**Project**: Middle School Exterior Athletic

**Project No**.:
**Program ID No**.: Measure M

# AGREEMENT FOR

# ARCHITECTURAL SERVICES

# FOR

# SAN LEANDRO UNIFIED SCHOOL DISTRICT

**Project**: Middle School Exterior Athletic

**Project No**.:
**Program ID No**.: Measure M

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This "AGREEMENT" made and entered into this 7th day of December, 2011 by and between San Leandro Unified School District, a political subdivision of the State of California, herein called "District" and

*Architect: Spencer Associates, Inc.*
*Address: 2100 Geng Rd, Ste 100*
*Palo Alto, CA 94303*
*Principal in Charge Name: Steve Bowers*
*License No: #C-8264*
*Telephone No.: 650-855-8850*
*Fax No.: 650-855-8855*
*E-mail address: steveb@spencerassoc.com*
*Taxpayer ID Fed # 94-3353292*

herein called "Architect",

WHEREAS, District proposes to undertake the construction of an improvement project herein described which requires the services of a duly qualified and licensed architect, and

WHEREAS, Architect represents that Architect is licensed to practice architecture in the State of California and represents that it possesses the requisite professional skill, experience, and resources to provide the services required by District, and

NOW, THEREFORE, District retains Architect to perform, and Architect agrees and undertakes to provide to District, under the terms and conditions of this Agreement, the Services for the complete design of the Project and related construction phase services as specified in this Agreement and related incidental services .

ARTICLE 1. DESCRIPTION OF PROJECT

1.1 Architectural services shall be provided for the project known as the Middle School Exterior Athletic Improvements and as further described in Exhibit A, Project Description and Schedule, which is hereby incorporated by reference (hereinafter Project). The Project is located at various sites in San Leandro, CA 94577.

1.3 Schedule

1.3.1 Time is of the essence with respect to the performance of all provisions of this

Agreement. The parties agree and acknowledge that delay is one of the greatest causes of waste and cost overruns in any construction program. The Architect and District shall act diligently in anticipating and performing its required tasks in a manner so as to not unreasonably delay completing of the Project.

1.3.2 Included in Exhibit A is a Project Schedule indicating durations and sequences applicable for performance of all services required under this Agreement, and if indicated, milestone dates for completion of key Project tasks. Architect shall, on a monthly basis, report to District on actions required to meet milestone schedule dates, progress on such actions, and recommend modifications or refinements to the Project Schedule.

1.4 Program (if applicable)

Exhibit _n/a_, Program, is a description of the District's current program direction for the Project (Program). The Program is subject to change. The District may revise the Program as necessary during the course of design.

ARTICLE 2. TERM OF AGREEMENT

The term of the Agreement shall be from the Effective Date and concludes upon completion of services under the Agreement, unless terminated sooner. If the District has not issued Notice to Proceed by or before twelve (12) months from the Effective Date, this Agreement is void.

ARTICLE 3. DEFINITIONS

The following terms as used in this Agreement are defined as follows:

*Additional Services:* The services and/or the associated expenses that the District, in writing, authorizes the Architect to perform or incur, and are in addition to the services included within Basic Services. Additional Services shall not include services and/or associated expenses that are the result of errors or omissions by the Architect.

*Appropriate Authorities*: Any private, local, municipal, county, state, regional or federal authority having jurisdiction or regulatory authority of any kind over the Project. This term includes those agencies and authorities which may require information or the filing of plans, drawings, specifications, permits, etc., in connection with the Project such as: the State Fire Marshal, Division of the State Architect, California Department of Education, Health Department, or any other regulatory agency, or any other entity that the District may designate.

*Architect*: The Architect serving under this Agreement with the District as the prime consultant for the design of the Project, whether providing architectural, engineering or other professional design

services. Reference to Architect herein shall also include Architect's, principals, owners, employees, subconsultants and agents, and their principals, owners, employees and agents, as appropriate.

*As Built Record Drawings*: The working drawings and project specifications (Div. 2 through Div. 16) as prepared under Construction Documents that have been revised to incorporate changes to the Project subsequent to the issue of the bidding documents for the project. Changes to be incorporated shall be based on information provided by the Contractor and include, but not be limited to, addenda, change orders, construction alterations and other changes to the physical components of the project. Changes shall be incorporated into the appropriate original drawing. Simple attachments to the document set are not acceptable.

*Authorization*: The written direction of the District properly executed by the District's Representative, and, where the direction increases or decreases the compensation to be paid to Architect under this Agreement, a written change order approved and specifically funded by the Board.

*Basic Services*: The services provided by the Architect as described in Article 6.0 below, and Exhibit A attached, that the Architect is required to perform. The fee for Basic Services is defined in Article 5.1 and Exhibit B, and includes normal project costs, including (a) phone calls, faxes, mail, express mail, courier delivery or overnight delivery service charges, or other communications charges between members of Architect's design team, regardless of location; regional phone calls and faxes for all area codes having any geographical land area within 100 miles of District's administrative offices even though its outlying boundary exceeds the 100 mile limitation; (b) Internet gateways, FTP sites or data file transfer or research services; (c) travel within 100 mile radius of District's administrative offices; travel outside 100 mile radius of District's administrative offices unless approved in writing in advance by the District; (d) in-house coordination materials among Architect's team and sub-consultants, including photocopy and drawing materials, messenger services; (e) presentation material and reproductions as specifically included in Basic Services; (f) all CADD and other computer-related time and costs; (g) food, beverage, and entertainment charges of any kind unless approved in writing in advance by the District.

*Bid Alternate*: Certain Work as defined in the Bidding Documents that may be added to or deducted from the base bid amount if the District decides to accept a corresponding change in either the amount of Work to be completed; the Contract Documents; or in the products, materials, equipment, systems, or installation methods described on the Contract Documents.

*Bid Package*: Separate and complete Contract Documents prepared for a specific portion of Work to be bid independently.

*Board of Education or Board*: The governing board of the San Leandro Unified School District. The Board retains sole authority to bind the District under this Agreement, and any modification

thereto, which authority shall not be delegated.

*Contract Documents*: The Construction Contract and all documents designated in the Construction Contract as being part of the Construction Contract, including Construction Documents.

*Contractor*: The appropriately licensed person, firm, or entity awarded the Construction Contract, and responsible for performing the Work under the Construction Contract

*Construction Budget*: District's budgeted funds available to pay for Construction Cost, including all on and offsite improvements. The Construction Budget represents that maximum amount of funds available to pay the Contractor for completing all Work called for by the Construction Contract. The Construction Budget for the Project is specified in Exhibit A.

*Construction Contract*: The contract between the District and the Contractor for construction of the Project.

*Construction Cost*: The actual amount, including authorized change orders, paid by the District to Contractor(s) for site work and building construction for the Project as designed or specified by the Architect pursuant to this Agreement, including all the cost of labor, material and equipment designed, specified, selected or specially provided for by the Architect, and the Contractor's profit and overhead, including insurance and construction bonds. However, it does not include compensation of the Architect and its consultants, District's project or construction management costs, land value or acquisition cost, cost of rights of way improvements, financing or other costs typically referred to as "soft costs" which remain the responsibility of the District.

*Construction Documents*: The working drawings, specifications, general conditions and special and/or supplementary general conditions, information for bidders, accepted bid proposals, addenda, change orders and submittals developed to set forth in detail aspects of design, function and construction of the Project and will be used for estimating the cost of the Project, securing bids for constructing the Project, and directing Contractor in construction of the Project. The Construction Documents shall be, complete, coordinated, and accurate, and shall give such directions as will enable any competent contractor to carry them out

*Construction Manager* (*CM*): The construction consultant retained directly by the District to assist the District in the areas of oversight and management of the Contractor, the bid process, estimating, value engineering, coordinating inspections, and negotiation of changes to the Construction Contract, and the like.

*CSI*: Construction Specification Institute

*Deliverables*: The required submissions of design or construction documents by the Architect to the

District, as specified in Exhibit B.

*DSA*: Division of State Architect, Department of General Services, State of California.

*Direct Cost for Services*: Either the direct salaries paid by the Architect for the services of employees with respect to the project or the direct salaries paid by the Architect's consultants for the services of their employees with respect to the Project, including the portion of the cost of the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, vacations, sick leave, holidays, pensions, and similar contributions and benefits; and overhead expenses.

*District Representative*: District's Superintendent or any of the individuals designated in Exhibit D, as may be changed from time to time upon written notice to Architect, who shall be the Architect's point of contact with the District. The District Representative shall represent the District in all matters pertaining to this Agreement. The Architect expressly acknowledges that all other District employees or agents are not authorized to order, direct, or approve Architect's performance. The District Representative does not have any authority to revise the District's construction program, adjust the Project Budget, modify this Agreement, approve changes to the project schedule, authorize performance of Additional Services, or to commit or bind the District to any obligation to pay any sum of money or additional compensation beyond the Fee in this Agreement; these powers are retained exclusively by the Board of Education. Notwithstanding the forgoing, the District Representative may execute any document needed to carry out the Board's decisions. District shall have the right, upon written notice to Architect, to replace, or add additional persons to act as the District Representative.

*Effective Date*. The Effective Date is the later of the date upon which the Board of Education finally approves or ratifies this Agreement and approves funding thereof, or the date the last party executed this Agreement.

*Estimated Construction Cost*: The Architect's current estimate of Construction Cost with respect to each phase of document development. Estimates prepared by the Architect represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the District have any control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding or market conditions. It is recognized the Architect does not guarantee that bids will not vary from the Estimated Construction Cost. This, however, is not intended to discharge the Architect from any obligations to design or redesign to the Construction Budget. The District may promulgate standard instructions necessary to prepare cost estimates and related documents required for submittals at each phase of the design to establish uniform formats and quality control that are acceptable to funding sources which Architect agrees to apply.

*Principal*: Individual authorized and empowered by the Architect to represent it and to act as its signatory to agreements for the Project, and to make decisions and commit the resources of the Architect's entire design team. The Principal is responsible for directing, coordinating and controlling the Architect's team effort to successfully perform the services called for under this Agreement.

*Program Manager*: District's consultant retained to act as District's agent in all aspects of the Bond Program.

*Request for Proposals or RFP* The Request for Proposals for professional design services issued by the District in connection with the Project, and the Architect's proposal (Proposal) to provide the requested services. All requirements of the RFP and the representations in the Proposal that are not in conflict with provisions of the Agreement are hereby incorporated by reference and made an integral part of this Agreement as though fully set forth herein. With respect to any conflict or ambiguity between this Agreement and the RFP or the Proposal, this Agreement shall control. Where the conflict or ambiguity relates to the services to be provided, the Architect shall provide the most comprehensive services and shall perform at a professional standard of care.

*Work*: The construction and services to be performed by the Contractor, including, all other labor, materials, equipment and services provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

## ARTICLE 4. STANDARD OF PERFORMANCE

Architect shall perform all services under this Agreement in a manner consistent with the generally accepted standards of professional practice in the design and construction administration of school construction or modernization projects of similar size, scope, and complexity in the San Francisco Bay.

## ARTICLE 5. COMPENSATION

No charge shall be incurred under this Agreement nor shall any payment become due the Architect until the Deliverables required under this Agreement have been completed and are received from the Architect and accepted by the District, or until the District accepts the services covered under any pay request as having been satisfactorily performed.

Architect acknowledges that this Agreement is subject to the fiscal requirements of state contracting laws and District's policies, and that no payment shall be due until and unless the Board has appropriated funding for this Agreement. Architect shall have no obligation to perform services under this Agreement until the District has made the necessary funding appropriations. Architect

further assumes the risk that the Board does not appropriate funding for this Agreement. The District will provide the Architect written notification that the necessary funding appropriations have been made or denied within ten (10) days of such action.

District shall compensate Architect as follows:

5.1 Fee for Basic Services

Upon Architect's completion of all Basic Services, as defined in Article 3, Architect shall be paid a Lump Sum Fixed Fee in the amount of **$235,000.00,** which shall include all subconsultant fees and normal costs of architectural services, including all phone calls, faxes, in-house and subconsultant coordination, presentation, printing, specified reprographics, and the like, and excludes only those costs for Additional Services and amounts for Reimbursable Expenses as set forth below.

The Lump Sum Fixed Fee for Basic Services is based on the anticipated level of Architect's effort for the Project. Architect will not be entitled to an adjustment in its compensation under this Agreement when the bids or Construction Cost become known. However, in the event that all or a portion of the services to be provided under this Agreement are terminated, deleted, or suspended pursuant to Article 14, the Lump Sum Fixed Fee shall be reduced by an agreed amount to reflect the reduced scope of services to be performed by the Architect. If the scope of the program for the Project, or the scope of Architect's services are modified, Architect's compensation may be increased accordingly provided, however, that any increase in compensation shall be made by written amendment to this Agreement, executed by the parties and approved by affirmative vote of the Board in the manner that this Agreement has been executed and approved before any such charges are incurred.

5.2 Fee for Additional Services

5.2.1 The District shall not compensate the Architect for Additional Services unless such services are authorized in writing by the Board prior to performance by Architect. Only the District Representative may communicate a request or direction to Architect to perform Additional Services; however, District Representative has no authority to bind the District to pay for Additional Services until and unless the Board votes affirmatively to approve such request for Additional Services and authorized the District Representative to execute the appropriate documents. Additional Services shall be incorporated into this Agreement by written modification approved and executed in the same manner as this Agreement.

5.2.2 If Architect believes it has been asked or directed to perform services not included within Basic Services, Architect must, within five business days, notify District in writing that Architect intends to request compensation for Additional Services, and shall include an estimate of its fees for

providing such service. If Architect is unable to provide an estimate of fees within this time frame, Architect may propose a reasonable alternative deadline for providing an estimate to the District. Failure to provide such notice and fee estimate for such services, or failure of Architect to verify the service has been properly authorized, shall be deemed Architect's agreement that such requested service is included within Basic Services, and constitutes Architect's waiver of any right to compensation for the requested service as Additional Services, and Architect shall not be entitled to compensation for such unauthorized services.

5.2.3 For all Additional Services, the parties are to agree upon the services to be performed and a fee, including associated allowed expenses, in writing prior to Architect's performance of such services. Architect shall have no liability for damages due to a delay in obtaining proper District authorization and/or execution of the writing authorizing Additional Services, where Architect is not at fault for such delay in obtaining authorization. The fee for Additional Services may be a flat amount, or based on Architect's standard hourly rates, as set forth in Exhibit C, Compensation, Reimbursable Expenses and Schedule of Hourly Billing Rates. The fee for Additional Services shall also include compensation for necessary subconsultants and allowable expenses associated with the added services. For Additional Services provided on an hourly basis, Architect shall be allowed a mark-up of 1.1 times the subconsultants' invoice to the Architect, and a mark-up of 1.1. times Architect's actual allowable expenses.

5.2.4 Architect shall monitor aggregate billings for Additional Services which shall not exceed the Cap for Additional Service as specified in Exhibit C or amount authorized in writing by the Board.

5.3 Reimbursable Expenses

5.3.1. The fee for Basic Services includes compensation for anticipated project-related expenditures, including the cost of producing Deliverables. District shall reimburse Architect for the types of expenses described herein that are not included in Basic Services that are necessarily incurred by Architect in furtherance of the Project up to the allowance for Reimbursable Expenses established in Exhibit C. Reimbursable Expenses shall be compensated at 1.10 times the actual cost incurred by the Architect, but are limited only to the following types of expenses:

5.3.1.1 Expenses for authorized travel outside of the nine contiguous San Francisco Bay Area counties (San Francisco, Marin, Sonoma, Napa, Solano, Contra Costa, Alameda, Santa Clara and San Mateo) or as otherwise agreed and set forth in writing in Exhibit C hereto.

5.3.1.2 Reasonable expense of additional print sets requested by the District beyond the quantities anticipated and included in Basic Services.

5.3.1.3 Long distance telephone expense related to the Project.

5.3.1.4 Actual and necessary agency or permit fees, if any, paid by Architect on behalf of District in connection with the Project.

5.3.1.5 Renderings, computer animated presentations and presentation models, in excess of what is included as Deliverables under Basic Services, that are requested and approved by the District in advance are reimbursable. Such documents prepared without prior written approval by the District shall be considered Basic Service.

5.3.2 Architect is responsible for tracking the cumulative amount of Reimbursable Expenses, and shall not exceed the allowance for Reimbursable Expenses in Exhibit C without prior written authorization from the District.

5.3.3 The District will not compensate Architect for expenses not specifically enumerated and identified in this Article.

5.3.4 The District will not compensate Architect for expenses not specifically enumerated or identified in Article 5 or Exhibit C. Such excluded expenses which are considered incidental to Architect's performance of this Agreement include but are not limited to home office overhead expenses, field office overhead expenses, the cost of doing business in the State of California, business taxes, overtime charges, meals and dining, clerical support, and other normal business expenses associated with operating a design firm.

5.4 Timing of Payments

Payment to Architect shall be made in the usual course of District business after presentation by Architect of an invoice approved by District Representative for services performed, method of computation of amount payable, and amount payable. District shall endeavor to pay Architect all undisputed charges within thirty days from receipt of an approved invoice. Nonpayment of undisputed amounts exceeding thirty days after receipt of Architect's invoice is subject to a 1% per month interest charge which shall be Architect's sole remedy for late or non-payment of undisputed charges. Architect shall not be entitled to suspend performance for late or non-payment by District.

5.4.1 Payment for Basic Services

Architect will submit invoices for work in progress no more than once each month for Basic Services in proportion to the Architect's determination of the percentage of design services that have been satisfactorily performed within each phase, up to the Percentage of Total Fees for Basic Services set forth in the following table:

| PHASE | PERCENTAGE OF TOTAL FEES FOR BASIC SERVICES PER PHASE | CUMULATIVE PERCENTAGE OF TOTAL FEES FOR BASIC SERVICES |
|---|---|---|
| Programming phase | 5 | 5 |
| Schematic design phase | 10 | 15 |
| Design development phase | 15 | 30 |
| Construction documents phase | 35 | 65 |
| DSA approval | 5 | 70 |
| Bid phase | 2.5 | 72.5 |
| Construction phase | 25 | 97.5 |
| Closeout | 2.5 | 100 |

Payment to Architect for Basic Services during the Construction Phase will be made monthly in proportion to the percentage of completion of the Work by the Contractor according to the following schedule:

25% construction Work complete, up to 35% construction phase fee

50% construction Work complete, up to 65% construction phase fee

75% construction Work complete, up to 80% construction phase fee

Substantial completion of construction, up to 95% construction phase fee

Final acceptance of construction Work, up to 100% construction phase fee

5.4.2 Payment for Additional Services.

5.4.2.1 Architect shall be paid only for Additional Services which have been authorized in writing by the District in the advance of the Architect's performance of the Additional Services.

5.4.2.2 Architect will submit invoices for Additional Services which are still in progress no more than once each month. Fees are to be invoiced in proportion to the degree of completion of such Additional Services if the fee for such service is a fixed fee, or in such other manner as the parties shall specify in writing when such Additional Services are agreed upon.

5.4.3 Payment for Reimbursable Expenses

5.4.3.1 Architect will submit invoices for Reimbursable Expenses, no more than once each month, up to a maximum of eighty percent of the Allowance for Reimbursable Expenses established in Exhibit C through completion of the Construction Documents Phase. The final twenty percent of the Allowance for Reimbursable Expenses shall be allowed in proportion to the percentage completion of construction.

5.4.4 Information to be Provided with Invoices:

5.4.4.1 Regardless of whether compensation is to be for a Lump Sum Fixed Fee or otherwise, all invoices submitted to the District under this Agreement shall identify the percentage of completion and the amount of the payment for each major work element, and shall be in accordance with District's form of invoice currently in use, if any.

5.4.4.2 The District may request the Architect to provide, as part of Basic Services and at no additional cost to the District, copies of time records for all employees of Architect and its subconsultants indicating the number of hours worked during the period, and the appropriate billing rate regardless of whether the invoice is being paid on a fixed or hourly basis. Accordingly, Architect is required to maintain such records.

5.4.4.3 If work is performed on an hourly basis, copies of certified time records shall be submitted for all employees of Architect and its subconsultants indicating the number of hours worked during the period, the appropriate billing rate as set forth in Exhibit C, and detailed time summaries that are broken down by time keeper, task and time expended.

5.4.4.4 For Reimbursable Expenses, Architect shall present an itemized statement of actual expenses

incurred with a detailed cost breakout and copies of supporting invoices and original receipts.

5.4.5 Withholding of Payment

5.4.5.1 After written notice to Architect, District may reasonably withhold payment to the Architect pending resolution, in an amount equal to 150% of questioned, disputed or disapproved amounts, or for work not satisfactorily completed or delivered as required by this Agreement or for amounts incurred by the District in connection with the Architect's negligent errors or omissions.

5.4.5.2 Such withholding shall not constitute a final determination or waiver of any rights or liabilities of District or Architect with respect to responsibility for such loss, which rights and liabilities shall remain subject to determination in accordance with this Agreement. Architect shall continue performance of its services pending final determination of disputes related to such withholding.

5.4.5.3 Payments for other undisputed amounts due on the same or other invoices shall not be unreasonably withheld or delayed.

5.4.5.4 No deductions shall be made to the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to the Contractor, or the cost of changes in the work other than those for which the Architect is responsible. Nothing in this Article 5.4.5.4 is intended to affect the rights or obligations of either party under Article 18 which is titled "Dispute Resolution."

5.4.6 Disallowance of Payment

If the Architect claims or receives payment from the District, which is later disallowed by the District, the Architect shall promptly refund the disallowed amount to the District upon District's request. At its option the District may offset the amount disallowed from any payment due or to become due to the Architect.

5.4.7 Payment Not Acceptance

Payment by District does not imply acceptance of Architect's work and shall not lessen the liability of the Architect to correct unsatisfactory work although the unsatisfactory nature of such work may or may not have been apparent or detected at the time such payment was made.

5.4.8 Suspension of Work

If the Project is suspended for more than one hundred eighty calendar days or abandoned in whole or in part, Architect shall be compensated for services satisfactorily performed prior to receipt of written

notice from the District of such suspension or abandonment pursuant to Article 14. If the Project is resumed after being suspended for more than 180 days, Architect's compensation of the remainder of services to be performed under this Agreement shall be subject to renegotiation.

ARTICLE 6. BASIC SERVICES TO BE RENDERED BY ARCHITECT

The Architect shall perform as Basic Services all necessary architectural, engineering and other consulting services as necessary and consistent with Article 6.1.1 to completely and comprehensively design the Project, except for services specifically designated herein as Additional Services. Performance of Basic Services is included in the fee payable by District to the Architect. Architect shall perform and maintain an active role during the Project. Architect must adhere to the Project Schedule as shown in Exhibit A and the Construction Budget.

Basic Services shall include, but are not limited to, the services described and/or identified in the Task and Responsibilities (Exhibit B) and the RFP, and shall include the following:

6.1 Project Staffing, Designation of Key Employees

District and Architect agree that the professional services under this Agreement require adequate staffing and continuity of qualified people.

6.1.1 Architect shall maintain an adequate staff to provide necessary and incidental services called for under this Agreement. Consistent with Architect's response to the RFP for this Agreement, Architect shall employ personnel and/or subcontract with subconsultant firms as may be necessary or required including an Architect, Landscape Architect, Engineers for the structural, mechanical, electrical, plumbing, and civil portions including off-site improvements of the Project, Cost Estimator, CHPS Coordinator, Energy Management & Building Automation Coordinator, other special designers and services for fire protection and life safety, acoustical, lighting, specifications, security, computer infrastructure, and disabled access, and others as maybe necessary for complete design of the Project; all to be licensed by the State of California, if licensing is required by law. Architect's staffing decisions shall be subject to approval by the District.

6.1.2 Unless specifically agreed to by the District elsewhere in this Agreement or in writing as Additional Services, all fees and costs attributable to Architect's employees or subconsultant firms are included in the fee for Basic Services.

6.1.3 Prior to execution of this Agreement, the Architect shall submit for the District's approval a list of the names of designated Key Employees, including Principal-in-Charge, Project Manager, Architect of Record, and Engineers of Record proposed for the Project, who

shall serve in those roles for the duration of the Project so long as their respective performances continue to be acceptable to the District and they continue to be employees of the firm. The duties and responsibilities of Key Employees shall be consistent with the Architect's response to the RFP for this Agreement. This list is incorporated by reference and shall be attached to this Agreement as Exhibit D.

6.1.4 Prior to execution of this Agreement, the Architect shall submit the names of the subconsultant firm(s) that it proposes for the Project and shall identify the responsible individual at the subconsultant firm(s) who shall remain in charge of the professional services provided by the subconsultant firm for the Project for the duration of the Project so long as their respective performances continue to be acceptable to the District and they continue to be employees of the firm. This list is incorporated by reference and shall be attached to this Agreement as Exhibit D

6.1.5 The District shall have the discretion to accept or reject any individual or subconsultant firm proposed. If an individual or subconsultant firm is rejected, the Architect shall propose an alternate individual or subconsultant firm that is acceptable to the District. The Key Employees shall remain in charge of the professional services for the Project, so long as their respective performance continues to be acceptable to the District.

6.1.6 Any change in Architect's staffing shall be made in consultation with the District and is subject to District's final approval. If staffing changes must be made due to unavoidable circumstances, the Architect shall promptly notify the District of the change and immediately submit the name(s) and resume(s) of the person(s) to the District in writing for approval prior to making the replacement. District's approval of staffing change shall not be unreasonably denied.

6.1.7 District shall have the right to request replacement of any subconsultant or project staff at any time the District, in its sole, subjective (but not arbitrary or capricious) discretion, determines that performance is unsatisfactory.

6.1.8 Architect's use of subconsultants shall not relieve Architect of any of its duties or obligations under this Agreement. With respect to Architect's obligations to District under this Agreement, Architect is responsible for the services performed by its subconsultants as if Architect had performed the services with its own forces. Architect shall coordinate its work with the work of all of its subconsultants to produce comprehensive, complete, coordinated and accurate drawings and specifications for all portions of the Project.

6.1.9 As an additional service, Architect shall assist District and CM in developing RFP/RFQ's for professional services for specialized consultants that may need to be retained by the Architect or District for the Project.

6.2 General Duties and Responsibilities

6.2.1 Architect shall consult District on all matters relative to the Agreement. Architect will participate in consultations and conferences as directed by District Appropriate Agencies necessary for the development of the drawings, specifications, and documents in accordance with the applicable standards and requirements of law and District. Such consultations and conferences shall continue through the design and construction of the Project. Architect shall only take direction from District Representative. District may designate new and/or different individuals to act as District Representative from time to time, but such designations shall be in writing.

6.2.2 The Architect shall perform its services in accordance with all applicable requirements of federal, state and local law including, but not limited to, the Uniform Building Code with California amendments, the Education Code, Title 19, Title 21 and Title 24 of the California Code of Regulations, and all requirements prescribed by the California Department of General Services, as these codes and regulations may be amended from time to time, and current written interpretation thereof published and in effect during Architect's rendering of services under this Agreement. Architect shall identify and analyze any existing conflicts in codes or regulations, pending changes to codes, regulations, or current written interpretations thereof, and keep the District informed as to potential changes that would materially impact the Project. In the event of changes in such codes, regulations or interpretations during the course of the Project that were not and could not have been reasonably anticipated by Architect, and which result in a substantive change to the Construction Documents, the Architect shall not be held responsible for the resulting additional costs, fees or time, and shall be entitled to reasonable additional compensation for the time and expense of responding to such changes.

6.2.3 District's Construction Budget for the Project is defined in Exhibit A. Architect shall design at least one scheme to meet the Construction Budget for the project. District may increase or decrease the Construction Budget and/or design space program at the end of each design phase based on the probable construction cost estimate for the proposed design, project needs and requirements, compatibility with other similar schools, and/or budget availability.

6.2.4 Prior to the start of design, Architect shall attend a project design start meeting with District and CM.

6.2.5 When requested by District, Architect shall: (i) attend meetings with Appropriate Authorities, school community, and/or the public(ii) assist in making presentations about the design to, and responding to questions or comments by attendees; and (iii) provide necessary follow-up to ensure that concerns, recommendations, or directions of Appropriate Authorities related to design matters are appropriately addressed.

6.2.6 Architect shall coordinate its work and collaborate with the CM and any other District authorized employee or agent The Architect, and members of its design team as appropriate, shall meet and confer regularly with the District Representative, CM, other District staff and consultants, the Board, contractors and subcontractors, and others as directed by the District's Representative, regarding the design, DSA review and permitting, bidding, award, and construction of the Project, as reasonably necessary to report on the progress of the Project, and to keep the Project progressing according to District's priorities and schedule. Architect shall also participate in meetings and workshops with CM or others for purposes of design coordination, value engineering, and constructability review.

6.2.7 Architect shall coordinate with the District, DSA, and Appropriate Authorities and public utilities to identify and integrate design requirements affecting the Project, review designs and obtain agency and utility provider approvals. Where engineering designs are prepared by such agencies or utilities, Architect shall coordinate and integrate those designs into the Construction Documents.

6.2.8 Throughout the design phases of the Project from NTP to DSA approval of the Construction Documents, Architect and appropriate members of its design team shall conduct design progress meetings as well as attend any other design related conferences deemed necessary by District. Architect will record the discussions in these meetings and provide a draft copy of the minutes to District and CM within five (5) working days. The District and CM will review and provide review comments to the Architect within five (5) working days. The Architect shall then incorporate the District's and CM's review comments, sign, publish, and distribute the final minutes of the meeting.

6.2.9 Architect shall notify District in writing of potential complications, cost overruns, unusual conditions, or other issue that could significantly affect the Project budget and schedule.

6.2.10 Architect shall, in accordance with applicable laws, take all steps necessary to submit required applications and other documents, the submission of which are not within the scope of the obligations of Contractor under the General Conditions, so as to enable District to promptly secure any necessary approvals and permitting of the Project and completed Construction Documents by Appropriate Authorities. Architect shall notify the District in writing upon receipt of such approvals specifying in detail the scope of Architect's work covered thereby and recommend as to whether and when all such approvals required by applicable laws have been obtained. Architect shall notify District in writing ninety (90) Days prior to the date that any approval by Appropriate Authority may expire.

6.2.11 Architect shall not proceed until it has received District's written notice to proceed with each

successive design phase described herein. In the event that separate written notice to proceed is not received by Architect for whatever reason, minutes to regular project team meetings which memorialize an orally conveyed intention to issue notice to proceed may substitute as written notice if the entry clearly states that notice to proceed was intended, and the Architect was present when the notice was given.

6.2.12 Independent Reviews

6.2.12.1 The Project is subject to independent reviews conducted by the District. Architect shall cooperate with these design reviews.

6.2. 12.2 Architect shall prepare written responses to the written review comments and shall make changes to the Construction Documents as appropriate. If the Architect does not deem a comment to require a change, the Architect shall so state in the written response to the comment, providing reasons why no change should be implemented. If the District nevertheless directs the Architect to implement the requested change, the Architect will do so, unless doing so would result in a violation of Applicable Laws.

6.2.12.3 District shall have the right, but not the obligation, to have independent cost estimate(s) conducted by an estimator designated by the District and at the District's expense. The Architect shall, as part of its Basic Services, be available to answer the estimator's questions regarding the design and to attend meetings with the District's estimator as reasonably necessary to reconcile the Architect's estimate with the independent estimate(s).

6.2.12.4 Approval by District, Appropriate Authorities, or other project team member of Construction Documents prepared by Architect (i) shall not relieve Architect of responsibility for the completeness, coordination or suitability of the Construction Documents, and (ii) shall not constitute acceptance or approval of any revision to the Project unless Architect informs District in writing at the time of seeking such approval that it is requesting approval of a revision to the Project and District thereafter issues approval of such change in the Project in writing. Any and all District approvals or decisions that involve changes to the Project, Architect's compensation (including, without limitation, compensation for Additional Services or Reimbursable Expenses), or time for performance by Architect (including, without limitation, changes in the Project Schedule) must be approved by District's Representative in writing in order to be effective.

6.3 PROGRAMMING PHASE
Upon Notice to Proceed for the Programming Phase, Architect shall:

6.3.1 Facilitate and document the District's development of an educational program /curricula and resulting facility requirements.

6.3.2 Review District archives to identify all District-held record documents or data relative to the Project site.

6.3.3 Research and procure any record documents and/or related information and data not in possession of District including but not limited to street improvements, easements, utilities and other on and off site improvements.

6.3.4 Make the necessary site visits and field investigations required to compare the building and/or site with the record drawings and other information and data Architect has obtained from District and/or others, and to review and clarify the requirements of the Project. Upon the discovery of discrepancies, conflicts, and/or ambiguities within those areas where construction will occur, Architect shall notify and address all discrepancies, conflicts and/or ambiguities with District. Architect shall meet with the District to discuss the Architect's findings and any specific site characteristics.

6.3.5 Advise and assist District in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

6.3.6 Notify District in writing of potential complications, cost overruns, unusual conditions, and general needs that could significantly affect the Project
budget and time line.

6.3.7 Advise District regarding any existing, or need for securing, easements, encroachment permits, rights of way, dedications, infrastructure, road improvements, and coordinating with utilities and adjacent property owners.

6.3.8 Unless otherwise directed by the District, prepare and present a minimum of three viable conceptual design solutions to the District's program and community requirements. At least one of the proposed schemes' costs must meet the Construction Budget current as of the start of the Programming Phase.

6.3.9 As Deliverables for the Programming Phase, for each design solution, prepare conceptual design studies, sketches and other necessary documents the solution(s) that best meet the needs of the District. The Deliverables shall provide sufficient information to allow the District to make an informed decision whether to proceed with the Schematic Design Phase, including, without limitation, general description of scope, site analysis diagrams showing key influences such as topographical characteristics, solar orientation, winds, views, traffic, and neighborhood context; utilization plans; spatial relationships; conceptual plans of each floor; simplified

elevations as necessary to show the fundamental architectural concept; and estimated costs and area calculations, and shall identify any notable issues with the potential for cost or schedule impacts.

6.4. SCHEMATIC DESIGN PHASE:
Upon Notice to Proceed for the Schematic Design Phase, Architect shall:

6.4.1 Meet and confer with District Representative and other designated District instructional and operational personnel to discuss the established program requirements, select a preferred conceptual plan, and to confirm the scope, Construction Budget, and scheduling.

6.4.2 Upon selection of the preferred design concept by the District, Architect shall further develop and present the preferred scheme.

6.4.2 Prepare and submit Schematic Design Documents, which shall include site plans, floor plans, elevations, study models, perspective sketches, phasing plans and other drawings or graphic materials necessary to describe the architectural concept and establishing the scope, relationship, forms, size and appearance of all design elements. The Schematic Design Documents will also describe the relationship of the Project to on- and off-site improvements. Architect shall also prepare descriptive narrative indicating proposed architectural, structural, mechanical and electrical systems and materials and other systems.

6.4.2.1 The Schematic Design Documents shall meet the requirements of the California State Department of Education Regulations (Cal Code Regs. Title 5, Section 14000, et seq.) and guidelines and shall be prepared in such form as may be submitted to the California State Department of Education for approval.

6.4.2.2 Such drawings and plans shall show in single-line drawings all rooms incorporated in each building in the Project, and shall include all revisions required by district or by Appropriate Agencies.

6.4.2.3 All final drawings shall be in a form suitable for reproduction.

6.4.3 Prepare and submit an updated cost estimate and area calculation as required under Article 7.

6.4.4 Prepare and submit a written report (Basis of Design) with a narrative that includes a discussion of pertinent design factors, if any, and a description of all components and facilities in the Project. A list of recommended finish materials and colors shall be included.

6.4.5 Prepare presentation models and color perspective renderings necessary to explain the proposed designs, including samples of color, finishes and materials proposed for the Project. Renderings and presentation models are Additional Services if prepared by the Architect. Renderings and presentation models are Reimbursable Expenses if prepared by Architect's subconsultant or vendor.

6.4.6 Prepare and maintain three dimensional building information models and reports necessary to collaborate and coordinate design and construction features with CM for purposes of verifying constructability and/or value engineering.

6.4.7 Final Schematic Design Documents shall be consistent with the Construction Budget and Project Schedule, and shall be revised until approved by District as consistent with the Construction Budget and Project Schedule, at no additional cost to the District.

6.4.8 Together with its subconsultants, make presentations to the Board, Appropriate Authorities, educational community, community groups, and others as directed by the District Representative.

6.4.8 Architect shall meet with the District and CM every other week (bi-weekly), as necessary, to review the Architect's design progress.

6.4.9 If directed by the District's Representative at the time of approval of the Schematic Design Documents, and as an additional service, the final working drawings and specifications shall be prepared so that portions of the work of the project may be performed under separate construction contracts, or so that the construction or reconstruction of certain buildings, facilities, or other portions of the project may be deferred.

6.4.10 The Deliverables required for this phase shall be in the format and contain the necessary information required for an application to any federal, state, regional, or local agency for approval and/or funding.

6.5 DESIGN DEVELOPMENT PHASE:
Upon receipt of written authorization from the District to proceed, the Architect shall:

6.5.1 Prepare, from the approved Schematic Design Documents, the Design Development Documents. Design Development Documents must fully illustrate and describe the refinement of the design of the Project by establishing the scope, relationships, form, size and appearance of the Project.

6.5.1.1 The Design Development Documents shall address comments provided by the District

on the previous submittals, and shall include any revisions necessary to incorporate District's comments as appropriate and, as directed by the District Representative. If Architect believes that incorporating the District's comments would materially change the scope of services Architect is to provide for the Project, then the Architect is required to notify the District in writing per the requirements of Article 5.2.2 before starting work to incorporate the changes.

6.5.1.2 The Design Development Documents shall include all the previously required information presented in the final documentation of the Schematic Design as well as dimensioned site development plan, floor plans, exterior elevations and typical sections and construction details indicating proposed construction as may be necessary, equipment layouts for all buildings and site structures, as well as all major finishes and proposed colors. Drawings shall also illustrate fundamentals of major engineering systems including civil, landscaping, structural, mechanical, plumbing, fire protection, electrical systems and kitchen/food service. Design Development documents shall be suitable for serving as the statement of design intent for the end-of-job commissioning and performance testing.

6.5.2 Provide a color board for selections of materials, textures, finishes, and other matters requiring an aesthetic decision at this phase of the Project for District's review and approval.

6.5.3 Prepare interim update to the estimate of Construction Cost based on the 100% Design Development Documents Cooperate and coordinate with the District Representative and CM to reconcile any differences with the District's independent estimates of construction cost based on the Construction Documents at corresponding intervals of completion.

6.5.4 Update the baseline design schedule by tasks, personnel and milestones for the remainder of the design phase.

6.5.5 Provide required draft sets of all drawings, in hard copy and electronic format, to the District for review and approval.

6.5.6 Review drafts of all Design Development Documents, estimates and schedules with the District, and revise as required to incorporate the District's comments before issuing them in final form.

6.5.7 Assist District in applying for and obtaining all required approvals from Appropriate Authorities. Architect shall make initial contact and consult with DSA, the State Fire Marshall, local fire authorities, City and/or County Street and Engineering Departments, and utility companies to determine their requirements and shall secure their preliminary approval and notify the District in writing as to the actions the District must take to secure formal approvals.

6.5.8 Together with its subconsultants as appropriate, make presentations, with drawings or renderings as necessary, to the Board, Appropriate Authorities, educational community, community groups, and others as directed by the District Representative. Presentation drawings or renderings shall be in color, mounted on 30" x 40" boards, with Project's and Architect's names, and shall show perspective view and technique, and adequately and accurately indicates the scope of the Project. Renderings are not required on modernization projects unless extensive changes are made to the exterior.

6.5.9. The Architect shall complete work and services required under the Design Development Phase of this Agreement, and submit such work to the District for their approval in accordance with the Project Schedule.

6.5.10 Architect shall meet with the District and CM every other week (bi-weekly) or as determined necessary, to review the Architect's design progress.

6.6. CONSTRUCTION DOCUMENT PHASE:
Upon receipt of written notice from the District to proceed, the Architect shall:

6.6.1 From the Design Development Documents approved by the District, prepare a complete set of Construction Documents which shall set forth in detail the Work to be done, including the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical electrical systems, and utility-service-connected equipment and site work. The Architect agrees that the 100% Construction Documents shall be, complete and accurate, within the professional standard of care, giving sufficient directions to enable any competent contractor to bid and perform the Work within the allotted time frame.

6.6.1.1 The Construction Documents shall include without limitation working drawings (e.g. all site and building plans, sections, elevations, enlarged plans, and details necessary to construct the Project), specifications, bidding information, bid forms, bid alternates, bonds, agreements, general conditions and special conditions provided by the District, to be submitted for approval by Appropriate Authorities and issued for bidding. Specifications shall establish the technical criteria and quality standards and requirements for elements of the Project.

6.6.1.2 The Construction Documents shall respond to comments provided by the District in prior reviews, and shall satisfactorily address all approved design and constructability review comments.

6.6.1.3 The Construction Documents shall be in full compliance with all applicable building codes, ordinances, other regulatory requirements, and requirements of DSA, applicable city departments and utility providers.

6.6.1.4. The Construction Documents shall be prepared utilizing AutoCAD or approved similar software and shall be of such quality and workmanship so that clear, legible and uniformly sized so that duplicate tracings or prints may be obtained therefrom. Architect shall also provide electronic copy files of the 100% Construction Documents.

6.6.2 Develop Bid Alternates, as directed by District, which shall be integral parts of the Construction Documents.

6.6.3 Recommend alternative designs to resolve any identified conflicts for above-grade and below-grade for the site facilities as well as the buildings and structures.

6.6.4 Be responsible for the content of all Construction Documents.

6.6.5 At 50% level of completion of the Construction Documents, provide a final color schedule, samples of textures and finishes of all materials to be specified for the Project for District's review and approval.

6.6.6 Furnish the required sets of drawings and updated basis of design report to the District for approval at 50%, *95%* and 100% completion for the Construction Documents, both in hard copy and electronic format, and revise if required and directed by the District.

6.6.7 Bid and contract forms and documents shall be submitted to District's legal advisor for review and approval at least ten (10) days prior to proposed publication.

6.6.8 Architect shall compile the Project Manual to include, but not limited to, information to bidders, bid forms, bonds, general conditions, special conditions, supplementary conditions, agreement forms between District and the prospective successful bidder, and other forms typically required of public school construction. Bid documents shall be submitted to District's legal advisor for review and approval at least ten days prior to proposed publication.

6.6.9 Complete Construction Documents, and obtain plan check approvals. Prior to submission of 100% Construction Documents to the District, Architect shall have completed an interdisciplinary coordination check, dimension check, terminology and spelling check, and detailed technical check of the Construction Documents. Completion of Construction Documents for initial submittal for plan check approvals shall be in accordance with the Project Schedule. The final plan check approved drawings shall be stamped with a California Architect and/or Engineer's registration seal, signed and dated by the Architect of record and/or consultant(s) responsible for the design.

6.6.10 Architect shall assist District in submitting any incremental or final documents necessary for procuring the approval of Appropriate Authorities. Architect shall review the submittals with the Appropriate Authorities, and revise and resubmit as necessary to secure all permits (costs of permits to be borne by the District).

6.6.11 Architect shall satisfactorily address the District design review comments and submit estimated construction cost in CSI format and area calculations at 100% completion of the Construction Documents, and with Bid Documents after DSA back-check (if required) with all scope revisions incorporated. These estimates shall be subject to District review and Architect shall satisfactorily address all District corrections.

6.6.12 Prepare an update of the estimate of Construction Cost based on the 100%Construction Documents. Cooperate and coordinate with the District Representative and CM to reconcile any differences with the District's independent estimates of construction cost based on the Construction Documents at corresponding intervals of completion.

6.6.13 As an additional service, prepare a new estimate of Construction Cost for each increment or bid package to be issued by the District according to CSI Division classifications based on the 100% complete Construction Documents to be considered for inclusion in the bid documents as the "Engineer's Estimate of Construction Cost." The final estimate of probable Construction Cost shall take into consideration any adjustments to previous estimates indicated by changes in requirements or general market conditions.

6.6.14 If, in the opinion of the CM or the District and with the concurrence of the Architect, that the probable Cost of Construction will exceed the Construction Budget by more than 10%, Architect shall, if directed by the District, and without additional compensation, so revise the plans and specifications so that construction may be completed within the Construction Budget, which may involve omitting, deferring or creating bid alternates of portions of the design.

6.6.15 If the interim or final estimated Cost of Construction at the Construction Documents phase exceeds the Construction Budget, District may, at its sole discretion, (i) give written approval of an increase in the Construction, (ii) authorize the solicitation of bids, or (iii) require Architect to revise the Construction Documents, at no cost to the District, so as to reduce the estimated Cost of Construction to conform with the Construction Budget.

6.6.16 Participate and assist in final selection and approval of systems to be included in the Project such as utilities, mechanical, electrical, communication, and security systems, and other relevant systems and equipment, including the coordination and management of required CHPS certification documentation. Continue to monitor and evaluate CHPS certification targets including tracking probable CHPS point achievements through forecasted CHPS Certification

Scorecard format.

6.6.17 Together with its subconsultants as appropriate, the Architect shall make presentations to District, State and local agencies, stakeholders and community groups as directed by the Construction Manager

6.6.18 The Architect and its subconsultants shall include with the delivery of the final form of Construction Documents their written certification that they have reviewed the drawings in total and confirmed that their own work has been coordinated into the Construction Documents, and to the best of their knowledge within the professional standard of care, the final set of Construction Documents is 100% complete and ready for bid.

6.6.19 At any time during the Architect's performance of design services, and upon 100% completion of the Construction Documents Phase, the District may retain architectural/engineering consultants to conduct a peer review of the Contract Documents for constructability and completeness. This peer review, if performed, shall be performed for the benefit of the District and shall in no way decrease the obligation of the Architect to produce a comprehensive, complete and accurate set of Construction Documents.

6.6.20 Architect shall meet with the District and CM at least monthly during the Construction Document phase to review the Architect's design progress.

6.7 BID PHASE

Upon receipt of written notice from the District to proceed, the Architect shall:

6.7.1 Assist the District and CM to prepare and assemble bid documents consisting of the General Conditions, Supplementary Conditions, Prevailing Wage Scale, Notice to Contractor, Bid Proposal Forms into the specifications. In addition, the Architect shall incorporate the Technical Specifications (including CSI Division 0 and 1) and any Alternates as may be required. Architect shall make recommendations as to the packaging of bids. If the Project will be bid in increments or packages, as an additional service, Architect shall assist the District and CM to prepare bid documents accordingly.

6.7.2 If requested by the District, and as an additional service, assist in the prequalification of contractors by developing a list of relevant criteria and standards to pre-qualify potential bidders, responding to inquiries regarding the prequalification process, and maintaining an up to date list of pre-qualified bidders.

6.7.3 Participate in and assist District and CM with a pre-bid conference.

6.7.4 Attend meetings with District and/or CM to discuss the upcoming bids and resolve any issues that might arise.

6.7.5 Assist the District and CM in providing timely responses to bidders' questions, interpreting Construction Documents, evaluating requests for substitutions.

6.7.6 Prepare addenda and clarification documents on timely basis for incorporation into the Bid Documents for issuance to potential bidders as directed by the District.

6.7.7 Assist with the review and evaluation of bids submitted, alternates, and make recommendations for award of construction contract(s). In the event that the District accepts bid alternates impacting Project space area and requiring a significant change in efforts by Architect, fees for Additional Services may be negotiated.

6.7.8 In the event that the lowest responsive bid exceeds the Construction Budget by ten percent (10%), District may, at its sole discretion:

6.7.8.1 Give written approval of an increase in the Construction Budget;

6.7.8.2 Authorize the solicitation of new bids;

6.7.8.3 Require Architect to revise the Project scope of Work as necessary to secure new bids that conform to the Construction Budget;

6.7.8.4 Abandon the Project and terminate this Agreement in accordance with Article 14.

6.7.9 If District chooses to proceed under Article 6.7.8.3, Architect shall, as part of Basic Services and at no additional cost to the District, make such changes in plans and specifications as shall be necessary to bring a new bid into conformity with the Construction Budget as may be revised under Article 6.7.8.1. The Architect must complete any redesign within forty-five days, or as agreed to in writing, of notification by the District of its intent to proceed under Article 6.7.8.3, or as otherwise may be agreed between the parties and memorialized by written acknowledgement of the District. The re-design effort under this provision shall be the limit of Architect's liabilities in the event the lowest responsive bid exceeds the Construction Budget, as may be revised under Article 6.7.8.1.

6.7.10 If bidding or negotiating has not commenced within ninety (90) days after Architect submits the DSA stamped approved Construction Documents to District, the Construction Budget shall be adjusted to reflect changes in the general level of prices in the construction industry.

6.8 CONSTRUCTION PHASE:

The Construction Phase shall commence with the award of the Construction Contract and shall end upon the earlier of District's approval of Architect's final certificate for payment to the Contractor or sixty days after the recording of the Notice of Completion or upon DSA's approval of final closeout submittals, including all final construction change orders and Final Verified Progress Report (Title 24 CCR Section 4-336) and final DSA approval of the Project. (The end of the Construction Phase does not necessarily coincide with the termination of this Agreement.)

The Principal-in-Charge or the Project Architect, or other representative of Architect approved by District, shall provide construction observation services as that term is defined in California Business and Professions Code section 5536.25(c).

6.8.1 Architect shall provide general technical direction to the District in the general administration of the Construction Contract and in the District's dealings with the Contractor, and shall have authority to act for the District to the extent provide in the Contract Documents.

6.8.2 Architect and appropriate members of its design team shall attend a construction start meeting, regularly scheduled construction progress meetings, and any other Project-related conferences deemed necessary by District. CM will provide Architect with a draft copy of the minutes of these meetings. Architect will review and provide review comments to the CM within five (5) ) working days of receipt for incorporation into the final minutes of the meeting. The Architect shall, when requested by District, be present at meetings or inspections called or conducted by Appropriate Authorities. Additionally, Architect and/or its subconsultants shall attend site meetings or site visits to discuss and resolve field issues, as necessary but not less than weekly.

6.8.3 Architect shall provide general technical direction to any Inspector of Record and/or District Representative who shall be employed by and responsible to the District as required by applicable law. Architect shall not be responsible or liable for the acts, errors or omissions of the Inspector.

6.8.4 Assist District in directing the Contractor in the preparation of a set of drawings indicating exact location of buried utility lines (as built drawings), which shall be forwarded to District upon completion of the Project.

6.8.5 The Architect shall perform within professional standards to secure the Contractor's compliance with the requirements of the Construction Contract, but is not responsible for the acts or omissions of the Contractor or any subcontractors, or Contractor's agents or employees, or persons performing Work on the Project that is not due to the Architect's negligence. Architect

shall not have control over or charge of, nor be responsible for, the Contractor's construction sequences or procedure (means and methods) or for safety precaution and programs in connection with the Contractor's work, as those items are solely the responsibility of the Contractor.

6.8.6 The Architect (and their consultants as necessary) shall make visits to the Project site at appropriate intervals, but not less than weekly, in order to maintain familiarity with the progress of the Work and to ascertain whether the Work is being executed in conformity with the plans, specifications, and directions and that the Work when fully completed, will be in accordance with the Contract Documents; and advise as to the interpretation of the drawings and specifications for the construction of the project, and, relay all observations to the District Representative relative to the construction of the Project. Such visits are to be distinguished from the continuous inspection provided by a project inspector required by law for public school construction. As Work progresses, Architect may be consulted to confirm completeness and/or regarding acceptance of the Work performed by Contractor.

6.8.7 The Architect shall conduct and make such regular written reports as shall be required by the District or by Appropriate Authorities to keep District Representative, Superintendent, or Board informed of the progress of construction.

6.8.8 The Architect shall be the interpreter of the requirements of the Construction Documents and the impartial judge of the performance by the Contractor hereunder. The District Representative may consult the Architect and seek their opinion and/or assistance in evaluating disputes related to the execution and progress of the Work and questions relating thereto. Architect shall provide the requested information in a prompt manner so as not to materially affect the progress of the Work or delay resolution on a dispute. The Architect's decisions in matters relating to artistic effect shall be consistent with the intent of the Construction Documents. The decisions of the Architect regarding the requirements of the Construction Documents and performance by the contractor are subject to District approval.

6.8.9 Architect shall review the Contractor's submittals required by the Construction Contract for general compliance with design and the Contract Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Architect shall comment upon, review, or take other appropriate action with such reasonable promptness as to cause no delay in the Contractor's Work or in the activities of District or of separate contractors or subcontractors, while allowing sufficient time in Architect's professional judgment to permit adequate review. Such reviews shall take place within the following time limits unless extensions are agreed to by the District:

6.8.9.1 Request For Clarifications (RFC) or Request For Information (RFI) shall be reviewed

and responded to within seven (7) calendar days from its receipt.

6.8.9.2 Submittals and shop drawings shall be reviewed and responded to within twenty-one (21) calendar days from its receipt and within fourteen (14) calendar days for resubmittals.

6.8.9.3 Request for substitution shall be reviewed and responded to within fourteen (14) calendar days from its receipt.

6.8.9.4 Deferred submittals shall be reviewed and responded to within fourteen (14) calendar days from its receipt.

6.8.9.5 Any change order request impacting the design drawings and specifications shall be reviewed and responded to within seven (7) calendar days from its receipt. Architect may be consulted in preparing documentations for change proposals and their related cost estimates.

6.8.10 Architect shall check and process, in a timely manner, all required material and test reports and report to the Division of the State Architect, the contractor, and District any deficiencies in material as reflected by those reports, with recommendation(s)for the correction of such deficiencies.

6.8.11 Promptly notify District, in writing, of deviations known or observed by Architect in the Contractor's Work or materials or both which do not conform to the Contract Documents. Upon direction from the District's Representative, Architect shall reject the Work or materials or both which do not so conform. Architect shall then inform District what further work, installation of conforming materials, or testing of proposed substitute materials, whichever may be applicable, shall be required of the Contractor if determined by Architect to be necessary to carry out the intent and purposes of the Contract Documents and the Project, based on Architect's reasonable professional judgment. Architect shall promptly notify District if Architect becomes aware of a significant defect or of any known or observed default by the Contractor in the orderly and timely progression or prosecution of the Work.

6.8.12 Architect, as well as the District, shall have authority to reject Work, or portions thereof, which does not conform to the Construction Documents. The Architect shall promptly inform the District whenever, in the Architect's opinion, it may be necessary to stop the Work to avoid the improper performance of the Construction Documents. Whenever Architect considers it necessary or advisable, Architect will have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of Architect to the Contractor, subcontractors, material and equipment suppliers,

their agents or employees or other persons performing portions of the Work.

6.8.13 Prior to District's review and approval of construction contractor's payment requests, the Architect shall receive and review the field marked contractor's set of prints describing the complete project as constructed. Upon the filing of the Notice of Completion, the Contractor shall forward the completed contractor's set of as-built drawings and specifications to the Construction Manager who will review and then transmit them to the Architect and the District Representative. The Architect shall be responsible for transferring markings and attachments from the contractor's record set of prints, including RFI responses and change order drawings, into the original CAD drawings by standard drafting methods. Each drawing sheet shall be prominently entitled "As Built Record Drawings" and dated. Upon approval of the District, the Architect shall furnish the District with the required As-Built Record Drawings. The District will not approve the Architect's final payment prior to receiving the As-Built Record Drawings.

6.8.14 Architect shall assist the District in preparing rebuttal for any claims filed against the District and attend arbitration and/or litigation hearings, except in the case where the Architect is a party to the suite. Additional compensations shall be provided per Article 8.

6.8.15. Examine the contractor's applications for payments including reviews of the status of the Contractor's record drawings and approve the issuance of certificates for payment for Work completed in such amount as Architect shall judge proper under the Contract Documents. Architect's approvals shall constitute representations to District, based on the Architect's professional evaluation of the Contractor's Work and on the data comprising the Contractor's applications for payment, that the Contractor's Work has progressed to the points indicated and that, in the Architect's professional opinion and based on the Architect's knowledge, information and belief, the quality of the Contractor's Work is in accordance with the Contract Documents. Architect's approvals shall not be representations that Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Contractor's Work; (2) reviewed construction means, methods, techniques, sequences or procedures; (3) reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by District to substantiate the Contractor's rights to payment; or (4) ascertained how or for what purpose the Contractor has used money previously paid.

6.8.16 Prepare and/or review and comment in writing on any necessary change orders for approval by the Contractor, District and all applicable governmental agencies, including review of the Contractor's pricing requests.

6.8.17 When notified that the Project is ready for punchlist inspection, Architect shall walk the site with District's designee, CM and Contractor and shall prepare one preliminary and one final punchlist identifying any non-conforming Work. Architect shall participate in meetings relating

to completion of the punchlist, as may be requested by the District. When notified that the Work is ready for final inspection, Architect shall participate in a final walkthrough to confirm that the punchlist has been cleared.

6.8.18 Assist the District in determining dates of substantial and final completion, and assist the District in preparation of appropriate notices for approval of the Board and recording with Appropriate Authorities.

6.8.19 Issue Architect's certificate of completion and final certificate for payment.

6.8.20 District shall require each contractor to provide District with record drawings indicating the location and size of all underground or imbedded construction and utility connections not covered in the original drawings, change orders, supplemental drawings, shop drawings, and other significant changes in the Work made during the construction process. District shall require the Contractor to record such construction on reproducible drawings furnished to the Contractor by District. Architect shall review the Contractor's completed record drawings for general compliance based on Architect's site visits. Such a review by Architect shall not relieve the Contractor of its responsibility for the accuracy or completeness of the information recorded.

6.8.21 Should Architect be required to perform Construction Phase services beyond a total duration provided in the Contract Documents due to no fault of the Architect, the Architect may be entitled to additional compensation. In the event that the construction is delayed beyond the specified duration due to the fault of Architect, as determined by the District in its sole discretion, then the Architect shall continue to provide Construction Phase services in accordance with this Agreement through the actual completion of construction at no additional charge to the District. Architect may submit any disputed amounts as a claim. Nothing in this Article 6.8.21 is intended to limit or modify any of the parties' rights and obligations under Article 18 titled "Dispute Resolution."

6.9 POST CONSTRUCTION PHASE:

After the completion of Architect's Construction Phase services, Architect shall

6.9.1 Provide all necessary services to assist District to closeout the Project, including but not limited to, preparing and submitting all final construction change orders to DSA and securing DSA's approval, and preparing and submitting the Final Verified Progress Report.

6.9.2 Within 30 days of final completion of construction and as a condition precedent to final payment, Architect shall review and forward the final working drawings and specifications, indicating on them all changes made by change orders or otherwise, under the Construction

Contract and all information called for on the specifications, producing a record set of final working drawings, and one clear and legible set of reproductions of the computations, the original copy of the specifications, the record drawings, the final verified progress report pursuant to Title 21 of the California Code of Regulations, and Architect's Final Verified Report.

6.9.3 Be available for consultation relating to the Project and the plans drawn by Architect for a period of one (1) calendar year from the date Notice of Substantial Completion is issued.

6.9.4 Attend meetings, at the request of District, relating to any claim by the Contractor(s) or any subcontractor of extra work or delay due to the plans, alleged design flaws, alleged insufficient drawings, or the construction contract administration by the Architect; or relating to any other matter germane to the completion of the Project over which Architect had general or specific control or responsibility.

6.9.5 Attend four (4)meetings, at the request of District relating to any other matter germane to the completion of the Project over which Architect had general or specific control or responsibility

6.9.6 Advise District on apparent deficiencies in the construction during the one-year warranty period following acceptance of Work. This provision survives the term of this Agreement and does not extend the term of this Agreement.

6.9.7 No earlier than the eleventh month following final completion but with sufficient time to prepare and submit any claims before the expiration of any warranty period, Architect shall inspect the condition of completed Work, and provide assistance to the District to develop a list of corrective warranty work and a schedule for completion of systems, components, equipment and finishes that have failed to meet the specified performance criteria or the terms of specific product warranties during the warranty period.

6.9.8 Services requested by the District after notice of completion has been filed that are not covered by this Article 6.9 shall be compensated as Additional Services.

## ARTICLE 7. RESPONSIBILITY FOR CONSTRUCTION COST:

### 7.1 Proposed Design or Scope Changes

The Architect shall cooperate with the District to control design or scope changes that would affect the cost or schedule of the Project during the design phases or the construction phases of the Project. To that end, Architect will coordinate with the District and CM so that proposed changes to the design are promptly and properly analyzed for potential cost and schedule

impacts. The Architect shall cooperate with the District to establish an interactive and integrated design, review and approval processes with the District Representative and CM. The intent of this provision is to avoid unnecessary re-design work by the Architect and to avoid unnecessary additional cost to the District. Architect will consult as necessary with District Representative and with Appropriate Agencies throughout the planning and construction of the Project and the post construction phase noted above.

7.1.1 Other than minor modifications, Architect shall not make modifications to plans, designs or specifications which would increase the size or scope of the Project or which would increase the Estimated Construction Cost, without the prior express written instruction of District. Architect shall inform the District Representative of any proposed changes to the design recommended by the Architect, or to the scope of the Project requested by the District or other stakeholders, that would materially affect (add or decrease) the Estimated Construction Cost or duration of the Project. Architect shall review with the District Representative the benefits and costs of the proposed changes, including any potential affect to the operating costs of the Project. To the extent that the changes increased the Estimated Construction Cost of the Project, Architect shall cooperate with the District and CM to identify other changes that could reduce the Estimate Construction Cost, or offset the anticipated increased cost.

7.1.2 Prior to performing design work engendered by any proposed design or scope change, Architect shall submit a written change request, numbered sequentially, that summarizes the proposed change and attaches such other analyses as may be appropriate for the District's consideration and approval. The District's prior written approval is required before Architect may incorporate any proposed change in the work. Architect shall proceed to incorporate the proposed change into the Project immediately upon receipt of District's approval, or as otherwise directed by the District.

7.1.3 Architect shall maintain a log of all changes recommended, pending, approved and incorporated. This change log is to be submitted to the District monthly throughout the design of the Project.

7.1.4 District's approval of any change in design or scope does not automatically entitle Architect to a change in Architect's compensation. Should Architect believe that the changes constitute Additional Services, Architect shall make any request for additional compensation, and the District shall consider such request, in accordance with Article 8.

7.2 Upon request and at no additional cost to the District, Architect shall revise the design as necessary for any and all change orders and other necessary modifications which were caused by negligent acts, errors or omissions of Architect, its employees or subconsultants.

7.3 Cost Estimating

7.3.1 The Architect shall prepare an Estimated Construction Cost of the design documents at each phase and area of calculation for each proposed design solution. Should the District require multiple contracts, as defined in Exhibit A - Scope of Work, the Architect shall as an additional service, prepare additional Estimated Construction Cost estimates for each bid package upon request. The Estimated Construction Cost shall reflect the estimated cost of each element of the Project, and shall include and disclose reasonable contingencies for design, bidding and price escalation.

7.3.2 During each subsequent design phase, the Architect shall update the Estimated Construction Cost and its assumptions to reflect changes to the design or scope, and current market conditions; and shall also provide a narrative explaining what Architect has determined is the cause of any change. The Estimate Construction Cost must include a quantity take-off and unit pricing consistent with the level of design completion, together with a statement of assumptions regarding design contingencies and exclusions.

7.3 .3 Architect's evaluation of the Construction Budget and preparation of the Construction Cost Estimate shall be made in accordance with the standard of care as provided in Article 4. It is recognized, however, that neither Architect nor District has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from District's Construction Budget, the Estimated Construction Cost, or other evaluation prepared or agreed to by Architect.

7.3.4 The Estimated Construction Cost and the Construction Budget shall be reconciled at the end of each design phase of the Project and prior to commencement of the subsequent design phase. At District's request, Architect shall meet with CM or others to reconcile any material differences between the Estimated Construction Cost and any estimates of construction costs generated by CM or others.

7.4 In the event any estimate during the course of the Project indicates Construction Cost will exceed the latest-approved Construction Budget, or the area calculation will be in excess of the latest approved design space, Architect shall immediately meet and confer with District, and if directed by the District in writing, shall, as part of Basic Services and at no additional cost to the District, make such changes to the Contract Documents to bring the design back within the Construction Budget prior to proceeding to the next design phase.

7.5 Architect must complete any redesign within forty-five days, or as otherwise agreed with the District, depending on required modifications and schedule adjustments. If the District elects to

increase the scope of the Project and Construction Budget, the District shall do so in writing and only after the District and the Architect come to mutual agreement on the revised Construction Budget and the associated cost of Architect's services for any added scope.

## ARTICLE 8. ADDITIONAL SERVICES

Architect shall not receive any compensation for performing Additional Services without the prior written authorization of the District. The following services are not include in Basic Services and shall be considered Additional Services:

8.1 Providing financial feasibility or other special studies other than those required under Basic Services.

8.2 Providing extensive planning surveys, site evaluations or comparative studies of prospective sites.

8.3. Providing design services relative to future facilities, systems and equipment which are not intended to be constructed as part of the Project.

8.4 Providing detailed quantity surveys or inventories of material, equipment and labor.

8.5 Providing services for planning tenant or rental spaces. Preparing contract documents required in connection with temporary housing during or related to construction.

8.6 Making revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given or are due to causes beyond the control of Architect.

8.7 Preparing supporting data and other services such as extra drawings, trips, estimates, studies, correspondence and presentations in connection with change orders if the change in the basic compensation resulting from the adjusted contract sum is not commensurate with the services required of Architect.

8.8 Making investigations involving detailed appraisals and valuations of existing facilities, and surveys or inventories required in connection with construction performed by District.

8.9 Providing consultation concerning replacement of any work damaged by fire or other cause during construction, and furnishing professional services as may be required in connection with the replacement of such work.

8.10. Providing professional services made necessary by the failure of performance, termination or default of the contractor or a subcontractor or by major defects in the work of the contractor or a subcontractor in the performance of the construction contract.

8.11 Providing services after issuance by District of the final certificate for payment except as noted in Article 6.9 or providing ongoing services if the agreed upon initial construction schedule is exceeded by more than thirty (30) days through no fault of the Architect.

8.12. Preparing to serve or serving as an expert witness on District's behalf in connection with any public hearing, dispute resolution proceeding or legal proceeding.

8.13. Providing any other services not otherwise included in this Agreement and not customarily furnished in accordance with generally accepted architectural practice.

8.14 Services for the following disciplines: graphics (other than for code-required signage).

8.15 Time and expenses preparing special presentation models, renderings or mock-ups.

8.16. Enactment or revisions of codes, laws or regulations or changes in official interpretations which necessitate changes to previously prepared documents other than those changes for which Architect should have reasonably foreseen.

8.17 Seeking variances or changes to agency guidelines on behalf of District when so directed by District.

8.18 Formal value engineering and detailed life-cycle cost analyses beyond those normally provided or required to meet the approved construction budget.

8.19 Preparation of design and documentation for alternate bid or proposal requests by District when not required to meet the approved construction budget.

8.20 Preparing additional scope Addenda. Addenda necessary to correct Architect's own errors or omissions are non compensable.

8.21 Assistance with environmental and EIR studies other than those which would normally be required to complete Architect's Basic Services.

8.22 Coordination of construction performed by District's own forces or coordination in connection with equipment supplied by District and not reflected within the contractor's construction costs.

8.23 Providing assistance in the utilization of any equipment or system such as preparation of operation and maintenance manuals, training personnel for operation and maintenance, and

consultation during operation.

8.24 Services related to manufactured relocatable buildings specified or coordinated by Architect and not included in the construction contract.

8.25 If the Project is suspended by District for more than sixty (60) consecutive days through no fault of Architect, the parties may negotiate an equitable adjustment to Architect's compensation due to such suspension.

8.26 Professional services required for the selection, design, or preparation of documents for the procurement of furniture, furnishings or portable equipment that are not affixed to the building.

## ARTICLE 9. RESPONSIBILITIES OF DISTRICT

It shall be the duty of District to:

9.1 Make available to Architect all necessary data and information concerning the purposes and requirements of the Project, including scheduling and budget limitations of the District.

9.2 Depending upon the scope of the Project, furnish Architect with, or direct Architect to procure at District expense, a survey of the Project site preparation by a registered surveyor or civil engineer and any other record documents which shall indicate legal limitations, existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, and locations including inverts and depths, topographical information and boundary dimensions of the site, and any other such pertinent information. District shall also provide a soils investigation report and a geological report, if required by law.

9.3 Directly pay, or reimburse Architect, for all fees required by any reviewing or licensing agency.

9.4 The District has designated Harris & Associates, as a representative authorized to act as liaison between Architect and District in the administration of this Agreement and the construction contract.

9.5 Furnish at District expense the services of any Project inspector agreed to or required by law.

9.6 Review all documents submitted by Architect and advise Architect of decisions thereon within a reasonable time after submission.

9.7 Issue any orders to Contractors through Architect or with notice to Architect.

9.8. Notify Architect in writing of any deficiencies in material or workmanship becoming apparent during the Contractor's warranty period.

9.9 Retain a testing service for materials testing and inspection as required by the Department of General Services, Division of the State Architect, Office of Regulatory Services and Title 21 of the California Code of Regulations and the Uniform Building Code with California amendments, as they may be amended from time to time.

9.10 Provide copies of plans of existing buildings to be remodeled.

9.11 Provide other services identified as "District's Responsibilities" in Exhibit B.

9.12. Architect shall be entitled to rely upon the accuracy of all plans, surveys and reports provided or furnished by District unless, based upon Architect's professional judgment, such material or information appear to be inaccurate or incomplete. Although Architect shall not be required to provide detailed or exhaustive investigations to determine accuracy of such plans, surveys and reports, Architect shall notify the District immediately if it has a reasonable doubt that such surveys, data, reports, or other information are inaccurate, incomplete, or insufficient.

ARTICLE 10. INDEMNITY

10.1 With regard to professional services to be provided under this Agreement, Architect shall indemnify, pay for the cost of defense, and hold harmless District, the Board, each member of the Board, and their officers, agents and employees (collectively Indemnitees) from and against all claims, loss, expense, damage, injury (including, injury to or death of an employee of Architect or its subconsultants), cost and liability of any kind (including, incidental and consequential damages, court costs, reasonable attorney's fees, litigation expenses, expert consultant or witness fees in litigation, and costs of investigation),that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Architect, subconsultant, their agents or employees.

10.2 Architect shall indemnify, pay for the cost of defense, and hold harmless District, the Board, each member of the Board, and their officers, agents and employees (collectively Indemnitees) from and against all claims, loss, expense, damage, injury (including, injury to or death of an employee of Architect or its subconsultants), cost and liability of any kind (including, without limitation, incidental and consequential damages, court costs, reasonable attorney's fees, litigation expenses, expert consultant or witness fees in litigation, and costs of investigation), that arise out of, infringement of any patent right, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons as a consequence of the use by District, or any member of its Board, its officers, employees and agents of articles or services provided by

Architect under this Agreement.

10.3 This indemnification obligation is not limited in any way or by any limitation on the amount or type of damages or compensation payable to Architect or its agents and employees under applicable policies of insurance, workers' compensation acts, disability benefits acts, or other employees, benefits acts.

10.4 This indemnification obligation survives the performance of Architectural services under this Agreement or any termination under the provisions of this Agreement except as specifically stated in this Agreement.

ARTICLE 11. INSURANCE

11.1 Public Liability and Property Damage Insurance.

Architect, at Architect's sole cost and expense, shall take out and maintain at all times, personal injury and property damage insurance for all activities of the Architect and Architect's subconsultants except for professional services, arising out of or in connection with this Agreement, written on a comprehensive or commercial general liability form, including blanket contractual, completed operations, vehicle coverage and employer's non-ownership liability coverage, in an amount no less than $1,000,000.00 combined single limit personal injury and property damage for each occurrence in an annual aggregate of no less than $2,000,000.00 or as may be agreed upon between District and Architect in writing.

11.1.2 The Public Liability Policy specified above shall be endorsed with the following specific language:

> The District is named as additional insured, for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, Board, Board members, employees and agents against liability for bodily injuries, deaths, property damage or destruction arising in any respect directly or indirectly from Architect's performance of the Agreement.

11.1.3 The Public Liability Policy specified above shall be endorsed with or include the following specific or equivalent language:

> (a) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured and the coverage afforded shall apply as though separate policies have been issued to each insured.

(b) The insurance provided herein is primary and no insurance held or owned by the District shall be called upon to contribute to a loss.

(c) Coverage provided by this policy shall not be canceled or modified without thirty (30) days written notice given to the District.

(d) The certificate must state that the insurance is on an 'occurrence' (not a claims made' or 'modified occurrence') basis.

(e) The Architect will notify the District if insurance coverage dollar amount is reduced.

11.2 Workers' Compensation Insurance.

11.2.1 Before the Agreement is entered into, Architect shall furnish to District satisfactory proof that Architect and all engineers, subconsultants, and subcontractors Architect intends to employ have taken out, for the period covered by the proposed contract, full Workers' Compensation insurance and Employer's Liability insurance, with a limit of not less than $1,000,000.00 with an insurance carrier satisfactory to District for all persons whom they may employ in carrying out the work contemplated under this Agreement in accordance with the act of the Legislature of the State of California, known as the "Workmen's Compensation Insurance and Safety Act," approved May 26, 1913, and all acts amendatory or supplemental thereto. Such insurance shall be maintained in full force and effect during the period covered by this Agreement. In the event Architect is self-insured, Architect shall furnish a Certificate of Permission to Self-Insure, signed by the Department of Industrial Relations Administration of Self-Insurance, Sacramento, California.

11.2.2 The policies represented by the certificates must contain the provision (and the certificates must so state) that the insurance cannot be canceled or modified or reduced in coverage amount until thirty (30) days after written notice of intended revocation, modification or reduction has been given to the District.

11.3 Errors and Omissions Insurance.

11.3.1 Immediately upon execution of this Agreement and before commencing any services hereunder, Architect shall furnish to District satisfactory proof that Architect has and shall maintain in force for the period covered by this Agreement, professional liability ("errors and omissions") insurance covering Architect's activities, in the amount not less than $2,000,000.00 with an insurance carrier satisfactory to District. In addition, to the extent that the activities and

services of engineers or consultants are not covered under Architect's professional liability insurance, Architect shall cause each engineer and consultant, before the time such engineer or consultant shall commence any services relating to the Project, to obtain and maintain a policy of professional liability insurance in an amount of not less than $2,000,000.00 with an insurance carrier satisfactory to District.
11.4 Project Insurance.

In addition to sections 11.1, 11.2 and 11.3 of this Article, District may require Architect to obtain a non-cancelable policy of project insurance with a carrier satisfactory to District, for the term of the Agreement and three years after completion of the Project, whichever is later. If District requires Architect to obtain Project insurance, such insurance shall begin when construction begins, at which time Architect shall provide evidence of the existence of such policy to District. The cost of such insurance shall be borne by District.

11.5 Documentation and Additional Provisions.

11.5.1 Architect shall maintain in full force and effect, at its sole cost and expense, from the time this Agreement is entered into until the date of acceptance of the Architect's work by District, insurance as set forth in this Article. All insurance provided for under this Article shall be with a carrier satisfactory to District. Prior to commencement of Architect's work, Architect shall furnish to District a certificate of insurance evidencing the required coverages. District shall not be obligated to make any payment to Architect until after its receipt and acceptance of said certificates.

11.5.2 Additionally, the following documentation of insurance shall be submitted to District, approved prior to execution of this Agreement and attached as part of Exhibit C:

> Certificates of insurance showing the limits of insurance provided and signed copies of the specified endorsements for each policy.

11.5.3 At the time of making application for an extension of time, Architect shall submit evidence that the insurance policies will be in effect during the requested additional period of time.

11.5.4 If Architect fails to maintain such insurance, District may, at its sole option, upon five days prior written notice to Architect, take out such insurance to cover any damages of the above mentioned classes for which District might be held liable on account of Architect's failure to pay such damages, and deduct and retain the amount of the premiums from any sums due Architect under the Agreement.

11.5.5 Nothing herein contained shall be construed as limiting in any way the extent to which Architect or any of the Architect's engineers, agents, employees or consultants may be held responsible for payment of damages resulting from its operations, its work, or its performance of services under this Agreement.

11.5.6 Complete copies of policies shall be furnished promptly to District upon request.

11.5.7 Approval of insurance by District shall not relieve or decrease liability of Architect hereunder.

11.5.8 District will stop processing this Agreement, approval of any future contract modifications and/or contract payments at any time, if there is not sufficient evidence that insurance is in full force and effect, as required under this Article.

11.5.9 Architect's failure to maintain insurance as required by this Agreement will be cause for immediate termination of this Agreement, solely at District's option, and will constitute a material breach and default of this Agreement.

ARTICLE 12. ERRORS AND OMISSIONS

12.1 If during the course of construction, the District determines that modifications to Construction Documents or Contract Documents are required due to errors or omissions on the part of the Architect or its subconsultants in the final Construction Documents working drawings and specifications, the Architect shall not receive any fee or reimbursement for the cost of developing, preparing or reproducing the necessary revised drawings and specifications to correct said errors or omissions nor shall the Architect be compensated in its fee for the cost of extra design work made necessary by errors or omissions of the Architect or its subconsultants.

12.2 Notwithstanding the foregoing, District shall pay for the cost of any actual materials and labor which were omitted for any reason, but only to the extent the bid price obtained from the Contractor was lower by reason of the omission. In the event of any dispute between District and Architect concerning this Article 12, the parties shall utilize the dispute resolution provisions set forth in Article18. Architect remains subject to applicable government claims presentation statutes.

ARTICLE 13. MAINTENANCE/INSPECTION OF RECORDS

13.1 Architect shall maintain complete and accurate books and records with respect to services, costs, expenses, receipts and other information necessary to verify the scope or charges for any services provided under this Agreement. Architect shall maintain such records in sufficient detail to permit the District, District's independent auditors, or a designee of any of them, to thoroughly

evaluate and verify the nature, scope, value and charges for services performed under this Agreement. All such books and records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Such records shall be kept separate from other documents and records unrelated to the Project for a period of four (4) years after the later of termination of this Agreement or Final Completion of the Project.

13.2 The District, District's independent auditors, or a designee of any of them, shall have the right to examine and to audit books, records, documents, and other evidence sufficient to reflect properly all costs and expenses claimed to have been incurred in Architect's performance of this Agreement, including, without limitation, verification of the amounts and tasks performed for all time expended that is charged to District on an hourly basis. Such right to audit shall include inspection at all reasonable times at the Architect's offices or facilities. In addition, Architect shall, at no cost or expense to the District, furnish facilities and cooperate fully with the audit. Upon request, Architect shall provide reproducible copies of books, records and other documents in the possession of Architect and its Subconsultants that are applicable to this Agreement for reproduction by the District or its designee.

## ARTICLE 14. TERMINATION OF AGREEMENT

### 14.1 Termination for Convenience

District shall have the right to suspend, cancel, terminate or abandon performance of all or part of this Agreement for the District's convenience and without cause upon fifteen (15) days written notice to Architect of District's intent to terminate the Agreement, so long as such decision is not made arbitrarily or capriciously. Architect shall be compensated in accordance with Article 14.4 for all authorized services and Reimbursable Expenses incurred by Architect through the date of termination. If District terminates this Agreement under this provision the parties shall be relieved of the remaining executory obligations of the Agreement except for such liability arising out of services performed prior to the date of termination.

### 14.2 Termination for Cause

14.2.1 District may, at its election, terminate this Agreement if Architect defaults in any material respect on any provision hereunder and Architect fails to cure such material default within fifteen (15) days following written notice of default, or if the default cannot be cured within fifteen (15) days, Architect commences to cure such default, diligently pursue such cure, and complete the cure within a reasonable time acceptable to District following written notice and demand from District. If District terminates this Agreement based upon the material default of Architect, District shall be entitled to pursue any remedy available under the law against Architect including, without limitation, an action for damages for breach of contract.

14.2.2 Architect may, at its election, terminate this Agreement if District defaults in any material respect on any provision hereunder and fails to cure such material default within fifteen (15) days, or if the default cannot be cured within fifteen (15) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from ARCHITECT. If Architect terminates this Agreement based upon the material default of District, Architect shall be entitled to pursue any remedy available under the law against District, including, without limitation, an action for damages for breach of contract.

14.2.3 If, after the Agreement has been terminated for Architect's default under Article 14.2.1, it is determined that Architect was not in fact in default, the termination shall be deemed to have been effected for the convenience of the District pursuant to Article 14.

14.3 Conditions of Termination

14.3.1 Upon receipt of District's notice under either Article 14.1 or 14.2.1, Architect shall cease all work as directed in the District's notice of suspension or termination, and shall, without further cost or charge to District, promptly deliver or immediately make available to the District all information, documents, and other work product the Architect or subconsultants have accumulated in the performance of this Agreement, whether completed or in progress, along with the final invoice for payment. Architect shall diligently commence and perform, all actions necessary on the part of Architect to effect the termination of this Agreement on the date specified in the notice in a manner which minimizes the liability of Architect and District to each other and to third parties as a result of termination.

14.3.2 Return of Property.

14.3.2.1 Architect shall return to the District all unconsumed and unused work product, materials, equipment and documents and other items, the cost, expense or purchase of which was reimbursed by the District in connection with this Project. Such items include, but are not limited to, original documents, design or other calculations, reports including testing or geo-technical reports, and data files.

14.3.2.2 Architect shall deliver all such property to the District at the termination of this Agreement, or earlier if such property is requested by the District or is no longer of use to Architect in the performance of this Agreement.

14.3.2.3 All property leased by Architect and reimbursed as a direct cost by the District shall be used exclusively for purposes of this Project, and every lease by its terms shall be fully assignable to District at the sole option of District, including any right of purchase.

14.3.3 Upon termination under either Article 14.1 or 14.2.1, the District may opt to take over and prosecute the work to completion using another design professional or its own forces. The District shall be free to use or reuse any plan, drawings, specifications or other work prepared by Architect as provided in Article 17.

14.3.4 Where only a portion of the Project or Basic Services has been terminated or deleted, Architect's fixed compensation for Basic Services shall be equitably adjusted to reflect the reduced scope of Basic Services.

14.4 Payment of Fee Upon Termination for Convenience

14.4.1 If the Agreement is terminated in whole or in part for any reason other than for default by Architect, Architect's total fee for all services performed shall be computed under Articles 5 and 14.4 to compensate Architect for services actually performed through the effective date of the termination, and shall include compensation for services within the phase of performance at which Architect's services stopped, proportionate to the degree of completion of the work on such phase;

14.4.2 Architect shall be paid a termination fee which shall compensate Architect for all expenses actually incurred by Architect as a result of termination of the Agreement, including, but not limited to, start up costs, termination settlement costs the Architect reasonably incurs relating to commitments which had become firm before receipt of the notice of termination, and a reasonable profit for services actually performed (Termination Fee). The Termination Fee shall be an amount computed as a percentage of the applicable Cumulative Percentage of Total Fees as set forth in 5.4.1 earned at the time of termination as follows:

(a)Twenty percent (20%) if termination occurs during or prior to completion of the Schematic Design Phase; or

(b) Ten percent (10%) if termination occurs during the Design Development Phase;

(c) Five percent (5%) if termination occurs during the Construction Documents Phase.

(d) No Termination Fee shall be due if the Agreement is terminated at 100% Construction Documents.

14.4.3 Architect shall take all reasonable and/or necessary measures to mitigate any and all expenses and/or costs incurred in closing out this Agreement. Architect hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, cancellation, abandonment, or termination.

14.5 Payment of Fee Upon Termination for Default

Should District terminate this Agreement for Architect's default, Architect's total fee, less applicable deductions or disallowances, for all services performed shall be computed under the foregoing provisions of this Agreement to cover services satisfactorily performed to the effective date of the Termination for Default. However, any payment otherwise due to the Architect at the time of termination under this provision may be equitably adjusted by the District to the extent of any additional loss actually incurred or reasonably anticipated by the District because of Architect's default.

14.6 Bankruptcy.

In the event that either party 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 statue of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party, this Agreement shall terminate and be of no further force and effect, and any property rights of such other party, tangible or intangible, shall forthwith be returned to it.

14.7 Lack of Funding

This Agreement will terminate without penalty at the end of any school year in the event funds are not appropriated for the succeeding fiscal year. If funds are appropriated, for a portion of the fiscal year, this Agreement will terminate, without penalty, at the end of the term for which funds are appropriated

14.8 Exclusive Remedy

Any payments made to Architect pursuant to Article 14.4 or 14.5 shall be Architect's sole and exclusive remedy for early termination of the Agreement. Architect shall not be entitled to be paid for anticipated profits on unperformed services, prospective losses, or consequential damages arising from the termination of this Agreement.

ARTICLE 15.ARCHITECT AN INDEPENDENT CONTRACTOR

15.1 It is expressly understood and agreed that in the making and performance of this Agreement, Architect is an independent contractor and is not and shall not be construed to be an officer or employee or partner or joint venturer of District.

15.2 It is expressly understood and agreed that Architect, or any of its employees or the employees of its subconsultants, shall in no event be entitled to any benefits to which District employees are entitled, including, but not limited to, overtime, retirement benefits, insurance, vacation, worker's compensation benefits, sick or injury leave, or other benefits.

15.3 As an independent contractor, Architect shall be wholly responsible for the manner in which it performs its services under this Agreement. Architect shall be liable for any and all acts, errors, and omissions of its agents, engineers, consultants and employees.

ARTICLE 16. STANDARDIZED MANUFACTURED ITEMS

Architect shall consult with and cooperate with District's staff in the use and selection of manufactured items to be used in the Project. Manufactured items, including, but not limited to, paint, finish, hardware, plumbing fixtures and fittings, mechanical equipment, electrical fixtures and equipment, roofing materials, and floor covering, shall be standardized to District's criteria so long as the same does not seriously interfere with building design. Architect is responsible for any specification calling for a designated material, product, thing, or service by a specific brand or trade name is drafted in compliance with Section 3400 of the Public Contract Code.

ARTICLE 17. OWNERSHIP, USE OR REUSE OF DOCUMENTS

17.1 Consistent with Section 17316 of the Education Code, Architect acknowledges that the District owns the design documents created by the Architect for the Project. Further pursuant to Section 17316 of the Education Code, District has the right to use the design documents created by the Architect for the Project for the purposes of repair, maintenance, renovation, modernization, or other purposes, only as they relate to Project for which they were created. Pursuant to subsection (b) of Section 17316, Architect id the owner of all intellectual property in the design documents created for the Project.

17.2 Architect grants to District a license to use the Documents in perpetuity for the specific grounds listed in Section 17316 of the Education code. However, as the owner of the intellectual property in the design documents, including but not limited to the copyright, District is not permitted to use the design documents for any other project without the express written consent of Architect. Further, the District's license for use of the design documents does not include the right or authority to modify the design documents.

17.3 Notwithstanding Paragraph 17.1 of this Agreement, if District proposes to reuse the Instruments of Service prepared by Architect and retains another certified architect or structural engineer for the preparation of those plans for the reuse, District shall indemnify and hold harmless

the Architect, and their consultants, agents, and employees, from and against any claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from, in whole or in part, the reuse.

## ARTICLE 18. DISPUTE RESOLUTION PROVISIONS

### 18.1 Notice of Claim

In the event that either party asserts any claim, dispute or other matter in question arising out of or related to this Agreement, it shall promptly give the other party reasonably specific written notice of the said claim, dispute or question. Within ten (10) calendar days of the provision of such notice the parties shall make a good faith effort to meet and confer to settle the dispute.

### 18.2 Mediation

18.2.1 If a mutually agreeable settlement of any claim, dispute or question cannot be reached, the same may be subject to mediation upon the written request of either party prior to other legal actions. If such matter relates to or is the subject of a lien arising out of Architect's services, Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or arbitration.

18.2.2 A request for mediation shall be filed in writing with the other party to this Agreement. The request may be made concurrently with the filing of a request for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

18.2.3The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon.

### 18.3 Voluntary, Non-Binding Arbitration

18.3.1 Any claim, dispute or other matter in question arising out of or related to this Agreement may be subject to arbitration if the parties mutually agree in writing. Prior to arbitration, the parties may endeavor to resolve disputes by mediation in accordance with the mediation provisions above.

18. 3.2 A request for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the request for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

18.3.3 Such arbitration shall be advisory unless the parties otherwise agree in writing.

18.4.4 If a claim, dispute or other matter in question between Architect and District involves the work of a another participant in the design and construction process, the parties hereto expressly agree that either Architect or District may join such entity or person as a party to the arbitration between Architect and District. Architect shall include in all subcontracts required by this Agreement a specific provision whereby its subconsultant consents to being joined in arbitration between Architect and District involving the work of such Subconsultant.

## ARTICLE 19. SUCCESSORS AND ASSIGNMENTS

This Agreement is binding upon and inures to the benefit of the successors, executors, administrators, and assigns of each party to this Agreement, provided, however, that Architect shall not assign or transfer by operation of law or otherwise any or all of Architect's rights, burdens, duties, or obligations, professional or otherwise, without the prior written consent of District's Governing Board. Any attempted assignment without such consent shall be invalid. It is understood and agreed that the architectural services to be performed by Architect are personal in character

## ARTICLE 20. TIME SCHEDULE

20.1 Architect shall perform all services hereunder as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. Architect shall submit for District's approval, as part of Exhibit A hereto, a schedule for the performance of Architect's services which shall be adjusted, as required, as the Project proceeds, and shall include allowance for periods of time required for District's review and approval of submissions and for approvals of authorities having jurisdiction over the Project. The schedule when approved by District shall not be exceeded unless extended in writing by District. Architect shall at all times maintain adequate staffing and resources necessary for the timely performance of Architect's services under this Agreement. Architect shall review and respond to submittals, requests for information, and the like, as expeditiously as possible to avoid delays in the work.

20.2 DELAYS: If Architect is delayed in Architect's services by acts of District or its employees or those in a direct contractual relationship with District or by the California Department of General Services or other agencies having jurisdiction over the Project or by acts of God or other occurrences which were not or could not have been reasonably foreseen and provided for, and which are not due to any fault or negligence on the part of Architect, the time for Architect's performance shall be extended accordingly. Notwithstanding the foregoing, Architect shall endeavor to avoid or minimize such delay. District shall not be liable for the damages to Architect on account of such delays, however, if delays beyond sixty (60) days are not due to any fault or negligence on the part of Architect, the parties shall negotiate equitable adjustment to Architect's compensation if due to such

delays.

ARTICLE21. HAZARDOUS MATERIALS

Unless otherwise specified, the services provided under this Agreement do not include the discovery, identification, removal, handling, or disturbance of any hazardous substances or materials at the project site. If such substances or materials are knowingly encountered by Architect, construction work shall cease in that area and District shall be notified to take appropriate action for removal or otherwise abating the condition in accordance with current regulations applicable to District.

ARTICLE 22. SCHOOL SITE CONDITIONS

District has determined that fingerprinting is not applicable to this Agreement, however, Architect expressly acknowledges that the following conditions shall apply to any work performed by Architect and/or Architect's employees on a school site: (1) Architect and Architect's employees shall check in with the school office each day immediately upon arriving at the school site; (2) Architect and Architect's employees shall inform school office staff of their proposed activities and location at the school site; (3) Once at such location, Architect and Architect's employees shall not change locations without contacting the school office; (4) Architect and Architect's employees shall not use student restroom facilities; and (5) if Architect and/or Architect's employees find themselves alone with a student, Architect and Architect's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

Fingerprinting.
Architect, its employees, agents, subconsultants and subconsultant employees who go to school sites when students are present will be required to comply with the requirements of the California Education Code Sections 45125.1 and 45125.2 at no cost to the District. In accordance with Section 45125.1 (d) all personnel going to the school site(s) must submit his or her fingerprints to the California Department of Justice (DOJ) in a manner authorized by the DOJ to determine whether the employee has been arrested or convicted of any crime. All personnel who may come in contact with students must be cleared by DOJ (Section 42125.1(f)). Any person who has been arrested or convicted of any serious or violent felony, as defined by California Penal Code Sections 667.5 and 1192.7 will not be allowed on the District property. The Architect is responsible for the administration and all costs relating to the fingerprinting and screening by the DOJ of all candidates for positions with the District. Confirmation of the DOJ clearance or confirmation that the fingerprints have been submitted to DOJ must be submitted to the District prior to employees visiting the school site. If the above time requirements cannot be met a letter of explanation must be submitted for the District's approval prior to visiting the school site.

ARTICLE 23. NOTICES

All notices, demands or requests shall be addressed to the parties as follows:

To District

| | |
|---|---|
| Name | San Leandro Unified School District<br>Song Chin-Bendib |
| Address: | 14735 Juniper Street |
| City: | San Leandro, CA 94579 |
| Phone: | 510.667.3504 |
| Fax: | 510.895.4159 |
| Email: | schinbendib@sanleandro.k12.ca.us |

With a copy to District and to

| | |
|---|---|
| Name: | Harris & Associates<br>Kurt Weidmann |
| Address: | 14735 Juniper Street |
| City: | San Leandro, CA 94579 |
| Phone: | 510.895.4675 |
| Fax: | 510.678.5368 |
| Email: | kweidmann@harris-assoc.com |

To Architect

| | |
|---|---|
| Name: | Spencer Associates, Inc.<br>Steve Bowers, Principal |
| Address: | 2100 Geng Rd, Ste 100 |
| City: | Palo Alto, CA 94303 |
| Phone: | 650-855-8850 |
| Fax: | 650-855-8855 |
| Email: | steveb@spencerassoc.com |

The Parties expressly acknowledge and agree that attempts to transmit electronic mail and facsimiles will not be sufficient to constitute notice under this Agreement.

ARTICLE 24. ARCHITECT REPRESENTATIONS AND DECLARATIONS.

24.1 Architect hereby represents and states that it is an experienced architectural firm having the skill and the legal and professional ability and flexibility to perform the services required of it under this Agreement.

24.2 Architect hereby represents and states that it has the capabilities and resources necessary to perform its obligations hereunder.

24.3 Architect hereby represents and states that it will assume full responsibility for all services prepared and furnished to District by its engineers, agents, employees, consultants.

24.4 Architect hereby represents and states that it has sufficient financial strength and resources to undertake and complete the architectural services provided for under this Agreement within the time allotted by District.

24.5 Architect hereby represents and agrees that the drawings, specifications and other documents prepared by it pursuant to this Agreement shall be designed to be complete and functional for the purposes intended, and that the buildings and improvements shown thereon, if constructed in accordance with the intent established by such drawings, specifications and other documents, and each shall be a complete and properly functioning facility suitable for the purposes for which it is intended and in compliance with applicable governmental laws, rules and regulations.

24.6 Architect understands and acknowledges that the Board must approve the terms of this Agreement and the provision of architectural and professional services herein, and must formally approve and appoint Architect to provide the professional and architectural services in accordance with the terms and conditions of this Agreement.

24.7 Architect understands and acknowledges that this Agreement is subject to the budget and school provisions of District. District must first assure itself that the funds needed to execute this Agreement are available and have been properly appropriated for such purpose. Architect understands that charges and compensation under this Agreement shall accrue only after Board approval. Any amount of District's obligation hereunder shall not at any time exceed the amount approved by the Board for the purpose and period stated in this Agreement. This Section of Article 24is a particularized provision, which shall control against any and all other provisions of this Agreement.

24.8 Architect acknowledges and agrees that the role of any construction manager on this Project is to function solely on behalf of, as an agent of, and for the benefit of the District.

ARTICLE 25. AMENDMENTS AND MODIFICATIONS

The Parties reserve the right to amend or modify this Agreement in writing at any time by mutual consent. Such changes, including any increase or decrease in the amount of compensation shall be effective upon execution of duly authorized written amendments to this Agreement unless stated otherwise in the amendments themselves. Amendments shall be numbered sequentially.

ARTICLE 26. CONFLICT OF INTEREST

26.1 Architect represents that Architect has no existing financial interest and will not acquire any such interest, direct or indirect, which could conflict in any manner or degree with the performance of services required under this Agreement and that no person having any such interest shall be subcontracted in connection with this Agreement, or employed by Architect. Architect shall not conduct or solicit any non-District business while on District property or time. Architect will also take all necessary steps to avoid the appearance of a conflict of interest and shall have a duty to disclose to the District prior to entering into this Agreement any and all circumstances existing at such time which pose a potential conflict of interest.

26.2 Architect warrants that it has not directly or indirectly offered or given, and will not directly or indirectly offer or give, to any employee, agent, or representative of District any cash or non-cash gratuity or payment with view toward securing any business from District or influencing such person with respect to the conditions, or performance of any Agreements with or orders from District, including without limitation this Agreement. Any breach of this warranty shall be a material breach of each and every Agreement between District and Architect.

26.3 Architect hereby certifies that no current Board member or District employee, and no one who has been a Board Member or who has been employed by District within the past two years, has participated in bidding, selling or promoting this Agreement. Furthermore, Architect certifies that no such current or former Board member or District employee has an ownership interest in this Agreement, nor shall any such current or former Board member or District employee derive any compensation, directly or indirectly, from this Agreement. Architect understands that any violation of this provision of the Agreement shall make the Agreement voidable by the District at its option.

26.4 Should a conflict of interest issue arise, Architect agrees to fully cooperate in any inquiry and to provide the District with all documents or other information reasonably necessary to enable the District to determine whether or not a conflict of interest existed or exists.

26.5 Failure to comply with the provisions of this section shall constitute grounds for immediate termination of the Agreement, in addition to whatever other remedies the District may have.

ARTICLE 27. MISCELLANEOUS

The following terms and conditions shall apply to this Agreement:

27.1 GOVERNING LAW AND VENUE: This Agreement shall be construed in accordance with, and governed by the laws of the State of California. Venue shall be in the Superior Court of the State of California in the County of Alameda.

27.2. ENTIRE AGREEMENT: This Agreement with its exhibits supersedes any and all other prior or contemporaneous oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreement shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.

27.3. SEVERABILITY: Should any provision in this Agreement be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect.

27.4. NON-WAIVER: None of the provisions of the Agreement shall be considered waived by either party unless made by written statement expressing that it is intended as a waiver of specified provisions of the Agreement. In the case of the District, any waiver of any provision of this Agreement must also have been approved by affirmative vote of the Board. District's failure to enforce any provision of this Agreement, or the District's waiver of any provision in a particular instance shall not be construed as a general waiver of any part of such provision.

27.5 DISCRIMINATION PROHIBITED: It is the policy of District that in connection with all work or services performed under contracts, there will be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, handicap, or marital status. Architect agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment Practice Act, beginning with Government Code Section 12900, et seq. Architect shall familiarize itself with all District policies relating to nondiscrimination, harassment-free workplaces, and other work related policies, and agrees to adhere to those policies in executing this Agreement and in performing the obligations hereunder. Architect agrees to require like compliance by any consultants or subcontractors employed on the Project.

27.6. DISABLED VETERANS

27.6.1 PARTICIPATION GOALS: In accordance with Education Code section 17076.11, the

District has a participation goal for disabled veteran business enterprises ("DVBE") of at least three percent (3%) per year of the overall dollar amount of funds allocated to District by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act of 1998 for construction or modernization and expended each year by the District. Prior to, and as a condition precedent for final payment under any contract for such Project, Architect shall provide appropriate documentation to District identifying the amount paid to disabled veteran business enterprises in conjunction with the contract, so that District can assess its success at meeting this goal.

27.6.2. RETENTION OF DVBE RECORDS: Architect agrees that, for all contracts subject to DVBE participation goals, the State and District have the right to review, obtain and copy all records pertaining to performance of the contract in accordance with DVBE requirements. Architect agrees to provide the State or District with any relevant information requested and shall permit the State or District access to its premises upon reasonable notice for purposes of interviewing employees and inspecting records. Architect agrees to maintain such records for a period of three (3) years after final payment under the contract.

27.7 NO THIRD PARTY BENEFICIARIES: This Agreement is as between Architect and District and no other party, individual or entity is intended to be or is a third party beneficiary of this Agreement.

27.8 CONFIDENTIALITY

Architect shall treat all information and data furnished to it by District or otherwise obtained or prepared by Architect concerning the Project as strictly confidential and shall not disclose any of the same to any other person or entity unless required to do so in connection with Architect's performance of this Agreement or any governmental filings or applications. Architect shall not engage in or permit any public references or statements to the Project, District or Architect's services hereunder, including, without limitation, granting interviews to broadcast, print or other media, without the prior written consent of District, which may be granted or withheld in the sole discretion of the District. Architect shall instruct all of its employees of the foregoing confidentiality obligation.

27.9 SURVIVAL.

The provisions of this Agreement which by their nature survive completion of the Services or termination of this Agreement, including, without limitation, warranties if any, indemnities and payment obligations, shall remain in full force and effect after completion or termination of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed this _____ day of _____, 2011.

| Architect | District |
|---|---|
| By: _____ | By: _____ |
| Steve Bowers, | Song Chin-Bendib, |
| Principal, License No. #C-8264 | Assistant Superintendent |

EXHIBITS:

Exhibit A: Project Description and Schedule
Exhibit B: Tasks and Responsibilities
Exhibit C: Compensation, Reimbursables and Schedule of Hourly Billing Rates
Exhibit D: Key personnel

## Exhibit A – Project Description, Budget and Schedule

### I. Project Scope:

Design of sustainable facilities at Muir Middle School & Bancroft Middle School, per SLUSD board policy, to include:

Muir MS
Synthetic field for soccer, football & lacrosse
All-weather running/walking path
ADA upgrade path of travel
Other associated improvements within available budget

Bancroft MS
Par course
ADA upgrade path of travel

### II. Construction Budget

Muir MS
$2,160,000.00 for general contractor at bid day.

Bancroft MS
$90,000.00 for general contractor at bid day

### III. Schedule

| | |
|---|---|
| Conceptual Design Team start | October 25, 2011 |
| DSA Approval | October 31, 2012 |
| Issue Bid Set | January 2013 |
| Bids Due | March 2013 |
| Construction start | April 2013 |
| Construction complete | September 2013 |
| Closeout complete | October 2013 |
| DSA Certification | December 2013 |

## Exhibit B – Tasks and Responsibilities

Note: It is important that District and Architect communicate with one another clearly to allocate and coordinate the tasks and responsibilities listed:

Architect's Basic Services Scope Responsibilities:

I. **Conceptual/Programming** – Architect will meet with the District and representatives from each middle school site in a series of meetings in order to develop specific program understandings for each site.

Facilitate and document the program with the District and site representatives

Request and gather existing site data

Conduct a preliminary site visit to each site to review site attributes against the proposed program developed

Develop a program per site and confirm scope and priorities

Prepare preliminary conceptual designs for each site that illustrate the locations of the program improvements and present information

Develop a palette of materials that address the program elements and present to District and site representatives

Identify any issues related to program costs that may negatively impact the project and inform the District as necessary

Conduct a field inventory to confirm all site elements to be included in the plans/scope of work based on the information prepared and approved in the programming phase

Prepare preliminary plans that illustrate the conceptual design based on the field inventory.

Documents will include site plans, sketches and/or other drawings or graphic materials that will illustrate the concept, scope and improvements for each site and those elements that are typical to all sites.

Prepare a preliminary cost estimate based on the plans. Architect will identify potential base bid and alternate items based on the priorities established in the programming phase

Meet with District and possibly site representatives to review the design and costs and gain direction and approval

After approval of the programming phase plan and cost estimate, Architect will prepare a presentation that will be used in meeting with school representatives in order to inform them about the site work and receive their feedback. Architect will attend the meeting and incorporate approved comments into the scope of work for the design development phase of the project.

**II. Design Development –** Architect will prepare a design development plans that will fix the elements for the project based on the approved schematic design phase of the project. Architect will:

From the approved schematic design drawings Architect will develop design development drawings that fully illustrate and refine the design for each site that established the scope relationship, form, size and appearance of all improvements

The design development drawings will include a dimensioned site plan with informational call outs referencing site work details and proposed materials, colors and other particulars necessary to fix the design.

**DD 100% Set**

- Prepare Auto CAD base sheets from existing data provided by District.
- Prepare demolition plan.
- Prepare construction layout plan and details sheet.
- Prepare preliminary planting plan and details sheet.
- Prepare preliminary irrigation plan and details sheet.
- Prepare preliminary specifications.
- Prepare preliminary cost estimate.

Review of drawings in-house and with District representatives

Prepare a refined cost estimate based on the 100% design development plans. Architect will further identify base bid and alternate items based on the priorities approved in the schematic design phase

Meet with District to review the design, costs, materials selection and gain direction and approval

After District approval of the design development plan and estimate, Architect will prepare a presentation that will assist District in meeting with school representatives in order to inform them about the site work and receive their feedback. Architect will attend the meeting and incorporate approved comments into the scope of work for the construction document phase of the project.

**III. Construction Documentation and DSA Submittal –** Based on the approved design development plans, Architect will prepare Construction Documents in AutoCAD for the project that sets forth in detail the work to be done including materials, workmanship, finishes and equipment required for the site work at each school. The construction documents will include working drawings including all site and shade structure plans, sections, elevations, enlargement plans and details as necessary to construct the project. The drawings will be in compliance with applicable building codes, ordinances,

other regulations and requirements of DSA. Documents will include specifications, bid forms, alternates, information on bonds and will be submitted to the District for merging with the District's front end bid documents. Architect will review the cost estimate with the District to insure conformance with the budget and will make the necessary adjustments to the design prior to final bid document preparation. Architect will conduct an in-house review of the design and make adjustments to the documents as required. Once the documents are completed we will provide hard copies of the drawings and technical specifications to the District for incorporation into a bid document. The technical specifications will be in the SLUSD designated CSI format with appropriate headers and footers. Architect will maintain open lines of communication and meet with the District for review and evaluation at the following intervals:

**A. 95% Set - Including DSA Submittal**

- Revise demolition plan.
- Revise construction layout plan and details sheet.
- Revise planting plan and details sheet.
- Revise irrigation plan and details sheet.
- Refine specifications.
- Refine cost estimate.
- Review of drawings in-house and with District representatives.
- Present construction document set for DSA submittal and prepare DSA back check comments for re-submittal.

**B. 100% Final Set**

- Revise and finalize demolition plans.
- Revise and finalize construction layout plan and details sheet.
- Revise and finalize planting plans, plant lists, and details sheets.
- Revise and finalize irrigation plans and details sheets.
- Revise and finalize technical specifications.
- Revise and finalize cost estimate.
- Review of drawings in-house and with District representatives.
- Present final reproducible set for printing and bidding.

## V. Construction Phase

### A. Bidding

Architect will participate in a pre-bid conference with prospective bidders and answer questions and provide clarifications and addenda concerning Contract Documents during this phase.

### B. Construction Administration

Architect will visit the site at appropriate stages of construction as outlined in the technical specifications. Architect will be available as needed for reasonable interpretation of the plans to help insure there is no delay of the project. Architect will notify and make recommendations to accept work or to reject work that does not conform to the Contract Documents.

Architect will review submittals, shop drawings, product data and samples, to check for conformance with information given and the design concept expressed in the Contract Documents. Architect will respond to Contractor Requests For Information (RFI) and will assist the Construction Manager (CM) with technical information as directed in preparing change order and construction change directives with supporting documentation and data if required. Architect will perform a complete punch list review.

1. Provide field observation and a final job-site observation as required by the specifications.
2. Provide clarifications and revisions to drawings and/or specifications RFIs to CM.
3. Review and return shop drawings, and submittals to CM.
4. Design clarification shall be attempted via telephone, email or fax prior to a site visit through the RFI procedure.
5. Architect will prepare a final itemized landscape punch list.
6. Architect will review Contractor prepared as-built drawings as outlined in the irrigation specifications.

**C. Close Out**

Architect will provide all necessary services to assist the District to close-out the project, including the preparation and submittal of all final change orders to DSA and securing DSA approval and preparing and submitting the Final Verified Progress Report. Architect will prepare record drawings of the as-built plans in AutoCAD format.

## VI. Deliverables shall be provided for each phase as follows:

Conceptual/Programming/Schematic Phase: four (4) full size and four (4) half size plotted or printed sets of site plan sketches for each of the school sites and a basis of design programming document including cost opinion at the end of the Conceptual Design Team (CDT) phase (3 to 4 CDT meetings). Basis of design document should one page summary, attached should one sketch of the conceptual site plan for each assigned school site.

Design Development Phase: four (4) full size and four (4) half size sets of drawings, and one (1) reproducible set of full size drawings; four (4) hard copies and one (1) set of compact discs of CADD files, outline specifications, reports, schedules and other written documents typically produced at this phase.

Construction Documents Phase, 95% and 100% submittals: four (4) full size and four (4) half size sets of drawings, and one (1) reproducible set of full size drawings; four (4) hard copies and one (1) set of compact discs of CADD files, outline specifications, reports, schedules and other written documents typically produced at this phase.

Construction Bid Phase: all documents on compact disk.

CADD drawings shall be provided in *[AutoCAD R2011 or other required format, if any]* or other computer drawing and drafting software approved by the District.

Written documents, spreadsheets and cost estimates on Microsoft Office Suite 2010 (Word and Excel)

Schedules in *Microsoft Project 2010 or current Primavera version.*

Audiovisual presentations in Microsoft PowerPoint 2010.

Image files in JPG, GIF, PIC, TIF and BMP formats. These images shall be made available on any storage format selected by the District.

Presentation Boards, mounted on 3/8 inch or ¼ inch foam board or gator board as requested by the District

Model, Plexiglas painted and mounted on wooden base with Plexiglas cover (if requested by District as Reimbursable Expense)

When Architect submits to DSA for approval, Architect shall submit the following to the District:

Final CHPS Scorecard signed by the design principal.

Specifications with General Conditions (6 bound sets)

Structural Calculations, signed by the Structural Engineer (2 sets).

Energy Calculations (2 sets).

Construction Cost Estimate (3 sets).

Project technical specifications for the completion of Contract Documents. Architect shall assist the District with Advertisement for Bids, Information for Bidders, Bid Forms (including Alternate Bids as requested by District), Bonds, General Conditions, Special Conditions, Agreement, Veteran Business Enterprise preferences, and/or affirmative action documents, if required, and any other documents reasonably required in order to obtain bids responsive to the specifications. All such documents shall be subject to the approval of District and District's counsel.

These are in addition to, and supplement, Basic Services as described in Paragraph 5. Where there is an apparent conflict between Exhibit B and Paragraph 5, Paragraph 5 shall prevail.

**VII. The following are DISTRICT Responsibilities, and excluded from ARCHITECT's scope:**

Property limits survey and topographic survey
Geotechnical & soils report
Underground utility location survey
CEQA reports, Environmental Impact Reports (EIR) and studies
Hazardous materials testing, reporting and contract documents
On-site construction management
On-site inspection
Interim housing

**Exhibit C** – Compensation, Reimbursable Expenses and Schedule of Hourly Billing Rates

## I. Compensation

Lump Sum Fixed Fee is $235,000.00

Fee Breakdown by school site:

| | |
|---|---|
| 1) Bancroft MS | $11,000.00 |
| 2) Muir MS | $224,000.00 |
| Total = | $235,000.00 |

Cap for Additional Services is N/A
Note: All Additional services must be approved, in writing, by District in advance

## II. Reimbursable Expenses & Schedule of Hourly Billing Rates

The Architect *has estimated and the* District *has accepted the following reimbursable expenses to be billed at one hundred ten percent (110%) of cost. The* Architect *may not exceed the total estimated amount unless approved by* District *in advance.*

| | |
|---|---|
| Out-of-local-area travel | $_____0_____ |
| Long distance telephone | $_____0_____ |
| Printing | $_____0_____ |
| Plotting | $_____0_____ |
| Additional models and mockups | $_____0_____ |
| Total estimated reimbursable expenses | $_____0_____ |

**Project**: Middle School Exterior Athletic

**Project No**.:
**Program ID No**.: Measure M

Schedule of Standard Hourly Billing Rates for Additional Services

The following hourly rates shall be used for any Time and Materials services above or for any calculation of future services:

| | |
|---|---|
| Principals of the Firm | $ 180.00 / hr |
| Associate | $ 120.00 / hr |
| Project Architect | $100.00 / hr |
| Project Manager | $ 120.00 / hr |
| Technical Staff | $ 85.00 / hr |
| Admin Support | $60.00 / hr |

Consultants: 1.10 times the consultants' standard hourly rates not to exceed a base rate of $185.00/hr

These rates shall be adjusted annually on the anniversary date of the Agreement up to, and in accordance with the Consumer Price Index issued by the U.S. Department of Labor, Bureau of Labor Statistics for "All Urban Consumers" in "San Francisco-Oakland" for "All Items," provided that the rates charged to the District does not exceed Architect's prevailing Most Favored Rate.

**Exhibit D**

Key Employees:

Principal-in-Charge Steve Bowers