

MASTER AGREEMENT FOR ARCHITECTURAL SERVICES

This Master Agreement for Architectural Services (“Agreement”) is dated _____, ____, 2016 for reference purposes only and is made by and between **SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT**, a California unified school district (“District”) and _____ (“Architect”), whose address is_____. The District and the Architect are collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, from time-to-time, the District is engaged in the design, bidding and construction of works of improvement consisting generally of the demolition, construction and/or alteration of new and existing physical facilities at the District’s campuses and related facilities. These works of improvement are hereinafter collectively referred to as the “Projects” and singularly referred to as an “Assigned Project.”

WHEREAS, the Projects require the preparation of Design Documents.

WHEREAS, applicable law, rule or regulation requires the oversight of some portions or all of the construction of the Projects by a California licensed architect.

WHEREAS, the District desires to retain Architect to provide and perform architectural and related services in connection with the design, bidding and construction of Projects assigned by the District to the Architect under this Agreement. The specific terms and conditions for an Assigned Project will be as set forth in the form of Project Assignment attached hereto as Exhibit A – Project Assignment and its attachment A1 – List of Design Requirements and Deliverables.

WHEREAS, Architect is duly licensed as an architect under the laws of the State of California and is qualified and capable of providing and performing the services, work product and its other obligations under this Agreement in accordance with the terms hereof.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the District and Architect agree as follows:

AGREEMENT

1. BASIC SERVICES.

1.1 Scope. Architect shall provide Basic Services and authorized Additional Services for an Assigned Project, as more particularly enumerated in this Agreement and in the Project Assignment for the Assigned Project. All Basic Services and authorized Additional Services shall be performed and completed by employees of the Architect and the Architect’s Sub-Consultants. Architect’s services hereunder shall be performed or provided consistent with the Basic Services Completion Schedule set forth in a Project Assignment and with professional skill and care and in such a manner as to avoid hindrance, interruption or delay to the orderly progress and completion of the design, bidding and construction of the Assigned Project(s). The scope of Basic Services to be provided by the Architect in connection with an

Assigned Project shall be in accordance with the Project Assignment issued by the District for an Assigned Project; the form of Project Assignment is attached hereto as **Exhibit A**, inclusive of **Attachment A1** – List of Design Requirements and Deliverables, and incorporated herein by this reference.

1.2 Project Construction Budget. If a Project Construction Budget is established for an Assigned Project, the Architect shall design the Project Plans within the Project Construction Budget and the value of the Construction Cost Estimate, including escalation, for the design work shall not exceed 95 percent of the Project Construction Budget without prior written authorization of the District. Where an estimate exceeds such limit without the District's authorization, the Architect shall redesign the Project Plans to stay within the Project Construction Budget at no additional cost to the District. All Construction Cost Estimates prepared by the Architect for the Project shall include hard construction costs, contractor's overhead and profit and design contingencies within the specified Project Construction Budget.

1.3 Architect of Record. The Architect is the Architect of Record for the work of this Agreement and any and all Assigned Projects related thereto.

1.4 Pre-Approval of Architect's Consultants. Prior to the execution of each Project Assignment, the Architect shall submit, for written approval by the District, the names of the Sub-Consultant firms proposed for the Project and shall identify the principals of the proposed Sub-Consultant firms who will be assigned to the Project. The District shall have the discretion to accept or reject any firm proposed. If a firm is rejected, the Architect shall propose an alternate firm acceptable to the District. Nothing in this Agreement shall create any contractual relationship between the District and any Sub-Consultant retained or employed by the Architect.

2. ARCHITECT COMPENSATION.

2.1 Contract Price. For each Assigned Project, the District shall pay Architect the Contract Price set forth in the Project Assignment for the Assigned Project. The Contract Price for an Assigned Project includes Architect's fee, Sub-Consultants' fees, personnel expense of the Architect and Sub-Consultants inclusive of all benefits and burdens, insurance and all other administrative or overhead costs associated with or arising out of performance of the Basic Services designated in the Project Assignment for an Assigned Project, including but not limited to costs of mobile telephone, facsimile and telephone charges, travel, mileage and parking within Los Angeles, Orange, Ventura, San Bernardino and Riverside Counties and printing and plotting costs for Architect's and Sub-Consultant's use. If an Architectural Services Budget is established in the Project Assignment for an Assigned Project, the aggregate amount paid by the District for the Basic Services for the Assigned Project shall not exceed the Architectural Services Budget. The Contract Price for an Assigned Project also includes Reimbursable Expenses, which are defined as costs of a non-capital nature reasonably and necessarily incurred by Architect to perform the Basic Services or authorized Additional Services for an Assigned Project, when such expenses are solely for the benefit of and use by the District. These costs include postage, delivery, office supplies, plans, prints, plotting or photographs and as set forth in the Project Assignment. Charges for Reimbursable Expenses shall be actual costs incurred by Architect plus a 5% handling fee. Reimbursable Expense exceeding \$250.00 will not be paid unless Architect shall have obtained the prior written approval of District. The District may direct the cessation of, or alternatives to, items of Reimbursable Expenses, if in the sole determination of the District such Reimbursable Expenses are excessive or not necessary for the efficient, orderly and full performance of the Architect's

obligations of the Project Assignment for an Assigned Project.

2.2 Adjustment of Contract Price for Construction Phase Changes. The Contract Price for the Basic Services for an Assigned Project is not subject to adjustment unless there are Changes authorized by the District during the Construction Phase of the Assigned Project which are not the result of errors, omissions or other defects in the Design Documents or failures of the Architect or Sub-Consultants to timely and completely perform the Basic Services for the Assigned Project. If Services of the Architect or Sub-Consultants are required in connection with Changes during the Construction Phase of an Assigned Project which do not result from the errors, omissions or other defects in the Design Documents or failures of the Architect or Sub-Consultants to timely and completely perform the Basic Services for an Assigned Project, the Contract Price will be equitably adjusted to reflect the additional services provided. Changes required to correct deficiencies, errors or omissions in the Construction Contract shall not result in adjustment of the Contract Price for an Assigned Project. Architect shall be liable to the District for all damages, losses or costs resulting from any errors, omissions or other defects in the Design Documents.

2.3 Additional Services. If the District shall approve or direct Architect to perform or provide Additional Services described generally in Article 3 of the Conditions to this Agreement in connection with an Assigned Project, Architect shall be compensated for its personnel providing such Additional Services in accordance with the Rate Schedule set forth in the Project Assignment for an Assigned Project.

2.4 District Payments.

2.4.1 Allocation of Contract Price. The District's payment of the Contract Price for Basic Services for an Assigned Project shall be allocated among the various Phases of the Basic Services for an Assigned Project as follows or as amended by the District for an Assigned Project:

BIM Fee Schedule

Pre-Design Phase:	3 %
Schematic Design Phase:	20 %
Design Development Phase:	20 %
Construction Documents Phase:	25 %
Bidding Phase:	2 %
Construction Contract Administration Phase:	25 %
Post-Construction Phase:	5 %
TOTAL:	100 %

CADD Fee Schedule

Pre-Design Phase:	3 %
Schematic Design Phase:	15 %
Design Development Phase:	20 %
Construction Documents Phase:	30 %
Bidding Phase:	2 %
Construction Contract Administration Phase:	25 %
Post-Construction Phase:	5 %
TOTAL:	100 %

2.4.2 Architect Billings to District. During the course of providing Basic Services for an Assigned Project, Architect shall submit monthly billing invoices to the District for payment of the Contract Price for Basic Services, authorized Additional Services and Reimbursable Expenses performed or incurred in the immediately prior month. Architect’s billings shall be in such form and format as may be reasonably requested by District.

2.4.3 District Payments to Architect. Within thirty (30) days of receipt of Architect’s billing invoices, District will make payment to Architect of undisputed amounts of the Contract Price due for Basic Services, authorized Additional Services and Reimbursable Expenses. No deductions shall be made or withheld from payments due Architect hereunder on account of any penalty, assessment, liquidated damages or other amounts withheld by the District from payment to the Contractor engaged by the District for construction of an Assigned Project. The District may, however, withhold or deduct from amounts otherwise due Architect hereunder if Architect shall fail to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after Architect has fully cured such failure of performance, less costs, damages or losses sustained by the District resulting therefrom. Notwithstanding any provision of this Agreement to the contrary, if the District shall, in good faith, dispute the amount due Architect under any billing invoice rendered by Architect under this Agreement, pursuant to Civil Code §3320(a) the District may withhold from payment to the Architect an amount not to exceed one hundred and fifty percent (150%) of the disputed amount.

3. Term. The term of this Agreement shall commence upon approval or ratification by the District’s Board of Education in accordance with Paragraph 5.3 hereof and execution by Architect and District. This Agreement shall terminate five (5) years thereafter (“Termination Date”). In the event that an Assigned Project is not completed or the District shall not have issued Final Payment to the Contractor as of the Termination Date through no fault or neglect of Architect, the Termination Date shall be extended. In such event, Basic Services provided by Architect following the Termination Date shall be in accordance with the Rate Schedule for the Assigned Project or as may be negotiated by the Parties.

4. Insurance. Coverage amounts and limits for policies of insurance to be obtained and maintained by Architect are set forth in Article 4 of the Conditions to this Agreement, which may be modified in a Project Assignment for an Assigned Project as determined by the District.

5. Miscellaneous.

5.1 Governing Law; Interpretation. This Agreement shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against the District or Architect.

5.2 Successors; Non-Assignability. This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors of Architect and the District. Neither Architect nor District shall assign rights or obligations hereunder without the prior consent of the other, which consent may be withheld or granted in sole discretion of the Party requested to grant such consent.

5.3 Authority. The individual(s) executing this Agreement on behalf of Architect warrant and represent that she/he is authorized to execute this Agreement and bind Architect to all terms hereof. The individual(s) executing this Agreement on behalf of District warrant and represent that she/he is authorized to execute this Agreement and subject to approval and ratification by the District's Board of Education, to bind District to all terms hereof and authority granted to enter into this Agreement.

5.4 Notices. Notices under this Agreement shall be addressed and delivered as follows:

If to District:

Santa Monica-Malibu Unified School District
c/o Janece Maez, Associate Superintendent, Business and Fiscal Services
1651 Sixteenth St.
Santa Monica, CA 90404

If to Architect:

5.5 Entire Agreement. This Agreement, the accompanying Conditions to this Agreement which are attached hereto, made a part hereof and incorporated herein by this reference, and the documents enumerated below are all of the documents comprising this Agreement:

Exhibit A – Project Assignment, including Attachment A1 Design Requirements and Deliverables.

The foregoing constitutes the entire agreement and understanding between the District and Architect concerning the subject matter hereof, replacing and superseding all prior agreements or negotiations, whether written or verbal. No term or condition of this Agreement shall be modified or amended except by writing executed by the District and Architect.

IN WITNESS WHEREOF, the District and Architect have executed this Agreement as of the date set forth above.

“DISTRICT”
SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT, a California unified school district

“ARCHITECT”

By: _____

By: _____

SAMPLE

**CONDITIONS OF AGREEMENT FOR
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**CONDITIONS OF AGREEMENT
FOR
ARCHITECTURAL SERVICES**

**ARTICLE 1
RELATIONSHIP OF PARTIES**

- 1.0 Relationship of Architect to Other Project Participants.** The Architect's services hereunder shall be provided in conjunction with contracts between the District and other Project participants including the Contractor and the District's Project Manager, if one is retained by the District for the Project. The Contractor awarded the Contract for construction of the Project is responsible for performance of its obligations under its contract with the District. Architect's services hereunder shall not be deemed or construed to be Architect's assumption of responsibility for, or control over construction means, methods sequences or procedures, or for safety at the Site, all of which are and remain the responsibility of the Contractor.
- 1.1 Architect Independent Contractor Status.** In providing services hereunder, Architect shall be an independent contractor to the District. The express terms hereof set forth the limited extent to which Architect is authorized to act on behalf of the District in its independent contractor capacity. Architect shall be responsible to the District and third parties for the consequences of Architect's actions or conduct which exceeds the express limited scope of Architect's authority to act on behalf of the District set forth herein. With prior written approval of the District, the Architect may enter into subcontracts with Sub-Consultants and retained parties for the performance of parts of the services associated with this Agreement. Nothing in this Agreement shall constitute any contractual relationship between any such Sub-Consultant or retained party and the Project Manager or the District or any obligation on the part of the Project Manager or the District to pay, or to be directly responsible for the payment of, any sums to any such Sub-Consultant or retained party without the prior written approval of the District.
- 1.2 District Responsibilities.**
- 1.2.1 Information.** The District shall provide full information regarding the Assigned Project, including the District's objectives, general description of the scope, schedule requirements, construction budget, topographical surveys, geotechnical investigations, hazardous material reports, record drawings and other constraints and requirements which may affect the Assigned Project.
- 1.2.2 District Representative.** The District shall designate a representative to act on the District's behalf with respect to the Project and who shall be authorized to render decisions on behalf of the District and to carry out the District's responsibilities under this Agreement, all of which shall be discharged or performed in a manner so as to avoid unreasonable delay in the orderly and sequential progress of Project design and construction and Architect's services hereunder.
- 1.2.3 District Consultants.** Except for the Sub-Consultants retained by the Architect, the District shall furnish all legal, accounting, insurance and other consulting services as may be necessary for the Project.
- 1.2.4 Tests and Inspections.** The District shall furnish or otherwise retain inspection or testing services in connection with construction of the Project as required by applicable

code, regulation or ordinance or the terms of the Construction Contract. The District shall provide, if required by applicable code, regulation or rule or by conditions encountered, tests or inspections for hazardous or toxic materials.

- 1.2.5 District Notice of Non-Conformity.** The District will give prompt written notice to the Architect if the District becomes aware of any fault, failure or neglect of Architect or in the services provided by Architect hereunder; provided that the failure or delay by District in giving such written notice shall not constitute a waiver of any right or remedy of the District arising out of such fault, failure or neglect of the Architect.
- 1.3 Architect Standard of Care.** Architect shall provide the Basic Services and authorized Additional Services for an Assigned Project: (i) using its professional skill and judgment; (ii) acting with due care and in accordance with respective applicable professional standards of care under California law for those providing similar services for projects of the size, scope and complexity of the Assigned Project; (iii) the terms of this Agreement; and (iv) in accordance with said standards regarding application and interpretation of applicable law, code, rule or regulation at the time services are rendered. All services provided pursuant to this Agreement shall be in accordance with the applicable provisions of the California Public Contract Code. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, consistent with the Architect's professional standard of care as set forth above. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information.

ARTICLE 2 BASIC SERVICES

2.0 Basic Services.

- 2.0.1 Architect Representation.** The Architect shall designate a Project Architect and/or Architectural Project Manager for all Phases of Basic Services for an Assigned Project. The Architect's Project Architect and/or Architectural Project Manager shall be reasonably satisfactory to the District and shall not be removed or replaced without prior written approval of the District. In seeking to replace an approved Project Architect and/or Architectural Project Manager for an Assigned Project, the Architect shall provide the District with a request in writing specifying the reason for the substitution or replacement and including the resume and qualifications of the proposed Project Architect and/or Architectural Project Manager. Notwithstanding any approval by the District of a Project Architect and/or Architectural Project Manager, the District reserves the right to require the removal and/or replacement of any Project Architect and/or Architectural Project Manager in its sole discretion and at no expense to the District. The Project Architect and/or Architectural Project Manager shall have the overall responsibility for performance of Architect's obligations of the Project Assignment for an Assigned Project and be authorized to act on behalf of the Architect in discharge of Architect's services thereunder. During the Construction Phase, the Project Architect and/or Architectural Project Manager shall be readily available and provide by telephone, telecopier, correspondence or other means of communication to provide design direction and decisions as necessary to avoid delay, hindrance or interruption of the construction progress of the Assigned Project.

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- 2.0.2 Scope of Basic Services; Design Consultants.** Basic Services are enumerated in this Article 2 and more specifically in the Project Assignment for an Assigned Project. Basic Services include services and/or work product provided or performed by the Sub-Consultants as identified in the Project Assignment for an Assigned Project. In the event of any conflicts, inconsistencies or ambiguities between the terms and conditions of this Article 2 and those set forth in the Project Assignment for an Assigned Project, the latter shall control. Where any portion of this Article 2 is silent and information or services are provided in the Project Assignment for an Assigned Project, the latter shall control.
- 2.1 Pre-Design Phase.** The Architect shall provide those services necessary to define the program and design time requirements of the Assigned Project prior to commencing design. The Architect shall assist the District in the preparation of facilities programming for the Assigned Project to define the scope, size, functions, space relationship and site development, including definition of the construction budget of the Assigned Project, alternative methods for design and construction of the Assigned Project, and selection of materials, building systems and equipment. The Architect shall use its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Assigned Project's budget. The Architect shall provide reasonable assistance to the District in securing easements, encroachment permits, rights of way, dedications, infrastructures and road improvements, as well as coordinating with the civil engineer and adjacent property owners.
- 2.2 Schematic Design Phase.**
- 2.2.1 Preliminary Schematic Design Documents.** Based upon scope, budget, schedule and other requirements or constraints mutually agreed upon and understood between the District and Architect, the Architect shall prepare Preliminary Schematic Design Documents consisting of drawings, cost estimates and other documents illustrating scale and other relationships of the various components of the Work of the Assigned Project and an outline of Specifications. Upon completion of the Preliminary Schematic Design Documents, or at such other intervals during Architect's development of Preliminary Schematic Design Documents as may be agreed upon by District and Architect, the Architect shall submit the same to the District for information and review.
- 2.2.2 Final Schematic Design Documents.** The District and Architect will confer and consult with each other to arrive at mutual understandings and agreements as to which of the design, constructability and value engineering comments and other comments of the District to the Preliminary Schematic Design Documents are to be incorporated into the Final Schematic Design Documents. Architect shall prepare Final Schematic Design Documents, which consist of the Preliminary Schematic Design Documents revised to incorporate therein the mutually agreed upon design, constructability, value engineering and other comments. Upon completion of the Final Schematic Design Documents, Architect shall submit the same to the District for review and approval; comments or revisions of the District to the Final Schematic Design Documents shall be incorporated by the Architect into the Design Development Documents.
- 2.2.3 Revisions to Schematic Design Documents.** If the estimate of Construction Cost for the Assigned Project as depicted in the Schematic Design Documents exceeds the District's budget, the Architect shall revise the Schematic Design Documents without adjustment of the Contract Price as necessary to conform to the District's budget, unless

the District approves the Schematic Design Documents and modifies the budget accordingly.

2.3 Design Development Documents.

2.3.1 Preliminary Design Development Documents. Based upon Final Schematic Design Documents approved by the District, the Architect shall prepare Preliminary Design Development Documents for the Assigned Project for review and approval by the District. Preliminary Design Development Documents shall consist of Drawings, Specifications and other documents establishing and describing the size and character of architectural, mechanical, electrical, structural and plumbing systems, materials and other significant components of the Work of the Assigned Project as necessary or appropriate.

2.3.2 Constructability and Design Review; Value Engineering. Upon completion of Preliminary Design Development Documents, or such earlier intervals as may be mutually agreed between the District and Architect, the Architect shall submit Preliminary Design Development Documents to the District for review and comment, including constructability reviews and/or value engineering comments.

2.3.3 Final Design Development Documents. The District and Architect will confer and consult with each other to arrive at mutual understandings and agreements as to which of the design, constructability and value engineering comments and other comments of the District are to be incorporated into the Final Design Development Documents for the Assigned Project. Architect shall prepare Final Design Development Documents incorporating therein the mutually agreed upon comments of the District. Upon completion of the Final Design Development Documents, Architect shall submit the same to the District for information and approval. Architect shall revise the Final Design Development Documents as necessary to obtain the District's reasonable approval thereof; comments or revisions of the District to the Final Design Documents shall be incorporated by the Architect into the Construction Documents.

2.3.4 Review of Final Design Development Documents Status. At intervals mutually agreed upon by the District and Architect, or in the absence of such mutual agreement at such intervals as reasonably determined by District, Architect shall provide to the District, for review and information, the Drawings, Specifications and other Design Documents for the Assigned Project depicting the then current status of the Architect's preparation of Final Design Development Documents.

2.4 Construction Documents Phase.

2.4.1 Construction Documents. Based upon the approved Final Design Development Documents for the Assigned Project, the Architect shall prepare Construction Documents consisting of all Drawings and Specifications and other Design Documents necessary or appropriate for setting forth in detail the requirements for the Work of the Assigned Project with sufficient clarity, coordination and consistency to permit qualified and capable Trade Contractor(s) to bid upon and construct the Work depicted therein.

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- 2.4.2 Review of Construction Documents Status.** In addition to the submittal of Construction Documents to the District pursuant to Article 2.4.3 below, at intervals mutually agreed upon by the District and Architect, or in the absence of such mutual agreement at such intervals as reasonably determined by the District, Architect shall provide Drawings, Specifications and other Design Documents depicting the then current status of the Architect's preparation of Construction Documents for the Assigned Project to the District for information and review.
- 2.4.3 Third Party Reviews.** If, during development of construction documents, it is determined that the project is exceeding the Estimated Construction Cost, the District reserves the right to conduct a constructability review, design review and/or value engineering of the Construction Documents. If the District elects to conduct third party reviews, the District shall notify the Architect of the same and thereupon at Architect's completion of the Construction Documents for the Assigned Project to 50% and 90%, the Construction Documents shall be submitted to the District for constructability and design review and value engineering comments. The District and Architect will confer and consult with the other to arrive at mutual understandings and agreements as to which of the constructability, design and value engineering comments are to be incorporated into the Construction Documents. These mutually agreed upon comments shall be documented in list form by the Architect and submitted to the District for revisions and/or comments. Architect's Construction Documents for the Assigned Project shall incorporate such mutually agreed upon comments and the Architect shall submit revised Construction Documents for the Assigned Project to the District for review and approval. Architect shall revise Construction Documents as necessary to obtain the District's reasonable approval thereof.
- 2.4.4 Approvals of Construction Documents.** The Architect shall obtain all necessary approvals for the Construction Documents for the Assigned Project from governmental agencies with jurisdiction therefor as necessary for the bidding and construction of the Work depicted in the Construction Documents, including without limitation, approvals by the Division of State Architect ("DSA"). Architect shall revise the Construction Documents as required by DSA or other governmental agencies to obtain their respective approvals of the Construction Documents. Except for the Architect's fees (which are included in the Contract Price for Basic Services) incurred in obtaining such approvals or preparing revisions pursuant to the foregoing, the District shall pay all other costs or fees necessary for obtaining such approvals.
- 2.4.5 Architect Provision of Construction Documents.** The Architect shall provide the District with one clear background reproducible copy of the Drawings contained in the final approved Construction Document for bidding and construction purposes. Reproduction of these sets for the District's bidding is at the cost of the District, except to the extent that reproduction is required by revisions or corrections arising out of negligent errors or omissions of the Architect or its Design Consultants, in which case, the Architect shall bear all costs of revisions or corrections including reproduction of revised Drawings. The District will furnish Architect the number of sets necessary, as agreed to by the District, of the final approved Construction Documents for use by Architect and its Design Consultants in the Bidding and Construction Phases of the Assigned Project.

2.5 Bidding Phase.

2.5.1 Development of Bid Documents. In consultation with the District, the Architect will advise and make recommendations to the District for bidding and award of the Construction Contract. Architect will generally review and comment upon the District's proposed forms of Construction Contract and General, Special and other Conditions thereof for conformity and consistency with the Construction Documents. Architect shall assist the District in preparation of information, documents and forms necessary or appropriate for bidding.

2.5.2 Bidding Process. During the bidding for Construction Contract, Architect will: (i) attend pre-bid conference(s), as called by the District; (ii) assist the District in responding to bidders' inquiries, questions or clarifications relating to the bidding, the Assigned Project, or the Construction Documents; and (iii) where necessary or appropriate, the Architect will prepare and assist the District in issuance of addenda to the Contract Documents, Bid Documents and/or Construction Documents for the Assigned Project. Architect will assist the District in the receipt and review of bidders' or Bid Proposals, including the review of Bids Proposals for responsiveness and bidder responsibility, analyses of Bid Proposals and recommendations for the selection of the Contractor for the award of the Construction Contract. As requested by the District, the Architect will assist the District in obtaining all necessary approvals for award of the Construction Contract.

2.5.3. Re-Bidding Process.

2.5.3.1. Detailed Construction Cost Estimate. The Architect, as a design professional familiar with the construction industry, shall develop a series of detailed Construction Cost estimates. Should the Construction Cost estimate exceed the Estimated Construction Cost at any time during design, the Architect shall immediately implement a process of redesign to bring the Assigned Project into compliance with the Construction Cost. All redesign shall be at no additional cost to the District.

2.5.3.2 Adjustment to Construction Cost; Changes in Construction Industry Prices. If bids are not received within the time scheduled at the time the Estimated Construction Cost was established, due to causes beyond the Architect's control and through no fault or neglect of the Architect, the Estimated Construction Cost established as a condition of this Agreement shall be adjusted to reflect any change in the general level of prices in the construction industry between the originally scheduled date and the date on which bids are received.

2.5.3.3 Adjustment to Construction Cost; District's Options. If the Estimated Construction Cost (adjusted as provided in Article 2.4.3.3) is more than one hundred ten percent (110%) of the lowest amount from bona fide bids or negotiated proposals, plus the District's reasonable estimate of other elements of Estimated Construction Cost for the Assigned Project, the District shall do one of the following: i) give written approval of an increase or decrease in such Estimated Construction Cost; ii) authorize rebidding or renegotiation of the Assigned Project or portions of the Assigned Project within a reasonable time;

iii) if the Assigned Project is abandoned, terminate in accordance with Article 5.2; iv) instruct the Architect to revise the Assigned Project scope and quality as required to decrease or increase the Estimated Construction Cost. In the case of (iv), the Architect shall, without additional cost to the District, modify the drawings and specifications as necessary to comply with the Estimated Construction Cost, rebid the Assigned Project in whole or in parts, and assist with award of construction contract(s).

2.5.3.4 Constructability and Design Review; Value Engineering to Achieve Necessary Savings. Constructability and Design Review and/or Value Engineering at this stage shall be in accordance with section 2.4.3.

2.6 Construction Phase.

2.6.1 Administration of Construction Contract. Architect will provide assistance to the District in administration of the Construction Contract and construction of the Assigned Project. If the District retains a Project Manager for the Assigned Project, the Architect's administration of the Construction Contract shall be in conjunction with the services and responsibilities of the Project Manager. The Architect shall be a representative of the District and shall advise and consult with the District regarding the Assigned Project construction until Final Payment under the Construction Contract is due and Final Completion of the Assigned Project Construction is certified by the Architect. The Architect shall have the authority to act on behalf of the District only to the extent expressly provided for by the terms hereof and as may be subsequently modified in accordance with the provisions hereof. Duties, responsibilities and limitations of the Architect's authority shall not be restricted, modified or extended without written agreement of the District and the Architect along with consent by the Contractor and/or Project Manager as necessary or appropriate. Architect shall cooperate with and comply with controls, procedures, processes and reporting functions reasonably implemented by the District with respect to design or construction of the Assigned Project.

2.6.2 Site Observations. The Architect shall attend scheduled project progress and/or other meetings relating to the Assigned Project and shall visit the Site at intervals appropriate to the stage of construction, as required by the conditions of construction or the Site, or as may be reasonably requested by the District from time to time, for the purpose of becoming generally familiar with the progress and quality of the Work completed and to generally determine if the Work is being performed in a manner indicating that upon completion it will be in accordance with the Construction Contract and the Construction Documents.

2.6.2.1 Purpose of the Site Observations. On the basis of observations made during Site visits and in its capacity as an architect, the Architect shall: (i) keep the District informed of the progress and quality of the Work; and (ii) endeavor to guard the District against defects and deficiencies in the Work and the failure or refusal of the Contractor to perform the Work in accordance with the terms and intent of the Construction Contract and the Construction Documents. If in the course of its Site observations, the Architect fails to discover or report to the District any major defect or deficiency in construction of the Work, or in the Work itself, which by exercise of due care should have been observed by the

Architect and reported to the District, the Architect will provide all design services necessary for remedial or corrective measures for such conditions without additional cost or expense. Notwithstanding the above, the Architect does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the Assigned Project. The provisions hereof shall not be construed as requiring the Architect to make exhaustive or continuous Site observations to check on the quality or quantity of the Work. The Architect shall have access to the Work wherever in preparation, fabrication or progress.

2.6.3 Contractor Applications for Payment.

- 2.6.3.1 Development of Payment Procedures. In consultation with the District and the Project Manager, the Architect shall assist in the development and implementation of procedures, forms and documents for the submittal, review, processing and disbursement of Progress Payments to the Contractor.
- 2.6.3.2 Certification of Payment Due. Based on the Architect's observations and evaluations, the Architect shall certify the amount due on each Application for Progress Payment. Such certification shall be the Architect's representation to the District that based upon the Architect's Site observations in accordance with this Agreement and the data contained in the Application for Progress Payment, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the terms of the Construction Contract. The Architect shall review and respond to Applications for Progress Payment in a prompt manner so as to allow the District to timely meet its payment obligations to the Contractor under the terms of the Construction Contract and applicable law, rule or regulation. Issuance of Certificate for Payment shall constitute Architect's representation that the Contractor is entitled to the amount certified.
- 2.6.3.3 Limitations Upon Architect's Certification. The Architect's certifications and representations hereunder are subject to an evaluation of the Work for conformity with the terms of the Construction Contract upon Substantial Completion, the results of subsequent tests and inspections, minor deviations from the terms of the Construction Contract correctable prior to Final Completion and any specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall not be deemed a representation that the Architect has: (i) made exhaustive or continuous Site inspections to check the quality or quantity of the Work; (ii) reviewed construction means, methods, sequences or procedures; (iii) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the District to substantiate the Contractor's right to payment, excepted as included in the materials accompanying an Application for Progress Payment transmitted to and reviewed by the Architect hereunder; or (iv) ascertained for or what purpose the Contractor has used funds previously disbursed under prior Application(s) for Progress Payment.

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- 2.6.3.4 **Final Payment.** The Architect shall review, evaluate and certify for payment the Contractor's Application for Final Payment. The Architect shall review and respond to the Contractor's Application for Final Payment in a prompt manner so as to allow the District to timely meet its obligation to make payment of the Final Payment under applicable law, rule or regulation.
- 2.6.3.5 **Timely Action by Architect.** Upon receipt of any of the Contractor's Applications for Progress Payment and the Application for Final Payment, the Architect shall promptly commence and complete its review, evaluation and certification of the amount due on each such application so that the District can make payment of the amount certified within the time permitted by law without incurring liability for interest and/or the Contractor's attorneys' fees resulting from untimely payments of any Progress Payment or the Final Payment. If the Architect fails to take timely action pursuant to the preceding, the Architect shall be liable to the District for all costs, demands, liabilities or losses arising out of or related to such failure to timely take action, unless such failure is the result of circumstances beyond the reasonable control of the Architect.
- 2.6.4 Rejection of Work.** The Architect shall notify the District to reject Work which does not conform to the requirements of the Construction Contract. Whenever the Architect considers it necessary or appropriate for implementation of the intent of the Construction Contract upon notice to and authorization by the District, the Architect may require additional inspection or testing of the Work in accordance with the provisions of the Construction Contract, whether such Work is prepared, fabricated, installed or constructed. This authority of the Architect, or the Architect's good faith determination to exercise or not exercise such authority, shall not, however, give rise to a duty or responsibility of the Architect to the District, the Contractor or any others performing or providing Work of the Assigned Project to exercise or not to exercise such authority.
- 2.6.5 Submittals.**
- 2.6.5.1 **Submittal Procedures.** In consultation with the District and the Project Manager, Architect shall assist in the development and implementation of forms, documents and procedures for the handling, review and processing of Submittals required for the Work.
- 2.6.5.2 **Submittal Review.** The Architect shall review, and take appropriate action upon Submittals for the limited purpose of checking for conformance with the information given and the design concept expressed in the Construction Documents. The Architect's actions hereunder shall be taken with such reasonable promptness as to cause no delay, interruption or hindrance to the activities of the Contractor or others performing construction activities at the Site affected by such Submittal while allowing sufficient time in the Architect's professional judgment to permit adequate review. If a Submittal Schedule or time for completion of the Architect's review and evaluation of Submittals is set forth in the Construction Contract, and such schedule has been approved by the Architect, the Architect's actions hereunder shall conform with such Submittal Schedule or time; Architect shall be responsible for all results or

consequences of its failure or refusal to complete its review and evaluation of Submittals in accordance therewith. When professional certification of performance characteristics of materials, systems or equipment is required by the terms of the Construction Contract, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Construction Contract.

- 2.6.5.3 Limitations Upon Submittal Review. The Architect's review of Submittals is not for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor in accordance with the Construction Contract. The Architect's review shall not constitute approval of safety precautions or, unless otherwise expressly stated by the Architect, construction means, methods, sequences or procedures. The Architect's review of a specific item shall not indicate approval of an assembly of which the item is a component.

2.6.6 Changes.

- 2.6.6.1 Changes Procedures and Processing. In consultation with the District and the Project Manager, the Architect shall assist in the development of procedures, forms and processes for the evaluation of Changes or potential Changes to the Work. The Architect will assist the District in obtaining all necessary approvals for all Changes to the Work.
- 2.6.6.2 Evaluation of Changes; Change Orders. The Architect shall assist the District and the Project Manager in evaluating Change Proposals of the Contractor and will advise the District of the nature, extent and scope of Change Proposals along with alternatives. Where Changes are authorized by the terms of the Construction Contract, the Architect shall prepare, execute and forward to District a Change Order describing such Change and the adjustment if any, to the Contract Price or Contract Time of the Construction Contract.
- 2.6.6.3 Authority to Direct Minor Changes. The Architect may advise and recommend Changes in the Work which do not involve an adjustment of the Contract Time or the Contract Price of Construction Contract and which are consistent with the intent of the Construction Documents. Such Changes shall be effected by written order prepared by the Architect and delivered to the District for issuance.

2.6.7 Interpretations.

- 2.6.7.1 Procedures for Handling Contractor's Requests. In conjunction with the District and the Project Manager, the Architect shall assist in the development of forms, documents and procedures for the transmittal, handling, response and disposition of requests and inquiries relative to the Work or the Construction Documents.

- 2.6.7.2 **Architect's Interpretation.** The Architect shall interpret and decide matters concerning the performance of the District or the Contractor on written request of either the District or the Contractor. The Architect shall respond to and issue clarifications as necessary to address and resolve questions or inquiries of the Contractor relative to coordination, consistency and clarity of the Design Documents and the component parts thereof. The Architect's responses to the foregoing shall be made with reasonable promptness and within any time limits established in the Construction Contract or which may otherwise be mutually agreed upon.
- 2.6.7.3 **Effect of Architect's Decisions.** The Architect's decisions and interpretations rendered hereunder shall be consistent with the intent of and reasonably inferable from the Construction Contract or the Construction Documents and shall be in writing or in the form of drawings. When making such decisions or interpretations, the Architect shall endeavor to secure faithful performance of the Contractor and the District, shall show no partiality to either and shall not be liable for the results of such decisions or interpretations rendered in good faith, in accordance with the terms hereof and the Architect's discharge of due care. The Architect's decisions or interpretations in matters pertaining to aesthetic effect shall be final and binding on the Contractor and District if consistent with the intent expressed in the Construction Contract or Construction Documents.
- 2.6.7.4 **Contractor Claims.** The Architect shall render written decisions within a reasonable time on all claims, disputes or other matters in controversy between the District and the Contractor arising under the Construction Contract, including the execution or progress of Work thereunder. The Architect's decisions shall be in accordance with any applicable time limits set forth in the Construction Contract; if no time limits are set forth, the Architect shall render decisions within a reasonable time.

2.6.8 Limitations Upon Architect's Construction Phase Services. Architect's services during the Construction Phase shall not be deemed Architect's assumption of, or control over, construction means, methods and sequences or Site safety, all of which remain the responsibility of the Contractor. Architect shall not have control over or charge of the acts or omissions of the Contractor or its Subcontractors or their agents and employees in performing construction of the Assigned Project. Architect shall not be responsible for the Construction Schedule(s) prepared by the Contractor.

2.7 Post-Construction Phase.

2.7.1 Substantial Completion. Upon request of the Contractor and in conjunction with the District, the Architect shall inspect the Work to determine if Substantial Completion has been achieved and if not the measures necessary to achieve Substantial Completion. The Architect shall determine and certify the date of Substantial Completion of the Assigned Project.

- 2.7.2 Punchlist.** At the time of determining Substantial Completion and in conjunction with the District, the Project Manager and the Contractor, the Architect shall note the conditions of the Work requiring correction, replacement, removal or other action necessary to comply and conform to the requirements of the Construction Contract (“Punchlist”). The Architect shall, in conjunction with the District, the Project Manager and the Contractor, determine the time reasonably necessary to complete the Punchlist items. The Architect shall thereafter periodically monitor the Contractor’s performance and completion of the Punchlist.
- 2.7.3 Final Completion.** In conjunction with the District and upon request of the Contractor, the Architect shall inspect the Work to determine that Final Completion has been achieved and that the Work conforms and complies with the requirements of the Construction Contract, including completion of the Punchlist prepared at Substantial Completion. The Architect shall determine and certify the date of Final Completion.
- 2.7.4 Close-Out Documents.** The Architect shall receive and review the Contractor’s close-out documents for delivery to the District, including without limitation, Record As-built Drawings, Operations and Maintenance manuals, key schedules and warranties. The Architect shall prepare and submit for processing such documentation as required by governmental agencies, including DSA, in connection with completion of the Work of the Assigned Project. Within sixty (60) days of the date of Final Completion, Architect shall provide District with a complete reproducible set of “Architect’s Record Drawings” which shall be based upon the Contractor’s “As-Built” drawings showing significant changes between the Work of the Drawings made during construction, including those incorporated into Change Orders issued under the Construction Contract, RFIs clearly noted, locations of building systems concealed or covered, including without limitation, utility structures and distribution systems and electrical, mechanical, plumbing and structural systems when identified in the Contractor’s “As Built” Drawings. Each sheet of the Architect’s Record Drawings shall note clearly “RECORD” with the data source, date of drawing and signature on behalf of Architect. Architect is entitled to rely upon the “As Built” information provided by the Contractor with no representation or warranty expressed or implied by the Architect. Concurrently with delivery of the reproducible set of the Architect’s Record Drawings, the Architect shall deliver to the District two (2) corresponding electronic files of the Architect’s Record Drawings on CD ROM.
- 2.7.5 Project Certification.** The Architect shall submit Plans, Specifications, Record Drawings, IOR records and documents of any sort required by DSA to close the Assigned Project with Certification Letter type #1 (Close-out With Certification).

ARTICLE 3 ADDITIONAL SERVICES

- 3.0 Additional Services.** The services described in this Article 3 are not included in the scope of Architect’s Basic Services hereunder. If the District shall request any of the Additional Services described in this Article 3, Architect shall be compensated for the same in accordance with Paragraph 2.3 of the Agreement.
- 3.1 Contingent Additional Services.** If Contingent Additional Services described below are provided by Architect through no fault or neglect of Architect, prior to providing any such

Additional Services, Architect shall notify the District in writing; the District may direct the Architect to not proceed with all or any portion of Contingent Additional Services described in Architect's written notice. The following constitute Contingent Additional Services:

- a. Making significant revisions to the Drawings, Specifications or other Design Documents where such revisions are: (i) inconsistent with approval or instructions previously given by the District, including revisions necessary due to significant adjustments in the District's Program, budget or construction completion time for the Assigned Project; (ii) required by enactment of, or revisions to codes, laws, rules or regulations applicable to the Work of the Assigned Project where such enactment or revision could not have been reasonably foreseen by Architect; or (iii) due to the District's failure to render decisions in a timely manner.
- b. Services required or necessary as a result of the default or termination of the Contractor, failure of performance by the District or the Contractor, or major defects or deficiencies in the Work of the Contractor which were not and could not have been noted by the Architect in its Site observations under Article 2.6.2 hereof.
- c. Except as provided in Article 2.6.6 above, preparing Drawings, Specifications or other Design Documents, along with supporting data in connection with Changes to the Work.
- d. Providing services in connection with the evaluation(s) or request(s) by the Contractor to provide substitute or alternative systems, equipment or materials to those indicated in the Construction Documents and making subsequent revisions to the Construction Documents and other documentation resulting therefrom.
- e. Providing consultation or other services in connection with repairs, replacements or corrections of the Work damaged or destroyed by fire or other casualty so long as no negligent or willful acts, omissions or other conduct of Architect or its employees, agents or representatives have caused or contributed to such damage or destruction.
- f. Providing services in connection with evaluation of an extensive and excessive number of claims submitted by the Contractor, except to the extent that such claims arise out of the services or other work product provided or performed by or through Architect hereunder.
- g. Providing services as an expert witness in connection with a public hearing, arbitration or other legal proceeding arising out of the Assigned Project, except where Architect is a party thereto, is called as a percipient witness (in which case Architect shall be entitled to witness fees and costs as allowed by law) or is found liable for damages or other relief.

3.2 Optional Additional Services. The Optional Additional Services described herein shall be provided by Architect only upon the specific written request of the District. Optional Additional Services shall be compensated for in accordance with the terms of this Agreement.

- a. Services relative to future systems, facilities or equipment not included within the scope of the Assigned Project.
- b. Services to investigate existing conditions or facilities not included within the scope of the Assigned Project or to provide measured drawings thereof or measured drawings of existing conditions or facilities within the Assigned Project scope.
- c. Services in connection with the District's selection, procurement or installation of furniture, furnishing or equipment not included within the scope of the Assigned Project.
- d. Providing financial feasibility or other special study.
- e. Providing planning surveys or special surveys for Site evaluations, comparative studies or assessment of environmental conditions.
- f. Providing services to verify the accuracy of drawings or other information provided by the District.

- g. Analysis of ownership, operational or maintenance costs to the District.
- h. Providing services of Design Consultants, except for the Sub-Consultants identified in **Exhibit "E"** attached hereto and which are included and contemplated as part of the Basic Services hereunder.

**ARTICLE 4
INSURANCE AND INDEMNITY**

4.0 Architect Insurance and Indemnity.

4.1 Insurance. The Architect shall purchase and maintain for the duration of this Agreement, including any extensions hereto and any extended periods as provided herein, insurance for protection from claims under automobile liability, workers' or workmen's compensation acts, claims for damages because of bodily injury, including personal injury, sickness, disease or death of any of the Architect's employees or of any person, employer liability, commercial general liability insurance providing coverage for claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom, contractual liability for claims arising out of the performance of this Agreement and caused by negligent acts or omissions for which the Architect is legally liable and professional liability. The general and automobile policies shall state that they afford primary coverage, and that the District's policies will be excess. The insurance shall be written for not less than the following limits or greater if required by law:

4.1.1 Automobile Liability including owned, non-owned and hired vehicles, with minimum limits of at least:

- a. Bodily injury: \$1,000,000.00 each person,
\$1,000,000.00 each occurrence
- b. Property Damage: \$1,000,000.00 each occurrence

4.1.2 Commercial General Liability with minimum limits of at least \$1,000,000.00 combined single limits written on an Insurance Services Office (ISO) General Liability "Occurrence" Form or its equivalent for coverage on an occurrence basis and any deductible or self-insured retention shall not exceed \$10,000, or as otherwise approved in writing by the District. Premises/operations, broad form property damage, contractual liability, completed operations products liability and personal injury coverage is required. The District and each member thereof, and its officers, employees, Trustees and representatives, must be endorsed or included on the policy as additional insureds as respects liability arising out of the Architect's performance of this Agreement. An additional insured endorsement utilizing Insurance Services Office (ISO) form 2010-11-85 or equivalent shall be provided to the District before commencement of the work and shall expressly provide that the Architect's policy is primary and non-contributing to the District's policies, and that to be effective, notice of any cancellation or non-renewal of the policy must be provided to all additional insureds as set forth in the California Insurance Code.

4.1.3 Professional Liability with minimum limits of at least \$1,000,000.00 on a claims made basis and any deductible or self-insured retention shall not exceed \$100,000.00. The Architect shall maintain in force during the performance of this Agreement and for four (4) years after

completion of the Assigned Project, the Professional Liability Insurance coverage referenced above. The policies must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is made during the policy period. This coverage will be in addition to any insurance coverage required under paragraph 4.1.5 below.

4.1.4 Worker's Compensation. The Architect shall comply with the applicable sections of the California Labor Code concerning Workers' Compensation for Injuries on the Job. Compliance is accomplished in one of the following manners:

- a. Provide a copy of a Submissive Self-Insurance Certificate Approved by the State of California; or
- b. Secure and maintain in force a policy of Workers' Compensation Insurance with statutory limited and Employer's Liability Insurance with a minimal limit of \$1,000,000.00 per accident. The policy shall be endorsed to waive all rights of subrogation against the District, and each member thereof, and its officers, employees, Trustees and representatives, for losses arising from performance of this Agreement; or
- c. Provide a "Waiver" form certifying that no employees subject to the Labor Code's Workers' Compensation provisions will be used in performance of this Agreement.

4.1.5 Professional Sub-Consultants. Architect shall require each of its Sub-Consultants to procure and maintain during all phases of the Assigned Project, all of the coverages specified herein for the dollar amounts specified herein, unless lower limits are accepted by the District. With respect to professional liability insurance, the coverage must be in an amount not less than \$500,000.00 with a deductible or self insured retention not to exceed the sum of \$50,000. The District and each member thereof, its principals, officers, employees, Trustees and representatives must be endorsed as additional insureds on all such general and automobile policies.

4.1.6 Each insurance policy included in this clause shall be endorsed to state that coverage shall not be cancelled except for thirty (30) days prior written notice to the District.

4.1.7 All policies of insurance shall:

4.1.7.1 Have attached the appropriate mandatory endorsements signed by authorized insurance company employees.

4.1.7.2 Be maintained with insurers authorized to transact business (i.e., admitted) in the State of California so as to provide access to the California Guaranty Association and other state regulations or have a "Best's Guide" rating of A:VIII or better.

4.1.7.3 Be maintained with insurers at all relevant times, having been specifically approved as to financial condition in writing by the District prior to execution of this Agreement.

4.1.7.4 As appropriate, all insurance policies required under this Agreement shall name the District, its employees and agents, including the District's Project Manager, as Additional Insureds/Covered Parties. This additional insured provision

insofar as it may be adjudged to be against public policy or in violation of any provision of the California Insurance Code, shall be void and unenforceable only to the minimum extent necessary so that the remaining terms of this provision may be within public policy and enforceable.

4.1.7.5 Shall contain a waiver of subrogation against the District, by endorsement or otherwise.

4.1.8 Prior to commencement of performance, Architect shall furnish District with a Certificate of Insurance and mandatory endorsements for each policy of insurance required by this Agreement, including the policies of Architect's Sub-Consultants. Each certificate is to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate(s) and endorsement(s) must be in a form approved by the District. The District may require complete, certified copies of any or all policies at any time. All liability insurance deductibles must be identified in the Certificates of Insurance provided to the District and accepted by the District. The deductibles for all insurance policies required herein shall be considered a form of self insurance.

4.1.9 Self insurance in lieu of liability insurance must be approved by the District prior to execution of this Agreement.

4.1.10 Failure to maintain required insurance at all times shall constitute a default and material breach of this Agreement. In such event, Architect shall immediately notify the District and cease all performance under this Agreement until further directed by the District. In the absence of satisfactory insurance coverage, the District, may at its option: (i) procure insurance with collection rights for premiums, attorney's fees and costs against Architect by way of a set-off or recoupment from sums due Architect, at the District's option; (ii) immediately terminate this Agreement; or (iii) on behalf of and with prior written consent of the District, have the District self-insure their risk, with all damages and costs incurred by judgment, settlement or otherwise, including attorney's fees and costs, being collectible from Architect, by way of set-off or recoupment from any sums due Architect.

4.2 Architect Indemnity of District. To the fullest extent permitted by law and in accordance with the provisions of California Civil Code §2782.8, the Architect shall indemnify, protect, defend and hold harmless the District and its employees, officers, Board members, agents and representatives from any and all claims, demands, losses, costs, charges, responsibilities or liabilities of any kind arising out of, pertaining to, relating to or attributable to, in whole or in part, the negligence, recklessness, willful misconduct, errors, omissions and/or other such conduct of Architect, the Sub-Consultants or the employees, agents and representatives of Architect or any of the Sub-Consultants in performing or providing any of the obligations, services or other work product contemplated under this Agreement, but excluding liability as to the active or sole negligence or willful misconduct of the District. The foregoing shall include without limitation, attorneys' fees, experts' fees and costs, investigation expenses and costs incurred by the District, and any defense afforded pursuant to this paragraph will be provided by counsel acceptable to the District. The Architect's obligations hereunder are not limited in any way or by any limitation on the amount or type of damages or compensation payable to the Architect or its Sub-Consultants or their respective agents and employees under applicable policies of insurance, workers' compensation acts, disability benefits acts, or other employee benefits acts. The provisions of this Article shall apply during the period of Architect's performance under this Agreement and shall survive the termination

of this Agreement until any such claim, demand, loss, responsibility or liability covered by the provisions hereof is barred by applicable Statute of Limitations.

4.3 District Indemnity of Architect. The District shall indemnify and hold harmless the Architect from all claims arising out of bodily injury (including death), economic damages related thereto and physical damage (other than to the Assigned Project itself and property covered by insurance under Article 4.1.2 hereof) which arise out of the negligent or willful acts, omissions or other such conduct of the District and its agents except for the Architect, its employees or consultants.

ARTICLE 5 TERMINATION/SUSPENSION

5.0 Termination for Default. Either the District or Architect may terminate this Agreement upon seven (7) days advance written notice to the other if there is a default by the other Party in its performance of a material obligation hereunder and such default in performance is not caused by the Party initiating the termination. For purposes of this provision, the only default of a material obligation on the part of the District shall be the District's failure to make payment of undisputed amounts due to Architect. Any termination hereunder shall be deemed effective the seventh (7th) day following the date of the written termination notice, unless during such seven (7) day period, the Party receiving the written termination notice shall commence to cure it default(s) and diligently thereafter prosecute such cure to completion. In addition to the District's right to terminate this Agreement pursuant to the foregoing, the District may terminate this Agreement upon written notice to Architect if: (a) Architect becomes bankrupt or insolvent, which shall include without limitation, a general assignment for the benefit of creditors or the filing by Architect or a third party of a petition to reorganize debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for Architect or any of Architect's property on account of Architect's insolvency; or (b) if Architect knowingly disregards applicable laws, codes, ordinances, rules or regulations. If District exercises the right of termination hereunder, the amount due the Architect, if any, shall be based upon Basic Services, authorized Additional Services and Reimbursable Expenses incurred or provided prior the effective date of the District's termination of this Agreement, reduced by losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or the cause(s) for termination of this Agreement. Payment of the amount due the Architect, if any, shall be made by District only after completion of the Construction Phase of the Assigned Project. Architect shall remain responsible and liable to District all losses, damages or other costs sustained by District arising out of termination pursuant to the foregoing or otherwise arising out of Architect's default hereunder, to the extent that such losses, damages or other costs exceed any amount due Architect hereunder for Basic Services, Reimbursable Expenses or authorized Additional Services.

5.1 District's Right to Suspend. The District may, in its sole discretion, suspend all or any part of the construction of the Assigned Project or the Architect's services hereunder; provided, however, that if the District shall suspend construction of the Assigned Project or Architect's services hereunder for a period of sixty (60) consecutive days or more and such suspension is not caused by the Architect's default or the acts or omissions of Architect or its Design Consultants, upon rescission of such suspension, the Contract Price will be subject to adjustment to provide for actual costs and expenses incurred by Architect as a direct result of

the suspension and resumption of Assigned Project construction or Architect's services hereunder.

- 5.2 District's Termination of Agreement for Convenience.** The District may, at any time, upon seven (7) days advance written notice to Architect terminate this Agreement for the District's convenience and without fault, neglect or default on the part of Architect. In such event, the Agreement shall be deemed terminated seven (7) days after the date of the District's written notice to Architect or such other time as the District and Architect may mutually agree upon. In such event, the District shall make payment of the Contract Price to Architect for services provided through the date of termination plus actual costs incurred by Architect directly attributable to such termination.
- 5.3 Architect Suspension of Services.** If the District shall fail to make payment of undisputed amounts of the Contract Price when due Architect hereunder, Architect may, upon seven (7) days advance written notice to the District, suspend further performance of services hereunder until payment in full is received. In such event, Architect shall have no liability for any delays or additional costs of Assigned Project construction due to, or arising out of, such suspension.
- 5.4 Delivery of Documents to District; Assignment of Contracts and Subcontracts.** In the event of suspension or termination as provided in this Article, all finished or unfinished documents or other work product prepared by the Architect or by any person or entity retained by the Architect for the Assigned Project up to the date of such suspension or termination, including but not limited to, all conceptual design, schematic design, design development and construction contract documents, data, studies, surveys, estimates, drawings, maps, models, photographs and reports, shall be delivered to the District and shall become the District's property. At the District's option, the Architect shall cause any and all contracts and subcontracts related to planning, design or construction administration to be assigned to the District upon the suspension or termination of this Agreement and Architect thereupon shall be relieved of any continuing responsibility for all such assigned contracts for work performed thereunder after the date of such assignment.

ARTICLE 6 GENERAL

- 6.1 Marginal Headings; Captions.** The titles of the various Paragraphs of the Agreement and the Articles of these Conditions are for convenience of reference only and are not intended to and shall in no way enlarge or diminish the rights or obligations of Architect and District hereunder.
- 6.2 Cumulative Rights; No Waiver.** Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by District hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default by Architect.
- 6.3 Notices.** Notices Architect or District are required or desire to serve on the other shall be valid only if addressed to the other as set forth in the Agreement or modified by notice hereunder from time to time. Notices shall be effective only if transmitted by personal delivery requiring

signature acknowledging receipt or by United States Mail, Certified, Return Receipt Requested, First Class, postage fully pre-paid.

6.4 Disputes.

6.4.1 Continuation of Architect Services. Except in the event of the District's failure to make payment of undisputed amounts of the Contract Price due Architect hereunder, notwithstanding any disputes between District and Architect hereunder, Architect shall continue to provide and perform services hereunder pending a subsequent resolution of such disputes.

6.4.2 No Attorneys' Fees. In the event any action or proceeding is commenced or maintained by any party to this Agreement which seeks to enforce, construe or interpret the rights or obligations created under this Agreement, each party shall bear its own costs and attorneys' fees incurred and neither party shall be entitled to recover from the other party its attorneys' fees and costs incurred in connection with such action or proceeding.

6.5 Severability. If any provision of this Agreement is deemed illegal, invalid unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted herefrom, but all remaining provisions will remain and continue in full force and effect.

6.6 Records.

6.6.1 Architect Accounting Records. Architect shall maintain complete and accurate records of its personnel engaged in performing any service hereunder, personnel expenses, Reimbursable Expenses and other direct costs incurred in connection with performance under this Agreement. Records shall be maintained on the basis of generally accepted accounting principles applied consistently and shall be available for inspection or reproduction by the District upon reasonable request at any time during Architect's performance hereunder. Following completion of the Assigned Project and the Agreement or the termination of this Agreement, Architect shall maintain accounting records for five (5) years or such longer period required by applicable law, code, rule or regulation, during which time such records shall be available to District or as otherwise required by law, code, rule or regulation for inspection or reproduction.

6.6.2 Project Records. Records, documents and other materials generated or received by Architect in the course of performing services hereunder may, following completion of the Assigned Project or termination of this Agreement, be retained by the District in its sole discretion.

6.7 No Contractual Relationship With Contractors; No Third Party Beneficiaries. Nothing contained herein shall be deemed to create any contractual relationship between the District, the Project Manager or the Architect with any of the contractors, subcontractors, or material suppliers on the Assigned Project; nor shall anything contained in this Agreement be deemed to give any third party any claim or right of action against the District or Project Manager which does not otherwise exist without regard to this Agreement.

6.8 Definitions.

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- 6.8.1 Construction Contract.** The Contract for Construction awarded by the District to the contractor for the construction of the Assigned Project.
- 6.8.2 Contractor.** The individual or entity awarded the Construction Contract for the Assigned Project.
- 6.8.3 Drawings and Specifications.** Drawings are the graphic and pictorial portions of the Construction Documents showing generally the location, design and dimensions of the Work, including without limitation, plans, elevations, sections, details, schedules and diagrams. Specifications are the portion of the Construction Documents, which consist of written requirements for materials, equipment, construction systems, standards, criteria and workmanship for the Work and related services.
- 6.8.4 Design Documents.** The Drawings, Specifications, calculations and other work product prepared for the Assigned Project or any portion thereof by the Architect, the Design Consultants or provided, however, that Drawings, Specifications, calculations or other work product prepared by the Sub-Consultants prior to the date of this Agreement shall be deemed to be Instruments of Services and not Design Documents.
- 6.8.5 Sub-Consultant(s).** Sub-Consultant(s) are individuals or entities retained by Architect to provide or perform a portion of the Architect's services or work product hereunder, including any portion of the Design Documents. Sub-Consultants shall be duly licensed as required by law, rule or regulation and shall be qualified to perform or provide the portion of Architect's services or work product assigned by having previously provided design consulting services for California public school project design and construction. The District shall have the right to reasonably disapprove a Sub-Consultant. Architect shall be responsible for the adequacy, timeliness and quality of services or work product provided or performed by Sub-Consultants; Architect shall be liable to District for, and shall defend, indemnify and hold harmless District and its Board of Trustees, employees, officers, agents and representatives from and against, all losses, costs, damages, liabilities, actions or demands arising out of the services or work product provided or performed by Sub-Consultants.
- 6.8.6 Instruments of Services.** Instruments of Services refer to Drawings, Specifications, calculations and other work product generated in connection with design or construction of the Assigned Project and which were prepared by Architect hereunder or any of the Sub-Consultants prior to the date of this Agreement.
- 6.8.7 Construction Documents.** Construction Documents are Drawings, specifications, calculations and other work product prepared by the Architect, the Sub-Consultants and/or Design Consultants for the Assigned Project as the context requires. The term Construction Documents shall include Instruments of Services and Design Documents.
- 6.8.8 Submittals.** Shop Drawings, Product Data or Samples prepared or provided by the Contractor or its Subcontractor(s) or supplier(s) illustrating some portion of the Work.
- 6.8.9 Site.** The physical area for construction and related activities of the Assigned Project.

6.8.10 Work. The term “Work” as used herein shall refer to all of the construction and other services required by the terms of the Construction Contract, including all labor, materials, equipment and other services required of the Contractor under the terms of the Construction Contract.

6.8.11 District Project Manager. The District’s Project Manager is the individual or entity retained by the District as an independent contractor to provide certain management, planning, and other services and/or work product in connection with the design and/or construction of the Assigned Project. Services, functions and responsibilities of the Project Manager shall be provided in conjunction with and complementary to the Architect’s services and work product under this Agreement. If the District has not retained or designated a Project Manager as of the execution of this Agreement, without adjustment of the Contract Price hereunder, the District reserves the right to subsequently retain a Project Manager to provide services and/or work product as generally described herein.

6.8.12 Construction Cost. The Construction Cost shall be the total cost to the District of all elements of the Assigned Project which are designed, specified or otherwise provided for in the documents prepared by Architect and its Sub-Consultants. Construction Cost as defined here includes an allowance for design contingency which covers all changes to the Assigned Project documents during the pre-bid period. These design and cost changes may be due to, but limited to, collaborative refinements of Assigned Project design, the impacts of regulatory review, improved information on existing conditions, and refinements of the construction cost estimates. The Construction Cost shall include the cost of general construction including labor, materials, equipment, overhead, and profit, provided by licensed general contractors. Construction Cost shall not include the compensation of Architect or its Sub-Consultants, the Project Manager and its Sub-Consultants, the cost of the land, rights-of-way or other costs which are the responsibility of the District. The cost of procurement and installation equipment, furniture and furnishings, and telecommunications equipment and cabling, when provided by District under contracts other than general construction, are excluded from the Construction Cost.

6.9 Use of Design Documents.

6.9.1 Ownership. All of the Architect’s work product, including Instruments of Service, working drawings, master plans, preliminary sketches, architectural presentation drawings, structural and other engineering calculations or computations and estimates, prepared by or on behalf of the Architect under this Agreement are and shall remain the property of the District. By this reference, the provisions of California Education Code §17316 are incorporated by reference herein in their entirety and references in said Section 17316 to “school district” shall be deemed to refer to the District. The District acknowledges that notwithstanding the District’s ownership rights to the Design Documents prepared under this Agreement, the Architect shall retain ownership of copyright rights, if any, in and to the Design Documents, provided that by this Agreement and without further action of the District or the Architect and without further compensation from the District, the Architect shall be deemed to have granted the District a perpetual license to use the Design Documents for completion of, or alterations, additions, renovations or other modifications to, the Assigned Project. Upon the termination of this

Agreement, the District may use any portion of the Architect's work product, including Instruments of Service (whether they are completed or in progress) for any purpose, in the sole and exclusive discretion of the District. Except for marketing and business development purposes, Architect shall not, without the prior consent and approval of the District which may be granted, withheld or restricted in the sole and exclusive discretion of the District, reproduce or otherwise use any documents owned by the District pursuant to this Agreement.

6.9.2 Electronic Deliverables. In the event that Architect utilizes Computed Aided Design Drafting (CADD) or Building Information Modelling (BIM), at each stage of its submission of Schematic Design Documents, Design Development Documents and Construction Documents to the District pursuant to the terms hereof, at the District' request, Architect shall also submit corresponding Electronic Deliverables. District recognizes that the CADD / BIM files are not construction documents and CADD / BIM files do not reflect changes made after DSA submittal due to governing requests, bidding changes and construction changes. Architect is under no obligation to provide CADD / BIM files to contractors.

[End of Section]