



ADDENDUM #1 - RFQ/P 1920 -007 REQUEST FOR  
 QUALIFICATIONS/PROPOSALS FOR GEOTECHNICAL SURVEY SERVICES  
 For Modernization at San Luis Rey Elementary School

**NOTICE TO PROPOSERS**

**ADDENDUM #1**

**RFP #1920-007 Geotechnical Survey Services for Modernization at San Luis Rey Elementary School**

**Oceanside Unified School District**

The following changes, additions, deletions, clarifications or corrections shall become part of the Request for Proposals for the above listed project. This Addendum #1 forms a part of the RFQ document and modifies the original documents. **Addendum #1 MUST be Acknowledged in the cover letter.** Failure to do so may subject response to disqualification.

PROJECT NAME	Modernization at San Luis Rey Elementary School	PROGRAM MANAGEMENT		CCM/MAAS
PROJECT DESCRIPTION	Geotechnical Survey	PROGRAM MANAGER		Penny McGrew
RFI #	RFQ QUESTION	RFQ	DATE REQUESTED	RFQ RESPONSE
001	Is the schedule of rates included in the 10 page count?	Geotech	05/19/20	The schedule of rates must be included in a separate sealed envelope, and is not included in the 10 page limit.
002	Are resumes included in the 10 page limit or should they be attached as an appendix	Geotech	05/19/20	Resumes may be attached as an appendix, and are NOT included in the 10 page limit.
003	Is hard copy submittal still required with Covid-19 concerns?	Geotech	05/22/20	Hard copy submittals to 2111 Mission Ave. Building E, Oceanside, CA are required. If hand delivering, please use best practices regarding social distancing and personal protective equipment
004	Are resumes included in the 10 page limit or should they be attached as an appendix	Geotech	05/22/20	Please see RFI Response 002
005	Can you provide as sample agreement and insurance requirements?	Geotech	05/22/20	Please see attached sample agreement, including insurance requirements
006	Can you please confirm that the fee schedules provided in a separate sealed envelope are not included in the 10 page count limit?	Geotech	05/26/20	Please see RFI Response 001
007	Are resumes required in this SOQ? If so, will they be counted toward the page count or included in an appendix section?	Geotech	05/26/20	Please see RFI Response 002
008	We understand that the SOQ shall not exceed 10 pages in length and 4 (four) hardcopies and 1 (one) electronic copy are to be submitted. However, in an attempt to help stop the spread of Covid-19, would only an electric submittal be acceptable?	Geotech	05/27/20	Please see RFI Response 003
009	Are there plans for the planned school?	Geotech	05/27/20	Assume no as built; however, if they are located, they will be provided.
010	What is the total number of proposed buildings?	Geotech	05/27/20	This is an anticipated modernization of the existing facility.
011	What is the square footage of the proposed buildings?	Geotech	05/27/20	Existing square footage is approximately 44,000 square feet.
012	Are there planned storm water infiltration BMPs? How many?	Geotech	05/27/20	Final scope is yet to be determined.
013	Are there any planned retaining walls?	Geotech	05/27/20	Final scope is yet to be determined.

**END OF ADDENDUM #1**

**AGREEMENT FOR ARCHITECTURAL SERVICES**

**BETWEEN**

**[INSERT ARCHITECT NAME]**

**AND**

**OCEANSIDE UNIFIED SCHOOL DISTRICT**

**[INSERT DATE]**

**FOR**

**[INSERT PROJECT TITLE]**

**PROJECT # [INSERT PROJECT NUMBER]**

**TABLE OF CONTENTS**

**RECITALS..... 5**  
**AGREEMENT ..... 5**

**SECTION 1 ..... 5**  
**GENERAL PROVISIONS..... 5**  
**1.1 DEFINITIONS. .... 5**  
**1.2 INCORPORATION OF RECITALS, EXHIBITS AND REFERENCED DOCUMENTS .... 10**

**SECTION 2 ..... 10**  
**EMPLOYMENT OF ARCHITECT..... 10**  
**2.1 EMPLOYMENT OF ARCHITECT ..... 10**  
**2.2 PERFORMANCE STANDARDS. .... 10**  
**2.3 AUTHORITY OF ARCHITECT..... 10**  
**2.4 PROJECT DIRECTOR AND OTHER EMPLOYEES ..... 10**  
**2.5 ARCHITECT COVENANT AGAINST CONTINGENT FEES ..... 11**  
**2.6 ORDER OF PRECEDENCE..... 11**

**SECTION 3 ..... 11**  
**THE PROJECT ..... 11**

**SECTION 4 ..... 11**  
**SERVICES ..... 11**  
**4.1 BASIC SERVICES..... 11**  
**4.2 GENERAL PROVISIONS CONCERNING BASIC SERVICES ..... 11**  
**4.3 ADDITIONAL SERVICES ..... 14**

**SECTION 5 ..... 15**  
**ARCHITECT’S COMPENSATION & PAYMENT SCHEDULE ..... 15**  
**5.1 COMPENSATION FOR BASIC SERVICES..... 15**  
**5.2 COMPENSATION FOR ADDITIONAL SERVICES ..... 16**  
**5.3 DISPUTED AMOUNTS ..... 16**  
**5.4 COMPENSATION FOR REIMBURSABLE SERVICES..... 17**  
**5.5 INVOICES..... 17**

**SECTION 6 ..... 18**  
**DEFAULT; REMEDIES; SUSPENSION AND TERMINATION ..... 18**  
**6.1 TERMINATION BY DISTRICT..... 18**  
**6.2 ARCHITECT DEFAULT..... 19**  
**6.3 DISTRICT REMEDIES ..... 20**  
**6.4 TERMINATION BY ARCHITECT ..... 21**  
**6.5 SOLE REMEDY UPON TERMINATION BY ARCHITECT ..... 22**

**SECTION 7 ..... 22**  
**DUTIES AND LIABILITIES OF DISTRICT ..... 22**  
**7.1 DUTIES..... 22**  
**7.2 LIMITATION ON LIABILITY OF DISTRICT ..... 24**

<b>SECTION 8</b> .....	<b>24</b>
<b>PROJECT CONSTRUCTION COST ESTIMATES</b> .....	<b>24</b>
<b>8.1 CONSTRUCTION BUDGET</b> .....	<b>24</b>
<b>8.2 ESTIMATED PROJECT CONSTRUCTION COST</b> .....	<b>24</b>
<b>SECTION 9</b> .....	<b>24</b>
<b>PROJECT SCHEDULE</b> .....	<b>24</b>
<b>9.1 SCHEDULE</b> .....	<b>24</b>
<b>SECTION 10</b> .....	<b>25</b>
<b>DOCUMENTS OWNERSHIP, LICENSE, COPYRIGHT AND USE</b> .....	<b>25</b>
<b>10.1 OWNERSHIP</b> .....	<b>25</b>
<b>10.2 REUSE BY DISTRICT</b> .....	<b>25</b>
<b>10.3 COPYRIGHT</b> .....	<b>26</b>
<b>10.4 TECHNOLOGY USED</b> .....	<b>26</b>
<b>10.5 DELIVERABLES UPON TERMINATION</b> .....	<b>26</b>
<b>10.6 NO REPRODUCTION OR USE BY ARCHITECT OR THIRD PARTIES</b> .....	<b>27</b>
<b>SECTION 11</b> .....	<b>27</b>
<b>INDEMNIFICATION AND INSURANCE</b> .....	<b>27</b>
<b>11.1 INDEMNIFICATION</b> .....	<b>27</b>
<b>11.2 INSURANCE</b> .....	<b>27</b>
<b>SECTION 12</b> .....	<b>30</b>
<b>DISPUTE RESOLUTION</b> .....	<b>30</b>
<b>12.1 RESOLUTION OF CLAIMS</b> .....	<b>30</b>
<b>12.2 RESOLUTION OF OTHER DISPUTES</b> .....	<b>30</b>
<b>12.3 SUBMISSION OF A CLAIM</b> .....	<b>30</b>
<b>12.4 CLAIMS RESOLUTION PROCESS</b> .....	<b>31</b>
<b>12.5 NON-WAIVER OR RELEASE</b> .....	<b>33</b>
<b>SECTION 13</b> .....	<b>33</b>
<b>NOTICES</b> .....	<b>33</b>
<b>13.1 NOTICES</b> .....	<b>33</b>
<b>SECTION 14</b> .....	<b>33</b>
<b>REPRESENTATIONS OF THE ARCHITECT</b> .....	<b>33</b>
<b>14.1 REPRESENTATIONS OF THE ARCHITECT</b> .....	<b>33</b>
<b>14.2 COMPLIANCE WITH LAWS</b> .....	<b>34</b>
<b>14.3 SUPPLEMENTAL CONDITIONS</b> .....	<b>35</b>
<b>SECTION 15</b> .....	<b>35</b>
<b>MISCELLANEOUS PROVISIONS</b> .....	<b>35</b>
<b>15.1 SUCCESSORS AND ASSIGNS</b> .....	<b>35</b>
<b>15.2 SEVERABILITY</b> .....	<b>35</b>
<b>15.3 ENTIRE AGREEMENT</b> .....	<b>35</b>
<b>15.4 GOVERNING LAW AND VENUE</b> .....	<b>35</b>
<b>15.5 NON-WAIVER</b> .....	<b>35</b>
<b>15.6 INDEPENDENT CONTRACTOR</b> .....	<b>36</b>
<b>15.7 NO ASBESTOS CERTIFICATION</b> .....	<b>36</b>

**15.8 NON-DISCRIMINATION ..... 36**  
**15.9 NO THIRD PARTY BENEFICIARY ..... 36**  
**15.10 ASSISTANCE OF COUNSEL ..... 36**  
**15.11 AUTHORITY TO EXECUTE ..... 37**  
**15.12 HEADINGS ..... 37**  
**15.13 EXHIBITS ..... 37**  
**15.14 EXECUTION IN COUNTERPARTS..... 37**

## AGREEMENT FOR ARCHITECTURAL SERVICES

This Agreement for Architectural Services (“**Agreement**”) is entered into on this [insert date] day of [insert month], 2020 by and between [ARCHITECT], an architectural firm that employs architects licensed to work in the State of California (collectively and individually, the “**Architect**”), with a business address at [ADDRESS], and the OCEANSIDE UNIFIED SCHOOL DISTRICT, a California public school district (“**District**”), with offices located at 2111 Mission Avenue, Oceanside, CA 92058. District and Architect are sometimes individually referred to herein as “Party” and collectively as “Parties.”

### RECITALS

**WHEREAS**, the District proposes to undertake the construction and installation of certain improvements, as further defined and described below (the “**Project**”) and, in connection with the Project, requires the services of a duly qualified and licensed architect;

**WHEREAS**, the Architect represents that its employees are licensed to practice architecture in the State of California, as appropriate, and that the Architect is qualified to perform the services required under this Agreement;

**WHEREAS**, the District has selected the Architect through a competitive Request for Qualification and Request for Proposal process designed to select the best qualified architect for the Project in question;

**WHEREAS**, the Parties intend that the Architect provide professional services pursuant to this Agreement, under the management and oversight of the District’s Representative, in such manner as to enable the Project to be designed and constructed with the standard of care described herein without burdening the District’s staff.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the promises and covenants herein and other valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

#### SECTION 1 GENERAL PROVISIONS

**1.1 DEFINITIONS.** When used in this Agreement, the following terms shall have the meanings set forth below:

**1.1.1 “Addendum”** shall mean written or graphic information (including without limitation Drawings and Specifications), prepared and issued prior to the receipt of Bids that modifies or interprets the Bid Set by additions, deletions, clarifications, or corrections.

**1.1.2 “Additional Services”** shall mean those services in addition to the Basic Services that are provided by the Architect pursuant to a written request by the District.

**1.1.3 “Agreement”** shall mean this document and all its identified exhibits, attachments and amendments.

**1.1.4 “Architect”** shall mean the architectural firm listed in the first paragraph of this Agreement and defined herein as the Architect.

**1.1.5 “Architect Consultant”** shall mean a person properly qualified and licensed in various aspects of design and construction employed at Architect’s sole expense, pursuant to prior written approval from the District, to provide Services for the Project.

**1.1.6 “Architect’s Supplemental Instruction” or “ASI”** shall mean a small set of drawings which better explains the intent of the design of a building or structure.

**1.1.7 “As-Built Documents”** shall mean the collection of documents assembled and prepared by the Contractor (including, without limitation the As-Built Drawings and specifications, shop drawings, approved changes, RFIs, manuals, etc.) showing the condition of the Project as actually built and accepted.

**1.1.8 “Basic Fee”** shall mean the compensation provided to the Architect for providing Basic Services.

**1.1.9 “Basic Services”** shall consist of (i) the professional design services, including but not limited to landscape and irrigation design, architectural, civil, structural, mechanical, plumbing (including fire sprinklers), acoustical, food service, audio and visual design, electrical services, a SWPPP for the Project, and LEED services as required to complete the Project, (ii) preparing educational specifications for the Project, and (iii) preparing and/or signing documentation required to obtain funding from any program administered by the State.

**1.1.10 “Bid”** shall mean the written proposal submitted to the District by a Contractor in accordance with the Bid Set for the construction of the Project.

**1.1.11 “Bid Set”** shall mean the DSA Record Set, the construction contract, general conditions and any other documents included in the bid packages, including but not limited to any addenda, all in a form that District approves and uses to bid the construction of the Project.

**1.1.12 “Bidder”** shall mean the person or entity submitting a Bid.

**1.1.13 “BIM” or “Building Information Modeling”** shall mean the process of generating and managing building data during its life cycle. Typically, it uses three dimensional, real-time, dynamic modeling software to increase productivity in building design and construction. The process encompasses building geometry, spatial relationships, geographic information, and quality and properties of building components.

**1.1.14 “CDE”** shall mean the California Department of Education.

**1.1.15 “Change Order” or “CO”** shall mean a written document between the District and the Contractor that is signed by the District and the Contractor and the Architect authorizing a change in the work or an adjustment in the contract, or the contract time.

**1.1.16 “Change Order Request” or “COR”** shall mean a proposed change(s) in contract amount, requirements or time (outside the scope of the construction contract and/or provisions of its changes clause) which becomes a Change Order when approved by the other parties (owner, contractor, and Architect).

**1.1.17 “CHPS”** shall mean Collaborative for High Performance Schools.

**1.1.18 “Construction Budget”** shall mean the Construction Cost, established by the District representative, of the documents and specifications prepared by or under the direction of the Architect, as amended by agreement of the parties during any subsequent phase.

**1.1.19 “Construction Cost”** shall mean, as of acceptance of the Project, the cost of all labor, materials, and fixtures (but not trade fixtures) supplied by the Contractor and subcontractors to construct the Project, including mobilization, demobilization, materials and other costs typically included in this calculation and *excluding* (i) all fees and costs paid to the Architect and any of their consultants, (ii) all costs and expenses of services, reports, information, equipment and materials furnished by the District, (iii) all costs and fees related to off-site improvements, (iv) all costs incurred to remedy any design or construction defects or errors, and (v) any other Project-related costs and fees typically excluded.

**1.1.20 “Construction Documents”** shall mean those documents which are required for the actual construction of a project, including but not limited to the agreement between the District and the Contractor; complete working drawings and specifications setting forth in detail the work to be done and the materials, workmanship, finishes and equipment required for architectural, structural, mechanical, electrical systems and utility service-connected equipment and site work.

**1.1.21 “Construction Manager”** shall mean and refers to any professional or consultant retained by the District to plan, direct and coordinate the construction of the Project.

**1.1.22 “Construction Document Phase”** shall have the meaning set forth in **Exhibit C**.

**1.1.23 “Construction Phase(s)”** shall mean individual construction contract packages that are bid separately.

**1.1.24 “Constructability Review”** shall mean, the review of the design documents to ascertain whether the design of the Project as depicted in the Construction Documents, and the documents themselves: (i) accurately and completely reflects the District’s objectives as explained to the Architect by the District; (ii) are free of errors, omissions, conflicts or other deficiencies so that the Contractors can construct the Project as therein depicted without delays, disruptions, or additional costs.

**1.1.25 “Contractor”** shall mean the general contractor or any other contractor selected to perform work or services on the Project or any replacement.

**1.1.26 “Contractor Payment Application”** shall mean a Contractor’s written request on a form approved by the District for payment for completed portions of the work and for materials delivered or stored by the Contractor.

**1.1.27 “Design Bid Build”** shall mean a project delivery method defined by the following characteristic – design and construction are separate contracts.

**1.1.28 “Design Development Phase”** shall have the meaning set forth in **Exhibit C**.

**1.1.29 “District”** shall mean the OCEANSIDE UNIFIED SCHOOL DISTRICT.



**1.1.30 “District Design Standards”** shall be the implementation of standard equipment and/or products as determined by the District, into the overall project design.

**1.1.31 “District’s Representative”** shall mean the Superintendent and/or Deputy Superintendent of Administrative Services or any authorized designee of those officers. Designee authorization shall be in writing by one of the District officers.

**1.1.32 “DSA”** shall mean the Division of the State Architect of the State of California.

**1.1.33 “DSA Record Set”** shall mean such documents, plans, drawings and specifications submitted to DSA as part of the design phase and stamped and approved by DSA for the Project.

**1.1.34 “Educational Specifications”** shall mean the interrelated statements that communicate what educators believe is required to support a specific educational program.

**1.1.35 “Funding Consultant”** shall mean any consultant designated by the District that assists the District in submitting applications for funding from programs administered by the State.

**1.1.36 “Guaranteed Maximum Price” or “GMP”** shall mean the cost for construction and installation of a project determined by the District and the lease-leaseback entity when the Lease-Leaseback delivery method is used and shall include both the “Estimated GMP” and the “Final GMP”.

**1.1.37 “Inspector of Record” or “IOR”** shall mean a certified Inspector approved by DSA to inspect work pursuant to the Field Act (California Education Code § 17280, *et seq.*) and applicable provisions of the California Code of Regulations. The IOR also serves as the representative of the District to conduct field inspections of the Project during construction.

**1.1.38 “Lease-Leaseback”** shall mean a project delivery method under which the District leases real property it owns to a lease-leaseback entity and the lease-leaseback entity causes the construction of a facility the District desires on said real property and subleases the facility back to the District, with title to the facility vesting in the District at the end of the term of the sublease, as set forth in California Education Code § 17406.

**1.1.39 “LEED”** shall mean Leadership in Energy and Environmental Design as administered by the U.S. Green Building Council.

**1.1.40 “Modernization”** shall mean the comprehensive replacement or restoration of virtually all major systems, interior work (such as ceilings, partitions, doors, floor finishes, etc.) and building elements and features.

**1.1.41 “MOU”** shall mean a memorandum of understanding.

**1.1.42 “New Construction”** shall mean the construction of a new school facility.

**1.1.43 “Notice of Completion” or “NOC”** shall mean the legal notice filed with the San Bernardino County Recorder after completion of construction project.

**1.1.44 “OPSC”** shall mean the Office of Public School Construction of the State of California.

**1.1.45 “Phase”** when used without the word “Construction” shall mean the various phases of architectural work described in this Agreement.

**1.1.46 “Piggy Back”** shall mean the method of cooperative purchasing method used to design, manufacture, deliver, and install modular buildings as designated. [project specific and will need to be omitted if not applicable]

**1.1.47 “Potential Change Order” or “PCO”** shall mean a written document before it has been approved and executed by the Contractor, District Representative, and Architect.

**1.1.48 “Principal(s)”** shall mean individual(s) who are participating owners of the Architect and are authorized to act on behalf of the firm.

**1.1.49 “Project”** shall mean the project described hereinafter in Section 3.

**1.1.50 “Project Budget”** shall mean the sum total of all monies allocated by the District to defray costs of the work and services related to the Project; including but not limited to professional services, bids for all construction (such as site work, prime contracts, consultants, materials), contingencies and applicable general conditions for each Construction Phase.

**1.1.51 “Project Director”** shall mean, with reference to the Architect, a licensed, experienced and well trained professional employed by Architect and fully authorized to represent the Architect in all matters related to the Project including but not limited to executing change orders during construction, and to bind the Architect to any commitments made on the Architect’s behalf in connection herewith. Any change shall be approved by the District in writing pursuant to Section 2.2.

**1.1.52 “Project Manager”** The District Representative will identify in writing the Project Manager(s) for each Project. Subsequent changes shall be made in writing.

**1.1.53 “Project Schedule”** shall mean the entire series of events necessary to design and construct the Project and encompasses work and services of the Architect, Contractors and other consultants.

**1.1.54 “Prolog”** shall mean the program/project management software required by the District to maintain, route and issue all design phase documents, construction documents, and close out documents.

**1.1.55 “Request for Information” or “RFI”** shall mean a written request from a contractor to the District or Architect for clarification or information about the contract documents following contract award.

**1.1.56 “Request for Qualification” or RFQ or “Request for Proposal” or RFP** shall mean the Architect’s proposal submitted to the District for review and approval as part of a competitive process for the selection of the architect for this Project.

**1.1.57 “SAB”** shall mean the State Allocation Board of the State of California.

**1.1.58 “Schematic Design Phase”** shall have the meaning set forth in **Exhibit C**.

**1.1.59 “Services”** shall mean all labor, materials, supervision, services, tasks, and work that the Architect is required to perform hereunder, including Basic Services and those Services reasonably inferred from this Agreement, as further described and clarified in **Exhibit C** hereto, including any Additional Services required of the Architect hereunder.

**1.1.60 “SWPPP”** shall mean Storm Water Prevention and Pollution Plan.

**1.1.61 “Time Impact Analysis” or “TIA”** shall mean a simplified analysis procedure typically specified on construction projects to facilitate the award of excusable days to project completion due to delays caused by either the owner or contractor.

**1.2 INCORPORATION OF RECITALS, EXHIBITS AND REFERENCED DOCUMENTS.** The Recitals and Definitions above and all Exhibits attached to this Agreement, now or hereafter by agreement of the Parties, are incorporated herein by reference and made a part of this Agreement.

## **SECTION 2** **EMPLOYMENT OF ARCHITECT**

**2.1 EMPLOYMENT OF ARCHITECT.** The District hereby retains the Architect to perform, for consideration and upon the terms and conditions set forth herein, all professional architectural and related Services required to complete the Project, as may be hereafter amended. The Architect hereby accepts such retention and commits to perform all the professional services required to complete the Project in a professional and conscientious manner in accordance and consistent with highest industry standards and the standard of care generally employed by professionals licensed and qualified to perform similar services within the State of California. The Services shall be performed in a safe, expeditious and satisfactory manner, with allowance for periods of time required for (i) the District’s review and approval of submissions to the District by the Architect; (ii) review and approval of submissions to those authorities having jurisdiction over the Project, and (iii) the Architect’s review of submissions to the Architect from the District or authorities having jurisdiction over the Project.

**2.2 PERFORMANCE STANDARDS.** All Services performed under this Agreement shall be performed by the Architect and its Architect Consultants: (a) in a manner consistent with the standard of care under California law applicable to those who provide similar services for projects of the type, scope and complexity of the Project, subject to this Agreement and the locality of the Project; (b) the Applicable Laws; (c) the terms of this Agreement; and (d) using their professional skill and judgment (hereinafter “Standard of Care”).

**2.3 AUTHORITY OF ARCHITECT.** Architect’s authority to act on behalf of the District is limited to its scope of authority set forth in this Agreement. Notwithstanding anything else stated in this Agreement or the Construction Documents, Architect does not have the express or implied authority to obligate District to any expenditure of money or extension of contractual time periods, including, without limitation, any adjustment to the price or time of performance of any contract between District and its Contractors, Construction Manager, District Representative or other third persons or parties. The Architect shall be liable to the District and third parties for the consequences of the Architect’s actions or conduct exceeding the limited scope of the Architect’s authority to act on behalf of the District.

**2.4 PROJECT DIRECTOR AND OTHER EMPLOYEES.** The Architect shall appoint and designate one State of California licensed architect to serve as the Project Director for the Project. The Project Director shall maintain personal oversight of the Project and the Services and shall be the primary

contact on the Architect's behalf for all matters related to the Project for which he or she is designated as Project Director. The Project Director shall be vested with full authority to represent and act on behalf of the Architect for all purposes under this Agreement. Any changes in the Project Director or any other key personnel of the Architect working on the Project must be approved by the District in writing.

**2.5 ARCHITECT COVENANT AGAINST CONTINGENT FEES.** The Architect warrants and represents that it has not employed or retained any company or person, other than a bona fide employee working solely for the Architect, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Architect, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the Basic Fee or otherwise recover, the full amount of such fee, commission, percentage fee, gift, or contingency.

**2.6 ORDER OF PRECEDENCE.** Each and every provision of the documents listed below is incorporated into this Agreement by this reference. The documents referenced below are in descending order of precedence. Any conflict between or among any of the documents shall be resolved in favor of the document with higher precedence.

- (a) Amendment(s) to this Agreement, if any;
- (b) This Agreement;
- (c) The RFQ/RFP;
- (d) The Architect's proposal submitted in response to the RFQ/RFP Addendum, if any; and
- (e) The Architect's proposal submitted in response to the RFQ/RFP.

### **SECTION 3 THE PROJECT**

The Project consists of such works of new construction, modernization and/or improvement that require services to be provided by Architect for the District's [REDACTED] Project, as described more fully in **Exhibit A** attached hereto and incorporated by reference.

### **SECTION 4 SERVICES**

**4.1 BASIC SERVICES.** The Basic Services, deliverables and submittals required under this Agreement are described in **Exhibit C** attached hereto and incorporated by reference. The Basic Services are divided into Phases, such as planning programming phase, schematic phase, etc. to facilitate the completion of each set of services during specified times established under the Project Schedule. The phases and percentages shall be approved by the District.

#### **4.2 GENERAL PROVISIONS CONCERNING BASIC SERVICES.**

**4.2.1 Employment of Personnel.** The Architect shall employ, at its own cost and expense, any and all personnel needed to perform the Services. Architect must identify all personnel that will perform work at any District site and must obtain fingerprinting clearance from the District.

Architect agrees to reallocate any personnel whose work is unsatisfactory to the District. Architect shall at all times be solely responsible for the compensation, benefits, tax deductions, insurance or other requirements of any laws applicable to its personnel.

**4.2.2 Employment of Architect Consultant(s).** For services not provided directly by the Architect, the Architect shall employ, at its own cost and expense, any and all needed Architect Consultant(s) to perform the services hereunder. Architect Consultant(s) retained by the Architect in the performance of this Agreement shall be licensed to practice in their respective professions where required by law. The Architect Consultant(s) will be required to show evidence of a policy of professional liability and/or project insurance that satisfies the requirements of Section 11.2 hereto.

**4.2.3 Architect's Responsibility.** The Architect shall remain at all times primarily responsible for the adequate performance of each service and said employment of the Architect Consultants shall not relieve the Architect from administrative or other responsibility under law or this Agreement. Architect shall be responsible for the coordination and cooperation of the Architect Consultants. The Architect Consultant(s) may consist of any consultants required to complete the Basic Services, including but not limited to designers and engineers for the structural, electrical, mechanical, plumbing (including fire sprinklers), landscaping, audio and visual, food service, acoustical, theatrical, and civil portions of the Project. Prior to entering into any consulting agreement and prior to authorizing any consultant(s) to perform any services on the Project, the Architect shall submit a written request for approval to the District. The request shall include the names of the Architect Consultant firms proposed for the Project and shall identify the key personnel of each Architect Consultant's firm. The District shall have the discretion to reject any proposed firm and/or personnel. If the proposed firm and/or personnel is rejected, the Architect may perform the Services at issue, if qualified to do so, or may propose an alternate acceptable to the District.

**4.2.4 Cooperation with District and Other Consultants.** The Architect and its Architect Consultant(s) shall confer and cooperate with District, the Project Manager, and other District consultants, if any, in all matters and activities as related to this Agreement and each Project.

**4.2.5 Corrections to Construction Documents and Other Deliverables.** The Architect shall revise the Construction Documents as needed to incorporate any and all change orders and other necessary modifications required due to negligent acts or any errors or omissions by the Architect or the Architect Consultants. The Architect shall also provide any modifications to any deliverables required under **Exhibit C** if such modifications become necessary due to any errors or omissions of the Architect or the Architect Consultants. Architect shall be responsible for securing any required agency approvals, including DSA, for any such revisions.

**4.2.6 Minutes of Progress Meetings.** The Architect will maintain meeting minutes of discussions during Design Phase progress meetings concerning any Services and will provide a draft copy of the minutes.

**4.2.7 Independent Reviews; Audits.** Each Project shall at all times be subject to independent reviews conducted by the District or any other person selected by the District, including but not limited to Constructability Review and audits. Such reviews may include inspection of any work, documents or services related to the Project. The Architect shall cooperate with these reviews, including preparing written responses to written or verbal comments, and incorporating changes to the Construction Documents based on such comments. If the Architect does not deem that a comment requires a change, the Architect shall so state in a written response to the comment

providing reasons why no change should be implemented. If District nevertheless directs the Architect to implement the requested change, the Architect will do so unless the change would result in a violation of applicable laws or requirements.

The scope of the Architect's obligations during Constructability Review includes without limitation written confirmation, in form and content satisfactory to the District, that (a) requirements noted in the design documents are consistent with and conform to District requirements; and (b) there are no errors, omissions or deficiencies in the Construction Documents that a reasonable Architect using skill and diligence standard in the profession would have detected and corrected prior to submission of the Construction Documents.

**4.2.8 Independent Cost Estimates.** The District shall have the right, but not the obligation to obtain independent cost estimate(s) conducted by an estimator designated by the District and at the expense of the District. The Architect shall be available to answer the estimator's questions regarding the design and attend meetings with the estimator to reconcile the Architect's and any independent estimator's estimate.

**4.2.9 Inspection of Records; Familiarity with Site and Project.** The Architect shall be solely responsible for researching and analyzing all available records of the existing conditions and the proposed Project improvements, identifying all District held record documents as available and provided by the District concerning each portion of the Project, conducting site visits and familiarizing itself with the conditions of the structure(s) and location(s) in which it is providing Services. It is required that the Architect will visit each site prior to design completion to validate visually observable existing conditions and record plans of existing buildings and site utilities.

**4.2.10 Construction Delivery Methods:** [The applicable construction delivery method will need to be specified for each project, see Design Bid Build, Lease Leaseback, etc., as noted in definitions above.]

**Design Bid Build.** Unless stated otherwise, the District will enter a competitive bid process under applicable Public Contract Code provisions for the Project. The design will be a separate contractual process from the construction contract.

**Lease-Leaseback.** If stated, the District may at its discretion, and in accordance with Education Code section 17406, enter into Lease-Leaseback agreements for pre-construction services and construction for the Project. The Architect will work cooperatively with the Lease-Leaseback contractor during the performance of its pre-construction service phase to implement value engineering, BIM and constructability recommendations.

**Piggy Back.** Piggyback contracting is the method the District will be using outside the construction delivery methods aforementioned to place modular Buildings in this Project. It will be the Architect's responsibility to oversee and manage the modular design process as a part of this Project.(project specific and will need to be omitted if not applicable)

**4.2.11 Funding Applications and Approvals.** The Architect shall assist the District, and its consultants, with any and all funding applications and submittals for any program administered by the State or other entities. Architect may be required to prepare, sign and submit applications and documents to various entities such as DSA, OPSC, CDE, and the U.S. Green Building Council. The Architect's duties shall include the preparation and submittal of application(s), plans and specifications, and any supplemental funding applications (such as CHPS, CDE, as well as OPSC and others as may be required). The Architect shall comply with the inspection card duties required under Title 24 of the California Code of Regulations sections 4-211 through 4-220 and sections 4-330 through 4-344, and DSA Procedure 13-01, including but not limited to submitting all required

interim Verified Reports (Form DSA-6.AE). The Architect shall respond timely to review comments and work cooperatively with the District's Funding Consultant to achieve any and all submittal deadlines.

**4.2.12 District Design Standards.** The Architect shall be responsible for implementing all District Design Standards issued to the Architect by the District into the overall Project design. Design standards include but are not limited to equalization standards, furniture, fixture and equipment standards, maintenance standards, data and technology standards, security intrusion and video surveillance standards.

**4.2.13 Storm Water Prevention and Pollution Plan (SWPPP).** The Architect shall be responsible for all designs and permitting, excluding fees, as it relates to the SWPPP plans and specifications for the Project. Responsibility also includes the preparation of plans, specifications, and any other requirements needed to obtain the required regulatory approvals and permits.

**4.2.14 Changes.** The Architect shall revise the Construction Documents as needed to incorporate any and all Change Order Requests, Potential Change Orders, supplementary instructions and other necessary modifications. The Architect is responsible for obtaining DSA approval for all changes.

**4.2.14.1 Changes Required to Meet Construction Budget.** If the lowest responsible bid exceeds one hundred ten percent (110%) of the Construction Budget, Architect shall revise the scope of the Project for re-bidding at no additional cost or expense to the District. The District shall approve or disapprove, in its sole discretion, all proposed changes to the scope intended to effect cost reduction and no such changes shall be effective until approved by the District.

**4.2.15 Deliverables.** Unless otherwise agreed to in writing, Architect shall produce the deliverables identified on **Exhibits C and D**.

### **4.3 ADDITIONAL SERVICES.**

**4.3.1 Architect Additional Services.** Additional Services for any Project will require written request or pre-authorization in writing by the District following specific approval of such services by the Board of Education. If Additional Services result in a modification of the Basic Fee, then the Architect shall be paid for such additional services as part of the payment for the Basic Fee. All other Additional Services shall be paid by the District as provided in Section 5.2, Compensation for Additional Services.

**4.3.2** The following services are not Basic Services under this Agreement and are to be considered Additional Services:

**4.3.2.1** Revisions and changes requested by the District to be made to drawings, specifications or documents previously approved by the District prior to awarding the construction contract, provided that such changes are not (i) required to meet the Project Budget, (ii) required to make the documents compliant with original design requirements, (iii) revisions that should have been implemented during design or (iv) necessary to comply with applicable laws, rules, or regulations.

**4.3.2.2** Services for repairs of damages to the Project resulting from third-party actions or unforeseen conditions or circumstances not the result of negligence or errors or omissions of the Architect or the Architect Consultants, including but not limited to repairs necessary

due to damage caused by fire, flood or other unforeseen conditions not the result of negligence or errors or omissions of the Architect or the Architect Consultants.

**4.3.2.3** Additional Services required due to (i) the termination, delinquency or insolvency of the Contractor, or (ii) a default of the Contractor that does not arise directly from the negligence or errors or omissions of the Architect or the Architect Consultants.

**4.3.2.4** Any of the following if directed by the District in writing: (i) the employment of specialty consultants not listed in the Architect’s Basic Services, and (ii) the preparation of special delineations and models of facilities not included in the original Project.

**4.3.2.5** Contract administration services performed more than 180 days after the original construction contract completion date, except when such delay is caused in whole or in part by the negligence or errors or omissions or willful misconduct of the Architect or the Architect Consultants.

**SECTION 5**  
**ARCHITECT’S COMPENSATION & PAYMENT SCHEDULE**

**5.1 COMPENSATION FOR BASIC SERVICES.**

**5.1.1 Compensation Description.** The Architect shall perform the Basic Services in exchange for compensation equal to the Basic Fee of:

**[INSERT AMOUNT N WORDS] DOLLARS (\$[insert amount in numbers])**

If the Project is divided into Construction Phases, the Architect shall allocate the Basic Fee over the Construction Phases and the allocation shall be in rough proportion to the Construction Budget for the Project with consideration given to the size and complexity of each Construction Phase. It is agreed that, as long as the Architect performs the Services for the Project or Construction Phase in a timely manner, in compliance with the provisions of this Agreement and to the satisfaction of the District, payments of the Basic Fee for each Project or Construction Phase shall be made by the District, upon approval by the District of deliverables described in **Exhibits C and D**, and approval of invoices satisfactory to the District, in amounts not to exceed the percentages for each Phase as set forth in the following Table: **[modify the below to fit the phases of the specific project]**



PHASE	PERCENTAGE	AMOUNT
Concept	3.5%	[\$insert amount]
Schematic Drawings	10%	[\$insert amount]
Design Development Drawings	15%	[\$insert amount]
Construction Drawings	40%	[\$insert amount]
DSA Approval/Bidding	5%	[\$insert amount]
Contract Administration	20%	[\$insert amount]
DSA Closeout	6.5%	[\$insert amount]
<b>TOTAL</b>		[\$insert amount]
Direct Costs		[\$insert amount]
<b>Total</b>		[\$insert amount]

**5.1.1.1 Invoices.** Invoices may be submitted monthly in proportion to the percentage of completion not to exceed the percentage noted above, except that the construction administration phase can be billed as progress in proportion to the certified completion of construction, rounded to the nearest whole percent, as determined by the District.

**5.1.1.2 Close-Out Phase.** The remainder of the Basic Fee shall be paid to Architect upon satisfactory completion of all Services identified as Close Out Phase on **Exhibit B**, provided that payment will be made as follows: (i) three percent (3%) will be paid after the submission by the Architect of the Verified Report (described on **Exhibit C**) to DSA; and (ii) three and one-half percent (3.5%) will be paid after receipt by the District of final DSA certificate and verification that all fees due to the Architect’s Consultants providing Services in connection with this Agreement have been paid. [modify percentages as agreed by the parties]

**5.2 COMPENSATION FOR ADDITIONAL SERVICES.**

**5.2.1** Fees negotiated for Additional Services pursuant to 4.3.2.1 that result in a change in the scope of the Project or Basic Services shall be processed as an amendment to the Basic Services and Basic Fee, subject to the approval of District’s Board of Education. Close-out percentages shall be applied to all additional service agreements following the same terms as 5.1.1.2.

**5.2.2** All other fees for Additional Services may be negotiated on a fixed fee or time and materials basis.

**5.3 DISPUTED AMOUNTS.** In the event of any good faith dispute concerning a particular payment or a portion of a payment under this Agreement, pursuant to California Civil Code section 3320, the District shall have the right to do either of the following: (i) make such disputed payment to the

Architect without prejudice to the District's right to contest the amount so paid; or (ii) withhold up to 150% of the disputed amounts. If the District withholds amounts invoiced by the Architect, the District will notify the Architect in writing of the reasons for the withholding. From and after the date such notice is given, the District and the Architect shall use their good faith efforts to resolve the dispute as quickly as practicable under the circumstances. If the District has given such notice, the Architect shall not be entitled to terminate this Agreement or suspend Services hereunder on account of such nonpayment, provided the District makes payment for all undisputed sums. If the District chooses to withhold payments under clause (ii) of this Section and if it is subsequently determined that the District owes an additional payment to the Architect, the District shall pay such amount to Architect. If the District chooses to proceed under clause (i) of this Section and it is subsequently determined that the District overpaid the Architect, the Architect shall promptly refund to the District the amount of such overpayment.

#### **5.4 COMPENSATION FOR REIMBURSABLE SERVICES.**

**5.4.1 PRIOR APPROVAL.** The District will not be obligated to pay for any service(s) performed or cost incurred by the Architect without prior written authorization by the District. The following will be reimbursed under this Agreement:

**5.4.2 REIMBURSABLE EXPENSES.** The EXCLUSIVE list of reimbursable expenses is set forth below. Claims for reimbursable expenses shall be documented by appropriate invoices and supporting receipts. The Architect may be reimbursed for those reasonable out-of-pocket expenses set forth below that are incurred and paid for by the Architect or the Architect Consultant in furtherance of performance of its obligations under this Agreement, but only to the extent that such expenses are directly related to Services satisfactorily completed, are approved by the District in writing and in total do not exceed Five Thousand Dollars (\$5,000.00). Reimbursable travel shall be at current federal rate for mileage, and Google Maps or other acceptable printout must be included. Reimbursements shall not be made or requested for extraneous activities or products, i.e. entertainment or gifts. All requests for reimbursements shall include receipts and other supporting documents as requested by the District.

**5.4.2.1 Travel and Mileage.** Architect must request the travel in writing and justify why the travel should be reimbursed. Travel expenses must be approved in writing by District, in its sole discretion. Trips from any Architect's office or Architect Consultant's office to the Project site(s) or to the District's office will not be approved for reimbursement.

**5.4.2.2 Reimbursable Reprographic Services.** Print sets or copies requested in writing by the District beyond the quantities required under **Exhibit D**.

**5.4.2.3 Fees for Consultants.** Fees for consultants hired and paid by the Architect at the written request of District that are not provided as Basic Services.

#### **5.5 INVOICES.**

**5.5.1 Invoices for Architect's Basic Services.** Following completion of the Services applicable to each Phase, or by agreement with the District (interim invoice), the Architect shall submit an invoice in form and substance satisfactory to the District in an amount not to exceed the amount specified as the portion of the Basic Fee to be paid for that Phase for the Services identified in the invoice. As required by California Civil Code section 3320, payment on a properly submitted, fully supported and documented invoice will be due within thirty (30) days of the date the invoice is

approved, unless the District disputes in good faith any portion of the amount claimed by the Architect to be due.

**5.5.1.1** Each invoice must be accompanied by an **Approval Letter** from the District in the form of **Exhibit D**, attached hereto.

**5.5.1.2** If District withholds any amount following a default, as provided in Section 6 of this Agreement, the Architect shall certify in each subsequent invoice that none of the amounts invoiced represent any portion of the amounts identified for withholding. Withheld amounts shall be paid as specified on the notice from the District informing the Architect that the District elects to exercise its right to withhold payment following an Architect default, if any.

**5.5.2 Invoices for Additional Services.** Except for Additional Services that are incorporated into the Basic Fee, payments for Additional Services shall be made monthly after approval by the District. The Architect's invoice shall be clearly marked "Request for Payment for Additional Services." Each invoice shall be accompanied by receipts and supporting information as deemed required by the District. As required by California Civil Code section 3320, payment on a properly submitted, fully supported and documented invoice will be due within thirty (30) days of the date of the expense, unless the District disputes in good faith any portion of the amount claimed by the Architect to be due.

**5.5.3 Invoices for Reimbursable Expenses.** Payments for Reimbursable Expenses, if any, shall be made monthly, unless otherwise specified within the reimbursable expense authorization. The Architect's invoice shall be clearly marked "Request for Payment of Reimbursable Expenses." Each invoice shall be accompanied by receipts and adequate supporting information as required by the District. As required by California Civil Code section 3320, payment on a properly submitted, fully supported and documented invoice will be due within thirty (30) days of the date of expense, unless the District disputes in good faith any portion of the amount claimed by the Architect to be due.

**5.5.4 Final Invoice.** Upon completion of all Services and delivery of final DSA certification, the Architect shall prepare a final invoice for the remaining amount due, including and separately identifying any amounts withheld by District hereunder. This invoice shall be prominently noted **FINAL INVOICE FOR [INSERT PROJECT NAME] CONSTRUCTION PROJECT**. The Architect shall provide a final invoice within thirty (30) days of District's notification of receipt of final DSA certification. The District shall pay within forty-five (45) days of approval of final invoice. No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages, or other sums withheld from payments to Contractors, provided the reason for such withholding is not attributable to the fault of the Architect or the Architect Consultants.

**5.5.5 Combined Invoices.** Invoices for Basic Services, Additional Services and Reimbursable Expenses may be combined on a single invoice provided that the invoice is itemized and follows the instructions above.

## **SECTION 6**

### **DEFAULT; REMEDIES; SUSPENSION AND TERMINATION**

#### **6.1 TERMINATION BY DISTRICT.**

**6.1.1 For Cause.** The District may terminate all or any portion of this Agreement or the Services hereunder for cause in the event of an Architect Default. This termination shall be effective if the Architect does not begin to cure its Architect Default within fifteen (15) days (or longer, if authorized in writing by District) after receipt of a notice of intention to terminate from the District specifying the failure in performance, including but not limited to an Architect Default as further defined herein. If a termination for cause does occur, the District will have the right to withhold monies otherwise payable to Architect resulting from the Architect's cited failure to perform. If the District incurs additional costs, expenses or other damages due to the negligent failure of the Architect to properly perform pursuant to this Agreement, these costs, expenses or other damages shall be deducted from the amounts withheld. Should the amounts withheld exceed the amounts deducted, the balance will be paid to the Architect upon completion of all Services for the Project. If the costs, expenses or other damages incurred by the District exceed the amounts withheld, the Architect shall be liable to District for the difference. The provisions of this Section 6.1.1 are in addition to, and not a limitation upon, any other rights and remedies of the District under law or in equity.

**6.1.2 For Convenience.** The District may terminate, abandon or suspend performance of this Agreement for convenience and without cause at any time upon fifteen (15) days written notice to the Architect, in which case the District will pay the Architect as provided in Section 5 for all Services and authorized Additional Services actually performed, and all authorized Reimbursable Expenses actually incurred, under and in accordance with this Agreement, up to and including the date of termination; provided, however, that such payments shall not exceed the percentage amounts specified as compensation for the Phases of the Services completed, plus any Additional Services and Reimbursable Expenses completed prior to termination, unless the District at its sole discretion determines that demobilization or other compensation is appropriate. After a notice of termination is given, the Architect shall submit to the District a final claim for payment, in the form and with certifications prescribed by the District. Such claim shall be submitted promptly, but in no event later than forty-five (45) calendar days after the Termination Date specified on the notice of termination.

Such payment shall be the Architect's sole and exclusive compensation and the District shall have no liability to the Architect for any other compensation or damages, including without limitation, anticipated profit, prospective losses, legal fees or costs associated with legal representation or consequential damages, of any kind.

In the event of a termination for convenience, the Architect shall deliver to the District all deliverables, work product, and material related to the Project in the possession of the Architect as set forth in Section 10.5 of this Agreement.

**6.1.3 Temporary Suspension of Services.** If the Services are suspended in whole or in part by the District for less than one hundred twenty (120) consecutive calendar days, and notice to that effect was provided to the Architect prior to the suspension of the Services, the Architect shall complete any remaining Services in accordance with the terms herein as in existence at the time of suspension and the Architect shall not be entitled to additional compensation. If one hundred twenty (120) consecutive calendar days or more have elapsed before the Services are resumed, the Project's Schedule shall be adjusted and the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Services.

**6.2 ARCHITECT DEFAULT.** The occurrence of one or more of the following events shall constitute an "Architect Default" under this Agreement:

**6.2.1 Inability to Pay Debts and Failure to Pay Architect Consultants.** At any time prior to the expiration or termination of this Agreement, the Architect is unable to pay its debts in the ordinary course of business as they come due, including but not limited to failure to pay, when due, invoices from Architect Consultants providing services in connection with this Agreement.

**6.2.2 Assignment for the Benefit of Creditors.** An assignment for the benefit of creditors is made by, or any bankruptcy, reorganization (in connection with a debtor relief proceeding), receivership, moratorium or other debtor relief proceedings are commenced by or against the Architect, and the same is not discharged within ninety (90) days of commencement.

**6.2.3 False or Misleading.** Any representation or warranty made by the Architect in this Agreement or in connection with any Services proves to be false or misleading in any material respect.

**6.2.4 Failure to Provide Acceptable Design.** The Architect's failure to provide a functional design that can be built within the Construction Budget in accordance with industry standards.

**6.2.5 Defective Services; Errors or Omissions; Failure to Perform.** The Architect and/or the Architect Consultant (a) provides defective services, including any deficiencies due to errors or omissions, or (b) fails to deliver Services in a timely manner; or (c) causes any delays for any reason, including providing defective Services; or (d) fails to perform any obligations under this Agreement (including, without limitation, failure to supply sufficient skilled personnel or suitable materials or equipment or failure to adhere to the Project Schedule).

**6.2.6 Willful Violation.** The District determines that (a) the Architect is willfully violating any conditions or covenants of this Agreement or the Contract Documents, or (b) the Architect is executing Services in bad faith or not in accordance with terms hereof.

**6.2.7 Failure to Cooperate with DSA.** Failure to comply with DSA requirements or to submit documents at any pre-scheduled times in accordance with the MOU Process will constitute an automatic default.

**6.2.8 Unapproved Assignment.** The Architect attempts to assign this Agreement or any Services hereunder without prior written approval from the District.

**6.2.9 Disregard of District Authority or Direction.** The Architect disregards the authority of the District or fails or refuses to perform any reasonable act or service requested by the District hereunder.

**6.2.10 Violation of Applicable Law.** The Architect violates any applicable law, statute or governmental regulation in connection with any Services or this Agreement.

**6.2.11 Failure to Maintain Errors and Omissions Insurance.** The Architect fails to maintain the insurance required pursuant to Sections 11.2.1.3 and 11.2.2.3 herein.

### **6.3 DISTRICT REMEDIES.**

**6.3.1 General Remedies.** If an Architect Default occurs under this Agreement, the District may exercise any right or remedy it has under this Agreement, or otherwise available at law or equity, and all of the District's rights and remedies shall be cumulative.

**6.3.2 Withholding Payment.** If an Architect Default occurs, the District's obligation to disburse further funds to the Architect pursuant to this Agreement may be terminated or suspended by the District, in its sole discretion. In connection with any Architect Default, the District may withhold all or a portion of any payments then or thereafter due to the Architect until the Architect cures any and all defaults to the satisfaction of the District.

**6.3.3 Stop Work.** Upon the occurrence of an Architect Default, the District may, at its sole and absolute discretion, order the Architect in writing to stop work on the Services, or any portion thereof, until the Architect Default has been cured. The Architect shall make best efforts to avoid delays and shall be solely responsible for any additional costs to the Project in connection with such "stop work" order.

**6.3.4 Errors & Omissions; Additional Costs.** In addition to any other remedy available to the District under this Agreement or under the laws of the State of California, the District may require the Architect to pay all costs incurred by the District to correct any defect and/or deficiency in the design work of the Architect and/or the Architect Consultants, including but not limited to re-design costs, additional services costs for other consultants, costs incurred by the District under any contract or to make alternative arrangements due to delays, litigation costs, and any cost related to the necessary removal of and/or replacement of work or materials. The Architect shall provide any Services requested by the District to correct any such negligent errors or omissions but shall not receive any fee for any work or Services performed in correcting said errors or omissions regardless of whether such errors or omissions result in damages to the District or delays to the Project. This remedy applies but is not limited to (i) providing a design that fails to serve its purpose when constructed in accordance with industry standard for the particular Project, or (ii) delays due to Architect's failure to comply with the plan check review process in accordance with the District's MOU with DSA.

**6.3.5 Self Help.** Upon the occurrence of an Architect Default, the District may, at its sole and absolute discretion, without prejudice to other remedies, correct any negligent deficiencies resulting from the Architect Default. In such case, the District may deduct costs relating to correcting such deficiencies, including, without limitation, compensation for additional services and expenses of a supplemental or replacement architect, design or engineering consultants and other consultants made necessary by such defaults, including services of legal counsel, from payments then or thereafter due to the Architect and may adjust the Basic Fee and any fees for Additional Services accordingly. If the payments then or thereafter due to the Architect are not sufficient to cover the amount of the deduction, the Architect shall pay the difference to the District.

**6.3.6 Payment to Consultant.** If the Architect Default is due to the Architect's failure to pay, when due, invoices of an Architect Consultant providing Services in connection with this Agreement, the District shall have the right, but no obligation, to pay the amount invoiced directly to that Architect Consultant from any amounts then due to Architect, provided that the District has accepted the Services to which the invoices refer. The District shall have no further liability to the Architect or the Architect Consultant in connection therewith.

**6.4 TERMINATION BY ARCHITECT.** The Architect may terminate this Agreement only upon the occurrence of one of the following conditions:

**6.4.1 Failure to Pay Undisputed Amounts.** The Architect may terminate upon thirty (30) days' notice if the District fails to make any undisputed payment to the Architect when due and such failure remains uncured for forty-five (45) calendar days after written notice to the District.

**6.4.2 Long Term Suspension of Project.** If the Project on which the Architect is providing Services are suspended or abandoned by the District for more than one hundred twenty (120) consecutive calendar days, the Architect may terminate this Agreement upon ninety (90) calendar days' notice to the District, provided the District does not reactivate the Project within such ninety (90) calendar day period.

## **6.5 SOLE REMEDY UPON TERMINATION BY ARCHITECT.**

**6.5.1 Payment for Services.** In the event of a termination of this Agreement by the Architect in accordance with Section 6.4, the District shall pay the Architect an amount for its Services, Additional Services and Reimbursable Expenses actually incurred up to the termination, calculated in accordance with Paragraph 6.1.2 of this Agreement. Such payment shall be the Architect's sole and exclusive compensation and the District shall have no further liability or obligation to the Architect for any other compensation or damages, including, without limitation, anticipated profit, prospective losses, business devastation, legal fees or costs associated with legal representation or consequential damages of any kind.

## **SECTION 7 DUTIES AND LIABILITIES OF DISTRICT**

### **7.1 DUTIES.**

**7.1.1 District's Representative.** The District's Representative represents the District in all matters pertaining to the Services. The District's Representative shall cooperate with the Architect in all matters relative to this Agreement in order to permit the performance of the work without undue delay.

**7.1.2 Statement of Building Program.** The District shall provide full information as to the requirements for and the intended use of the Project, including budget limitations and scheduling. The Architect shall have the right to rely upon such information unless the Architect knows or should know that the information is inaccurate or incomplete.

**7.1.3 Surveys and Tests.** The resources, surveys, and reports identified below shall be made available to the Architect, as required, at the District's expense. The Architect shall be entitled to rely upon such resources, surveys and reports, unless the Architect knows or should know that the information contained therein is inaccurate or incomplete. The Architect must inform the District in writing if any information therein appears to be incorrect or incomplete based upon the Architect's experience, site visits, or knowledge of the Project and the sites. Architect shall provide to District written scope details and scope of work to be used in securing Survey and Tests quotes as necessary.

**7.1.3.1 Site Survey.** The District shall furnish a legal description and a land survey of the site, giving as known grades and lines of streets, alleys, pavements and adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Site.

**7.1.3.2 Geologic Hazards Investigation Survey.** The District shall have caused to be performed any geological hazards or investigation survey required by State authorities having jurisdiction and shall make copies available to the Architect for distribution as necessary.

**7.1.3.3 Special testing and Inspection.** The District shall furnish special testing and inspection services as required by law.

**7.1.3.4 Checking and Permit Fees.** The District shall pay or cause to be paid all fees required in connection with the Project to government agencies having jurisdiction. The Architect shall be responsible for securing, at District expense, all necessary Federal, State and local agency approvals and permits required for the Project.

**7.1.3.5 Advertising.** The District shall pay the cost of any advertisements for bids that may be required.

**7.1.3.6 District Inspector.** The District shall furnish and provide an Inspector of Record, or Inspectors of Record, as required during the entire course of construction of the Project. Each inspector shall be responsible to and defer to the direction of the Architect and shall also be responsible to and act in accordance with the policies of the District. The cost of employment of each such Inspector of Record will be borne by District and paid directly to the inspector.

**7.1.3.7 Hazardous Material Consultant.** Unless the District and the Architect agree that a hazardous materials consultant shall be a consultant of the Architect, the District shall furnish the services of a hazardous material consultant or other consultants only when such services are requested in writing by the Architect and deemed necessary by the District or are requested by the District. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to said matters which are to be incorporated into bid documents prepared by the Architect. If the hazardous materials consultant is furnished by the District and not a consultant of the Architect, the specifications shall include a note to the effect that they are included in the Architect's bid documents for the District's convenience and have not been prepared or reviewed by the Architect. The note shall also direct questions about the specifications to its preparer.

**7.1.4 District Site Visits.** At the discretion of the District, District staff may assist or accompany the Architect in making site visits and observing the work, including the visits described below. Requests for changes or substitutions shall be directed to the District Representative. Orders to the Contractor shall be issued through Architect after approval by the District Representative.

**7.1.4.1 Pre-Final Walk-Through.** District staff, or any person assigned by the District, may participate in the pre-final walk-through of the Project or any portion thereof and may assist in the preparation of the list of deficiencies required by the Construction Phase portion of the Services, as set forth on **Exhibit B** hereto.

**7.1.4.2 Final Site Visit.** At the discretion of the District, when notified by the Architect that the construction "punch list" items have been corrected, District staff may accompany the Architect and the Contractor on the final site visits.

**7.1.5 Notice of Defects.** If the District observes or otherwise becomes aware of any fault or defect in the Project, or nonconformance with the Construction Documents, the District shall verbally or in writing advise the Architect. However, the District's failure to give such notice shall not eliminate the obligations of the Architect regarding the administration of the construction of the Project or other obligations under the Construction Documents; nor require the District to make site visits.



**7.1.6 Notice of Completion.** When all items are completed to the satisfaction of the District and the Architect, and upon written recommendation of the Architect, District staff shall recommend that the District's Board of Education adopt a Notice of Completion.

## **7.2 LIMITATION ON LIABILITY OF DISTRICT.**

**7.2.1** Other than as specifically provided elsewhere in this Agreement, the District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall the District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

**7.2.2** The District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by the Architect, its employees, agents, consultants, invitees or guests even if such equipment has been furnished or loaned to the Architect by the District.

## **SECTION 8 PROJECT CONSTRUCTION COST ESTIMATES**

**8.1 CONSTRUCTION BUDGET.** The Construction Budget may be revised at the conclusion of design or other earlier Phase of the Project at the discretion of the District based on input from the Architect.

**8.2 ESTIMATED PROJECT CONSTRUCTION COST.** The Estimated Project Construction Cost shall be prepared and updated by the Architect as required in **Exhibit B** during each Phase of the Services and shall be subject to District approval. The Estimated Project Construction Cost during each Phase shall under no circumstances exceed the Construction Budget, including a reasonable allowance built in for estimating design contingency. The Architect shall, at no additional cost to the District, incorporate any and all revisions needed to the preliminary studies, schematic drawings, site utilization plans and Construction Documents if at any time the Architect becomes aware that the Estimated Project Construction Cost, as recalculated, will exceed the Construction Budget; provided that this limitation shall not apply to unanticipated cost increases beyond the reasonable control of the Architect.

## **SECTION 9 PROJECT SCHEDULE**

### **9.1 SCHEDULE.**

**9.1.1 Time for Completion.** Time is of the essence and failure of the Architect to perform Services on time shall constitute a material breach of this Agreement. It shall not be a material breach if a delay is beyond the Architect's or Architect Consultant's control as set forth in Section 9.1.4 below. The milestones set forth on the Project schedule are binding, unless extended in writing by the District Representative.

**9.1.2 Delays.** Except as otherwise provided in Section 5.2, the Architect shall not be entitled to any compensation additional to the Basic Fee, damages or any losses incurred in connection with delays due to errors, omissions, intentional or negligent acts of the Architect or the Architect

Consultant in the performance of the work (including their respective employees or those in a direct contractual relationship with either).

**9.1.3 Notice of Delay.** The Architect shall immediately notify the District of any delay in: (i) the preparation and/or production of any of the Architect's documents hereunder, (ii) the performance of Services, or (iii) connection with any matter attended to by the Architect or with which the Architect is familiar (whether or not as the result of an act or omission of another).

The Architect shall consult and advise the District in connection with any such delay and its effect on the Project Schedule and shall take such action on the District's behalf as the District may request in accordance with the terms and conditions of this Agreement.

**9.1.4 Force Majeure.** Neither Party will be liable to the other for unanticipated delays or failures in performance resulting from causes beyond the reasonable control of that Party, including, but not limited to, acts of God, labor disputes or disturbances, pandemics, material shortages or rationing, riots, acts of war, governmental regulations, communications or utility failures, or casualties; provided that the delayed party: (i) gives the other Party prompt written notice of such cause and (ii) uses its reasonable efforts to correct such failure or delay in its performance. The delayed Party's time for performance or cure under this Section will be extended for a period equal to the duration of the cause or sixty (60) days, whichever is less.

## **SECTION 10** **DOCUMENTS OWNERSHIP, LICENSE, COPYRIGHT AND USE**

**10.1 OWNERSHIP.** Pursuant to California Education Code section 17316 and the requirements of the District, all plans, specifications, original or reproducible transparencies of any drawings and master plans, preliminary sketches, architectural presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded in electronic form (hereinafter referred to as the "Project Documents") shall be and remain the property of the District. Although the official copyright in all Project Documents shall remain with the Architect or Architect Consultant, as applicable, the Project Documents shall be the property of the District whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, or the earlier termination of this Agreement for any reason, the Architect shall provide to the District copies of all Project Documents then existing. In addition, the Architect shall retain copies of all Project Documents on file for a minimum of ten (10) years following completion of the Project, or the early termination of this Agreement for any reason, and shall make copies available to the District upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, the Architect shall make a reasonable effort to notify the District and provide the District with the opportunity to obtain the documents slotted for destruction.

**10.2 REUSE BY DISTRICT.** All plans for the Project, including, but not limited to, record drawings, specifications, and estimates prepared pursuant thereto, shall be and remain the property of the District for the purposes of repairs, maintenance, renovations, modernization, or other purposes, only as they relate to the assigned Project. Notwithstanding the foregoing, the District may use the plans, record drawings, specifications, or estimates related to the assigned Project for the purposes of additions, alignments, or other development on the site. The District reserves the right to reuse certain elements, features, details or other project standards in order to incorporate them into other projects within the District.

**10.2.1** The plans, designs, copyrights, drawings, studies, specifications, and estimates prepared by the Architect or its Architect Consultants are instruments of service of the Architect. The

Architect shall be deemed to be the author of these documents and the Architect shall retain all common law, statutory and other reserved rights, including the copyright thereto. Notwithstanding the foregoing, the documents, including but not limited to plans, drawings, specifications, record drawings, models, mock-ups, renderings and other documents (including all computer file and/or AutoCAD files) prepared by the Architect or the Architect's Consultants for this Project, shall be and remain the property of the District pursuant to Education Code section 17316 for the purposes of repair, maintenance, renovation, modernization or other purposes as they related to the Project. The District shall not be precluded from using the Architect's or Architect Consultant's documents enumerated above for the purposes of additions, alignments or other development on the Project site.

**10.2.2** Notwithstanding Section 10.2.1 above, if the District proposes to reuse the plans prepared by Architect within the District but other than on the Project site, the terms and conditions for the reuse shall be set forth in an Amendment to this Agreement, or other subsequent writing executed by the District and the Architect. However, under any circumstances, in the event of any reuse or modification of the Architect's drawings, specifications or other documents by any other person, firm or legal entity, the Architect shall be given design credit and the names and seals of the Architect and the Architect's Consultants, if any, shall first be removed from the Architect's drawings, specifications or other documents.

If the District reuses the plans prepared by the Architect or Architect Consultant and retains another certified architect or structural engineer for the preparation of those plans for the reuse, the District shall indemnify and hold harmless the Architect and Architect Consultant, and their respective 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.

**10.2.3** This Agreement creates a non-exclusive and perpetual license for District to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents, or any other works of authorship fixed in any tangible medium of expression, including, but not limited to, physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect pursuant to this Agreement. The Architect shall require any and all subcontractors and consultants to agree in writing that the District is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

**10.3 COPYRIGHT.** The Architect represents and warrants that the Architect has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Construction Documents that Architect prepares or causes to be prepared pursuant to this Agreement. The Architect shall indemnify and hold the District harmless pursuant to the indemnification provisions of this Agreement for any breach of this representation and warranty.

**10.4 TECHNOLOGY USED.** The Architect shall perform the Services and prepare all documents under this Agreement with the assistance of Building Information Modeling (BIM) and Computer Aided Design (CAD) (e.g., AutoCAD) or other technology acceptable to the Architect and the District. As to any drawings that the Architect provides in a CAD file format, the District acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that the District should rely on the hard or PDF, unalterable, copies of all documents.

**10.5 DELIVERABLES UPON TERMINATION.** Following the termination of any Services, for any reason, or abandonment of all or a portion of the Project, the District may utilize the Construction

Documents as it sees fit, subject to the provisions of Section 10.2 above. The Architect shall deliver to the District, in a form and version acceptable to the District, two (2) reproducible hard-copies, two (2) PDF electronic copies, and two (2) Auto CAD electronic copies of each set of Construction Documents, complete or incomplete, prepared in connection with the Project by the Architect and the Architect Consultants, if any.

**10.6 NO REPRODUCTION OR USE BY ARCHITECT OR THIRD PARTIES.** After completion of the Project, or earlier termination of the Services, the Architect shall not use the Construction Documents for any purpose without District's prior written consent. In addition, the Architect shall not permit reproductions to be made of any Construction Documents without the approval of the District and shall refer all requests by other persons to the District.

## **SECTION 11**

### **INDEMNIFICATION AND INSURANCE**

#### **1.1 INDEMNIFICATION.**

**1.1.1 Indemnity and Litigation Costs.** To the fullest extent permitted by law and in conformity with California Civil Code section 2782.8, Architect shall indemnify, defend and hold the District, the District's Governing Board of Education, each member of the Governing Board, and the District's officers and employees, agents and authorized volunteers (the "Indemnitees") entirely harmless from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to or related to the negligence, recklessness or willful misconduct of Architect, its principals, officers, employees, agents or volunteers, in connection with the Services.

To the fullest extent permitted by law, the District agrees to defend, indemnify and hold harmless, the Architect from any and all losses, liabilities, claims, damages and costs arising out of or attributable, in whole or in part, to the negligent or willful acts, omissions, errors and/or other conduct of the District, and those of the District's Governing Board, officers, employees, agents and volunteers arising from the Project that is subject to this Agreement; provided, however, that nothing contained herein shall be construed as obligating the District to indemnify any Architect for any loss, liability, claim, damage or cost to the extent resulting from that Architect's, or its Architect Consultant' or their respective employees', agents', representatives' or independent contractors', negligence or willful misconduct, omissions, errors and/or other conduct. The District's obligation to pay Architect's attorneys' fees and costs shall be limited to the reimbursements for attorney fees and costs incurred by the Architect in defending actions to the extent caused by the negligence, recklessness or the willful misconduct of the District.

**1.1.2 Survival of Indemnities.** The provisions of this Section shall survive the termination of this Agreement.

**1.2 INSURANCE.** Without in any way affecting the indemnity provided in or by Section 11.1, before commencement of any Services, the Architect and each Architect Consultant shall procure and maintain at its own cost and expense for the duration of the Services, and longer as required by the District against claims for injuries to persons or damages to property which may arise from or in connection with the Services, the types and amounts of insurance set forth herein.

**1.2.1 Minimum Limits of Insurance.** The Architect and each Architect Consultant shall procure and maintain the types and amounts of coverage as follows:

**1.2.1.1** Commercial General Liability Insurance with a limit of not less than \$1,000,000 each occurrence for bodily injury, personal injury and property damage \$2,000,000 annual aggregate.

**1.2.1.2** Automobile Liability Insurance (Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto)). Minimum of \$1,000,000 limit each accident.

**1.2.1.3** Professional Liability (Errors and Omissions) Insurance with a limit not less than \$1,000,000 per claim and \$3,000,000.00 in the annual aggregate.

**1.2.1.4** Workers' Compensation Insurance as required by the State of California (Division IV of the California Labor Code, and any amendatory acts or provisions thereto).

**1.2.1.5** Employer's Liability Insurance in an amount not less than \$1,000,000 per accident for bodily injury or disease.

**1.2.2 Minimum Scope of Insurance.**

**1.2.2.1** Commercial General Liability insurance shall be written on Insurance Services Office form CG 0001 (or a substitute form providing coverage as least as broad and acceptable to the District) and shall cover liability arising from bodily injury and property damage (broad form property damage), premises, operations, independent contractors, products-completed operations, personal injury and advertising injury liability (including the tort liability of another assumed in a business contract), contractual liability with respect to this Agreement, explosion, collapse and underground hazards.

**1.2.2.2** Automobile Insurance shall cover liability arising out of any automobiles. Coverage shall be written on Insurance Services Office form CA 0001, or a substitute form providing coverage at least as broad and acceptable to District. The policy may require deductibles acceptable to the Director of Risk Management of the District, but not self-insured retention without written approval from District.

**1.2.2.3** If the Professional Liability Insurance policy is written on a claims made basis, it shall be maintained continuously for a period of no less than three (3) years after Final Completion of the Project to which it applies. The "retro date" must be shown and must be before the date of this Agreement.

**1.2.3 Valuable Document Insurance.** The Architect shall carry adequate insurance on all drawings and specifications as may be required to protect District in the amount of its full equity in those drawings and specifications, and shall file with District a certificate of that insurance. The cost of that insurance shall be paid by Architect.

**1.2.4 Content and Endorsements.** Each policy must contain, or be endorsed to contain, the following provisions:

**1.2.4.1** The Commercial General Liability policy shall name District, its Board of Education and each member thereof, its officers, employees, agents, and designated

volunteers as named additional insureds (“Additional Insureds”). The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. Coverage shall be primary and not contributory with respect to the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Architect’s insurance and shall not contribute with it.

**1.2.4.2** On each policy of insurance, the insurer shall agree to waive all rights of subrogation against District, its Board of Education and each member thereof, its officers, employees, agents, and volunteers.

**1.2.4.3** Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice has been given to the District by the carrier. In the case of cancellation for non-payment, ten (10) days’ notice is acceptable. Qualified statements such as carrier “will endeavor” or that “failure to mail such notice shall impose no obligation and liability upon the company” shall not be acceptable.

**1.2.4.4** The insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

**1.2.5 General Insurance Matters.** All insurance coverage required under this Agreement shall:

**1.2.5.1** Be issued by insurance companies admitted to do business in the State of California, with a financial rating of at least an A:VII as rated in the most recent edition of Best’s Insurance Reports. Architect shall notify District in writing if any of its insurer(s) have an A.M. Best rating of less than A:VII. At the option of District, either 1) District can accept the lower rating; or 2) the Architect or Architect Consultant(s) shall be required to procure insurance from another insurer.

**1.2.5.2** Except for professional liability policies, all insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees and agents.

**1.2.5.3** The Architect or Architect Consultant, as applicable, shall promptly notify the District of any materials change in the coverage, scope, or amount of any policy.

**1.2.5.4** Except for professional liability policies for which primary coverage is not available, all such insurance shall be primary insurance. Any insurance of the District shall be excess coverage for benefit of the District only and non-contributory.

**1.2.5.5** At all times while this Agreement remains in effect, the Architect and the Architect Consultant(s) shall maintain on file with the District valid and up to date certificates of insurance showing that the required insurance coverage is in effect in not less than the required amounts. If not contained on the face of the policy, endorsements signed by a person authorized by the insurer to bind coverage on its behalf, shall be separately provided. Each policy endorsement, copy, or a certificate of the policy executed by the insurance company, and evidence of payment of premiums for each policy shall be deposited with the District within twenty-one (21) days of execution of this Agreement and prior to the commencement of services, and on renewal of the policy, not less than twenty (20) days before the expiration of the term of the policy.

**1.2.5.6** If the Architect fails to provide or maintain the required insurance, the District may, at its sole and absolute discretion, obtain such insurance at the Architect's expense and deduct the premium from any fees or reimbursable expenses subsequently invoiced by the Architect.

**1.2.5.7** Any deductibles or self-insured retentions in excess of \$100,000 must be declared to the District and must be reduced to a level deemed acceptable by the District in writing. The Architect agrees that, at the option of the District, it will either: (A) arrange for the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the District, its directors, officials, officers, employees and agents; or (B) procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

## **SECTION 12**

### **DISPUTE RESOLUTION**

**1.1 RESOLUTION OF CLAIMS.** Claims shall be resolved by the parties in accordance with the provisions of this Section 12. All Claims shall be subject to the “**Claims Resolution Process**” set forth in this Section 12, which shall be the exclusive recourse of the Architect and the District for determination and resolution of Claims.

For purpose of this Section 12, a “**Claim**” shall mean, a written demand or assertion by the District or the Architect seeking, as a matter of right, an interpretation of contract, disputed payment of money, recovery of damages or other relief. A Claim does not include the following: (i) penalties or forfeitures prescribed by statute or regulation imposed by a governmental agency; (ii) tort claims for personal injury or death; (iii) false claims liability under California Government Code section 12650, et seq.; (iv) physical defects in the Construction first discovered by the District after final payment by the District to a Contractor; (v) stop notices; or (vi) the right of the District to specific performance or injunctive relief to compel performance.

**1.2 RESOLUTION OF OTHER DISPUTES.** Disputes between the District and the Architect that do not constitute Claims shall be resolved by way of an action filed in the Superior Court of the State of California, County of San Diego, and shall not be subject to the Claims Resolution Process.

**1.3 SUBMISSION OF A CLAIM.**

**1.3.1 By the Architect.** The Architect's right to commence the Claims Resolution Process shall arise upon the District's written response denying all or part of a Claim. The Architect shall submit a written statement of dispute to the District within fourteen (14) calendar days after the District rejects all or a portion of the Architect's Claim. Failure by the Architect to timely submit its statement of dispute shall result in the decision by the District on the Claim becoming final and binding. The Architect's statement of dispute shall be signed by a Principal of the Architect and shall state with specificity the events or circumstances giving rise to the Claim, the dates of their occurrence and the asserted effect, if any, on the compensation due or time of performance obligations of the Architect under this Agreement (the “Statement of Dispute”). Such Statement of Dispute shall include adequate supporting data to substantiate the disputed Claim. Adequate supporting data for a Claim relating to an adjustment of the Architect's obligations relative to time of performance shall include a detailed, event-by-event description of the impact of each delay on the Architect's time for performance. Adequate supporting data for a Statement of Dispute involving the Architect's compensation shall include a detailed cost breakdown and supporting cost data in such form and including such detailed information and other supporting data as required to

demonstrate the grounds for, and precise amount of, the Claim.

**1.3.2 By the District.** The District’s right to commence the Claims Resolution Process shall arise at any time following the District’s actual discovery of the circumstances giving rise to the Claim. Nothing contained herein shall preclude the District from asserting Claims in response to a Claim asserted by the Architect. A Statement of Claim submitted by the District shall state the events or circumstances giving rise to the Claim, the dates of their occurrence and the damages or other relief claimed by the District as a result of such events. Notwithstanding the foregoing, the District shall not be able to commence or assert a claim beyond the applicable statute of limitations.

**1.4 CLAIMS RESOLUTION PROCESS.** The parties shall utilize each of the following steps in the Claims Resolution Process in the sequence they appear below. Each party shall participate fully and in good faith in each step in the Claims Resolution Process, which good faith effort shall be a condition precedent to the right of each party to proceed to the next step in the Claims Resolution Process.

**1.4.1 Direct Negotiations.** Designated representatives of the District and the Architect shall meet as soon as possible (but not later than forty-five (45) calendar days after the Statement of Dispute is given) in a good faith effort to negotiate a resolution to the Claim. Each party shall be represented in such negotiations by an authorized representative with full knowledge of the details of the Claim or defenses being asserted by such party, and with full authority to resolve such Claim then and there, subject only to the District’s right and obligation to obtain Board of Education approval of any agreed settlement or resolution. If the Claim involves the assertion of a right or claim by a Contractor or Architect Consultant against the Architect that is in turn being asserted by the Architect against the District, then such Contractor or Architect Consultant shall also have a representative attend such negotiations, with the same authority and knowledge as just described. Upon completion of the meeting, if the Claim is not resolved, the parties may either continue the negotiations or either party may declare negotiations ended. All discussions that occur during such negotiations and all documents prepared solely for the purpose of such negotiations shall be confidential and privileged pursuant to California Evidence Code sections 1119 and 1152.

**1.4.2 Deferral of Agreement Disputes.** Following the completion of the negotiations required by the preceding paragraph, all unresolved Claims shall proceed to Mediation as set forth in the succeeding paragraph entitled “Mediation.” The Parties hereto may mutually agree to postpone continuing the Claims Dispute Resolution until the earlier of: (i) the completion of the Scope of Services hereunder or, (ii) the termination of the services. In the event Claims are deferred, the Claims shall be consolidated within a reasonable period of time after completion of the Scope of Services herein and pursued to resolution through the Claims Dispute Resolution Process. Pending final resolution of any Claim, including but not limited to any payment dispute, the Architect shall proceed diligently with the performance of its Scope of Services and the District shall continue to make payments for those services that are not part of the Claim set forth herein in accordance with the terms of this Agreement.

**1.4.3 Mandatory Mediation.** If the Claim remains unresolved after direct negotiations pursuant to Paragraph 12.4.1, the Parties agree to submit the Claim to non-binding mandatory mediation before a mutually acceptable third party mediator prior to commencement of any lawsuit or court action.

**1.4.3.1 Qualifications of Mediator.** The Parties shall endeavor to select a mediator who is a retired judge or an attorney with at least five (5) years of experience in public works construction contract law and in mediating public works construction disputes.



**1.4.3.2 Submission to Mediation and Selection of Mediator.** The Party initiating mediation of a Claim shall provide written notice to the other Party of its decision to mediate. The Parties shall mutually agree upon the selection of a mediator within thirty (30) calendar days of receipt of the notice of Mandatory Mediation issued by the Party initiating mediation of a Claim.

**1.4.3.3 Mediation Process.** The location of the mediation shall be at the offices of the District, or otherwise mutually agreed upon location. The costs of mediation shall be shared equally among all Parties participating. All discussions that occur during the mediation and all document presentations prepared solely for the purpose of the mediation shall be confidential and privileged pursuant to California Evidence Code sections 1119 and 1152.

**1.4.4 Government Code Claim Requirements.** Pursuant to Government Code section 930.6, any claim, demand, dispute, disagreement or other matter in controversy asserted by the Architect against the District for money or damages, including, without limitation, a Demand for Arbitration, shall be deemed a “suit for money or damages” and shall be subject to the provisions of Government Code sections 945.4, 945.6 and 946. Notwithstanding the resolution of disputes pursuant to the arbitration provisions set forth in this Paragraph 12.4.4, any claim, demand, dispute, disagreement or other matter in controversy between the Architect and the District seeking money or damages in excess of \$375,000 shall first be presented to the District and acted upon or deemed rejected by the District in accordance with Government Code section 900, *et seq.*, as an express condition precedent to the Architect’s commencement of legal proceedings.

**1.4.5 Arbitration.** All claims, disputes or other matters in controversy between Architect and District arising out of or pertaining to this Agreement which are not fully resolved through the mandatory mediation set forth in Paragraph 12.4.3 above shall be settled and resolved by binding arbitration conducted under the auspices of the AAA Construction Industry Arbitration Rules in effect at the time of the filing of a Demand for Arbitration, as modified herein. The award rendered by the Arbitrator(s) shall be final and binding upon the District and the Contractor and shall be supported by law and substantial evidence pursuant to California Code of Civil Procedure section 1296. Any written arbitration award that does not include findings of fact and conclusions of law in conformity with California Code of Civil Procedure section 1296 and Rule R-47 of the AAA Construction Industry Arbitration Rules shall be invalid and unenforceable. The District and Contractor hereby expressly agree that the Court shall, subject to California Code of Civil Procedure sections 1286.4 and 1296, vacate the award if, after review of the award, the Court determines either that the award is not supported by substantial evidence or that it is based on an error of law. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure section 1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference. If any claim or dispute is asserted by the Contractor, the Construction Manager, if any, the District Representative or the District relating to the Project and arising in whole or in part out of this Agreement, the services provided by or through the Architect hereunder or the Services provided or documents prepared by or through the Architect, Architect Consultant and District agree that any arbitration proceedings initiated between Architect and District hereunder shall be consolidated with any arbitration proceedings initiated in connection with such other claim or dispute with the Architect, the Contractor, the District Representative or the Construction Manager. Any arbitration hereunder shall be conducted in the AAA Regional Office closest to the Project site.

**1.5 NON-WAIVER OR RELEASE.** Participation in the Claims Resolution Process shall not constitute a waiver, release or compromise of any defense of either party.

**SECTION 13**  
**NOTICES**

**1.6 NOTICES.** All notices, demands, or requests to be given under this Agreement shall be given in writing and conclusively shall be deemed received when received in any of the following ways: (i) on the date delivered if delivered personally; (ii) on the date sent if sent by facsimile transmission and confirmation of transmission is received; and (iii) on the date it is accepted or rejected if sent by certified mail. All notices, demands or requests shall include the name of this Agreement and be addressed to the parties as follows:

**TO DISTRICT:**

Deputy Superintendent of Administrative Services  
**Oceanside Unified School District**  
2111 Mission Avenue  
Oceanside, CA 92058

**TO ARCHITECT:**

[INSERT NAME OF PRINCIPAL]  
[INSERT NAME OF FIRM]  
[INSERT ADDRESS]  
[INSERT CITY], CA [INSERT ZIP]

**SECTION 14**  
**REPRESENTATIONS OF THE ARCHITECT**

**14.1 REPRESENTATIONS OF THE ARCHITECT.** By executing this Agreement, and hereafter each and every time this Agreement is amended, the Architect makes each of the following covenants and representations.

**14.1.1** The Architect represents that it is professionally qualified to act as the Architect for the Project and is licensed to practice architecture in the State of California by all public entities having jurisdiction over the Architect and the Project.

**14.1.2** The Architect covenants to maintain, at all times Services are performed hereunder, all necessary licenses, permits or other authorizations necessary to act as architect for the Project or projects until the Architect's duties in connection therewith have been fully satisfied.

**14.1.3** The Architect represents that it has become familiar with the Project site and the local conditions under which the Project is to be designed, constructed, and operated.

**14.1.4** The Architect represents and covenants that it shall prepare, or cause to be prepared, all documents and things required by this Agreement including, but not limited to, all Project plans and specifications in such a manner that they shall be constructible in accordance with the standards of the profession.

**14.1.5** The Architect assumes full responsibility to the District for the improper acts and omissions of its employees and any consultants retained by the Architect in connection with the Project. The Architect covenants that each Project Director and all other Architect employees or Architect Consultants now or in future assigned by the Architect to work on a Project shall have the level of

skill, experience and qualifications required to perform the Services assigned to them, and shall also have all licenses, permits or approvals legally required to perform such Services.

**14.1.6** The Architect covenants that it shall be responsible for all costs and damages, including those due to any delays, resulting from its failure to prepare adequate documentation or to implement any changes identified as necessary either in connection with the Constructability Review or other review.

**14.2 COMPLIANCE WITH LAWS.** The Architect covenants that it shall, at all times while providing Services, remain in full compliance with the provisions of all applicable laws, rules and regulations, including without limitation, the provisions of the Education Code regarding design and construction of school facilities, the provisions of the California Labor Code regarding employer's insurance, the provisions of the California Labor Code regarding payment of prevailing wages, all non-discriminations laws (including federal and state laws), and any and all other laws rules and regulations applicable to this Agreement, the Architect, the District, the Project or the Services. The Architect shall at all times require the Architect Consultants to fully comply with all such applicable laws, rules and regulations. Without in any way limiting the generality of the foregoing the Architect shall ensure that it and each Architect Consultant comply with the following:

**14.2.1 Cost Disclosure - Documents and Written Reports.** The Architect shall be responsible for compliance with California Government Code section 7550 if the total cost of the contract is over five thousand dollars (\$5,000).

**14.2.2 Disabled Veteran Business Enterprise Participation.** Pursuant to Education Code section 17076.11, the District has a participation goal for disabled veteran business enterprises (DVBES) of at least three (3) percent, per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act. Unless waived in writing by the District, the Architect shall provide proof of DVBE compliance, in accordance with any applicable policies of the District or the State Allocation Board, within thirty (30) days of its execution of this Agreement.

**14.2.3 Fingerprinting & Other Operational Requirements of the District.** Unless exempted, the Architect shall comply with the requirements of Education Code Section 45125.1 with respect to fingerprinting of employees who may have contact with the District's pupils. The Architect shall also ensure that its consultants on the Project also comply with the requirements of Section 45125.1. The Architect and each Architect Consultant must complete the District's certification form attached hereto as **Exhibit F** and incorporated herein by reference prior to any of the Architect's or Architect Consultant's employees coming into contact with any of the District's pupils. The Architect also agrees to comply, and ensure that all its employees and Architect Consultants comply with all other operational requirements of the District, as may be revised from time to time, including but not limited to any obligations relating to vaccination or testing for infectious diseases.

**14.2.4 Name and Trademarks.** The Architect shall not use any name, trademark or service mark of the District without first having received the District's written consent to such use.

**14.2.5 Conflict of Interest.** No member, official or employee of the District shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

**14.2.6 Safety.** The Architect shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Architect shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

**14.2.7 Labor Certification.** By its signature hereunder, the Architect certifies that it is aware of the provisions of the California Labor Code sections 3700, *et seq.*, which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

**14.3 SUPPLEMENTAL CONDITIONS.** Any supplemental conditions agreed to by the Parties shall be attached as an exhibit to this Agreement and incorporated herein by reference.

## **SECTION 15**

### **MISCELLANEOUS PROVISIONS**

**15.1 SUCCESSORS AND ASSIGNS.** In as much as this Agreement is intended to secure the specialized Services of the Architect, the Architect may not assign, transfer, delegate or sublet any interest therein without the prior written consent of the District and any such assignment, transfer, delegation or sublease without the District's prior written consent shall be considered null and void. Likewise, the District may not assign, transfer, delegate or sublet any interest therein without the prior written consent of the Architect and any such assignment, transfer, delegation or sublease without the Architect's prior written consent shall be considered null and void.

**15.2 SEVERABILITY.** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**15.3 ENTIRE AGREEMENT.** This Agreement including Exhibits hereto, contains the entire understanding of the Parties, and supersedes all other written or oral agreements. The Architect shall be entitled to no other benefits other than those specified herein. No changes, amendments or alternations shall be effective unless in writing and signed by both Parties. The Architect specifically acknowledges that in entering into this Agreement, the Architect relied solely upon the provisions contained in this Agreement and no others.

**15.4 GOVERNING LAW AND VENUE.** This Agreement shall be construed in accordance with, and governed by the laws of the State of California, excluding its choice of law rules. Venue shall be exclusively in San Diego County.

**15.5 NON-WAIVER.** None of the provisions of this Agreement shall be considered waived by either party unless such waiver is specifically specified in writing. Neither the District's review, approval of, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and the Architect shall remain liable to the District in accordance with this Agreement for all damages to the District caused by the Architect's failure to perform any of the Services to the standard of care of the Architect for its services, which shall be, at a minimum, the standard of care of architects performing similar work for California school districts in or around the same geographic area of the District. This provision shall survive the termination of this Agreement.

**15.6 INDEPENDENT CONTRACTOR.** The Architect is, for all purposes arising out of this Agreement, an independent contractor, and neither the Architect nor its employees shall be deemed an employee of the District for any purpose. It is expressly understood and agreed that the Architect 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, workers' compensation benefits, sick or injury leave or other benefits. The Parties acknowledge Labor Code section 2750.3 and its potential impact on independent contractor relationships. The Parties agree that: (1) Architect shall be responsible for the control and direction of its own employees and personnel in the performance of the Services under this Agreement; (2) the Architect's personnel shall only perform work that is outside the District's usual course of business; and (3) Architect's personnel shall be engaged in business independent of the District.

**15.7 NO ASBESTOS CERTIFICATION.** No asbestos or asbestos-containing materials will be used or substituted in conjunction with the Project. Upon completion of all work under the Project, the Architect will certify to the District that to the best of the Architect's knowledge, no asbestos or asbestos-containing materials were used in the Project.

**15.8 NON-DISCRIMINATION.** No discrimination shall be made by the Architect in the employment of persons to work under this Agreement because of race, national origin, sex, age, ancestry, religion, physical disability, marital status, sexual orientation, or political affiliation of such person. The Architect shall comply with all applicable regulations and laws governing nondiscrimination in employment, including without limitation the following laws:

- a) **California Fair Employment and Housing Act** (California Government Code section 12900, et seq.) which prohibits discrimination in employment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex and prohibits harassment of an employee or applicant because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex or age;
- b) **Federal Civil Right Act of 1964** (42 U.S. Code Section 2000e, et seq.) which prohibits discrimination in employment on the basis of race, religious creed, color, national origin, or sex;
- c) **Title I of the Americans with Disabilities Act of 1990** (42 U.S. Code section 12101, et seq.) which prohibits discrimination against qualified individuals with a disability in hiring and employment practices;
- d) **The Age Discrimination in Employment Act** (29 U.S. Code Section 621, et seq.), prohibiting age discrimination in employment against individuals who are least forty years of age; and
- e) **California Labor Code Section 1102.1** which prohibits discrimination in any aspect of employment or opportunity for employment based on actual or perceived sexual orientation.

**15.9 NO THIRD PARTY BENEFICIARY.** There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

**15.10 ASSISTANCE OF COUNSEL.** Each Party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each Party acknowledges that the drafting of this Agreement was the product of negotiation and that this Agreement shall not be construed against any Party as the drafter of the Agreement.

**15.11 AUTHORITY TO EXECUTE.** The persons executing this Agreement on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

**15.12 HEADINGS.** The headings in this Agreement are inserted only as a matter of convenience and reference and are not meant to define, limit or describe the scope or intent of the contract documents or in any way to affect the terms and provisions set forth herein.

**15.13 EXHIBITS.** The following Exhibits are attached hereto and incorporated herein by this reference: [The project specific details will need to be added by way of the following exhibits]

Exhibit A – Project

Exhibit B – Architect RFP/RFQ Response & Architect Basis of Design

Exhibit C – Basic Services and Description of Submittals

Exhibit D – Deliverables

Exhibit E – Design Phase Approval Letter

Exhibit F – Fingerprinting Requirements

**15.14 EXECUTION IN COUNTERPARTS.** This Agreement may be executed in any number of counterparts, electronic or otherwise, each of which shall be an original, but all of which together shall constitute one instrument.

**[SIGNATURES ON FOLLOWING PAGE]**

**NOW, THEREFORE**, the Parties, through their authorized representatives, have executed this Agreement on the dates indicated under their respective signatures.

**Architect**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**District**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**Project Details**

**[Insert Project Details]**











**EXHIBIT F**

**FINGERPRINTING BACKGROUND CHECK REQUIREMENTS**

**EDUCATION CODE SECTION 45125.1 PROVIDES IN RELEVANT PART:**

- A. If the employee(s), agents, or independent contractor(s) of an entity which has a contract with a school District to perform janitorial, administrative, landscape, transportation, food related or similar services may have any contact with students, those employees, agents, or independent contractors must have their fingerprints submitted to the Department of Justice;
- B. The Department of Justice shall determine whether the individuals have been arrested or convicted of a crime and notify the employer of the criminal history;
- C. An entity with a school District contract shall not permit an employee to come in contact with pupils until the Department of Justice ascertains that the employee has not been convicted of a felony as defined in *Education Code section 45122.1*;
- D. The entity must certify that none of its employees, agents, or independent contractors who may come into contact with pupils have been convicted of a felony as defined in *Education Code section 45122.1*.
- E. The entity must provide lists of the names of employees, agents, or independent contractors who may come in contact with pupils.

***I am aware of the provisions of Education Code section 45125.1 which requires fingerprinting and background checks of school District Contractor's and subcontractor's employees, certification that employees with pupil contact have not committed a felony as defined in Education Code section 45122.1 and provision of lists of those employees to the school District. I will comply with such provisions before commencing the performance of the work of this contract. I will provide a new certification and a updated list in the event that during the course of the contract, new and different employees may come into contact with pupils.***

\_\_\_\_\_  
**Name**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

