agreement with the data presented in the therein.

**I.** ARCHITECT shall provide DISTRICT with monthly updates of the Project Schedule (Exhibit "D").

### **1.4.3 Add-on Alternatives**

ARCHITECT shall consider a maximum of five add-ons in the preparation of the Construction Documents. The Construction Documents shall be drawn in such a way as to minimize, to the extent practical, the subsequent cost

of drawing fully detailed add-on alternatives. ARCHITECT shall provide, as a Basic Service, full detailed and biddable maximum of five alternatives sufficient to cover the anticipated risk that the actual construction cost as established by bids will exceed the ARCHITECT'S Revised Statement of Probable Construction Cost as updated at the conclusion of the Design Development Phase.

#### **1.4.4 Governmental Approvals and Plan Checks**

ARCHITECT in a timely manner shall provide architectural drawings, narrative description, and other pertinent data prepared by ARCHITECT to DISTRICT. Five complete sets of working documents, calculations and specifications, and digital data on disc, at no additional cost to the DISTRICT, shall be submitted to the DISTRICT for review, study, checking and approval by the DISTRICT. The DISTRICT at its sole option may self perform and or hire a third party(s) to provide a DISTRICT review, study and check of documents, concurrently with the required submittal and review period of the governing agencies. ARCHITECT shall make all changes, additions or corrections in the working drawings and specifications originating from the DISTRICT so long as they are not in conflict with requirements of applicable building codes, local, state and/or federal government regulations and requirements of public agencies having jurisdiction. Upon DISTRICT approval, the ARCHITECT shall then submit all required documents to the necessary governing agencies, obtain reviews and corrections from the governing agencies and incorporate any required changes and/or corrections into the Contract Documents, calculations or other documents prepared by ARCHITECT. At the DISTRICT'S request, ARCHITECT shall assist DISTRICT in filing any necessary documents for procuring permits and/or the approval of any governmental authorities having jurisdiction over the Project

#### **1.4.5 Cooperation with DISTRICT'S Project Manager**

ARCHITECT shall consult with DISTRICT'S Construction Manager regarding any changes in requirements or in construction materials, systems or equipment as the Drawings and Specifications are developed. DISTRICT may elect to perform a Constructability Review of the construction document. ARCHITECT shall provide two (2) copy sets to the DISTRICT for their review. ARCHITECT shall incorporate all noted constructability comments at no additional cost to the DISTRICT. Final changes, listed to identify impacts on construction cost, shall be provided to DISTRICT by ARCHITECT.

#### **1.4.6 Cost Determination**

Upon fifty percent (50%) completion of the Construction Document Phase and upon one hundred percent (100%) completion of the Construction Document Phase, ARCHITECT shall provide DISTRICT with all documents used to prepare ARCHITECT'S 50% and 100% CD Cost Statements. DISTRICT shall review its Estimate, if any, and compare it to ARCHITECT'S 100% CD Cost Statement. Any discrepancies between the 100% CD Cost Statement and the Estimate, if any, shall be identified and reconciled in accordance with Article 4, Construction Cost.

#### **1.4.7 DISTRICT'S Approval**

ARCHITECT shall obtain DISTRICT'S written acceptance of each package of the Construction Documents, a final Tabulation of Areas, the updated Project Schedule and a Final Statement of Probable Construction Cost ("Final Statement"). When, in ARCHITECT'S opinion, final drawings and specifications are complete and approved by all governing agencies, a complete sets of prints of working drawings and specifications and digital data on disc shall be submitted to the DISTRICT for review, study, checking, and approval by the DISTRICT.

ARCHITECT shall make all changes, additions and/or corrections in the final working drawings and specifications requested by DISTRICT, so long as they are not in conflict with the requirements of the applicable building codes, local, State and/or Federal governmental regulations and requirements of public agencies having jurisdiction or previous approval.

#### **1.4.8 Copies**

ARCHITECT shall provide DISTRICT with an original sepia and one master of the Specifications for reproduction.

### **1.5 BIDDING PHASE**

#### **1.5.1 Assistance with Bidding**

ARCHITECT shall assist DISTRICT in identifying and evaluating potential bidders, obtaining bids or negotiated proposals, including rendering interpretations and clarifications of the Drawings and Specifications in appropriate written form. ARCHITECT shall assist DISTRICT in conducting pre-award bid tours and conferences with potential bidders.

#### **1.5.2 Services**

Unless otherwise directed by DISTRICT in writing, ARCHITECT shall:

- A.** Review and comment upon the following documents to be provided by DISTRICT:
  - (1) All of the Front End documents set forth in the Table of Contents in the DISTRICT'S proposed Bid Documents for the Project, including without limitation, the: (i) Invitation to Bid; (ii) Instructions to Bidders; (iii) Bid Form; (iv) Agreement form; (v) General Conditions; (vi) Special Conditions; etc.
- B.** Coordinate these "front end" documents with the approved Construction Documents, Special Conditions, Specifications and information developed by the ARCHITECT and bid alternates into a complete Bid Package(s).
- C.** Prepare any required Addenda to the Bid Package(s).
- D.** Assist in the pre-bid conference and walk-through, if required, including giving a technical narrative of the project scope.
- E.** Prepare written answers to questions, addenda, interpretations and clarifications in a timely manner.
- F.** Assist DISTRICT with a written analysis and recommendation of the bids and any alternatives included in each bid.
- G.** Assist DISTRICT in any negotiations with bidders, if any.
- H.** Investigate, review, advise and recommend for acceptance or rejection any substitution of materials and products where requested or required by the terms of the specifications during the bidding process.
- I.** Comply with the provisions of Article 4.4.4 herein.
- J.** If required by the DISTRICT, after competitive bids based on the Contract Documents

have been received and in the event the total of the lowest responsible bid or bids exceeds the District-approved Construction Document One-Hundred (100) percent Estimate by more than ten (10) percent, ARCHITECT shall, at no cost to the DISTRICT, revise the Construction Documents and obtain all necessary governmental approvals, as directed by the DISTRICT in a manner that will permit the securing

of new bids that do not exceed the cost limitations of the DISTRICT-approved Construction Document One-Hundred Percent Estimate.

## **1.6 CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION CONTRACT**

### **1.6.1 Duration and Scope.**

The Construction Phase will commence with the award of the Construction Contract and will terminate when ARCHITECT completes all services for such phase as required by this Agreement, the Contract Documents and those documents forming the Construction Contract. The ARCHITECT shall perform during the duration of this Agreement all services and work called out under this Agreement as well as all obligations imposed on the ARCHITECT by applicable law, including without limitation, the obligations, duties and responsibilities set forth in Titles 19, 21 and 24 of the California Code of Regulations. ARCHITECT shall perform all services and work within the time frames specified in this Agreement and in the Construction Contract awarded by the DISTRICT to the contractor(s). Regarding the ARCHITECT'S performance of its obligations under this Agreement, time is of the essence. (See also Article 6.4.)

### **1.6.2 Administration**

Unless otherwise provided in this Agreement, ARCHITECT shall, in cooperation with DISTRICT and/or Construction Manager, if there is one, provide administration of the Construction Contract(s) (the work) as set forth below, and as called for by all of the Contract Documents.

### **1.6.3 Cost Determination**

ARCHITECT shall comply with Articles 4.4.5 and 4.4.6 upon becoming informed of the Bid Price, as defined by Article 4.4.3.

### **1.6.4 Pre-Construction and Meetings**

ARCHITECT, along with Construction Manager, if any, shall conduct pre-construction conferences and job walks with successful contractor(s).

### **1.6.5 Meetings, Instructions**

ARCHITECT shall advise and consult with DISTRICT during the Construction Phase. Meetings shall be held between DISTRICT, ARCHITECT and the Contractor(s) on a weekly basis. The ARCHITECT shall provide minutes to DISTRICT and Contractor. ARCHITECT shall have authority to act on behalf of DISTRICT only to the extent provided in the Contract Documents unless otherwise modified by written instrument. ARCHITECT shall also have a duty to make corrections, as appropriate, to the meeting minutes.

### **1.6.6 Observation**

ARCHITECT and consultants shall visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of construction of the Project (the Work) and to determine and to advise DISTRICT in writing if the Work is proceeding in accordance with the Contract Documents. This includes site visits by ARCHITECT on a timely basis appropriate for approvals required of ARCHITECT as specified in the Contract Documents. ARCHITECT and/or its engineering consultants shall review for conformance with specifications field tests and equipment performance tests and observe the start up and check-out of major and specialized systems, such as air conditioning and heating systems including boilers, pumps and air handling equipment, and energizing of switchgear. These requirements include, without limitation, a review by ARCHITECT'S electrical consultant before energizing any electrical system to determine that the equipment and installation complies with the intent of the Contract Documents and specifications where observable or visible for inspection. On the basis of such onsite observations, ARCHITECT shall keep DISTRICT informed of the progress and quality of the Work, and shall endeavor to guard DISTRICT against, defects and deficiencies in the Work.

#### **1.6.7 Construction Responsibility**

ARCHITECT shall not be responsible for, nor have control of, or charge of, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Project, and shall not be responsible for the Contractor(s)'s failure to carry out work in accordance with the Contract Documents. ARCHITECT shall be available on site to the Contractor(s) as reasonably required to provide interpretation of the Drawings and Specifications.

#### **1.6.8 Access**

ARCHITECT shall at all times have access to the Work wherever it is in the preparation or progress.

#### **1.6.9 Payment of Certificates**

Based on ARCHITECT'S observations at the site, and an evaluation of the Application for Payment, ARCHITECT shall assist DISTRICT in determining the amounts owing to the Contractor(s) each month. ARCHITECT shall review and recommend Certificates for Payment from Contractor(s). Before authorizing any payments to the Contractor, ARCHITECT shall carefully and promptly review and approve the most recent schedule of values submitted by the Contractor and shall require sufficient data to substantiate the Contractor's right to payment as the DISTRICT or ARCHITECT may require. ARCHITECT shall carefully determine the proper amount owing to the Contractor, and within the time limits prescribed by the Contract Documents, shall issue a certificate for payment for such amounts as may be due to the contractor. If ARCHITECT does not approve the schedule of values as submitted by the Contractor(s), ARCHITECT shall advise the DISTRICT, Construction Manager, and the Contractor of ARCHITECT'S reasons for withholding the certification in whole or in part. The issuance of a Certificate for Payment shall constitute a representation by ARCHITECT to the DISTRICT that the work has satisfactorily progressed to the point indicated, complies with and is in accordance with all building codes, all government rules and regulations and the Contract Documents (subject to an evaluation of the work as a functioning whole upon completion, and to the results of any subsequent tests required by the Contract Documents, and to minor deviations from the Contract which are correctable before completion), and that the Contractor is entitled to the payment in the amount certified. ARCHITECT shall follow the time limits prescribed by the Contract Documents and/or applicable law for performing the tasks set forth in this Article 1.6.9.

#### **1.6.10 Extent of Assistance by ARCHITECT**

ARCHITECT shall assist DISTRICT in ascertaining that, to the best of ARCHITECT'S knowledge, information, and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work for conformance with the Contract Documents upon completion), to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable before completion; and that the Contractor(s) is entitled to payment in the amount certified upon delivery of the appropriate lien waivers.

#### **1.6.11 Interpretation**

ARCHITECT shall be the interpreter of the requirements of the Construction Documents. ARCHITECT shall render written interpretations necessary for the proper execution or progress of the work with reasonable promptness but in any event not more than five (5) work days following written request of either DISTRICT or the Contractor(s). Interpretations with cost implications shall be subject to approval by DISTRICT.

#### **1.6.12 Form of Interpretations**

Interpretations and decisions of ARCHITECT shall be consistent with the intent of and reasonably inferable from the Contract Documents, and shall be in written or graphic form or both as required. Clarification and additional details or drawings required to clarify an ambiguity in the Construction Documents in order to accomplish the work are not an Additional Service.

### **1.6.13 Rejection of Work**

ARCHITECT may recommend that DISTRICT reject work of the Contractor(s) which does not conform to the Contract Documents. Whenever in ARCHITECT'S reasonable opinion it is necessary or advisable for the implementation of the intent of the Construction Documents, ARCHITECT may recommend special inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work is then fabricated, installed, or completed.

### **1.6.14 Submittals and Substitutions**

ARCHITECT shall receive submittals, including shop drawings, product data, samples, or the like, as well as all requests for substitutions, from the Contractor(s) and shall with reasonable promptness so as to not cause delay, but in any event not more than five (5) work days, review, or take other appropriate action, but only for conformance with the design concept of the Project, and with the provisions and intent of the Contract Documents. ARCHITECT shall upon receipt of submittal and/or substitution immediately send a copy of all submittal and/or substitution materials to the DISTRICT.

### **1.6.15 Changes by ARCHITECT**

ARCHITECT may recommend to DISTRICT' minor changes in the work not involving an adjustment in the contract price or an extension of the contract completion date and which are not inconsistent with the intent of the Contract Documents. Following approval by the DISTRICT such changes shall be effected by written field order issued to the Contractor(s) with a concurrent copy to DISTRICT.

### **1.6.16 Warranties and Manuals**

ARCHITECT shall receive from the Contractor(s), review and forward to DISTRICT for DISTRICT'S retention and use, written warranties and related documents assembled by the Contractor(s). ARCHITECT'S mechanical and electrical engineering consultants shall review the operation and maintenance manual on all mechanical, electrical and related systems.

### **1.6.17 Modification of Duties**

The extent of the duties, responsibilities and limitations of authority of ARCHITECT as a representative of DISTRICT during construction shall not be modified or extended without written agreement between DISTRICT and ARCHITECT.

### **1.6.18 Contract Beneficiaries**

ARCHITECT'S contractual relations extend only to DISTRICT, and the services under this Agreement are intended to be performed for the benefit only of DISTRICT.

### **1.6.19 Progress Reports**

ARCHITECT shall prepare and submit to DISTRICT monthly verified progress reports, which are to include evaluation of the Project Development Schedule, status of field orders, change orders, shop drawing, submittals, etc. These reports shall be in a format approved by DISTRICT. Architect shall also prepare and submit all reports required by DSA and any other applicable agency having jurisdiction over the Project.

### **1.6.20 Problem Reports**

During the construction, ARCHITECT shall make written reports to the DISTRICT stating any problems arising during construction, the changes contemplated in the work as a result of the problem, and the progress of the work.

## **1.6.21 Drawings (As-Built)**

### **1.6.21.1 - As-Built Drawings**

As-Built Drawings: Also sometimes called “Record drawings,” are drawings created by the General Contractor by a person skilled in drafting and knowledgeable of the conventions of the trades involved made to scale and during the course of construction to accurately record the location (measured from building corners or other permanent monuments), sizes and nature of elements of the Project as it was actually constructed by the General Contractor and subcontractors showing changes to the drawings and specifications. The OWNER’s Inspector of Record and the ARCHITECT shall review the Contractor’s as-built drawings at monthly site visits, based on the Inspector of Records observations and the ARCHITECT site visits, as-built shall become a condition of the monthly Contractors Progress Payment Request. Upon completion of the Work, the Contractor(s) shall forward the as-built drawings, annotated specifications, operations and maintenance manuals to ARCHITECT with a certificate from the Inspector of Record and the Contractor that the “As-Built” are complete, correct and accurate. Submission shall be made to OWNER before certification of the Contractor(s) Application for Final Payment.

### **1.6.21.2 – Record Drawings**

Record Drawings: Upon completion of the as-built drawings by the Contractor the ARCHITECT, shall prepare for the OWNER a set of Record Drawings. The ARCHITECT shall rely on the accuracy of the as-built drawings and the notations made by the Contractor and Inspector of Record. The As-Built drawings shall indicate significant construction changes in the Work and final locations of hidden building systems including electrical, mechanical, plumbing, low voltage and subsurface utilities. ARCHITECT shall then provide OWNER with one copy of the specifications and changed record drawings, on 20# bond and one scanned copy of the contractor & inspector’s specifications and as-built drawings in “.tiff” format at 200 dpi resolution. ARCHITECT shall also provide base CADD drawings, in the latest version of AutoCAD; including site plans, floor plans with case work and interior elevations.

## **1.6.22 Construction Schedules**

ARCHITECT shall review and comment upon construction schedules prepared by the Contractor(s). ARCHITECT shall review and comment upon the report of the Contractor(s), as to any variations from the construction schedule. ARCHITECT shall immediately notify Construction Manager and the contractor in writing of any and all instances in which the schedules submitted by the contractor do not accurately reflect the actual progress of the work, correspond to the contractor’s application for payments or reflect other necessary changes in the scheduled progress of work activities.

## **1.6.23 Public Agency Approvals**

ARCHITECT shall assist the DISTRICT in applying for and obtaining the required permits and/or approvals from all public agencies having jurisdiction over the Project. To the extent approvals of documents or drawings are required for the Project, ARCHITECT shall submit such copies to such agency as are required and shall make corrections or revisions as may be necessary or required by such agency in order to secure approvals or funding. The DISTRICT shall reimburse ARCHITECT for any permits and/or plan check fees paid by ARCHITECT on the DISTRICT’S behalf.

## **1.6.24 Certificate of Completion**

Certificate of Completion. ARCHITECT shall conduct inspections of the Project and consult with the Contractor, Construction Manager and the DISTRICT to determine the dates of substantial completion and final completion, shall review written warranties and guarantees and related documents, shall cooperate with the DISTRICT in the preparation of a punch list, and shall issue a final certificate for payment. ARCHITECT shall issue a final certificate for payment only after it has made an inspection to determine whether the work or the designated portion thereof is

substantially complete and conforms to the requirements of the Contract Documents. When the work or the designated portion thereof is substantially complete, ARCHITECT shall prepare a certificate of substantial completion/final punch list that shall establish the date of substantial completion; shall establish the responsibilities of DISTRICT and the Contractor with respect to security, maintenance, heat, utilities, and any damage to work; and shall fix the time within which the contractor shall finish all the items needed to be completed or corrected to conform the work to the Contract Documents. Each item listed on the certificate of substantial completion/final punch list shall be assigned an estimated dollar value calculated by the ARCHITECT to encompass the cost the DISTRICT is likely to incur if the Contractor fails to perform and/or deliver each such item as required by the Construction Contract. Regarding any items that require warranties, the value of such an item(s) shall include an estimate of the likely cost to the District for having to acquire a replacement warranty for such item(s).

During the period of construction, ARCHITECT shall cause its consulting engineers to make or cause to be made all respective tests and inspections necessary to secure the completion of various types of work falling under their division of the work, and upon completion of the Project, ARCHITECT shall cause each consulting engineer to issue or cause to be issued a certificate stating that the work falling under his or her administration has been performed in accordance with the drawings and specifications and contract requirements.

Architect shall also prepare and submit all final reports required by DSA and any other applicable agency having jurisdiction over the Project.

#### **1.6.25 Guarantees**

ARCHITECT shall secure in proper form and transmit to the DISTRICT, the necessary guarantees, affidavits, releases, bonds, waivers, instruction books, diagrams, operating manuals, and documents required of the Contractor by the Contract Documents.

#### **1.6.26 Web-based Project Management Systems**

ARCHITECT will, in collaboration with the DISTRICT, the ARCHITECT'S consultants, and the Contractor, use the DISTRICT'S web-based project management software system to administer the construction phase of the PROJECT. This will include the processing, distributing, implementing, and collaborating of all items described in Article 1.5 and project documentation to include, but not limited to, Construction Documents, Requests for Information, submittals, meeting minutes, change order proposals, change orders, payment requests, field direction, Architectural Supplemental Information, etc.

### **1.7 POST CONSTRUCTION EVALUATION PHASE - CORRECTION OF DEFECTS**

#### **1.7.1 Interpretation**

During all periods of guarantee of the work provided for in the Contract Documents with the Contractor(s), ARCHITECT shall act as DISTRICT'S advisor for the purpose of securing correction of any and all defects and deficiencies discovered after acceptance of the Project and before expiration of the guarantee period. ARCHITECT shall also assist DISTRICT by providing interpretation of the Construction Documents where requested.

#### **1.7.2 Eleven Month Review**

Eleven (11) months following completion and before the expiration of any guarantees, ARCHITECT and all its consultants shall visit the Project with DISTRICT and:

**A.** Review the work and identify observable defects and deficiencies.

**B.** Evaluate the performance, durability, and appearance of installed products, materials, and systems as they relate to suitability for the use intended and to DISTRICT'S construction budget.



C. Evaluate the Project's function and DISTRICT'S use of the Project as reflections of the original program intent; and

D. Submit a written report to DISTRICT concerning the foregoing.

## **ARTICLE 2 - ADDITIONAL SERVICES**

### **2.0 Authorization Required**

DISTRICT may require ARCHITECT to perform services beyond the Basic Services described in Article 1 of this Agreement and elsewhere in this Agreement. ARCHITECT shall not begin work on and shall not be paid for any Additional Services unless the DISTRICT has approved in writing a description of the services and the cost thereof BEFORE any Additional Services are performed. Should ARCHITECT perform services it contends are beyond the scope of its Basic Services under this Agreement without first getting the DISTRICT'S approval in writing describing the services and the cost thereof, ARCHITECT agrees that it is not entitled to compensation therefore and such services shall be treated as Basic Services. As used herein, "Additional Services" means any work which is determined by the DISTRICT to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary for ARCHITECT to perform at the execution of this Agreement. DISTRICT shall pay ARCHITECT for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of ARCHITECT pursuant to, without limitation Articles 12 and/or 7.8 of this Agreement. Additional Services shall also not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which ARCHITECT was aware or should have been aware pursuant to the laws and regulations provision of this Agreement. Such Additional Services may include, but shall not be limited to:

### **2.1 Inventories**

Providing detailed quantity surveys or inventories of materials, equipment or systems other than those required as a Basic Service in order to select materials, equipment and methods;

### **2.2 Fire**

Providing consultation concerning replacement of any Work damaged by fire or other causes beyond the control of the ARCHITECT during construction;

### **2.3 Defaults of Others**

Providing services made necessary, without fault of ARCHITECT, by default of the Contractor(s); major defects or deficiencies of the Contractor (s) or failure of performance by the Contractor(s);

### **2.4 Consultants**

Providing services of consultants for other than Basic Services;

### **2.5 Changes**

Making revisions to previously approved Drawings, Specifications or documents as a result of increasing or decreasing the Project Budget or to accomplish changes requested by DISTRICT and assisting the Contractor(s) in preparing change orders to accomplish such revisions, 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 preparation of such documents, or are due to other causes beyond the reasonable control of ARCHITECT. Preparing Drawings, Specifications and supporting data and providing other services in connection with such change

orders. However, change orders and related services necessitated by an error or omission of ARCHITECT shall be provided without additional cost; provided however that the performance of such services shall not be an admission of liability by ARCHITECT. In the event of dispute over the cost of or responsibility for a change order, ARCHITECT shall prepare the document pending resolution of the dispute in accordance with Article 14; and/or

## **2.6 Other Services**

Providing any other services not otherwise included in, and not reasonably inferable from, this Agreement and not customarily furnished in accordance with generally accepted architectural practice. These include, without limitation, the design of future facilities not included in the Project, dynamic structural analyses, phasing, and the provision of services after the completion of Basic Services.

## **ARTICLE 3 - THE DISTRICT'S RESPONSIBILITIES**

### **3.1 DISTRICT Project Manager**

DISTRICT shall designate a person who will be the primary contact person between the DISTRICT and the ARCHITECT for purposes of conveying information and performing the day to day tasks required by this Agreement with respect to the Project ("Project Manager"). Beyond the day to day performance of the DISTRICT'S tasks and obligations under this Agreement, the Project Manager is not authorized to modify, change, alter, or amend this Agreement in any way. Any modification, change, alteration, or amendment to this Agreement can only be authorized by an act of the DISTRICT'S Governing Board or an employee or officer of the DISTRICT who has received specific delegated authority in writing from the DISTRICT'S Governing Board. It is the ARCHITECT'S responsibility to inquire and determine if any such person has received such specific delegated authority for the Project. The DISTRICT' may replace the Project Manager upon written notice to ARCHITECT.

### **3.2 Project Team**

The DISTRICT Project Manager may be supported by the DISTRICT'S Project Team during the course of this Agreement. Any Project Team members will be identified in writing to the ARCHITECT by the DISTRICT. However, Project Team Members are not authorized to modify, change, alter, or amend this Agreement in any way.

### **3.3 Review of Documents**

DISTRICT shall examine the documents submitted by ARCHITECT and shall render decisions pertaining thereto.

### **3.4 Site Survey**

When requested and reasonably required, the DISTRICT shall furnish a legal description and a certified land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site.

### **3.5 Soils**

When requested and reasonably required, the DISTRICT shall furnish the services of geotechnical engineers or consultants when such services are reasonably required and deemed necessary by ARCHITECT or as required by local or state codes. Such services may include test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, including necessary operations of determining subsoil, air and water conditions, with reports and appropriate professional recommendations, or as may be recommended by ARCHITECT.

### **3.6 Utility Survey**

When requested and reasonably required, the DISTRICT shall furnish a survey of the existing known utilities of the site, including location, size, inverts and depths.

### **3.7 Testing**

When requested and reasonably required, the DISTRICT shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.

### **3.8 Legal, Accounting**

DISTRICT shall furnish its own legal, accounting and insurance counseling services, including auditing services, as DISTRICT may desire.

### **3.9 Notice of Defects**

If DISTRICT observes or otherwise becomes aware of any fault or defect in the Project, or nonconformance with the Contract Documents, DISTRICT shall give prompt written notice to ARCHITECT. However, DISTRICT'S failure to give such notice shall not eliminate the obligations of ARCHITECT regarding the administration of the construction of the Project or other obligations under this Agreement and/or the Contract Documents; nor is DISTRICT required to make any inspections.

### **3.10 Advertising**

DISTRICT shall pay the cost of any advertisements for bids that may be required by DISTRICT.

### **3.11 Bid Documents**

DISTRICT shall provide copies of samples of the documents listed in 1.4.2.A. In addition to the ARCHITECT'S obligation to prepare all of the documents and information required by this Agreement, ARCHITECT shall recommend to the DISTRICT at least sixty (60) days in advance of any advertisement for bids, any changes, modifications, edits and/or alterations needed to the samples of the documents listed in 1.4.2.A.

### **3.12 Inspector of Record**

Pursuant to the DISTRICT'S obligations under applicable law, the DISTRICT will retain and pay for the DSA required Inspector of Record for the Project as well as any specialty inspectors needed to report to the Inspector of Record.

### **3.13 Permits/Fees**

As between the ARCHITECT and the DISTRICT, the ARCHITECT shall acquire same but the DISTRICT will pay and/or reimburse the ARCHITECT for all necessary fees and permits.

## **ARTICLE 4 - CONSTRUCTION COST**

### **4.1 Definition**

"Construction Cost" as used in this Article 4 shall be the total construction cost of the lowest responsible bidder as of the time construction bids are received, including all fees, compensation, overhead, bonds, contingency and profit of the Contractor(s) and all general conditions items, and excluding any contingency maintained by DISTRICT. "Probable Construction Cost", as used hereinafter, shall be the ARCHITECT'S best estimate of said total construction cost. If a construction delivery method other than competitive bidding is used for the Project, then the

“Construction Cost” as used in this Article 4 shall be the total construction cost finally agreed to between the DISTRICT and the contractor(s) selected to build the Project.

## **4.2 Estimates of Construction Cost**

### **4.2.1 Statements of Probable Construction Cost**

All Statements of Probable Construction Cost ("Statements") prepared by ARCHITECT or Estimates of Construction Cost ("Estimates") prepared by DISTRICT shall be in a mutually agreed upon format so they may be directly compared. The Statements and the Estimates shall be independently prepared by ARCHITECT and the DISTRICT at the end of the Schematic Design Phase, at the end of the Design Development Phase, and at 50% and 100% Construction Documents Phases. The ARCHITECT and the DISTRICT will perform a final reconciliation of the Final Statement of Probable Construction Cost and the Estimate of Construction Cost after the documents have been reviewed/approved by the Division of the State Architect (DSA) to allow for any changes made during the DSA review period. The Statements and the Estimates shall identify any contingencies as a separate line item. ARCHITECT shall supply DISTRICT upon request all material relied upon in producing the Statements.

### **4.2.2 Time of Preparation**

ARCHITECT shall prepare and provide to the DISTRICT Statements of Probable Construction Cost, at the end of the Schematic Design Phase, at the end of the Design Development Phase, and at 50% completion of Construction Documents Phase and at 100% completion of Construction Documents Phase.

## **4.3 DISTRICT'S Construction Budget**

### **4.3.1 Amount**

DISTRICT has a construction budget, (the "Construction Budget") as set forth in attached Exhibit E, including a design contingency. ARCHITECT shall designate in its initial Statement a design contingency within the Construction Budget.

## **4.4 Responsibility for Construction Cost**

### **4.4.1 Estimation, Reliance**

ARCHITECT (or its consultant) is a construction industry professional skilled in construction estimation. Although it is recognized, that ARCHITECT has no control over the cost of labor, materials or equipment, over bid prices, or other competitive bidding, market or negotiating conditions which may vary from any Statement or Estimate. Nonetheless, DISTRICT shall be entitled to rely upon the Statements and Estimates in making decisions regarding the Project.

### **4.4.2 Consultation and Reconciliation**

At the time of each preparation of the Statements and Estimates for the Project, ARCHITECT and DISTRICT shall consult with each other to attempt to explain and resolve the differences between their independently prepared Statements and Estimates. The ARCHITECT and the DISTRICT will conduct cost reconciliation meetings at the end of the Schematic Design Phase, at the end of the Design Development Phase, at 50% completion of the Construction Documents Phase, and at 100% completion of the Construction Documents Phase to compare the DISTRICT'S Estimate and the ARCHITECT'S Statement to ensure accuracy and compliance with the Construction Budget. If at the conclusion of each estimate reconciliation meeting, the reconciled construction estimate is greater than five percent (5%) over the established Construction Budget, the ARCHITECT will develop and propose cost reduction measures in order to realign the design with the established Construction Budget. The ARCHITECT will provide the DISTRICT with a detailed report of all proposed cost reduction measures for DISTRICT'S review and approval.

#### **4.4.3 Bid Price**

The "Bid Price" shall be the price for all work to be done in the construction of the Project including the items listed in 4.1. The Bid Price is the lowest responsive competitive bid submitted by a responsible contractor(s), as determined by DISTRICT.

#### **4.4.4 Resolution of Final Statement of Probable Construction Cost Before Bids**

If before bidding any bid package, ARCHITECT'S Final Statement exceeds the Construction Budget for that portion of the Work, ARCHITECT shall propose alternatives or shall propose revisions which, when agreed upon, shall be incorporated in the bidding documents at no additional cost to DISTRICT. If after consultation and reconciliation with DISTRICT, in accordance with Subparagraph 4.4.2 there remains a difference between ARCHITECT'S Final Statement and DISTRICT'S Estimate, ARCHITECT has the right to rely on ARCHITECT'S Final Statement. Such reliance shall in no way relieve ARCHITECT of the obligation to modify the Drawings and Specifications for rebidding or negotiation if the final Bid Price, obtained by bidding consistent with the Project Schedule, and including alternatives described above, is more than ten percent (10%) above the Construction Budget. Before bid, DISTRICT may, however, direct ARCHITECT to prepare further bid alternatives. If the Bid Price for a bid package on which DISTRICT requested additional bid alternatives exceeds the Construction Budget for that work by more than ten percent, then ARCHITECT will not be compensated as an Additional Service for preparing the requested bid alternatives. If the Bid Price for a bid package on which DISTRICT requested additional bid alternatives is less than the Construction Budget, then ARCHITECT shall be compensated, on a time and expense basis, as an Additional Service for preparing the requested bid alternatives.

#### **4.4.5 Bid Price with Alternatives Above or Below Budget**

If the Bid Price, obtained by bidding consistent with the Project Schedule, and modified by exercising all alternatives approved by DISTRICT exceeds the construction budget by more than ten percent (10%), ARCHITECT after consultation with DISTRICT shall at its own expense promptly modify the Construction Documents to reduce, or increase the construction cost such that the revised Bid Price is within the Construction Budget. ARCHITECT shall evaluate in writing the impact of each modification, which shall be subject to DISTRICT'S approval. ARCHITECT shall provide all appropriate assistance in rebidding or negotiation of bids.

#### **4.4.6 Bid Price Exceeds Budget**

If the Bid Price, obtained by bidding consistent with the Project Schedule and Scope, exceeds the Construction Budget and the District chooses to award the Project the Architect is not entitled to additional fees due to the increased construction cost.

### **ARTICLE 5 - RELATIONSHIP OF DISTRICT, ARCHITECT AND CONSTRUCTION MANAGER**

#### **5.1 Team Concept**

DISTRICT and ARCHITECT, (the "Team") shall function as a team to design and construct the Project as expeditiously as possible to maximize the program content within the fixed budgetary limits established by DISTRICT. In general ARCHITECT shall be the team leader with respect to design matters and DISTRICT shall be the team leader with respect to all other matters, including without limitation, construction and financial matters.

#### **5.2 Coordination with Consultants**

DISTRICT may, at its sole discretion, employ the services of separate consultants, such as interior designer, acoustic engineers or a consultant on energy conservation. ARCHITECT shall cooperate with the consultants by including them in meetings and providing information pertaining to their specialties. Any differences of opinion between any consultant and ARCHITECT or DISTRICT'S Construction Manager and their consultants shall be resolved by DISTRICT.

## **ARTICLE 6 – TIME**

### **6.1 Avoiding Delays**

Time is of the essence in this Agreement.

### **6.2 Project Schedule**

The Project Schedule (see 1.0.12 and Exhibit “D”) shall not be exceeded by any party for its respective tasks. The Project Schedule may be adjusted as the Project proceeds as required due to causes other than the negligence of ARCHITECT and beyond the reasonable control of ARCHITECT, including allowance for DISTRICT or governmental or other authorities or entities having jurisdiction over the Project. Subject to the foregoing limitations, ARCHITECT agrees to perform all Basic Services and Additional Services with respect to the Project in order to meet the Project Schedule.

### **6.3 Notice of Delay**

ARCHITECT shall, immediately upon ascertainment, notify DISTRICT in writing of any delay in: (i) the preparation and/or production of any of ARCHITECT'S documents hereunder, (ii) the performance by DISTRICT'S consultants, (iii) ARCHITECT'S services, or (iv) in connection with any matter attended to by ARCHITECT or with which ARCHITECT is familiar (whether or not as the result of an act or omission of another) which would affect or delay the Project Schedule. ARCHITECT shall consult and advise with DISTRICT in connection with any such delay and its effect on the Project Schedule and shall take such action on DISTRICT'S behalf as DISTRICT may request in accordance with the terms and conditions of this Agreement.

### **6.4 Specific Response Times**

ARCHITECT shall adhere to the response times set forth in the Construction Documents, or other reasonable response times if established in writing by the DISTRICT, for ARCHITECT'S performance of services (e.g., review and approval of shop drawings, preparation of change orders and field orders, interpretation of Construction Documents, review of requests to substitute materials, etc.). These specific response times shall be considered to be reasonable and ARCHITECT will not exceed them unless, at the time of the action which necessitates a response, it indicates that a longer response time is necessary and gives a written explanation of the reasons why an extended response time will be needed. Any extension of the response time must be approved by DISTRICT. Insufficiency of personnel shall not be an adequate excuse for delay by ARCHITECT or its consultants. (See, also, Article 1.5.1.)

### **6.5 Delays**

If the Work of ARCHITECT is delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, damage to the Project by reason of fire or other casualty or other causes beyond the reasonable control of ARCHITECT (including failure of DISTRICT or its consultants to respond in a timely manner) and not due to the willful or negligent act or omission, financial inability, or default of ARCHITECT, or events reasonably foreseeable to ARCHITECT, then upon the written request of ARCHITECT to DISTRICT the time for completion under the Project Schedule shall be appropriately extended by the number of working days of delay actually so caused. Provided, however, no such extension shall be made or allowed unless a written request therefore is made within ten (10) calendar days after the event or occurrence giving rise to the delay. In the case of a continuing cause of delay only one request shall be necessary, which request shall affirmatively state the delay is a continuing one and the reasons therefore. All delay requests or notices hereunder shall describe the nature of the delay and estimate the probable effect of such delay on the progress of the work. The effect of any delay shall also be shown on the latest Project Schedule.

## **ARTICLE 7 - ARCHITECT'S FEES**

### **7.1 Basic Services**

DISTRICT shall pay ARCHITECT for all Basic services under this Agreement the sum of the amount set forth in the attached Exhibit F. Such sum is inclusive of all costs associated with the Project, including engineers and consultants, sub-consultants, overhead and profit, but excluding reimbursable expenses as set forth in Article 8.

### **7.2 Payment for Basic Services**

The DISTRICT will make progress payments to ARCHITECT monthly upon receipt of ARCHITECT'S statement on account of compensation for Basic Services. The amount of the progress payment shall be the fraction of estimated compensation for Basic Services for the particular phase, which fraction has the services performed that month as the numerator and the total services required within the particular phase as the denominator less any backcharges, set offs and/or withholds. The payments shall be such that the total of all progress payments made shall not exceed the following percentages (cumulative, by phases) of the total compensation to be paid to ARCHITECT at various phases for Basic Services:

	<u>To Be Paid</u>	<u>Paid To Date</u>
Programming/Planning Phase completed	7%	7%
Schematic Design Phase completed	10%	17%
Design Development Phase completed	15%	32%
Construction Documents Phase completed	35%	67%
Bidding Phase completed	5%	72%
Construction Phase completed	23%	95%
Post Completion Evaluation Phase	5%	100%

#### **7.2.1 Not Used**

#### **7.2.2 Next to Last and Final Payment**

The Next to Last payment will be made to the ARCHITECT at the end of the Construction Phase once all of the following have occurred: (i) the filing of the Notice of Completion by the District with the County Recorder's Office; and (ii) receipt by the District of a letter from the ARCHITECT certifying that all DSA close-out documents have been submitted to DSA. To be in compliance with the foregoing, the ARCHITECT'S letter to the District shall include copies of all close-out documents that the ARCHITECT has sent to DSA. Final payment of five percent (5%) will be made to the ARCHITECT upon the submittal of all required documents under the control of the ARCHITECT of the Post Completion Evaluation Phase.

#### **7.2.3 Termination**

If ARCHITECT'S services are terminated by DISTRICT as set forth in Article 11 at the completion of the Schematic Design Phase, the maximum obligation of DISTRICT to ARCHITECT shall be as set forth in attached Exhibit F, plus the approved Reimbursable Expenses incurred and Additional Services performed before the date of termination.

#### **7.2.4 Payments to Consultants and Sub-Consultants**

ARCHITECT shall make all progress and final payments to ARCHITECT'S consultants and/or sub-consultants in compliance with Civil Code Section 3321.

#### **7.2.5 Back Charges; Set Offs; and Offsets**

DISTRICT shall have the right to back charge and deduct from any payment(s) then due or to that become due and payable to the ARCHITECT for any costs, expenses, fees, damages of the like that DISTRICT has had to pay or become obligated to pay, or incurred, as a result of the failure or refusal of the ARCHITECT and/or its consultants

and/or sub-consultants to perform as required under this Agreement. DISTRICT shall also have the right to deduct (offset/setoff) the amount of any such back charge against any other monies it may owe ARCHITECT under any other contract or agreement. Also, if the DISTRICT owes money to the ARCHITECT under this Agreement, but the ARCHITECT owes money to the DISTRICT under some other agreement or contract, the DISTRICT may offset/setoff such monies and either receive and/or pay the net amount of such monies after any such offset/setoff.

**7.2.6** Disputed invoices shall be returned to the Architect within ten (10) working days of receipt of the invoice with a clear description of the nature of the dispute.

**7.2.7** Undisputed amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate of one and one-half percent (1-1/2%) per month on balances outstanding, pursuant to Civil Code section 3320.

### **7.3 Compensation for Additional Services**

#### **7.3.1 ARCHITECT**

For Additional Services of ARCHITECT, as described in Article 2 and including Additional Services of ARCHITECT'S consultants, compensation shall be computed as follows: Principals' time and time of other employees at the fixed hourly rate set forth on attached Exhibit G hereto.

### **7.4 Invoices**

DISTRICT shall pay for Additional Services and Reimbursable Expenses, as described in Article 8, monthly upon presentation and verification of ARCHITECT'S statement of services rendered using the invoice form provided in EXHIBIT "H". Payment shall be made within 30 days after (a) receipt of ARCHITECT'S invoice or (b) date payment is due, whichever is later. ARCHITECT shall submit invoices for Additional Services and Reimbursable Expenses within sixty (60) days after rendering such services and incurring such expenses. The ARCHITECT'S invoices for Reimbursable Expenses shall be at cost plus a ten (10) percent mark-up for overhead and profit.

### **7.5 No Deductions**

Except as provided elsewhere in this Agreement, no deductions shall be made from ARCHITECT'S compensation for Basic Services on account of penalty, liquidated damages or other sums withheld from payment to the Contractor(s), or on account of the cost of changes in Construction Cost, other than those for which ARCHITECT is liable.

### **7.6 Suspension**

If the Project is suspended in whole or in part for more than four months, ARCHITECT shall be compensated for all services performed before receipt of written notice from DISTRICT of such suspension, together with Reimbursable Expenses due. If the Project is resumed after being suspended for more than four months, ARCHITECT'S compensation shall be equitably adjusted.

### **7.7 Limitation**

The fee for Basic Services provides payment in full for all costs incurred by the ARCHITECT in the performance of this Agreement, unless reimbursement is specifically provided for elsewhere in this Agreement. Costs not to be reimbursed include, but are not limited to, correction of errors or omissions, local telephone calls, postage, and expressage. ARCHITECT shall not perform work which involves a change in any fee without prior written agreement from the DISTRICT as to the amount of adjustment to the fee. Work performed by the ARCHITECT without such written approval will be at the ARCHITECT'S sole cost. Adjustment of the ARCHITECT'S Basic Services Fee requires amendment of the Agreement and shall be made only if THE DISTRICT'S Governing Board materially increases or decreases the scope of work, or suspends, extends or terminates the ARCHITECT'S services in which case fees will be adjusted as set forth in this Agreement. Acceptance of final payment under Paragraphs 7.2 or 7.2.1 by ARCHITECT shall be conclusive that DISTRICT has performed all its



obligations under this Agreement and shall release DISTRICT from all claims except those previously asserted by ARCHITECT in writing and still unresolved.

## **7.8 Errors and Omissions**

In addition to the standards and requirements set forth elsewhere in this Agreement, including but not limited to in Article 16 hereof, this Article 7.8 and Article 7.81 establishes standards and requirements that specifically govern the ARCHITECT'S and DISTRICT'S apportionment of the risks associated with errors and omissions in the Construction Documents and/or for other failure on the part of the ARCHITECT to perform services and/or work under this Agreement.

### **7.8.1 Responsibility for Errors and Omissions**

**.1 Errors:** The ARCHITECT shall be solely responsible for and pay all of the DISTRICT'S costs, expenses, fees and damages, of all kind, either due to or arising from errors by the ARCHITECT and/or one or more of the ARCHITECT'S consultants and/or sub-consultants that violate the standard of care set forth in Article 16.

**.2 Omissions:** The ARCHITECT shall be responsible for and pay all of the DISTRICT'S costs, expenses, fees and damages, of all kind, arising from the omissions of the ARCHITECT and/or one or more of the ARCHITECT'S consultants and/or sub-consultants that are greater than what the DISTRICT would have paid had the work been correctly shown in the as-bid Contract Documents. Notwithstanding the foregoing, the DISTRICT will pay for the costs, expenses, fees and/or damages arising from such omissions up to a maximum aggregate amount of four percent (4%) of the Contractor's base bid. The ARCHITECT shall be solely responsible for and pay for all of the DISTRICT'S costs, expenses, fees and/or damages arising from such omissions that violate the standard of care in excess of four percent (4%) of the Contractor's base bid.

## **7.9 Architect Supplemental Instructions**

Architect Supplemental Instructions (ASI), sometimes called a Clarification, will be considered part of quality control, and all redesign and specification costs associated with ASI's will be borne by the ARCHITECT. An ASI and a Clarification are synonymous.

## **ARTICLE 8 - REIMBURSABLE EXPENSES**

### **8.1 General**

Reimbursable Expenses are in addition to the compensation for Basic Services and Additional Services and shall be actual expenditures made by ARCHITECT and ARCHITECT'S employees and consultants in the interest of the Project for the expenses listed in the following subparagraphs. Reimbursable Expenses shall not carry any mark up and be passed on to the DISTRICT plus an administrative mark-up of 10%. All expenses incurred or which reasonably can be inferred from the conduct of Basic or Additional Services are included in the fees quoted therefore and no other expenses shall be reimbursed by DISTRICT except as described in the following subparagraphs to the extent they are actually and reasonably incurred and approved in advance in writing by DISTRICT.

#### **8.1.1 Transportation Expenses**

Extended travel outside of the Orange and San Diego Counties when traveling in connection with the Project, provided that such travel has been specifically approved in writing by the DISTRICT'S Governing Board before the travel occurs.

#### **8.1.2 Excess Reproduction Expense**

Expense of reproductions of drawings, specifications and other documents furnished at the end of each phase,

requested by DISTRICT in excess of those furnished as a Basic Service. Reproduction of working documents during design phases for District and consultants shall be furnished as part of Basic Services.

### **8.1.3 Additional Services Expenses**

Expense of data processing and photographic production techniques when used in connection with Additional Services and authorized in writing in advance.

### **8.1.4 Models**

Expense of models and mockups specifically requested by DISTRICT and prepared by independent contractors, but specifically excluding study models.

### **8.1.5 Overtime**

If authorized in writing in advance by the DISTRICT'S Governing Board, the expense of overtime work requiring higher than regular rates. ARCHITECT shall be responsible for all overtime work required to meet its Basic Service obligations within the Project Schedule in accordance with Article 6.2. Any general authorization of work shall not be an authorization of overtime work unless the inclusion of overtime Work is clearly identified and DISTRICT has received an estimate of the cost of the overtime work before the approval.

### **8.1.6 Additional Insurance**

Expense of any additional insurance coverage or limits, including professional liability insurance, specifically requested by DISTRICT in writing in excess of that set forth in Article 13.

### **8.1.7 Other**

Expense of special mailing, special delivery and similar other expenditures incurred at DISTRICT'S request.

### **8.1.8 Overhead**

DISTRICT shall reimburse only for actual out-of-pocket costs and not for indirect costs or overhead.

## **ARTICLE 9 - ARCHITECT'S ACCOUNTING RECORDS**

### **9.1 Maintenance of Records**

Records relating to Basic Services, Reimbursable Expenses, Additional Services, and any other charges based upon hourly rates or expenses of ARCHITECT, shall be kept in accordance with generally accepted accounting principles consistently applied and all records of ARCHITECT pertaining to the Project shall be available to DISTRICT and DISTRICT'S authorized representative during normal business hours. DISTRICT shall be allowed to make copies of any of the foregoing records. ARCHITECT shall preserve all such records for a period of three years after final payment to ARCHITECT under this Agreement. At the end of the three year period, if ARCHITECT intends to destroy said records, the ARCHITECT shall notify the DISTRICT in writing of such intention and permit the DISTRICT to take possession of such records.

### **9.2 Payment without Prejudice**

DISTRICT'S payments to ARCHITECT for Basic Services, Reimbursable Expenses, Additional Services, or other payments based upon ARCHITECT'S records, shall be without prejudice to DISTRICT'S right to an examination of ARCHITECT'S records relating to the Project. All payments to ARCHITECT are subject to review and/or audit, and/or adjustment.

### **9.3 Audits**

At any reasonable time within three (3) years after final payment to ARCHITECT, and upon ten (10) days prior written notice to ARCHITECT, DISTRICT may cause an audit to be made of the records relating to the Project for any period covered by this Agreement. Except as provided in 9.4 below, the cost of such audit shall be paid by DISTRICT.

### **9.4 Cost of Audit**

If it shall be determined as a result of such audit that there has been an overcharge to DISTRICT when such overcharge is in excess of five percent (5%) of the amount paid by DISTRICT for Basic Services, Reimbursable Expenses, Additional Services, and/or other charges based upon ARCHITECT'S records for the period covered by the audit, ARCHITECT shall also pay to DISTRICT the cost of the audit, in addition to any refund of overcharges.

## **ARTICLE 10 - OWNERSHIP AND USE OF DOCUMENTS**

Although the official copyright in all Project Documents shall remain with the ARCHITECT, the documents prepared by the ARCHITECT or ARCHITECT's Sub-Consultants for this Project shall be and remain the property of the DISTRICT pursuant to Education Code Section 17316. This Agreement creates a non-exclusive and perpetual license for DISTRICT to copy, use, modify or reuse any and all designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression (Project Documents), including, but not limited to, physical drawings, data magnetically or otherwise recorded on computer disks and any intellectual property rights therein for additions, remodels, alterations, renovations or completion of the project by others. Should the DISTRICT copy, use, modify, or reuse any of the Project Documents, the names and seals of the ARCHITECT or Sub-Consultants, if any, shall be removed from the title block of all signature pages from the Project Documents and the DISTRICT agrees to indemnify, defend and hold the ARCHITECT harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including but not limited to, reasonable attorneys' fees, accruing to or resulting from any and all persons, firms, or any other legal entity, arising out of any use, reuse or modification of the ARCHITECT's Project Documents.

The DISTRICT expressly acknowledges and agrees that the Project Documents provided by the ARCHITECT under this Agreement may contain certain design details, features and concepts from the ARCHITECT's best practices detail library, which collectively may form portions of the design for the Project, but which separately are, and shall remain, the sole and exclusive property of the ARCHITECT. Nothing herein shall be construed as a limitation on the ARCHITECT's right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients.

## **ARTICLE 11 - TERMINATION OF AGREEMENT**

### **11.1 Termination for Cause**

The DISTRICT may terminate ARCHITECT'S services under this Agreement following seven (7) days written notice to ARCHITECT because of the substantial failure of ARCHITECT to perform or provide prompt, efficient or thorough service or if ARCHITECT fails to complete its services or otherwise comply with the terms of this Agreement. Upon receipt of a notice of termination, ARCHITECT shall forthwith discontinue the rendering of all services under this Agreement other than services necessary for an orderly windup of ARCHITECT'S services.

Failure of the DISTRICT to make payments to the ARCHITECT in accordance with this Agreement may be considered substantial nonperformance and cause for termination.

## **11.2 Termination for Convenience**

The DISTRICT shall also have the right, in its absolute discretion, to terminate this Agreement for convenience and without cause following fifteen (15) days prior written notice from the DISTRICT to ARCHITECT. Upon receipt of a notice of termination, ARCHITECT shall forthwith discontinue the rendering of all services under this Agreement other than services necessary for an orderly windup of ARCHITECT'S services. Any termination by the DISTRICT pursuant to Paragraph 11.1, which is found not to meet the requirements of Paragraph 11.1, shall be deemed a termination pursuant to this Paragraph 11.2. As a full and complete method of compensating ARCHITECT for a Termination for Convenience, ARCHITECT shall produce to the DISTRICT an accounting of all billings submitted to the DISTRICT to the time of termination and payments made thereon, a supplemental billing of for Services rendered from the last regular billing submitted, with backup and support. The full and exclusive compensation, money and damages payable by the DISTRICT to the ARCHITECT for a Termination for Convenience shall be: (1) the amount of any unpaid regular invoices; (2) the amount of the supplemental billing, properly supported with backup, if any, (3) the amount of any retention held by the DISTRICT from the ARCHITECT; and (4) a markup of five percent (5%) calculated on items (1) – (3) identified in this Paragraph 11.2. Nothing set forth herein shall preclude the DISTRICT from its rights and/or remedies of offset, set off, back charge, and/or indemnity, against the ARCHITECT and/or its insurance carriers.

## **11.3 Suspension or Abandonment**

The DISTRICT has the absolute discretion to suspend or abandon all or any portion of the work on a Project for any length of time and may do so upon seven (7) days written notice to ARCHITECT. Upon notice of suspension or abandonment, ARCHITECT shall discontinue any further action on a Project. If the entire work to be performed on the Project is abandoned, the Parties shall each be relieved of the remaining executory obligations of this Agreement, as it relates to that Project, but shall not be relieved of any obligations arising prior to said abandonment or of obligations related to any other project.

## **11.4 Insolvency**

In the event that ARCHITECT shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the DISTRICT this Agreement shall terminate and be of no further force and effect and any property or rights tangible or intangible, shall forthwith be returned to the DISTRICT.

## **11.5 Terms of Payment**

In the event the DISTRICT terminates without cause, abandons or suspends the work on the Project, there shall be due and payable within thirty (30) days an amount which bears the same proportion to the total basic fee as the amount of services performed or provided by ARCHITECT before the time of such termination, suspension or abandonment of this Agreement bears to the entire services ARCHITECT is required to perform or provide for the Project. For purposes of determining the ratio of the services actually rendered to the total services necessary for the full performance of this Agreement, the division of work set forth in the payment schedule in Article 7.2 shall be conclusively deemed to have the values corresponding to the amounts required to be paid by said progress payment schedule. ARCHITECT shall also be paid its compensation for services performed before the date of termination, including Reimbursable Expenses and Additional Services then due. In the event of termination due to a breach of this Agreement by ARCHITECT, the compensation due ARCHITECT upon termination shall be reduced by the amount of damages sustained by the DISTRICT due to the negligence of the Architect pursuant to the conditions set forth in Article 12 of this Agreement.

## **11.6 Documents/ Models**

Upon termination, abandonment or suspension, ARCHITECT shall deliver to the DISTRICT all productions of all finished and unfinished documents, cost estimates, studies, surveys, maps, models, photographs, reports sketches,

working drawings, specifications, computations and all other documents and matters prepared by ARCHITECT to which the DISTRICT would have been entitled at the completion of ARCHITECT'S services. All drawings shall be of high quality sepia with all work clearly legible.

#### **11.7 No Release**

The termination, abandonment, or suspension of this Agreement shall not relieve or release ARCHITECT from any liability to DISTRICT for damages sustained by DISTRICT by virtue of any breach of this Agreement by ARCHITECT.

### **ARTICLE 12 - INDEMNITY**

#### **12.1 Indemnity for Non-Professional Liability**

ARCHITECT shall indemnify, hold harmless, and defend DISTRICT and each of its officers, trustees, employees, agents, and volunteers, from any and all liability, loss, fines, penalties, forfeitures, costs, and damages (whether in contract or tort, including but not limited to personal injury, death, and property damage) incurred by DISTRICT, ARCHITECT, or any other person, and from any and all demands, and actions in law or equity (including attorney's fees and litigation expenses), arising directly out of any negligence, recklessness, or willful misconduct on the part of ARCHITECT, its officers, agents, employees, subcontractors, sub-consultants, or any other person or entity for whom ARCHITECT is responsible, in connection with the performance of the Agreement. ARCHITECT'S obligations under the preceding sentence shall apply regardless of whether DISTRICT or any of its officers, officials, employees, or agents are passively negligent, but shall not apply to any loss, liability, fines, forfeitures, costs or damages caused by the active negligence or by the willful misconduct of DISTRICT.

#### **12.2 Indemnity for Professional Liability**

Specifically regarding professional liability, ARCHITECT shall indemnify and hold harmless DISTRICT, its officers, trustees, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract or tort, including but not limited to personal injury, death at any time and property damage) incurred by DISTRICT, ARCHITECT, or any other person, and from any and all claims, demands, and actions in law or equity (including attorney's fees and litigation expenses) arising out of or in connection with the professional negligence, recklessness or willful misconduct of the ARCHITECT in the performance of the Agreement. The ARCHITECT's obligation to indemnify for claims based upon professional negligence, recklessness or willful misconduct does not include the obligation to defend actions or proceedings brought against the DISTRICT but rather to reimburse the DISTRICT for reasonable attorney's fees and costs incurred by the DISTRICT in defending such actions or proceedings brought against the DISTRICT to the extent caused by the professional negligence, recklessness or willful misconduct of the ARCHITECT on a comparative fault basis.

#### **12.3 Limitation**

Notwithstanding paragraphs 12.1 and 12.2, ARCHITECT'S obligations to indemnify and hold harmless the DISTRICT shall not include indemnification, or hold harmless obligations for claims which arise as the result of the active negligence of DISTRICT, or the negligence or willful misconduct of DISTRICT, its agents, servants or independent contractors who are directly responsible to DISTRICT, or for defects in design furnished by such persons, other than ARCHITECT and its agents, consultants and sub-consultants, or unless such claims arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the ARCHITECT. It is the intent of this Article 12 to provide the broadest enforceable defense, indemnity, and hold harmless obligations of ARCHITECT under California law. If any provision of this Article exceeds the restrictions of California law, that portion of this Article that exceeds the limits of the law shall be null and void and the remaining defense, indemnity, and hold harmless obligations shall remain fully enforceable.

## **ARTICLE 13 – INSURANCE REQUIREMENTS**

Before starting to perform under this Agreement and during the entire term of this Agreement, ARCHITECT shall, at its sole cost and expense, carry and maintain the following insurance.

### **13.1 Minimum Scope of Insurance:** Coverage shall be at least as broad as:

- .1 Insurance Services Office Form No. CG 0001 (Commercial General Liability);
- .2 Insurance Services Office Form No. CA 0001 (Ed. 1/87) (Automobile Liability, Code 1 “any auto”);
- .3 Workers’ Compensation as required by the Labor Code of the State of California, and Employers’

Liability Insurance;

.4 Professional Liability (Errors and Omissions) insurance against loss due to error, omission or malpractice, unless waived by District.

### **13.2 Minimum Limits of Insurance:** ARCHITECT shall maintain limits no less than:

- .1 Commercial General Liability; \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
- .2 Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- .3 Workers’ Compensation and Employers Liability: Workers’ compensation limits as required by the Labor Code of the State of California and Employers’ Liability limits of \$1,000,000 per accident.
- .4 Professional Liability (Errors and Omissions): \$1,000,000 combined single limit per claim and \$2,000,000 aggregate.

### **13.3 Claims-Made Forms:**

If the above insurance is written on a claims-made form, it shall continue for three years following termination of this Agreement. Such insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

### **13.4 Deductibles and Self-Insured Retentions:**

Any deductibles or self-insured retentions must be declared to and approved by the DISTRICT in writing.

### **13.5 Other Insurance Provisions:**

The policies are to contain, or be endorsed to contain the following provisions:

#### **A. General Liability and Automobile Liability Coverage:**

- .1 DISTRICT, Construction Manager, its officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of ARCHITECT; premises owned, leased or used by ARCHITECT. The coverage shall contain no special limitations on the scope of the protection afforded to DISTRICT, its officials, employees or volunteers.

- .2 ARCHITECT'S insurance coverage shall be primary insurance as respects DISTRICT, its officials, employees and volunteers. Any insurance or self-insurance maintained by DISTRICT, its officials, employees or volunteers shall be in excess of ARCHITECT'S insurance and shall not contribute with it.
- .3 Failure to comply with reporting provisions of the policies shall not affect coverage provided to DISTRICT, its officials, employees or volunteers.
- .4 Coverage shall state that ARCHITECT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- B.** All Coverages: Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice has been given to DISTRICT. In addition, ARCHITECT agrees that it shall not reduce its coverage or limits on any such policy except after thirty (30) days prior written notice has been given to DISTRICT and DISTRICT approves the reduction in coverage or limits in writing. ARCHITECT further agrees that it shall not increase any deductibles or self-insured retentions on any such policy except after thirty (30) days prior written notice has been given to DISTRICT and DISTRICT approves such increase in writing.
- C.** Acceptability of Insurers: Insurance is to be placed with insurers with a Best's rating of no less than A: VII. This requirement may however, be waived in writing in individual cases for Errors and Omissions Coverages only, provided, however, that in no event will a carrier with a rating of B: IX or lower be acceptable.

### **13.6 Additional Requirements:**

- .1 ARCHITECT shall submit proof of the required insurance coverage at the time of the execution of this Agreement. Evidence of such insurance shall be provided to the DISTRICT by delivering copies of the policies or certificates of insurance setting forth the required coverage.
- .2 ARCHITECT shall ensure that all such coverages are in full force and effect during the time intervals hereafter stipulated. The Professional Liability and all other coverages (except for the Automobile Liability coverage) shall remain in effect for at least three (3) full years after the date of final Completion of the Project and acceptance thereof by the DISTRICT. The Automobile policy shall remain in effect until at least the date on which ARCHITECT is paid in full under this Agreement. ARCHITECT shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverage during the time period they are required to be in affect.
- .3 No act or omission of any insurance agent or broker shall relieve ARCHITECT of any of its obligations under this Agreement. In the event that ARCHITECT fails to acquire and maintain the insurance coverage as provided herein, the DISTRICT may procure the same and pay the premium therefore, in which case the cost shall be charged to ARCHITECT or deducted from payments due ARCHITECT hereunder, at the DISTRICT'S sole discretion.
- .4 In addition, the DISTRICT may, at its option, require ARCHITECT to provide additional Project insurance, provided the premiums for such insurance are reimbursed by the DISTRICT and the DISTRICT approves, in advance, such additional insurance, the company issuing the same, the scope of the coverage thereof and the premiums therefore.

## **ARTICLE 14 – CHANGES**

### **14.1 DISTRICT May Direct**

DISTRICT may, at any time, direct changes in the general scope of the services required by this Agreement, or in services previously approved in earlier phases. All DISTRICT directed changes shall be in writing specifying the change required.

### **14.2 ARCHITECT'S Responsibility**

Upon receipt of a written notice of a change, ARCHITECT shall estimate the hours and costs associated with the change. ARCHITECT shall prepare a written statement showing the impact of the change on the probable Construction Cost, on the Project Schedule and on the functioning of the Project as a whole.

### **14.3 Compensation**

If approved, ARCHITECT shall be entitled to compensation pursuant to Article 7 as an Additional Service in an amount that DISTRICT and ARCHITECT agree upon. In addition, DISTRICT shall adjust the Project Construction Budget, and the Project Schedule by an amount determined by DISTRICT after consultation with ARCHITECT. However, ARCHITECT shall not be compensated for correction of deficiencies in the Construction Documents or other documents prepared or reviewed by it.

## **ARTICLE 15 – DISPUTES**

Pending resolution of a dispute, ARCHITECT agrees to continue the work diligently to completion and the DISTRICT agrees to make progress payments in accordance with this AGREEMENT, except that the DISTRICT may withhold only those funds that are in dispute. In the event that the withholding by the DISTRICT exceeds 10% of the total fee, the DISTRICT and ARCHITECT agree that any withholding by THE DISTRICT in excess of that amount, the ARCHITECT shall be entitled to suspend services upon seven (7) days written notification to the DISTRICT, pending the good faith resolution of the dispute by both parties.

In any claims process established by the Construction Contract, mediation, settlement discussions, and/or civil action involving the DISTRICT and the Contractor(s) for the Project, the ARCHITECT is required to participate therein as part of its Basic Services under this Agreement.

In any dispute between the ARCHITECT and the DISTRICT, the ARCHITECT and the DISTRICT agree to try to resolve same amicably as follows:

**First**, between the DISTRICT'S Deputy Superintendent, Business and Support Services and the person listed as the Project Architect for the ARCHITECT. The proponent of the dispute must provide written notice to the other person within thirty (30) days of the dispute arising. The written notice must set forth a detailed written explanation of the factual basis, applicable contract provisions from this Agreement, a calculation of any amounts of money claimed due, and all supporting backup documentation for the factual basis and amounts of money claimed due from the other party. The opponent of the dispute must, within thirty days (30) of receiving such information, must prepare and send back to the proponent a detailed written explanation either agreeing with, and/or disputing: (i) the factual basis presented, (ii) alleged applicable contract provisions; (iii) the calculation of any amounts of money claimed due; and/or (iv) the supporting backup documentation for the factual basis and amounts of money claimed due from the other party. Additionally, the opponent must also set forth in writing any and all other reasons, if any, why the dispute is or is not valid and provide all supporting information for such position(s). The DISTRICT'S Deputy Superintendent, Business and Support Services and the person listed as the Project Architect for the ARCHITECT shall then meet within fifteen (15) days of the opponent's written response being sent to try and resolve the dispute. If they agree to resolve the dispute at the meeting, the DISTRICT Staff will place the matter on the Board of Education's agenda for consideration and action;



**Second**, if the foregoing meeting between the DISTRICT'S Deputy Superintendent, Business and Support Services and the person listed as the Project Architect for the ARCHITECT does not resolve the Dispute, then the DISTRICT'S Superintendent and the President of the ARCHITECT shall meet with fifteen (15) days of the meeting of the DISTRICT'S Deputy Superintendent, Business and Support Services and the person listed as the Project Architect for the ARCHITECT. If the DISTRICT'S Superintendent and the President of the ARCHITECT meeting resolves the dispute, the DISTRICT Staff will place the matter on the Board of Education's agenda for consideration and action;

**Third**, if the DISTRICT'S Superintendent and the President of the ARCHITECT meeting does not resolve the dispute then either party has the right to immediately invoke mediation between the parties, the costs thereof to be shared equally by the parties. Such mediation shall take place within forty (45) of either party requesting it in writing. A Mediator must have substantial experience mediating, arbitrating and/or litigation public works K-12 construction matters. The proponent of the mediation must provide in writing at the time of the notice demanding mediation, the names of six (6) such mediators. The opponent may within five (days) select one. If the opponent selects fails to do so, then the proponent shall immediately identify the mediator to be used. The days set forth in this Paragraph are calendar days.

**Fourth**, if mediation fails to resolve the dispute within 45 days of the demand for mediation, or such additional period of time as both parties agree to in writing, then a party is permitted to file a civil action. The three step process set forth in this Paragraph 15 is a condition precedent to the filing of any civil action between DISTRICT and the ARCHITECT.

## **ARTICLE 16 - STANDARDS OF PERFORMANCE**

### **16.1 Standard of Care**

In addition to the requirements set forth in Article 7.8 regarding errors and /or omissions, ARCHITECT shall perform all services and work under this Agreement pursuant to the requirements stated in this Agreement. The ARCHITECT will perform all services and work in a skillful and competent manner that is consistent with the standards generally recognized as being employed by professionals qualified to perform the services and work in the same discipline in the State of California. The ARCHITECT shall provide the Construction Documents and shall review the construction and installation of the Work to meet the requirements of the Construction Documents. Neither review nor approval of ARCHITECT'S, its consultants', and/or sub-consultants work shall relieve ARCHITECT, its consultants, and/or its sub-consultants from first, their duty to adhere to the standards and requirements of this Agreement, or if silent herein, then, the applicable standards of professional care in the performance of their duties. ARCHITECT will be fully responsible to the DISTRICT for any damages to the DISTRICT and delays to the Project as specified in Article 12 of this Agreement. Without limiting the foregoing, ARCHITECT shall be fully responsible to the DISTRICT for any increased costs incurred by the DISTRICT as a result of any such negligent delays in the design or construction of the Project. ARCHITECT represents and maintains that it is skilled in the professional calling necessary to perform the services and work required by this Agreement. ARCHITECT warrants that all of its employees, ARCHITECT'S, engineers, and other consultants and sub-consultants shall have sufficient skill and experience to perform the services and work assigned to them. ARCHITECT represents that it, its employees, ARCHITECT'S, engineers, and other consultants and sub-consultants have all required licenses, permits, qualifications and approvals of whatever nature that are legally required for them to have to perform the services and work assigned to or rendered by them, and that such licenses and approvals shall be maintained in good standing throughout the entire term of this Agreement.

### **16.2 Laws and Regulations**

#### **.1 Knowledge and Compliance.**

ARCHITECT shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall

give all notices required of ARCHITECT by law. Similarly, ARCHITECT'S employees, engineers and consultants shall keep themselves fully informed of all applicable laws and regulations affecting performance. ARCHITECT shall be liable, pursuant to Article 12 of this Agreement, for all violations of such laws and regulations in connection with its services. If ARCHITECT performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the DISTRICT, ARCHITECT shall be solely responsible for all costs arising there from. ARCHITECT shall defend, indemnify and hold the DISTRICT, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure to comply with such laws, rules or regulations.

## **.2 Construction Documents.**

ARCHITECT shall cause all Construction Documents to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, the California Education Code; Titles 19, 21 and 24 of the California Code of Regulations; and any requirements of the Division of State ARCHITECT (including structural safety, fire/life safety and access compliance sections), the State Department of Education, the California Department of General Services, local agencies such as Department of Health, Department of Public Works, Department of Transportation, Fire Department, and local utility companies, in effect as of the time the drawings and specifications are prepared or revised. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services. ARCHITECT shall cause the necessary copies of the Construction Documents to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the services described in this Agreement.

## **.3 Americans with Disabilities Act.**

ARCHITECT will use its best professional efforts consistent with the standard of care set forth in this Agreement to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). ARCHITECT shall inform the DISTRICT of its interpretations of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law. Unless ARCHITECT brings such inconsistencies and conflicting interpretations to the attention of the DISTRICT and requests the DISTRICT'S direction on how to proceed, ARCHITECT'S interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of ARCHITECT, and ARCHITECT shall correct all Construction Documents and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. If ARCHITECT brings such inconsistencies and conflicting interpretations to the attention of the DISTRICT and requests the DISTRICT'S direction on how to proceed, ARCHITECT shall be responsible to the DISTRICT pursuant to the indemnification provision of this Agreement.

## **16.3 Schedule of Services**

### **.1 Timely Performance Standard.**

ARCHITECT shall perform all services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, ARCHITECT shall perform its services so as to allow for the full and adequate completion of the Project within the time required by the DISTRICT and within any completion schedules adopted for the Project. ARCHITECT agrees to coordinate with the DISTRICT'S staff, Project Managers, contractors and consultants in the performance of the services, and shall be available to the DISTRICT'S staff, Project Managers, contractors and consultants at all reasonable times. Time is, and shall remain, of the essence.

### **.2 Performance Schedule.**

ARCHITECT shall adhere to the schedule established by the DISTRICT. If the DISTRICT and ARCHITECT cannot mutually agree on a performance schedule, the DISTRICT shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by ARCHITECT, without the DISTRICT'S prior written approval unless

due to events beyond the direct control of the ARCHITECT. If ARCHITECT'S Services are not completed due to circumstances within the control of the ARCHITECT within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the DISTRICT may suffer damage for which ARCHITECT may be responsible pursuant to the indemnification provision of this Agreement.

### **.3 Excusable Delays.**

Any delays in ARCHITECT'S work caused by the following shall be added to the time completion of any ARCHITECT'S obligations: (a) the actions of the DISTRICT or its employees; (b) the actions of those in direct contractual relationship with the DISTRICT; (c) the actions of any governmental agency having jurisdiction over the Project; (d) the actions of any parties not within the reasonable control of ARCHITECT; and (e) any act of God or other unforeseen occurrence not due to any fault or negligence on the part of ARCHITECT. Accordingly, the DISTRICT may compensate the ARCHITECT for additional services, subject to mutual agreement, on account of such delays.

### **.4 Request for Excusable Delay Credit.**

ARCHITECT shall, within five (5) calendar days of the beginning of any excusable delay (unless the DISTRICT grants in writing a further period of time to file such notice before the date of final payment under the Agreement), notify the DISTRICT in writing of the causes of delay. The DISTRICT will ascertain the facts and the extent of the delay, and grant an extension of time for completing the services when, in its sole judgment, the findings of fact justify such an extension. The DISTRICT'S findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the services affected by the delay and shall not apply to other portions of the services not so affected. ARCHITECT'S sole remedy for extensions of time shall be an extension of the performance time at no cost to the DISTRICT. Should ARCHITECT make an application for an extension of time, ARCHITECT shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

## **ARTICLE 17 - NOTICES**

All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal services or (b) by U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or if mailed on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this Agreement, the addresses of the parties are as follows:

#### **DISTRICT:**

LYNH RUST  
Executive Director Contracts and Purchasing  
Capistrano Unified School District  
33122 Valle Road  
San Juan Capistrano, CA 92675

#### **ARCHITECT:**

ROBERT J. HENSLEY  
Architect, AIA, LEED™ AP, Chairman, Principal  
WLC Architects, Inc.  
8163 Rochester Avenue, Suite 100  
Rancho Cucamonga, CA 91730

Each Party shall promptly notify the other Party of any changes to its address, telephone number, or any other contact information.

## **ARTICLE 18 - MISCELLANEOUS PROVISIONS**

### **18.1 Successors, Assigns, and Contractual Relationships of ARCHITECT**

DISTRICT and ARCHITECT, respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to covenants of this Agreement. Before ARCHITECT makes any change in the name or legal nature of ARCHITECT'S entity, ARCHITECT shall first notify the DISTRICT and cooperate with the DISTRICT in making such changes as the DISTRICT may request in this Agreement. ARCHITECT shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement or of its rights, title or interest in or to the same or any part thereof, without the DISTRICT'S prior written consent and ARCHITECT shall not assign, by power of attorney or otherwise, any of the monies to become due and payable under this Agreement, unless by and with the like consent signified in like manner. If ARCHITECT desires to subcontract any part of this Agreement, the DISTRICT must first consent in writing and ARCHITECT shall be fully responsible to the DISTRICT for acts and omissions of any subcontractor and of persons either directly or indirectly employed by any subcontractor, as it is for acts and omissions of persons directly employed by ARCHITECT. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and the DISTRICT, nor shall this Agreement be construed to be for the benefit of any subcontractor.

## **18.2 Exhibits**

All Exhibits referred to are incorporated by reference herein and made an integrated part hereof.

## **18.3 Choice of Law and Forum**

This Agreement shall be construed and interpreted in accordance with the laws, except such laws as may be denominated choice of law rules, of California. Any action to enforce or interpret this Agreement may be brought only in the courts of California and then in the County of Orange.

## **18.4 Survival**

Unless otherwise specifically provided, the covenants of this Agreement shall survive completion and acceptance of the Project by DISTRICT and shall continue until fulfilled.

## **18.5 Captions, Index**

The captions and the index of this Agreement shall have no effect on its interpretation.

## **18.6 Singular and Plural**

Where required by the context of this Agreement, the singular shall include the plural and vice-versa.

## **18.7 Severability**

The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

## **18.8 Work Days**

All reference to Work Days in this Agreement refers to calendar days excluding Saturdays, Sundays and holidays.

## **18.9 Registered Architects and Engineers**

ARCHITECT agrees that all architectural and engineering Work under this Agreement shall be done by, or shall be reviewed and approved by, Architects and Engineers registered to practice as such by the State of California and qualified to do business in California. All drawings shall be signed by a principal of the firm who is registered by the State of California as a licensed professional.

**18.10 Nondiscrimination**

No discrimination shall be made by ARCHITECT in the employment of persons to Work under this Agreement because of race, color, national origin, sex, age, creed, religion, physical handicap, marital status, sexual orientation, or political affiliation of such person.

**18.11 Independent Contractor**

ARCHITECT is an independent contractor and is not a joint venture, partner, agent or employee of DISTRICT.

**18.12 Use of Name**

ARCHITECT shall not use any name, trademark or service mark of DISTRICT without first having received DISTRICT'S written consent to such use.

**18.13 Compliance with the Laws**

ARCHITECT agrees comply with all applicable laws and regulations.

**18.14 Amendment, Waiver**

None of the terms, conditions, and provisions, of this Agreement may be amended, changed, modified, waived, canceled, or altered, in any way, orally or otherwise, except: (1) in writing; (2) signed by the parties hereto; (3) specifying such amendment, change, modification, waiver, cancellation, or alteration; and most importantly, (4) approved by the DISTRICT'S Governing Board by way of a formal Resolution. A waiver of any breach of this Agreement shall not be deemed a waiver of any preceding or subsequent breach, whether similar or dissimilar. The failure of the DISTRICT in any one or more instances to insist upon strict performance of any of the terms of this Agreement or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

**18.15 Entire Agreement**

This Agreement, together with the Exhibits hereto, and any later modifications as set forth in paragraph 18/14, is intended to be a fully integrated agreement and contains all the agreements of the parties hereto. It supersedes all other written or oral agreements. The parties acknowledge that at all times in the negotiation and execution of this Agreement that they have each been represented by their own independently selected legal counsel.

**18.16 Attorney Fees**

**In any action brought by either party regarding this Agreement, the parties shall bear their own attorney's fees and costs.**

**18.17 Consent to Subcontractors**

The DISTRICT'S consent to any of ARCHITECT'S consultants and/or sub-consultants under this Agreement shall not in any way relieve ARCHITECT of any obligations under this Agreement, and no such consent shall be deemed to waive any provision of this Agreement.

**18.18 Architect Employees**

ARCHITECT shall at all times enforce appropriate discipline and good order among its employees and shall not employ or work any unfit person or anyone not skilled in providing the services required under this Agreement. It shall be the responsibility of ARCHITECT to ensure compliance with this section. Any person in the employ of ARCHITECT whom the DISTRICT may deem incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from providing services under this Agreement and shall not again provide services except with the

DISTRICT'S written consent. ARCHITECT shall ensure that persons who perform services on District's property, including without limitation college campuses, have not been convicted of any felony, have not been convicted of any controlled substance offense, and have not been convicted of any sex offense, as those terms are defined by Education Code sections 87008-87010, inclusive.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first given above.

**DISTRICT:**

CAPISTRANO UNIFIED SCHOOL DISTRICT

33122 Valle Rd

San Juan Capistrano, CA 92675

Telephone #: (949) 234-9436

BY: \_\_\_\_\_

Lynh Rust

Executive Director Contracts and Purchasing

**ARCHITECT:**

BY: \_\_\_\_\_

ROBERT J. HENSLEY

Architect, AIA

LEED™AP

Chairman, Principal



## **EXHIBIT "A"**

May 4, 2016

Mr. Ryan Carter  
Director, Construction  
Capistrano Unified School District  
33122 Valle Road  
San Juan Capistrano, CA 92675-4859

Re: Architectural / Engineering Fee Proposal  
Shorecliff Middle School Library Demolition and New AC Pavement  
Project 1614500.06

Dear Ryan:

WLC Architects is pleased to submit a proposal to provide architectural and engineering and extended construction administration services for the project listed above.

### **Scope of Work:**

WLC Architects will assist the District with the following:

1. Field verify existing conditions.
2. Prepare Construction Documents.
3. Prepare Bid Documents.
4. Provide extended construction administration.

### **Excluded Services:**

1. Plan Check Fees
2. Fire Hydrant Flow Testing
3. Geotechnical Investigations
4. Hazardous Material Studies and Reports
5. SWPPP and WQMD Studies

### **Contract Format:**

Extension of the District's Owner Architect Agreement

Mr. Ryan Carter  
Architectural/Engineering Fee Proposal  
Shorecliff Middle School Library Demolition and New AC Pavement  
Project 1614500.06  
May 4, 2016  
Page 2

**Proposed Compensation:**

WLC proposes to provide the architectural services described above for the Shorecliff Middle School Library Demolition and New AC Pavement project for a stipulated sum of **\$9,440.00**

FEE SCHEDULE			
Task Description	Staff Member/Hourly Rate		Extended Fee
Site Investigation Construction Document Bidding and Negotiation Construction Administration	Associate	(8) hours at \$200.00	\$ 1,600.00
	Project Manager	(24) hours at \$150.00	3,600.00
	Technical Resources	(8) hours at \$80.00	640.00
	Civil Engineer	Lump Sum	3,600.00
<b>Total Fixed Fee</b>			<b>\$ 9,440.00</b>

**Reimbursable Expenses:**

Reimbursables will be limited to bid sets.

**Project Schedule:**

To be determined.

I hope this proposal meets with the District's needs at this time. If this proposal is acceptable, we would propose to invoice for this effort against the project listed above.

Sincerely,



ROBERT J. HENSLEY  
Architect, AIA  
LEED™ AP  
Chairman, Principal

RJH:BO:hb/P01614500x1-prp

Attachments: Epic Engineers Civil Proposal Dated April 25, 2016

cc: John G. Forney, Executive Director Facilities/Maintenance and Operations, Capistrano Unified School District  
Bruce Ou, Architect, AIA, LEED™ AP, Associate, WLC Architects, Inc.  
Haryadi Pranata, LEED™ AP, Project Manager, WLC Architects, Inc.  
Nanette Piccini, Director, Accounting, Associate, WLC Architects, Inc.



# EPIC ENGINEERS

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CIVIL ENGINEERING

LAND SURVEYING

April 25, 2016

**Bruce Ou**  
**WLC Architects**  
8163 Rochester Avenue, Suite 100  
Rancho Cucamonga CA 91730-0729

Re: **Proposal for Civil Engineering Services for  
Capistrano USD Shorecliffs MS  
Library Demo**

Dear Bruce,

In accordance with your request we are pleased to provide this proposal for Civil Engineering services on the above-referenced project. The scope of services was developed utilizing the field topography, done by Guida Surveying, Inc. provided on April 18, 2016. The scope is defined as follows.

## **SCOPE OF SERVICES:**

1. **Demolition Plan:** Provide Demolition Plan at a scale of 1" = 20' for two (2) portable library buildings
2. **Precise Grading Plan:** Provide Precise Grading Plan at a scale of 1" = 20' for AC Paving at demolished portable building area, and hardscape features as required for on-site improvements.
3. **Construction Administration:** Provide services for bidding and construction activities including clarifications and additional information if required.

## **FEE FOR SERVICES:**

Scope of services 1- 3 Inclusive:

\$3,600.00

**RATE SCHEDULE:**

Rate schedule for additional work as needed:

\$ 50.00 per hour for Clerical Services

\$ 95.00 per hour for Engineering Designer

\$145.00 per hour for Civil Engineer

\$250.00 per hour for Survey crew

**SPECIFIC EXCLUSIONS:**

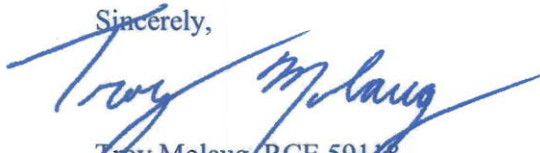
1. Field Topo
2. Utility Research
3. As-Built Plans
4. Utility Plans
5. Storm drain plans.
6. SWPPP and WQMP Reports.
7. Blueprints, mylars, and report copies.

**INSURANCE:**

Our insurance carrier will forward a certificate of insurance naming WLC Architects as additionally insured upon request.

If you have any additional needs or questions regarding this proposal please call us at your convenience. We look forward to being a part of your team and will make every effort to provide you with the highest quality of Civil Engineering Services.

Sincerely,



Troy Molaug, RCE 59118  
President Epic Engineers

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Approved By:

---

Date:





## **EXHIBIT “B”**

### **ARCHITECT’S PROJECT PERSONNEL**

PRINCIPAL: Robert J. Hensley

PROJECT MANAGER: Harry Pranata

PROJECT DESIGN ARCHITECT: Bruce Ou

PROJECT INTERIOR DESIGNER: CONSTRUCTION DOCUMENT REFINEMENT PERSONNEL (list as many as assigned):  
Project Coordinator:  
Production Support:  
Quality Review:

### **Exhibit B** Architect’s Project Personnel



## **EXHIBIT "C"**

### **ARCHITECT'S CONSULTANTS AND THEIR KEY PERSONNEL**

FIRM NAME: WLC Architects, Inc.  
8163 Rochester Avenue, Suite 100  
Rancho Cucamonga, CA 91730

CIVIL ENGINEERING: Epic Engineers  
101 E. Redlands Blvd., Ste. 146  
Redlands, CA 92374

STRUCTURAL ENGINEERING: None

MECHANICAL ENGINEERING: None

ELECTRICAL ENGINEERING: None

COST ESTIMATING: None

LANDSCAPING DESIGN: None

OTHER CONSULTANTS: None

CONSULTANT KEY PERSONNEL: Key personnel for each consultant listed above will be provided.

Key consultants are listed for each firm above. The identified consultant personnel will be maintained on the project during all phases of service to the DISTRICT.

### **Exhibit C**

Architect's Consultants and Their Key Personnel



## **EXHIBIT “D”**

### **PROJECT SCHEDULE**

Programming/Planning Phase:  
Schematic Design Phase:

Design Development Phase:  
Construction Documents Phase:

Submit Construction Documents to DSA:

DSA Review and Approval:

Bidding and Award (includes Board approval time) Phase:

Construction Administration Phase:  
Post Construction Evaluation Phase:

### **Exhibit D Design/Construction Schedule**



**EXHIBIT “E”**  
**CONSTRUCTION BUDGET**

The construction budget is N/A

The project budget is N/A

**Exhibit E**  
**Construction Budget**



## **EXHIBIT "F"**

### **ARCHITECT'S COMPENSATION**

#### **1. BASIC SERVICES**

The Architect's shall be compensated for Basic Services furnished for the Project as follows.

**Construction Budget:**

Fee shall be delineated as follows: \$ 9,400.00

#### **2. ADDITIONAL SERVICES**

The Architect's fee schedule for additional hourly services as approved by the DISTRICT in advance of performance of them is included in Exhibit G.



**Exhibit F**  
**Architect's Fee Schedule—Basic Services**



## EXHIBIT “G”

### ARCHITECT’S FEE SCHEDULE - Additional Services

#### Hourly rate for additional services:

In accordance with the terms of our contract, our hourly rates for services provided as of January 1, 2015, shall be as follows:

Principals of Firm.....	\$220.00/hr
Associate Principal/Director.....	\$200.00/hr
Associate/Coordinator .....	\$200.00/hr
Senior Project Architect .....	\$180.00/hr
Senior Project Manager .....	\$180.00/hr
Project Architect.....	\$150.00/hr
Project Manager .....	\$150.00/hr
Technical Level I.....	\$100.00/hr
Technical Level II .....	\$100.00/hr
Technical Support .....	\$80.00/hr

### Exhibit G Architect’s Fee – Additional Services



## EXHIBIT "H"

### ARCHITECT'S INVOICE

Invoices shall be sent to the attention of:  
 John Forney  
 Executive Director, Facilities/Maintenance and Operations  
 Capistrano Unified School District  
 33122 Valle Road  
 San Juan Capistrano, CA 92675

Invoice must be in the following format:

<b>ORIGINAL CONTRACT</b>	<b>\$</b>
PO No.	
Additional Contract Amount	<b>\$</b>
PO No.	
<b>TOTAL CONTRACT AMOUNT</b>	<b>\$</b>
Previously Invoiced Amount	<b>\$</b>
Current Invoice No. _____	<b>\$</b>
<b>FUNDS REMAINING ON CONTRACT</b>	<b>\$</b>

### Exhibit H Architect's Invoice Form