

---

AGREEMENT NO. 17/18-03A  
FOR ARCHITECTURAL & ENGINEERING SERVICES  
BY AND BETWEEN  
THE LA CAÑADA UNIFIED SCHOOL DISTRICT  
AND  
LPA INC.  
FOR VARIOUS PROJECTS AT PALM CREST ELEMENTARY SCHOOL

---



## Table of Contents

RECITALS .....	1
ARTICLE I. PROJECT AND CONSTRUCTION BUDGETS .....	2
ARTICLE II. BASIC SERVICES OF THE ARCHITECT .....	4
A. General Services.....	4
B. Schematic Design Phase.....	4
C. Design Development Phase (Preliminary Plans). ....	7
D. Fifty (50) Percent Construction Documents Phase. ....	9
E. Construction Document Phase (Final Plans).....	10
F. Preparation of Documents Generally.....	13
G. Contract Administration/ Construction Phase Administration.....	14
H. Additional Responsibilities of Architect.....	23
I. Excluded Services.....	25
J. Laws and Regulations.....	26
K. Prohibited Interests.....	27
L. Labor Certification. ....	27
ARTICLE III. DUTIES OF DISTRICT .....	27
A. District Representative.....	27
B. Statement of Building Program and Budget and Scheduling for the Project.....	27
C. Surveys and Tests.....	28
D. Fees.....	28
E. Bidding and Contract Documents. ....	29
F. Project Inspector. ....	29
G. Communications and Inspections.....	29
H. Notice of Completion. ....	30
I. Board Approval.....	30
J. Conflict of Interest. ....	30
ARTICLE IV. ARCHITECT'S COMPENSATION.....	30
A. Basic Fee. ....	30
B. Invoicing of Basic Fee.....	31
C. Allocation and Payment of Basic Fee. ....	31
D. Adjustments to Basic Fee.....	33
E. Additional Services. ....	33
F. Reimbursable Expenses. ....	33
G. Invoicing of Additional Services and Reimbursable Expenses. ....	34
H. Withholding Payment to Architect.....	34
ARTICLE V. TERMINATION, ABANDONMENT OR SUSPENSION OF WORK ON THE PROJECT.....	34
A. Termination by District. ....	34
B. Default and Immediate Termination. ....	35
C. Default and Termination After Notice. ....	35
D. Termination by Architect. ....	36
E. Suspension or Abandonment of the Work or Project.....	36
F. Compensation in the Event of Termination, Abandonment or Suspension.....	36

G. Delivery of Documents. ....	37
ARTICLE VI. INDEMNIFICATION. ....	37
ARTICLE VII. STANDARDIZED MANUFACTURED ITEMS.....	38
ARTICLE VIII. OWNERSHIP OF DOCUMENTS PREPARED FOR THE PROJECT .....	38
A. Ownership. ....	38
B. Right to Reuse. ....	38
C. License. ....	39
D. Right to License. ....	39
ARTICLE IX. ACCOUNTING RECORDS OF THE ARCHITECT .....	39
ARTICLE X. INSURANCE.....	40
A. Insurance. ....	40
B. Consultant Insurance.....	41
ARTICLE XI. ASBESTOS CERTIFICATION.....	41
ARTICLE XII. MISCELLANEOUS PROVISIONS .....	41
A. Election to Arbitrate. ....	41
B. Successors and Assigns.....	42
C. Governing Law.....	42
D. Incorporation of Recitals and Exhibits.....	42
E. Architect Not Officer or Employee of District.....	42
F. No Third-Party Rights.....	43
G. Time of Essence. ....	43
H. Captions and References. ....	43
I. Drafting of Agreement.....	43
J. Entire Agreement.....	43
K. Severability.....	44
L. Waiver. ....	44
M. Conflicting Provisions.....	44
N. Amendment. ....	44
O. Prevailing Wages.....	44
P. Equal Opportunity Employment.....	44
Q. Counterparts. ....	45
R. Due Authority of Signators. ....	45
EXHIBIT A.....	46
EXHIBIT B.....	47

## **ARCHITECTURAL & ENGINEERING SERVICES AGREEMENT**

This AGREEMENT is made and entered into this 7th day of August in the year 2018 between the **LA CAÑADA UNIFIED SCHOOL DISTRICT**, hereinafter referred to as "DISTRICT", and **LPA INC.**, hereinafter referred to as "ARCHITECT". The DISTRICT and the ARCHITECT are sometimes referred to herein as a "PARTY" and collectively as the "PARTIES". This AGREEMENT is made with reference to the following facts:

### **RECITALS**

A. The District, in accordance with, and with funding provided in part by, the Leroy F. Greene School Facilities Act of 1998 ("SFP"), and Measure LCF Local Bond funds intends to construct the following projects:

#### **PALM CREST ELEMENTARY SCHOOL**

##### **New Two-Story Classroom Addition**

Estimated Construction Budget: \$13,125,000

Total Project Budget: \$18,548,000

##### **Site Utilities Improvement**

Estimated Construction Budget: \$835,000

Total Project Budget: \$1,240,000

##### **Various Safety & Security Site Improvement**

Estimated Construction Budget: \$435,000

Total Project Budget: \$685,000

##### **Interim Housing**

Estimated Construction Budget: \$250,000

Total Project Budget: \$417,000

##### **Modernization of Buildings A, B, C, D, E, & Library**

Estimated Construction Budget: \$2,600,000

Total Project Budget: \$4,046,000

##### **New Parking Lot & Drop-off Improvement**

Estimated Construction Budget: \$1,275,000

Total Project Budget: \$2,039,000

##### **Technology Upgrade**

Estimated Construction Budget: \$371,000

Total Project Budget: \$508,000

The Project includes the construction of new two-story classroom addition, renovation of existing classroom building, construction of interim housing, and miscellaneous site

improvements at Palm Crest Elementary School.

B. The Architect desires to perform as provided herein all services described herein for completion of the Project, including as applicable, but not limited to: (i) architectural, landscape architectural, civil engineering, structural engineering, electrical engineering, fire protection, interior design, and mechanical engineering for the Project; (ii) administration necessary for the implementation, construction and completion of the Project; (iii) obtaining all necessary approvals of the Project, including from the Division of the State Architect (“DSA”), California Department of Education (“CDE”), Department of Toxic Substances and Control (“DTSC”), any other agency of the State of California (“State”) or local government with jurisdiction over the Project, and any community association having right of approval over the Project; and (iv) with respect to funding of the Project by the State, obtaining approvals of the Office of Public School Construction (“OPSC”) and the State Allocation Board (“SAB”). All of such services shall be referred to collectively herein as “Architectural Services.”

C. The Architect represents that it employs licensed architects and engineers in the State to provide the Architectural Services, that it is qualified and has sufficient personnel to perform the Architectural Services required pursuant to this Agreement, and that it shall comply with all applicable laws and regulations, including, but not limited to, Education Code Section 17280 and Title 21 of the California Code of Regulations.

NOW, THEREFORE, in consideration of the rights and obligations set forth herein, the District and the Architect agree as follows:

## ARTICLE I. PROJECT AND CONSTRUCTION BUDGETS

A. The overall budget established by the District for the Project (“Project Budget”) shall include the Construction Cost (defined in Paragraph B of this Article) together with all other costs incurred in connection with completion of the Project, including, but not limited to: cost of land, if any; equipment furnished by the District,; furnishings; cost of insurance; tests and surveys made at the District expense; Architect, Project Inspector (defined in Paragraph B of this Article) or other consultant fees; cost of plan-checking and other fees and permits; cost of advertising; and cost of District reproduced plans and specifications.

B. The cost for actual construction of the Project (“Construction Cost”) is deemed to mean the total of the contracts for the completion of the work to construct the Project (“Work”) for which the Architect shall have prepared complete drawings and specifications acceptable to the District, together with the sum of all subsequent additions to the contract amount(s) pursuant to change orders approved by the District. The Construction Cost shall not include: (i) any payments to the Architect pursuant to this Agreement; (ii) any fee paid (except for general conditions) to a construction manager (“CM”), if any; (iii) any fee paid to the construction-project inspector employed by the District in relation to the Project, as required by law (“Project Inspector”), or (iv) any other non-construction costs, fees or expenses.

C. The Estimate of Construction Cost of the Project in current dollars is as specified in Recital A and subject to revisions upon completion of the Schematic Design Phase. If the District instructs the Architect to make changes in the scope of the project, the District shall establish a revised Estimate of Construction Cost and the Architect's compensation adjusted in accordance with Article IV, Paragraph D.

D. The Architect shall assume an active role during the Schematic Design, Design Development and Construction Document phases. Adherence to the project schedule, building program, and Estimate of Construction Cost shall be the responsibility of the Architect. The Architect shall perform the following:

1. In the Schematic Design Phase, the Architect shall prepare and submit Construction Specification Institute, (CSI) or Unifomat Cost Estimate for each proposed design solution.

2. In the Design Development Phase, the Architect shall prepare and submit to the District a CSI Cost Estimate and Cost Estimate Supplement. Should the District require multiple contracts, the Architect shall prepare separate cost estimates for each separate bid phase, but not for each separate bid package when project is multi-prime bid.

3. In Construction Document Phase, the Architect shall prepare and submit CSI Cost Estimates, and Site Development Cost Estimates for OPSC at the 100% of Construction Document Phase. The CSI Cost Estimate(s), and Cost Estimate supplement(s), shall be updated and submitted to the District with the Design Development, Construction Documents, and final bid documents after DSA Backcheck with all revisions to the scope of the project incorporated therein. These estimates shall be subject to District review and the Architect shall incorporate all District corrections prior to the District's submittal to State Agencies such as: California Department of Education (CDE), Office of Public School Construction (OPSC), Department of Toxic Substances and Control (DTSC) and, Department of Health Services (DHS) for approval.

4. In the event any estimate during the course of the Project indicates a cost in excess of the Estimate of Construction Cost, the Architect shall immediately meet with the District for a resolution. The Architect shall offer reasonable alternatives for cost reduction. Upon determination of the adjustments to be made, the Architect shall make changes to the documents at no extra cost to the District and resubmit. The resulting new estimate shall be the Revised Estimate of Construction Cost. The Parties acknowledge, for purposes of such estimates, that labor and materials costs may be affected by matters beyond the control of the Architect. Evaluations of District's project budget, preliminary estimates of construction cost and detailed estimates of construction cost prepared by Architect under the Schematic Plan Phase or at any other time during the Agreement, represent Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither Architect nor District has control over the cost of labor, materials or equipment, over the contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions.

## ARTICLE II. BASIC SERVICES OF THE ARCHITECT

The Architectural Services to be provided pursuant to this Agreement shall include all services as specified in LPA's Proposal dated May 29, 2018 (Exhibit "A"), and shall comply with all requirements, set forth in this Article. In the event of inconsistencies, this agreement takes precedence.

### *A. General Services.*

1. The Architect shall verify code compliance of the design with all applicable laws, codes and other requirements.

2. The Architect shall attend all job meetings and other conferences as mutually agreed by the Architect and the District.

3. The Architect shall work with the school community or design committee (as designated by the District) in the development of the plans.

4. The Architect shall provide CSI Cost Estimates or Unifomat Cost Estimates and Site Development Worksheets as defined in Article I.

5. The Architect shall submit in writing for approval by the District, the name of one person on the Architect's staff who will be the responsible point of contact throughout the duration of the project. If changes must be made due to unavoidable circumstances, the Architect shall submit the name(s) of the person(s) to the District in writing for approval.

6. The Architect shall assist the District in establishing eligibility for funding, and the preparation and submission of application for funding for the School Facility Program Funding (SFP), if Project is eligible.

7. At each of the phases of design indicated below, the Architect shall provide two (2) full size drawings, two (2) half size drawings, two (2) bound copies of the specifications/project manual, two bound copies of associated reports. All documents shall also be provided to the District in electronic format (PDF). The PDF drawings shall be formatted as required by the Division of State Architects.

### *B. Schematic Design Phase.*

1. The Architect shall review the goals of the District and other information related to the Project provided by the District to ascertain the requirements of the Project. The Architect shall



develop, update and maintain, subject to approval by the District, an estimated schedule of its activities pursuant to this Agreement related to design of the Project that covers all activities through award by the District of the Construction Contract(s) (defined in Subparagraph j of Section 3 of Paragraph E of this Article) for all Work (“Design Schedule”). Once established, the District, in its discretion, may require reasonable changes to the Design Schedule in order to accommodate changes in circumstances related to the Project.

2. The Architect shall conduct an evaluation (“Facilities Condition Assessment & Site Investigations”) of the existing facilities to establish and verify the conditions of the facilities, locations and size of existing utilities. The Architect shall meet with maintenance staff and review maintenance records and as-builts during the evaluation, and Architect shall be entitled to rely upon such information.

3. The Architect shall submit a report of the findings of the Facilities Condition Assessment & Site Investigations to the District for review and approval by the District.

4. The Architect shall conduct all necessary conferences as mutually agreed by Architect and District and develop tentative schemes or methods to modernize the building(s) leading to a recommended scope of modernization for the Project (“Modernization Schemes”).

5. If directed by the District at the time of approval of Project Schemes, the preliminary and final drawings and specifications shall be prepared so that portions of the Work may be performed under separate construction contracts utilizing a construction manager or project manager, as determined by the District, or so that the reconstruction of certain buildings, facilities, or other portions of the Project may be deferred. The Architect, in conjunction with the District, shall develop a phasing plan for the Project so that the construction of the Project can be completed while the campus is operational and occupied. Additionally, phasing plan shall consider projected project revenues/available funding.

6. The Architect shall review the budgeted amount of the Project with the District and establish a tentative Project cost for the selected Scheme that is within the available budget amount, subject to later revision.

7. Documents prepared by the Architect for final schematic design phase submittal shall include drawings and a written report. The drawings shall include, but not be limited to, a proposed utilization study of the particular project site, schematic plans of all floor plan conditions, and simplified elevations indicating the fundamentals of the architectural concept. The report shall incorporate the Architect's estimate of Project Construction Cost and breakdown, as well as the schedule of the management plan. The Architect shall prepare such estimates as it deems necessary to assure itself that the project cost is within the project budget established for the project. Furthermore, the report shall include such discussion of design factors, if any, as are pertinent in the opinion of the Architect and outline descriptions of proposed engineered systems, construction methods, materials and work to be included in the construction contracts.

8. To be considered acceptable for final schematic design phase submittal, the documents shall contain, at a minimum:

a. Architectural

- ☐ Single line drawings showing complete building layout, identifying the various major areas affected by the site growth or development, core areas and their relationships. These drawings shall also include schematic plans of all floor plan conditions and simplified elevations indicating the fundamentals of the architectural concept.
- ☐ Schematic outline specifications including major building materials, descriptions of engineering systems with diagram plans if necessary and identification of finishes which define the design.
- ☐ Site plan with building located and overall grading plan with a minimum of 5'-0" contour lines. All major site development such as access road paving, walls and outside support buildings, structured parking facilities, and paved parking lots, if any, should be shown.
- ☐ Gross and net area calculations separated to show conformance with the program of requirements.

b. Structural

- ☐ Structural systems layout with overall dimensions and floor elevations. Work shall include identification of structural systems (pre-cast concrete elements, structural steel with composite deck, structural steel with bar joists, moment frame, etc.).
- ☐ Identification of foundation requirements (fill requirements, piles, footings, etc.).

c. Mechanical

- ☐ Work shall include block heating, ventilation and cooling load calculations, to include building skin versus internal loading.
- ☐ A minimum of two (2) HVAC systems shall be identified and described which appear to be compatible with the Architect's design and which are compatible with loading conditions for life-cycle costing and comply with the District's standards pertaining to HVAC systems.
- ☐ Single line drawings showing locations of all mechanical equipment spaces, duct chases, and pipe chases shall be prepared.

- ☐ All major mechanical equipment shall be located into allocated spaces.
- d. Electrical
  - ☐ Work during this phase shall include preparation of a list of all major electrical equipment roughly scheduled to show size and capacity.
  - ☐ Complete preliminary one-line electrical distribution diagrams showing location of service entry, switchboards, motor control centers, panels, transformers (if any) and emergency generator (if any) shall be depicted.

### *C. Design Development Phase (Preliminary Plans).*

1. Upon approval in writing by the District of the Schematic Design Phase services as set forth in Paragraph B of this Article, the Architect shall prepare floor plans, elevations and other necessary and appropriate drawings, and shall outline specifications as necessary, in order to fix and illustrate, in reasonable detail, the size and character of the entire Project in its essentials as to kinds of materials, quantities, categories of proposed work, type of structure, and such other work as may be required ("Preliminary Plans").

2. The Architect shall prepare architectural presentation drawings acceptable to the District which shall consist of a 20" x 30" perspective colored rendering of the Project with a surrounding mat and frame bearing the project name, project description, and Architect identification, and one full size and six 8-1/2" x 11" color copies of the rendering.

3. The Architect shall make initial contact and consult with the Division of the State Architect (DSA), State Fire Marshall, local fire authorities, city or county street and engineering departments, and utility companies to determine their requirements and shall secure their preliminary approval and notify the District in writing as to the actions the District must take to secure formal approvals.

4. During the Design Development Phase, the Architect shall be responsible for filing the Preliminary Plans and other documents with the CDE or other governmental agencies, as required by law. The Architect shall provide the District with a copy of, and proof of filing of, each document so filed. The Architect shall prepare and file the Educational Specifications in accordance with CDE requirement.

5. The Design Development Phase shall consist of sufficient architect and consultant drawings and other documents to adequately define all spaces, systems, sizes of equipment, etc., required for the Project. The documents for the final design development phase submittal shall consist of, as a minimum:

- e. Architectural

- ☐ Floor plans with final room locations including all openings.
- ☐ Wall sections showing final dimensional relationships, materials and component relationships.
- ☐ Identification of all fixed and loose equipment to be installed.
- ☐ Finish schedule identifying all finishes (manufacturer's brochure may be acceptable if only prefabricated structures are used).
- ☐ Well-developed door and hardware schedule showing final quantity plus type and quality levels.
- ☐ Virtually complete site plan including grading and drainage.
- ☐ Preliminary development of details and large scale blow-ups.
- ☐ Legend showing all symbols used on drawings.
- ☐ Outline specifications.
- ☐ Reflective ceiling development including ceiling grid and all devices that penetrate ceiling (i.e., light fixtures, sprinkler heads, ceiling register or diffusers, etc.).  
Furniture layout for all administration and other special purposes rooms.

f. Structural

- ☐ Plan drawings with all major structural members located and sized.
- ☐ Outline specifications.
- ☐ Foundation drawings.

c. Mechanical.

- ☐ Preliminary heating and cooling load calculations for each space and major duct or pipe runs sized to interface structural.
- ☐ Major mechanical equipment scheduled, indicating size and capacity.
- ☐ Duct work and piping substantially located and sized.
- ☐ Devices in ceiling located.

- ☐ Legend showing all symbols used on drawings.
- ☐ Outline specifications.
- d. Electrical
  - ☐ All power consuming equipment and load characteristics.
  - ☐ Total electric load.
  - ☐ Major electrical equipment (switchgear, distribution panels, emergency generator, transfer switches, UPS system, etc.) dimensioned and drawn to scale into the space allocated.
  - ☐ Complete preliminary site lighting design.
  - ☐ Outline specifications.
  - ☐ Lighting, power, telecommunications and office automation devices and receptacles shown in plan.
  - ☐ Final light fixture schedule.
  - ☐ Interior electrical loads estimate for systems, furniture, receptacles, light, food service equipment, and any other special use

Upon completion of all other activities in the Design Development Phase, the Architect, and the CM, if any, in consultation with the District, shall develop an estimated schedule for construction of the Project (“Project Schedule”), which shall include all anticipated activities from first issuance of a Notice to Proceed (defined in Subparagraph m of Section 3 of Paragraph G of this Article), through final completion of the Project, to and including furnishing, move-in and occupancy by the District. The Architect, and the CM, if any, in consultation with the District, shall update the Project Schedule during each phase of the Architectural Services and upon each significant event related to development of the Contract Documents and/or construction of the Project. The Architect shall not proceed to the Construction Document Phase without written authorization from the District.

#### ***D. Fifty (50) Percent Construction Documents Phase.***

Upon approval in writing by the District of the services set forth in paragraph C above, the Architect shall develop construction documents to an intermediate state which shall not be less than 50 percent of completion and to a point where a review of the construction documents can be made by the District for design and compliance with the District guides and standards. The

Architect shall proceed with Construction Document preparation during District's review of 50% documents. The Architect shall then make all required changes in such construction documents consistent with the approved design development documents and District requirements.

#### *E. Construction Document Phase (Final Plans).*

Upon completion of the services set forth in paragraph D above, the Architect shall prepare final construction documents as follows:

1. The final construction documents shall include, but not limited to, all architectural drawings, engineering drawings, (structural, mechanical, fire protection, civil, electrical), equipment layout drawings (whether in contract or not in contract), landscape architecture, specifications, mathematical calculations, graphics, and signage patterns or mosaics required to aesthetically delineate the Project.

2. The final construction documents shall be prepared by AutoCAD or Revit where applicable software for the consultant-prepared drawings, Revit for the architect-prepared drawings, and shall be of such quality and workmanship that clear and legible duplicate tracings or prints may be obtained there from and be uniform in size. The drawings shall be provided to the District in AutoCAD format or Revit, and PDF or TIF, shall be to scale, and legible. All lettering shall be a minimum 1/8 inch high in order to be reproduced legibly when providing future Record Drawings, as hereinafter defined in Subparagraph W of Section 4, Paragraph G below. The Architect shall provide the Bid Documents in an electronic copy as specified by the District. The final construction documents shall show all the work to be done in minimum LOD 200.

3. The final approved copy of the specifications shall be printed in black ink on white paper suitable for producing clear copies on a reproduction machine, or such other process as may be approved by the District. The sheet size shall be 8-1/2 by 11 inches. The Architect shall also provide an electronic copy as specified by the District.

4. Unless any such duties are expressly made the sole responsibility of the CM, if any, the Architect shall review all necessary Bid Documents (defined in Subparagraph j of Section 3 of Paragraph E of this Article), general conditions of the Construction Contract(s), and supplementary general conditions of the Construction Contract(s), and shall assist the District's legal advisor or District Contract Manager in the drafting of bid proposal and form Construction Contract(s).

5. The Architect shall secure the required approvals thereof from all governmental agencies having jurisdiction over the Project; The Architect shall be responsible for filing the final plans, specifications, Bid Documents, and other Project-related documents with CDE and DSA as required by law. The Architect shall provide the District with a copy of, and proof of filing of, each document so filed. After the DSA, the District, and other agencies have completed their reviews, the Architect with Architect's consultants, shall attend a meeting with District representatives to discuss review items of such agencies and the District. Prior to the conclusion of the meeting, the Architect shall commit to a date to have incorporated the agreed-upon

corrections, accomplished the backchecks of the District and other reviewing agencies, and obtained DSA approval. Within five days of the meeting, the Architect shall issue a letter to the District stating the date when the Architect will complete the corrections and resubmit to construction documents to the agencies in order to obtain final approvals.

6. The Architect shall notify the District whether or not there is any variation from previous estimates of the Construction Cost resulting from market fluctuations or approved changes in scope or requirements of the Project.

7. The Architect acknowledges that the District may contract for the services of a CM and may pursue construction of the Project on the basis of multiple prime-construction contracts or any other delivery method. The Architect shall cooperate with the CM, if any, as needed through every stage of the planning and construction of the Project.

8. Design Quality Control Review. The Architect shall conduct a quality control review of the drawings and specifications and make any changes or corrections needed. The quality control review shall be based on the most recent edition of “Redicheck Interdisciplinary Coordination” by William T., and Martha W. Nigro or an equivalent quality control system. The Architect shall perform a detailed analysis and report on the quality control review. The Architect shall advise District in writing upon completion of such analysis and report, and shall review and discuss the report in detail with the District. The Quality Control review must be documented and copies of the documents must be submitted to the District.

a. The District may, in its sole discretion, require the Architect to submit its Construction Documents for constructability reviews at 50% and/or 90% completion to the District, and/or other third-party consultant(s) (if applicable) retained by the District. The District, Architect, Architect’s consultants, and other third-party consultant (if applicable) will confer and consult with each other and the District to arrive at mutual understandings and agreements as to which of the constructability review comments are to be incorporated into the Construction Documents. Any revisions or comments resulting from such mutual agreements of the constructability review shall be incorporated into the Architect’s documents at no additional cost to the District, so long as the constructability review comments are received by the Architect no later than four (4) weeks after the documents are filed with DSA for initial review and provided that such review comments are not inconsistent with previous direction given by the District. The Architect shall incorporate all mutually agreed upon revisions following such constructability reviews, unless otherwise specifically directed by the District in writing and shall submit the revised Construction Documents to the District for approval. Any costs or claims arising from the Architect’s failure to incorporate any such constructability review revisions shall be the responsibility of the Architect, unless otherwise specifically directed by the District in writing.

9. Separate Bids. As part of the preparation of Contract Documents (defined in Subparagraph j of Section 3 Paragraph G) and if so directed by the District, drawings and specifications shall be prepared so that portions of the Work may be performed pursuant to separate construction contracts so that the construction of certain buildings, structures, facilities, or other parts of the Project may be deferred.

10. District Approval. The Architect shall, consistent with the Design Schedule, submit to the District six (6) sets of the final drawings and specifications, when those are essentially complete, for review and approval by the District. The Architect shall make all changes, additions, deletions, and corrections to the working drawings and specifications as required by any State or other governmental agency with jurisdiction over the Project or as are requested by the District, so long as such requests do not conflict with the requirements of public agencies having jurisdiction over the Project or with previous approvals.

11. Revised Estimate of Construction Cost. At the time the completed working drawings and specifications are submitted to the District, the Architect shall also furnish to the District a revised estimate of the Construction Cost. In the event that this revised estimate of the Construction Cost exceeds the Construction Budget established by the District, the Architect shall, at no additional cost to the District, make revisions to the drawings and specifications as the District, with the assistance of the Architect, and CM, if any, may direct in order to bring the estimated Construction Cost within the Construction Budget.

12. Progress Reports. When requested by the District, the Architect shall make written reports as to the Architect's progress toward completing the drawings and specifications for the Project and whether such progress is consistent with the Design Schedule.

13. Approval of Documents. When the drawings, specifications, and other Contract Documents are complete, the Architect shall present them to the District for final review. The final drawings and specifications prepared by the Architect shall meet with the approval of the District, which shall not be unreasonably withheld, and the estimated Construction Cost based on such Contract Documents shall not exceed the Construction Budget.

14. Bid Documents and Application.

a. Contract Documents/Bid Forms. Within the period required pursuant to the Design Schedule, the Architect, shall furnish all services required to enable the District to receive competitive bids for the construction of the Project. This shall include preparation, with the District's assistance, of the Contract Documents. Prints made of any drawings or details shall be the same size as the tracings from which the prints are made. The Architect, after approval of the Contract Documents, shall assist in obtaining competitive bids from qualified contractors and, during the period of bidding, the Architect shall be available to interpret the Contract Documents and to prepare and distribute any addendum or addenda required before bids are received. The Architect if any, shall assist the District in evaluating the responsiveness and responsibility of the bidders, and shall make recommendations to the District regarding award of the Construction Contract(s). The Architect shall prepare bid tabulations and bid analyses as required by the District.

b. Alternate Bids. When approved and directed by the District, the Architect shall provide working drawings and specifications that provide for alternate bids, consistent with and in the manner provided by applicable law. The Architect shall confirm that the estimate of



Construction Cost made after providing for such alternate bids (the total of all additive and deductive alternate bids) is within the Construction Budget as that may be established or revised by the District.

c. Applications. The Architect shall furnish, process and either obtain or require in the Contract Documents that it is the contractor's responsibility to obtain, with the District's assistance, all permits or other required approvals for the construction and operation of the Project. All architectural and engineering information required to prepare, process and obtain approvals, permits, materials and funds for the construction of the Project shall be provided by the Architect at no cost to the District, unless agreed to otherwise in writing.

d. Approval of Bonds. The Architect shall confirm that the Contract Documents require, and shall verify prior to the award of the Construction Contract(s), that the surety or sureties issuing any payment (labor and materials), performance or bid bond in connection with the Project or any portion of the Work be an "admitted surety insurer" as defined in Code of Civil Procedure Section 995.120. Unless expressly made the sole responsibility of the CM, if any, the Architect shall confirm that the Contract Documents require that bidders/contractors submit documentation verifying that any sureties issuing any bonds in connection with the Project are "admitted surety insurers," and Architect shall review and verify such documentation upon receipt and thereafter submit such documentation to the District for its review.

e. Revision of Drawings. In preparing the Contract Documents, the Architect shall seek to ensure that, when received, the total of competitive bids received for all Work does not exceed the Construction Budget. If required by the District, after competitive bids based on the Contract Documents have been received, and in the event the total of the lowest responsible bid or bids exceeds the Construction Budget, the Architect, at no additional cost to the District, shall revise the drawings and specifications in a manner that will permit the securing of new bids acceptable to the District that do not exceed the cost limitations of the Construction Budget. It is understood that the Architect is not responsible to redesign the project at no additional cost, if the cause for the project being overbudget is determined to be unusual and unpredictable increases in the bidding market. If the bid phase has not commenced within ninety (90) days of approval of the Construction Documents by the Division of State Architect, through no fault of the Architect, the District's Construction Budget shall be adjusted to reflect the general level of prices in the applicable construction market.

#### ***F. Preparation of Documents Generally.***

1. The Architect, consistent with the requirements of the Design Schedule and the other provisions of this Agreement, shall prepare all drawings, specifications and other documents and applications for approvals required in connection with the Project, including those required in order to obtain approvals from any local, State and federal agency with jurisdiction over the Project, including, but not by way of limitation, CDE, OPSC, DTSC, DSA and (in order to obtain State Funds, including, if applicable, financial or other hardship assistance funding) the SAB.

2. All drawings, specifications and other documents prepared pursuant to this Agreement shall comply with all codes, ordinances, laws and regulations applicable to, and shall be in such form as will enable the District to secure all required permits and approvals for, the construction and operation of the Project.

3. The plans, specifications and other documents prepared pursuant to this Agreement shall be consistent with the geology, grade and elevation of the site of the Project ("Project Site"), the Construction Budget and the Project Budget. The Architect shall, at no cost to the District and in the number required herein, provide all drawings, specifications and other documents prepared pursuant to this Agreement for review and approval of the District. The Architect shall provide the specifications to the District on a computer-readable disk or "CD."

4. Unless specified otherwise herein, the printing or reproduction expenses incurred in connection with the bidding and construction of the Project shall be paid by the District. The Architect shall bear the cost of reproduction required for submittal of drawings and specifications to the Division of the State Architect for plancheck approval. Any other costs associated with plancheck approval of local agencies shall be paid for by the Architect and reimbursed by the District at 1.10 times the direct cost. Unless specified otherwise herein, all printing or reproduction expenses incurred in connection with the development of the Contract Documents and the coordination by the Architect required pursuant to this Agreement, shall be paid by the Architect. In addition to any other requirement herein, the Architect shall, at no cost to the District, provide up to six (6) sets of design documents at each phase of the design to the District for its use.

#### *G. Contract Administration/ Construction Phase Administration.*

1. The Architect shall reproduce the Contract Documents in the required number, the expense being borne as provided in Article IV Paragraph F, and shall assist the District in obtaining bids from contractors and in awarding the Construction Contract(s).

2. The Architect shall provide technical general direction to the Project Inspector in accordance with Title 24, Part I, Sections 4-341 and 4-342. The Architect shall advise the Project Inspector and/or contractor(s) in the preparation of the Record Drawings (defined in Subparagraph w of Section 4 of Paragraph G of this Article).

1. The Architect shall endeavor to secure compliance by contractor(s) with the requirements of the Construction Contract(s), but the Architect does not guarantee the performance of the Construction Contract(s). The Architect's responsibilities in this regard are set forth below:

a. Bid Opening Date. Upon authorization by the Board to obtain competitive bids for construction of the Project, the Architect, in conjunction with the CM, if any, and with the District's assistance, shall establish a date on which the bids will be opened ("Bid Opening Date"). The Bid Opening Date shall be at least one week prior to a regularly scheduled meeting of the Board and shall be approved by the District.

b. Pre-Publication Duties--List of Trades. The Architect and the District shall agree on the date the Notice Inviting Bids (defined in Subparagraph c of this Section 3) is to be first published in a newspaper as required by law. Any inquiries regarding crafts and trades shall be referred to the Architect for resolution.

d. Bid Set. The Architect shall provide a complete set of Contract Documents ("Bid Set") at least ten (10) business days prior to the date selected as the first day of publication of the Notice Inviting Bids; provided that the District may waive this time limit. Upon approval of the District, additional Bid Sets will be provided at the cost of the district. The Architect shall, at all times prior to receipt of bids, make its best efforts to revise the Bid Set to comply with any changes in the applicable laws or for purposes of clarification.

e. Distribution of Bid Set. The Architect shall assist the District in making the Bid Set available for inspection by potential bidders. The Bid Set shall clearly specify the terms on which the Bid Set may be checked out by potential bidders, the amount of money deposits for checking out copies of the Bid Set and the terms on which money deposits for such copies will be forfeited to the District. The Architect shall use reasonable efforts in addition to newspaper notice to advise potential bidders, whom the Architect knows to be responsive and responsible contractors, of the Notice Inviting Bids.

f. Pre-bid Meeting. The Architect shall attend the pre-bid meeting and/or job-walk as defined in the Notice Inviting Bids. If the pre-bid meeting and/or job-walk is mandatory, the Notice Inviting Bids shall specify that failure to attend may result in the bidder being declared a non-responsive bidder. The Architect shall conduct and take minutes of the pre-bid meeting and/or job-walk, and shall thereafter deliver said minutes to the District. If any addendum to the Bid Set has been authorized prior to the pre-bid meeting or job-walk, but not yet distributed to potential bidders, the Architect may distribute such addendum at the pre-bid meeting and/or job-walk, but shall also distribute such addendum to all potential bidders that obtained a copy of the Bid Set but were not present at the meeting or job-walk.

g. Bid Opening. The District shall conduct the bid opening. The Architect shall attend and take minutes of the bid opening.

h. Intentionally left blank.

i. Intentionally left blank.

j. Definition of Contract Documents. For purposes of this Agreement, the term "Contract Documents" shall mean all of the following together, either as prepared by the Architect or as completed and/or awarded to and signed by the contractor:

(i) Specifications for the Work.

(ii) Plans, including drawings, for the Work.

(iii) Any addendum to the any of the Contract Documents.

(iv) All documents and forms necessary for competitive bidding of the Work as required by law, whether on a general-contract contract basis (“Bid Documents”), including, but not limited to: Notice Inviting Bids; instructions to bidders; and bid proposal, bid bond, list of subcontractors, bid tabulation, and other required forms. The District shall provide to the Architect the District’s front-end documents to include: Notice Inviting Bids; instructions to bidders; and bid proposal, bid bond, list of subcontractors, bid tabulation, form of agreement, form of payment bond, form of performance bond, and other required forms.

(v) The contract(s) for the Work, whether the Project is constructed on a general-contract or multi-prime contract basis, including the form of agreement, general conditions, supplemental conditions, and any addendum to the contract(s) (collectively, “Construction Contract(s)").

(vi) Performance bond(s) required pursuant to the Construction Contract(s).

(vii) Payment (labor and materials) bond(s) required pursuant to the Construction Contract(s).

k. Intentionally left blank.

l. Intentionally left blank.

m. Notice to Proceed. The Architect shall advise the District on appropriate time to distribute a notice to each successful bidder to proceed with the portion of the Work within the scope of its bid (“Notice to Proceed”).

n. Pre-Construction Meeting. As soon as practicable after service of the Notice(s) to Proceed, the Architect shall call and conduct a pre-construction meeting including the contractor(s), the District and other parties as appropriate. The Architect shall have, reasonably in advance, prepared and distributed an agenda for the pre-construction meeting. The Architect shall take minutes of the pre-construction meeting and thereafter send a copy of the minutes to the District.

2. Construction Phase. During the construction phase for the Project, Architect shall perform the following services:

a. Construction Administration. The Architect shall provide general administration for the work, and in so doing shall comply with all requirements of Title 21 of the California Code of Regulations and all other applicable requirements. The Architect shall: (i) attend weekly meetings at the Project Site, and produce and review meeting minutes of all meetings; (ii) visit the Project Site to observe the Work as necessary in the Architect’s professional judgement, but no

less than weekly, as the Work progresses in order to determine the general quality of each contractor's performance and advise the District thereon; (iii) In addition to the weekly Site visit described visit the Project Site and observe the Work with reasonable promptness upon request of the District, the CM, if any, or the Project Inspector. The Architect shall promptly review submittals and respond to requests for information and work to resolve questions from the contractor(s). This review shall be completed in such as way as to cause no undue delay in the Project, while allowing time, in the Architect's professional judgment to permit adequate review. The administration by the Architect shall be in addition to the continuous inspection by the Project Inspector. The Architect, on the basis of its Site visits, shall report to the District known deviations of the contractor(s) and the subcontractors with the Contract Documents and Construction Contract(s).

b. Project Inspector and Reports. The Architect shall aid in the selection of, and approval of, full-time Project Inspector(s) as required by law. Such Project Inspector shall be under direct contract to the District. The Architect shall provide technical direction to a full-time Project Inspector employed by and responsible to the District as required by applicable law. The Architect shall perform all the duties of the Architect/Engineer as specified in DSA Procedure PR 13-01. The Architect shall verify that the Project Inspector is properly performing his/her assigned duties and abiding by the guidelines specified in DSA Procedure PR 13-01. The Architect shall receive and review Project Inspector's reports, and prepare and submit reports to applicable agencies as required by law. Should errors, omissions or conflicts in the drawings, specifications or other contract documents by the Architect be discovered or observed by the contractor or any other person, the Architect will review such alleged errors, omissions or conflicts and, if necessary, will prepare and submit to the District, all within five (5) working days after receiving notice thereof unless otherwise authorized by the District, such amendments or supplementary documents and provide consultation as may be required, for which the Architect shall make no additional charges to the District.

c. Architect Visits. The Architect will have access to the work at any time during regular business hours and on weekends, holidays, and off-hours with prior notification and approval from the District, but such access shall not be deemed to mean that the Architect is responsible for making exhaustive and continuous Site visits. To the extent possible, all site visits, observations and other activities by the Architect shall be coordinated through the construction manager, if any is assigned to the work, and otherwise through the District. The Architect and its consultants (including, but not limited to, the structural, mechanical and electrical disciplines) shall make such periodic visits to the project site as may be necessary in the Architect's professional opinion to familiarize themselves generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the contract documents. The Architect and such consultants will make a written record of each such site visit, which record shall include the date and time of the visit, the weather conditions on such date, a description of the condition of the project site and the Project on the date of the visit, including any concerns that the Architect or consultant may have with respect to the Project as a result of such visit, and such other information as the Architect or such consultant, as applicable, may deem material. On the basis of such on-site observations, the Architect and its consultants shall endeavor to guard the District against defects and deficiencies in the work of the contractor. the Architect and its consultants shall not be required to make exhaustive or full-time on-site observations to check the quality or quantity of the work, but shall make as many observations as may be reasonably required to fulfill their obligations to the District. The Architect shall not be

responsible for construction means, methods, techniques, sequences, or procedures, or safety precautions and programs in connection with the work, and shall not be responsible for any contractor's failure to carry out the work in accordance with the contract documents, which responsibilities shall be solely that of the contractor.

The Architect has the obligation to advise the District when it observes Work which does not conform to the Contract Documents but the decision to reject or stop or replace the Work is the responsibility of the District's. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect shall have the obligation to recommend to District additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. The decision to proceed with the Architect's recommendation for testing or inspection of the Work is the responsibility of the District.

d. Schedule Observation and Records. The Architect shall require in the Contract Documents that the contractor(s) prepare, and the Architect shall receive and keep on file, records of construction progress and time schedules. The Architect, and CM, if any, shall determine whether construction progress is consistent with the most recent approved Project Schedule. The Architect, and CM, if any, shall advise the contractor and District of any deviations from the time schedule that will prevent completion within the contract period.

e. Intentionally Omitted.

f. Responsibility of Architect. The Architect shall not be responsible for those acts or omissions, including those resulting in a delay in completion of the Project, that are solely the responsibility of the contractor(s), subcontractors, any agent or employee of the contractor(s) or subcontractors, or any persons performing any of the Work on their behalf, or of the CM, if any.

g. Progress Reports. The Architect shall submit verified progress reports as required to the District and to DSA in compliance with Title 21 of the California Code of Regulations.

h. Tests. Independent testing companies employed by and responsible to the District will provide Architect, as well as the CM, if any, with copies of test results and/or reports. The Architect shall: (i) review for conformance with applicable requirements and process all required on- and off-site material and test reports; (ii) report any deficiencies in material, as reflected by such reports, to the District and each governmental agency with jurisdiction there over; and (iii) make recommendations for correction of such deficiencies. The Architect shall not be responsible for the content of any independent test reports.

i INTENTIONALLY LEFT BLANK.

j. Aesthetic Decisions. With the aid of and in cooperation with District, the Architect shall prepare, and submit to the District for review and approval, all drawings, sketches and samples and/or illustrations of colors, textures, finishes, and other items as are necessary for

the District to decide all matters of an aesthetic nature included in the Work. The Architect shall prepare and submit such drawings, sketches, samples and/or illustrations in sufficient time to prevent delay in the Work.

k. Shop Drawings and Equipment Lists. The Architect, shall review shop drawings, material lists, and equipment lists for compliance with Contract Documents, reject those that do not comply, or indicate no exception to those that do comply, and return same to the Contractor within a maximum of three weeks from the date of receipt. The Architect shall provide and update weekly submittal logs. For shop drawings requiring DSA review and approval (such as fire sprinklers, elevators, etc.), the Architect shall submit the shop drawings to DSA with the Architect's stamp and signature thereon, attend the DSA meeting, if required to and obtain approval, and forward the approved documents to the Contractor as soon as possible. No significant change or deviation from the requirements of the Contract Documents shall be permitted at any time without prior written approval from the District. The Architect shall submit one (1) set of all reviewed shop drawings for the District's file and advise the District in writing of the results of such review. The Architect shall not be required to review partial submissions or those for which submissions or related items have not been received. The parties acknowledge that there are circumstances where a contractor fails to exercise due diligence to submit complete submittals or fails to follow the Architect's review comments on previously reviewed submittal for same item resulting in excessive efforts by the Architect in the submittal review process. The parties agree that under such circumstances the Architect may be entitled to additional compensation for its additional efforts spent in reviewing submittals. The District shall seek reimbursement from the Contractor on behalf of the Architect. The District agrees that the Construction contract shall include provisions to effect the provision of this paragraph. The Architect shall provide the District with written notice of the Contractor's failure to comply with the Construction Documents or the Contractor's contract requirements.

l. Substitution of Materials and Products. The Architect shall review, advise and recommend for acceptance or rejection by the District, and its CM, if any, any substitution of materials and products if requested or required by the terms of the specifications and shall record all substitutions of items in the Record Drawings. The Architect shall advise the District in writing of the Architect's recommendations.

m. Changes in the Work. The Architect shall discuss with the contractor, the CM, if any, and the District any proposed changes required during construction when the changes alter the function, quality, appearance, or cost of the finished item of work, and the Architect shall quantify and inform the District of any change in the Construction Cost resulting from such changes. The Architect shall reduce any such proposal for change to writing ("Change Order") and shall submit the Change order for approval of the District. The Architect is advised that Change Order encompasses Construction Change Directive (CCD), Immediate Change Directive (ICD) as those terms are defined in the construction contract documents.

n. Information for Record Drawings. The Architect shall consult with the Project Inspector and/or the contractor(s) in the compilation of information necessary for the preparation

of the Record Drawings. In preparing Record Drawings, Architect shall be entitled to rely upon the information provided by the contractor and the Project Inspector. However, during the construction period the Architect shall periodically review the As-builts drawings being maintained by the Contractor.

o. Requirements of Governmental Agencies. The Architect shall furnish all necessary prints, specifications, and other documents and applications, and shall make all required reports, to the governmental agencies and other entities having jurisdiction over the Project. The District shall pay for all associated costs required for submittal, plancheck review and approval of local agencies, including but not limited to, Health Dept., Fire Dept., and any City or County agencies having jurisdiction.

p. Certificate for Payment. The Architect shall timely review each contractor's monthly request for payment, and when satisfied as to the amount due pursuant to the provisions of the Construction Contract(s), shall issue a proper and timely certificate for payment in an appropriate amount, in accordance with a uniform method acceptable to the District. In connection therewith, the Architect shall advise the District regarding whether the contractor's request for payment is correct and shall advise the District of required time-lines for payment. With respect to each request for payment, the Architect shall complete all actions required in relation thereto within one (1) week of receipt thereof.

q. Description Drawings and Interpretations. The Architect shall furnish all details or incidental services reasonably necessary for the proper execution of the Work, including, but not limited to, all large scale or full size supplemental drawings required to describe the Work. The Architect shall complete these details and deliver them in a timely manner to the contractor(s), and the CM, if any with such reasonable promptness as to cause no delay in the Work. Tracings of all supplemental drawings shall be furnished to the District and shall bear the approvals required of public agencies having jurisdiction over that portion of the Work. If, during the construction, any dispute arises regarding the true meaning of the drawings and/or specifications, the Architect shall render a prompt interpretation. The parties acknowledge that there are circumstances where a contractor fails to exercise due diligence in executing the construction work resulting in excessive efforts by the Architect to provide additional design drawings, details, and/or specifications. The parties agree that under such circumstances the Architect may be entitled to additional compensation for its additional efforts spent in responding to such excessive requests by the contractor. The District shall seek reimbursement from the Contractor on behalf of the Architect. The District agrees that the Construction contract shall include provisions to effect the provision of this paragraph. The Architect shall provide the District with written notice of the Contractor's failure to comply with the Construction Documents or the Contractor's contract requirements.

r. Architect's Evaluation of The Work & Construction Observation at Substantial Completion and Final Completion. The Architect shall evaluate the Work to determine the dates of Substantial Completion and Final Completion, check if the Contractor finished his punch list, and if the Work conforms to the Contract Documents. The terms Substantial Completion and Final Completion are defined in the General Conditions of the Construction Contract. The procedures for Substantial Completion and Final Completion are outlined in the General Conditions of the Construction Contract.



The Architect shall conduct a final evaluation/observation when all construction work is completed, including any punch-list items, and the project is fully ready for its intended use. The District shall acknowledge final acceptance by issuing a Notice of Completion on the Project. The final evaluation/observation will be made at the earliest possible date after completion of the Project. When several buildings are involved, evaluations/observations may be made upon completion of each building. No evaluation/observation will be recorded as a final until all deficiencies or nonconforming conditions have been corrected. When codes and ordinances require inspections by local authorities, their final acceptance will be required prior to the District's final inspection and acceptance.

The Architect shall coordinate the evaluation/observation with all parties, including the District, Contractor, engineers, Project Inspector, so that all stakeholders may be present on the site at the same time. A final evaluation/observation must be conducted before the final payment to the contractor to ensure that all work is performed according to project plans and specifications and meets all applicable codes and quality standards.

A Pre-Final Observation/Evaluation shall be conducted at the point when the Architect believes that the Work can be deemed substantially completed. The Architect shall prepare a list of items (Punch-List) that need to be completed or corrected before substantial completion is achieved. The architect shall notify the contractor of items that need to be completed or corrected before a certificate of substantial completion certificate can be issued.

Final Evaluation/Observation shall be conducted when all Punch-List items have been corrected. The Architect shall notify the District in writing that the Contractor has completed all Work and recommend to the District to issue a Notice of Completion for the Project.

s. Operations and Maintenance Manuals, Guarantees. The Architect shall secure in proper form and transmit to the District all guarantees, warranties, instructions, diagrams, operations manuals, and other documents related to the operation and maintenance of the Project or otherwise to be furnished by the contractor(s) to the Architect pursuant to the Construction Contract(s).

t. Notice of Completion. The Architect, in conjunction with the District, the contractor(s), and the CM, if any, shall make a final evaluation/observation, or evaluations/observations as necessary, not later than thirty (30) days following the date of substantial completion. The Architect shall certify in writing to the District at such time as Architect, based on its personal knowledge (as personal knowledge is defined in Education Code Section 17309) is satisfied that the Work in all respects has been completed in accordance with all provisions of the Contract Documents and Construction Contract(s), and that no change in the Work has been made except as authorized in writing by the District and approved by all governmental agencies with jurisdiction over the affected portion of the Work. The Architect shall at such time recommend that the District accept the Project and shall seek approval from the District for Architect to record a notice of completion with respect to the Project ("Notice of Completion"). Upon recording the Notice of Completion, the Architect shall provide a conformed

copy thereof to the District. Within seven (7) days after filing of the Notice of Completion, the Architect, in conjunction with the CM, if any, shall assist the District in providing any notices required pursuant to Civil Code Section 3185.

u. Expiration of Stop Notice Period(s). Upon expiration of applicable period in which any stop notice related to the Project may be filed ("Stop Notice Period"), the Architect, shall review and approve the certificate of final payment to the contractor ("Certificate of Final Payment").

v. Intentionally Omitted

w. Release of Final Payment and Retention. Within thirty-five (35) days after the Notice of Completion is recorded, the Architect shall certify in writing to the District that the items specified in this Subparagraph were completed and that final payment and payment of the any remaining retention, to the contractor is warranted. If the Architect cannot so certify, it shall submit a detailed explanation to the District explaining what action is required and the reason for such action, along with its best estimate as to when final payment, and any retention, may be released to the contractor(s). If final payment to the contractor(s) is delayed for any reason, the Architect shall thereafter immediately notify the District in writing when there is no longer any reason to delay such final payment and shall provide such certification as is required pursuant to this Subparagraph. As provided herein, the Architect shall certify that:

(i) The contractor(s) has/have provided all guarantees and warranties as required pursuant to the Construction Contract(s).

(ii) The contractor(s) has/have provided all operations manuals or instructions to the District as required pursuant to the Construction Contract(s).

(iii) DSA has received all reports and given all approvals required by law for the Project.

(iv) The Architect has verified to the best of its ability that all certificates and documents as are required by law, the DSA, the CDE, this Agreement, and the Contract Documents are on file with the District.

x. Record Drawings.

(i) . Within sixty (60) days after the completion of the Project's construction and the Architect receipt of as-built documents from the contractor, Architect will review the as-built documents prepared by the contractor and shall prepare the Record Drawings at no additional cost to the District. The Record Drawings shall be prepared in the same electronic format (AutoCad or Revit). If the Architect determines the as-built documents prepared by the contractor are incomplete, then the Architect shall amend the record drawings and specifications so that they include all material changes made necessary by CCD's, ICD's, change orders, RFI's, change order requests ("COR's"), Bulletins, clarifications and/or any other District approved

document which details the changes that were made to the DSA approved Construction Documents. The Architect shall incorporate such changes into a complete Record Drawings file, , and PDF files, and provide all such documents, including three (3) hard copies, to the District and electronic files (AutoCad or Revit) and PDF format.

(ii) On approval by the District of the completed Record Drawings, the Architect shall forward to the District the complete set of drawings and specifications corrected to "record" condition in electronic (AutoCad or Revit) and PDF file and three hard copies of the drawings and specifications.

(iii) As a condition of final payment pursuant to this Agreement, the Architect shall forward to the District one (1) clear and legible set of reproductions of the structural calculations, the original copy of the specifications, on disk, the Record Drawings, on disk or CD readable in AutoCad or Revit, the final verified progress report pursuant to Title 21 of the California Code of Regulations, and the Architect's Certificate of Completion.

3. Agency Approvals. The Architect shall apply for and obtain the required approvals (including Final Certification from DSA) from all public or private agencies or entities having jurisdiction over the Project with District assistance as required, so as not to delay the Project. To the extent approvals of documents or drawings are required for the Project, Architect shall submit such copies to any such agency as are required and shall make corrections or revisions as may be necessary or required by such agency in order to secure approvals or funding, provided that Architect shall be entitled to an Additional Services such revisions are inconsistent with approvals or direction of the District. Unless directly paid by the District, the Architect, subject to reimbursement as provided herein, shall pay on behalf of the District such amounts as necessary for any plan check or other fees or approvals.

4. Construction Problems. The Architect shall make written reports to the District, and its CM, if any, stating any problems that occur or are identified by the Architect, the Project Inspector, the CM, if any, or the contractor(s) during the Project, the changes contemplated in the Work as a result of any such problem, and the progress of the Work. The Architect shall timely advise the District of risks associated with any action planned by District and provide alternatives for such action to the District.

5. Requests for Information. Review shall review with reasonable promptness, while allowing sufficient time in Architect's judgment to permit an adequate review, all requests for information ("RFI"), submittals, and substitution requests that are submitted by the Contractor in connection with the Project. Unwarranted and/or incomplete requests, as determined by the Architect in its professional opinion, shall be rejected, and returned to the Contractor.

## *H. Additional Responsibilities of Architect*

1. Designation of Project Architect. Architect shall designate in writing prior to the execution of the Agreement, the individual who will serve as the Architect for the Project

("Project Architect"). The Project Architect shall not be changed without the prior written approval of District, which shall not be unreasonably withheld.

2. Consultations. As mutually agreed between the Architect and District, the Architect shall participate in all consultations and conferences with the District, its CM, if any, public or private agencies having jurisdiction over the Project, and others as may be directed by the District. The Architect shall attend all such meetings of the Board as directed by the District.

3. Employees and Consultants. The Architect shall employ at its sole cost and expense, employees, technicians, consultants including engineers and personnel properly skilled and licensed in the State of California in the various aspects of the design and construction of the Project, including, but not limited to, civil, structural, mechanical (inclusive of both HVAC and plumbing), electrical, cost estimator, food service consultants, acoustical engineers, landscape architects, and other specialized engineering or consulting services required for the Project, unless specifically excluded in the Architect's proposal. Architect shall notify District in writing of the names of the consultants to be employed by Architect for the Project. In the event of any change in a consultant, Architect shall notify District in writing of the new or substituted consultant. The Architect shall confer and cooperate with professional consultants employed directly by the District within the scope of work covered by this Agreement, and Architect shall be entitled to rely upon the services and information provided by such District's consultants. The Architect agrees to have all consultants or engineers employed on the Project execute a declaration that they have no financial interest in the sale or use of any materials or equipment required for the Project. Architect shall require in its sub-consultant agreements that its professional sub-consultants maintain professional liability insurance with minimum coverage limits of \$500,000 and shall require certificates of insurance evidencing such.

1. Guarantee Period. The Architect shall, upon request of the District, shall make one visit to the Site prior to the anniversary of Substantial Completion and shall recommend to the District action to be taken should defects in workmanship or materials be discovered by the Architect during the Site visit, . The Architect shall conduct one additional Site visit as to ascertain whether all such guarantee work has been completed by the contractor in an acceptable manner. Additional Site visits required by the District shall be provided as an Additional Service unless such apparent deficiencies resulted from the Architect's failure to provide any of the services required by this Agreement.

2. Standard of Care. Architect shall perform all of the Architectural Services required pursuant to this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to provide architectural services related to construction and modernization of school facilities within the State. Architect warrants that each of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience, and shall have all licenses, permits, qualifications and approvals as are required, to perform the Architectural Services assigned to them. Any employee or consultant of Architect that is determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of other persons or property, or who fails or refuses to perform the Architectural

Services in a manner acceptable to the District, as determined by the District, shall be promptly removed from the Project by the Architect and shall not be re-employed to perform any of the Architectural Services or to work on the Project.

3. Fingerprinting requirements. Unless determined by the District in writing to be exempt, the Architect shall comply with the requirements of Education Code Section 45125.1, regardless of whether such requirements are otherwise applicable. Unless exempted from such requirement, the Architect shall comply with all California Department of Justice (“DOJ”) guidelines and requirements with respect to fingerprinting of employees, consultants, or others engaged in the performance of the Architectural Services who may have more than limited contact with District students at any time during the course of the Project, as determined by the District.

4. Architect Records. The Architect shall maintain all financial and other records related to this Agreement and the Project, as necessary, appropriate or required by law (“Architect Records”), which shall be available at all reasonable times for inspection by the District and any governmental agency with jurisdiction there over. The Architect shall prepare and maintain the Architect Records using a generally-recognized accounting basis. The Architect Records shall include, but not necessarily be limited to, records of Reimbursable Expenses, direct personnel costs incurred in connection with Additional Services, and accounts between the District and the architect.

#### *I. Excluded Services.*

The following services are specifically excluded from Architect's scope of work:

1. Soils and geotechnical report and topographic surveys.
2. Environmental impact report and studies, including any required testing.
3. Making revisions to Contract Documents where such revisions are inconsistent with approvals or instructions previously given by the District; or, due to changes required as a result of the District's failure to render decisions in a timely manner.
4. Providing services in connection with replacement of Work damaged by fire or other acts of God.
5. Providing services made necessary by the default or termination of the contractor, by defects or deficiencies in the work of the contractor or subcontractors, or by failure of performance of either the District, contractor, or others performing services or providing work on the Project.
6. Providing services relative to future facilities, systems and equipment.
7. Architectural Services relating to design requests or options requested by parties other than the District, having jurisdiction over the Project, which services shall be

accomplished only when and to the extent authorized in writing by the District after the additional party has deposited funds with the District to cover any such cost.

8. Testing for hazardous materials, employment of hazardous abatement consultant.

9. Field measuring to document as-built conditions, in the event that no existing as-built or record drawings are available.

10. Civil engineering services related to studies and master planning required by the local approving agencies.

### *J. Laws and Regulations.*

1. Knowledge and Compliance. Architect shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Architectural Services or the Project, and shall give all notices required of the Architect by law. Architect shall be liable, pursuant to the indemnification provision of this Agreement, for all violations of such laws and regulations in connection with its Architectural Services. If the Architect performs any work knowing it to be contrary to such laws, rules and regulations, Architect shall be solely responsible for all costs arising there from.

2. Drawings and Specifications. Architect shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, the California Education Code, Titles 19, 21 and 24 of the California Code of Regulations, and any requirements of the DSA (including structural safety, fire/life safety and access compliance section), the CDE and the California Department of General Services, in effect as of the time the drawings and specifications are prepared or revised and submitted for required approvals.

1. Americans with Disabilities Act. Architect shall use its professional efforts to interpret and apply all applicable federal, state and local laws, rules and regulations with respect to access, including the Americans with Disabilities Act ("ADA") as are, applicable to the Project. Architect shall inform District of any inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law. Unless Architect brings such inconsistencies and conflicting interpretations to the attention of the District and requests District's direction on how to proceed, the Architect's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Architect, and the Architect shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. If Architect brings such inconsistencies and conflicting interpretations to the attention of the District and request District's direction on how to proceed, Architect shall be responsible to the District pursuant to the indemnification provision of this Agreement.

2. Permits, Approvals and Authorizations. Architect shall provide District with a list of all permits, approvals or other authorizations required for the Project from all applicable federal State, and local governmental agencies and private entities with approval authority or jurisdiction over the Project.

***K. Prohibited Interests.***

Architect represents and warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Architect, to solicit or secure this Agreement. Architect further represents and warrants that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Architect, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Upon any breach or violation of such representations or warranties, the District shall have the right to rescind this Agreement immediately without liability, and the Architect shall be liable to the District for all costs, expenses and damages resulting there from.

***L. Labor Certification.***

Architect represents and certifies that it is aware of the provisions of Labor Code Section 3700, which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of such section, and agrees to comply with such provisions before commencing the performance of the Architectural Services.

## **ARTICLE III. DUTIES OF DISTRICT**

***A. District Representative.***

The District shall designate in writing a representative who shall act on behalf of the District in all matters pertaining to the Architectural Services to be rendered pursuant to this Agreement ("District Representative"). All requirements of the District pertaining to Architectural Services or directions to Architect related to the Project shall be given through the District Representative, the Superintendent of the District, or the Assistant Superintendent of Business Services of the District. The District Representative, and CM, if any, shall cooperate with the Architect in all matters related to this Agreement in order to permit the performance of the Work without unreasonable delay.

***B. Statement of Building Program and Budget and Scheduling for the Project.***

As reasonably necessary for the Architect to perform its obligations pursuant to this Agreement, and upon reasonable request of the Architect, the District shall provide full information as to the requirements and educational program as related to the Project. As provided

herein, the District shall establish the maximum Construction Budget for the Project and a schedule for completion of the Project with the assistance of the Architect.

### *C. Surveys and Tests.*

1. Site Survey. Upon reasonable request of the Architect, the District shall furnish the Architect with a survey of the building site, prepared by a licensed surveyor indicating where relevant, among other matters, the location of existing buildings, grades around existing buildings, grades and lines of street, pavements, boundaries of adjoining properties and contours of site. Any such request by the Architect shall be timely so as to avoid any unreasonable delay in the performance of the Architectural Services, and/or completion of the Work or portion thereof, and/or completion of the Project.

2. Testing. Upon reasonable request of the Architect, the District shall furnish chemical, mechanical or other tests required for proper design and boring or test pits necessary for determining subsoil conditions and soil test results performed by a qualified testing laboratory or soil engineer. Any such request by the Architect shall be timely so as to avoid any unreasonable delay in the performance of the Architectural Services, and/or completion of the Work or portion thereof, and/or completion of the Project.

3. Geotechnical and Environmental Investigation Survey. The District shall perform any geological investigation survey reasonably required by the CDE, DTSC, OPSC, SAB, or other authorities having jurisdiction of the Project, or upon reasonable request of the Architect, and shall provide copies to the Architect for distribution as necessary. The Architect shall review such information and advise the District whether, in the opinion of the Architect, any additional studies or information are necessary for construction and operation of the Project and of apparent cost implications, if any, to the Construction Budget, and the overall Project Budget.

4. Reliance. The Architect shall be entitled to rely upon the information provided by the District under this Article III.C, as well as any other information provided (including but not limited to as-builts) provided by the District. The Architect shall have reviewed information provided by the District and shall inform the District of any apparent errors or discrepancies in the information.

### *D. Fees.*

The District shall pay or cause to be paid, or reimburse to the Architect as provided herein, all fees required in connection with the Project by public agencies having jurisdiction over the Project.



#### *E. Bidding and Contract Documents.*

The District shall be responsible for distribution of Bid Documents and Contract Documents to bidders.

#### *F. Project Inspector.*

The District shall directly employ the Project Inspector(s), as required during the entire course of construction of the Project. The Project Inspector(s) shall be qualified and approved by appropriate agencies, and shall be satisfactory to, responsible to, and under the direction of the Architect as required by the DSA and in compliance with Title 21 of the California Code of Regulations. The cost of employment of the Project Inspector will be borne by the District and paid directly to the Project Inspector. The administration by the Architect and its engineers and consultants shall be in addition to the continuous personal inspection of the Project by the Project Inspector. The District shall provide all legal advice pertaining to any inspection services for the Project.

#### *G. Communications and Inspections.*

1. Relationship with Contractors. If during the course of construction any questions, recommendations, requests for changes, or substitutions are initiated by the District staff or the CM, if any, they shall be directed to the Architect only through the District Representative, or CM, if any. Orders to the contractor(s) shall be issued through the Architect, or CM, if any, unless such orders are not being properly transmitted by Architect.

2. Pre-final Evaluation/Observation. The District, as necessary, shall assist the Architect in making the pre-final Evaluation/Observation and the preparation of the list of deficiencies with regard to the Project.

3. Final Evaluation/Observation. When the District is notified by the Architect that the punch list items were corrected, the District shall accompany the Architect, the CM, if any, and the contractor(s) for the final Project Evaluation/Observation.

4. Language of Certificates. The proposed language of certificates, or certifications requested of the Architect or Architect's consultants shall be submitted to the District for review and approval at least fourteen (14) days prior to execution. The District, or CM, if any, shall not request certifications that would require knowledge or services outside the scope of this Agreement.

#### *H. Notice of Completion.*

When all items are completed with regard to the Project to the satisfaction of the District, the CM, if any, and the Architect, and upon recommendation of the Architect and CM, if any, the District shall recommend to the Board that it accept the Project and authorize the Architect to record a Notice of Completion. During any guarantee period applicable to the Work, the District shall notify Architect in writing of any apparent deficiencies in materials or workmanship.

#### *I. Board Approval.*

Upon receipt from Architect of adequate supporting documentation, the District shall ensure that all matters submitted by the Architect for approval by the Board (including, but not limited to, approval of the Notice of Completion and approval of any Certificate of Final Payment) are placed on the agenda for the next regular meeting of the Board that is scheduled at least five (5) days after receipt by the District of such supporting documentation.

#### *J. Conflict of Interest.*

For the term of this Agreement, no director, official officer or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising there from.

### **ARTICLE IV. ARCHITECT'S COMPENSATION**

#### *A. Basic Fee.*

The District shall pay the Architect, for full performance of all Architectural Services contemplated pursuant to this Agreement, a total fixed fee as stipulated in Exhibit "A" and as provided in this Paragraph ("Basic Fee"). Architect's Fee shall be based on the Preliminary Project Construction Budget and Exhibit "A" – Architect's Fee Schedule, until completion of the Design Development Phase. At completion of the Design Development Phase, the Architect's final Fee shall be determined and finalized by written agreement between the District and the Architect based upon the "Final Project Construction Budget" approved by the District. The Final Project Construction Budget, rather than the final Project Construction Cost or Preliminary Project Construction Budget, shall be utilized for the purposes of determining the Architect's Fee, as applied to the basic services fee schedule set forth in Exhibit "A". At the time the Final Project Construction Budget is determined and finalized, the District and Architect shall also agree on whether the Project is deemed new construction or modernization, or if the Project involves both new construction and modernization, which components of the Project and their corresponding costs are deemed new construction and which are deemed modernization, to determine the Architect's final Fee in accordance with Exhibit "A". The District and the Architect may also mutually agree in writing on the Architect's Fee that is not calculated in accordance with Exhibit "A", but rather an agreed upon fixed fee amount. Once the Architect's Fee is determined based on the Final Project Construction Budget, no further adjustments shall be made regardless of the

actual Project Construction Costs or bids received. If, however, there are revisions to the scope of work directed in writing by the District that are not the result of errors or omissions on the part of the Architect, the Architect's Fee shall be adjusted as negotiated between the District and the Architect in writing. The Architect's Fee as calculated under this Paragraph is inclusive of all costs associated with the Project, including engineers and consultants, overhead and profit, but excluding reimbursable expenses.

After the Final Project Construction Budget has been determined and finalized, the District and Architect shall reconcile any Fee differences between the Fees paid during the Schematic Design and Design Development phases to the Architect based on the Preliminary Project Construction Budget and Exhibit "A" versus the final Fee that should have been paid during the Schematic Design and Design Development phases based on the Final Project Construction Budget and Exhibit "A". If this Fee reconciliation shows an overpayment of Fees to the Architect during the Schematic Design and Design Development phases, the Architect's Fee during the remaining phases shall be reduced accordingly as approved by the District. If this Fee reconciliation results in an underpayment of Fees to the Architect during the Schematic Design and Design Development phases, the Architect's Fee during the remaining phases shall be increased accordingly as approved by the District.

#### ***B. Invoicing of Basic Fee.***

The Architect shall submit invoices to the District requesting payment of the Basic Fee or portions thereof at such times as provided in this Agreement. Each such invoice shall be accompanied by such detailed information as is reasonably necessary to substantiate the Architect's request for payment. The District shall review and pay all approved invoices or approved portions thereof within thirty (30) days of receipt of the invoice. The District may, within ten (10) days of receipt of any such invoice, request additional information to substantiate Architect's request for payment, and the time for payment by the District shall be extended by the number of days required for Architect to provide such information. Pursuant to California Civil Code; Section 3320, failure to make payment within 30 days of receipt of the Architect's invoice shall result in interest due at the rate of 1.5% per month.

#### ***C. Allocation and Payment of Basic Fee.***

The Basic Fee shall be allocated and paid to Architect in such amounts and at such times as provided in this Paragraph.

1. Conceptual Design Phase: Upon completion of the Conceptual Design Phase, the Architect may request payment of up to five percent (5%) of the total Basic Fee. Billings shall be monthly or lump sum, in arrears, up to five percent (5%) of the Basic Fee, based upon work completed.

2. Completion of Schematic Design Phase: increase to twenty percent (20%) of the Basic Fee. Billings shall be monthly or lump sum, in arrears, up to twenty percent (20%) of the Basic Fee, based upon work completed.

3. Completion of Design Development: increase to thirty five percent (35%) of the Basic Fee. Billings shall be monthly or lump sum, in arrears, up to thirty five percent (35%) of the Basic Fee, based upon work completed.

4. Construction Documents: compensation shall be up to sixty eight percent (68%) of the Basic Fee. Billings shall be monthly or lump sum, in arrears, up to sixty eight percent (68%) of the Basic Fee, based upon work completed as determined by the District. Work during this phase includes incorporating all agreed upon constructability review comments and submission of all completed documents to DSA. Architect shall provide District with documents or other evidence reasonably requested by the District to support DSA submittal of all required documents.

5. Incorporation of Back-Check Comments from DSA into Construction Documents and Final Construction Documents Approval by DSA: increase to seventy two percent (72%) of the Basic Fee. Billings shall be monthly or lump sum, in arrears, up to seventy two percent (72%) of the Basic Fee, based upon work completed and requires final stamped approval from DSA.

6. Contract Award Phase: increase to seventy seven percent (77%) of the Basic Fee. Billings shall be monthly or lump sum, in arrears, up to seventy seven percent (77%) of the Basic Fee, based upon work completed.

7. Construction, Project Completion and Recordation of the Notice of Completion: Billings during the Construction, Project Completion and Recordation of the Notice of Completion Phase of the Project shall be submitted monthly, in arrears, equal each month based on the Architect's fee for these this phase divided by the number of months/duration of this phase. The months/duration of construction used to calculate this phase will be determined by the construction schedule and months/duration at time of award of construction contract – up to ninety-seven (97%) of the total Basic Fee for the Project.

8. Close-Out Phase: Completion of all requirements under Subparagraph x of Section 3 Paragraph G of Article II, Project documentation, including, without limitation, record and as-built documents forwarded to District and the applicable governmental agencies having jurisdiction. The required documents (independent of District requirements) shall be delivered within sixty (60) days of Project acceptance. Upon submission of all required documents and information to DSA for close-out and certification, and upon approval and confirmation by the District that all required documents have been submitted to DSA, the District shall pay up to ninety-eight (98%) of the total Basic Fee for the Project.

9. DSA Certification of Project: Upon receipt of final Project close-out certification from DSA, the District shall release the final two percent (2%) of the Basic Fee to increase the total amount paid to Architect to one hundred percent (100%) compensation due for the Project.

10. Completion of Project (Final Payment). Upon acceptance of the completed Project by the District and subject to any conditions set forth herein, including, but not limited to delivery of the Record Drawings, the Architect may request such additional payment so that the portion of the Basic Fee paid to Architect shall equal one hundred percent (100%) of the Basic Fee. The final payment to Architect shall be made at such time as provided in this Agreement notwithstanding that the Architect shall continue to be obligated to provide Architectural Services during any guarantee period applicable to the Work.

#### *D. Adjustments to Basic Fee.*

In the event any authorized Change Order results in an increased scope of Work or the Project, the Basic Fee shall be reasonably adjusted as agreed by the Parties. The Architect shall not be entitled to additional compensation on account of any Change Order that merely increases the total Construction Cost without increasing the scope of the Work or the Project. In the event of a deductive Change Order, the Architect shall only be entitled to such agreed compensation as is based upon the portion of the Work affected by the Change Order that was performed prior to issuance of such Change Order, as well as any revisions to Drawings and Specifications required to illustrate and describe the deduct. The Architect shall not be entitled to any compensation for Change Order or other work that increases the Construction Cost by virtue of negligent error, omission, or oversight on the part of the Architect. The Basic Fee shall not be reduced on account of any reduction in the final Construction Cost that is a result of the District assessing any liquidated damages or other penalties against the contractor(s).

#### *E. Additional Services.*

The Architect shall not be entitled to additional compensation for itself or its consultants unless agreed in writing in advance by the District in its sole discretion. If the District requests changes or additional Architectural Services that are not within the scope of this Agreement ("Additional Services"), the Architect shall provide such Additional Services at the hourly personnel rates set forth in Exhibit "B". Consultant services shall be provided at a cost not more than 1.10 times the amount reasonably charged to the Architect. The Architect shall not be compensated for Additional Services made necessary as a result of the delinquency, default or insolvency of any contractor(s), or by major defects in the work of any contractor(s), if the Architect failed to detect and report such matters when it reasonably should have done so.

#### *F. Reimbursable Expenses.*

The Architect shall be entitled to reimbursement for expenses reasonably incurred in connection with the provision by Architect of the Architectural Services, as provided in this Paragraph ("Reimbursable Expenses"), at Architect's cost plus a mark-up of 1.10 to the District. Reimbursable Expenses shall include only those categories of out-of-pocket expenses set forth below in this Paragraph. Total Reimbursable Expenses shall not exceed the total Estimated Expenses of **\$150,000** without prior written authorization of the District. Payment for Reimbursable Expenses shall be made upon detailed invoices presented to District. Reimbursable Expenses shall be paid within thirty (30) days of receipt by the District of a properly substantiated invoice therefore. Reimbursable Expenses are in addition to the Basic Fee and compensation for Additional Services. Reimbursable Expenses shall include only:

- (i) Approved reproduction of drawings and specifications in excess of the copies provided by this agreement.
- (ii) Fees advanced for securing approval of authorities having jurisdiction over the Project.

(iv) Other studies and design as may be required by governmental agencies where such studies and design could not have been anticipated at the time the Agreement was executed.

(v) Any Additional Services specifically requested and authorized in writing by the District Representative.

#### ***G. Invoicing of Additional Services and Reimbursable Expenses.***

The Architect may, on a monthly basis, submit invoices to the District requesting payment for Additional Services provided, and Reimbursable Expenses incurred, by the Architect in and prior to the immediately preceding month. Each such invoice shall be accompanied by such detailed information as is reasonably necessary to substantiate the Architect's request for payment. The District shall review and pay all approved invoices or approved portions thereof for Additional Services or Reimbursable Expenses, within thirty (30) days of receipt of the invoice. The District may, within ten (10) days of receipt of any such invoice, request additional information to substantiate Architect's request for payment, and the time for payment by the District shall be extended by the number of days required for Architect to provide such information. Pursuant to California Civil Code; Section 3320, failure to make payment within 30 days of receipt of the Architect's invoice shall result in interest due at the rate of 1.5% per month.

#### ***H. Withholding Payment to Architect.***

The District may withhold all or a portion of any progress payment to the Architect in accordance with Civil Code Section 3320, to the extent permitted thereby. Failure by District to withhold any sums from a progress payment shall not constitute a waiver of the District's right to such sums. The District may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefore, to the payment of any expenses, losses, or damages incurred by the District for which Architect is liable under the Agreement or State law as determined pursuant to the disputes resolution process herein this Agreement. Payments to the Architect for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Architect shall not be withheld, postponed, or made contingent upon receipt by the District of offsetting reimbursement or credit from parties not within the Architect's reasonable control.

### **ARTICLE V. TERMINATION, ABANDONMENT OR SUSPENSION OF WORK ON THE PROJECT**

#### ***A. Termination by District.***

The District, in its discretion and with or without cause, may suspend or terminate this Agreement, or all or any portion of the Architectural Services, following ten (10) days written notice thereof to the Architect.

### ***B. Default and Immediate Termination.***

This Agreement shall terminate immediately if any of the following events of default of the Architect occur, unless waived in advance, in writing, by the District:

1. If the Architect commences a voluntary action under any chapter of the United States Bankruptcy Code, as now or hereafter in effect, or if the Architect takes any equivalent or similar action by filing a petition, or otherwise, under any Federal or State law in effect at such time relating to bankruptcy or insolvency;
2. If a petition is filed against the Architect under any chapter of the United States Bankruptcy Code, as now or hereafter in effect, at the time of filing or if a petition is filed seeking any equivalent or similar relief against the Architect under any other Federal or State law in effect at the time relating to bankruptcy or insolvency, and such petition, or filing, is not dismissed within sixty (60) days after being filed;
3. If the Architect makes a general assignment for the benefit of creditors;
4. If a trustee, receiver, custodian or agent of the Architect is appointed under applicable law or under contract, whose appointment constitutes authority to take charge of the property of the Architect, is for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the Architect's creditors;
5. If the Architect persistently fails to timely pay engineers, consultants or other persons retained by the Architect in connection the Architectural Services, provided that District has fulfilled its payment obligations under this Agreement;

### ***C. Default and Termination After Notice.***

This Agreement shall terminate immediately upon notice from the District if any of the following events of default of the Architect occur, unless waived in advance, in writing, by the District:

1. If the Architect: (i) refuses or fails, except in cases for which extension of time is provided or granted, by District, to supply sufficient properly skilled staff or proper materials; (ii) disregards laws, ordinances, rules, regulations or orders of any public agency having jurisdiction, including, but not limited to, the DSA and OPSC; or (iii) violates or breaches any term or provision or fails to perform any of its obligations hereunder in a timely manner (including timely delivery to the District of all required documentation to be prepared by the Architect), which violation or breach arises out of or results from the fault or negligence of the Architect; or
2. If the drawings, specifications, or any other document provided in connection with this Agreement contains any material errors or omissions arising out of or resulting from the

fault or negligence of the Architect and Architect, after reasonable notice, has failed to correct such errors or omission with reasonable promptness.

***D. Termination by Architect.***

The Architect may terminate this Agreement thirty (30) days after notice to the District, and failure by the District in such thirty (30) day period to cure, any breach by the District of an obligation to make payments of undisputed amounts to the Architect in accordance with this Agreement.

***E. Suspension or Abandonment of the Work or Project.***

The District has the absolute discretion and right to suspend or abandon all or any portion of the Work on the Project and may do so upon written notice to the Architect. Upon notice from the District of any suspension or abandonment of the Work in part, the Architect shall immediately scale back operations to the extent of the Work not suspended or abandoned. In the event the District suspends or abandons the entire Project, the Architect shall terminate all activities pursuant to this Agreement not later than ten (10) days after such notice. If the entire Project is abandoned, the parties shall each be relieved of any further obligation pursuant to this Agreement except for any obligation of the Architect to indemnify the District, which obligation in all circumstances shall survive termination of this Agreement with respect to acts or omissions of the Architect occurring prior such termination.

***F. Compensation in the Event of Termination, Abandonment or Suspension.***

If, for reasons other than Architect's breach of this Agreement, the District terminates this Agreement with respect to the entire Project or abandons the entire Project, the District shall, within thirty (30) days following such termination or abandonment, pay such sum to Architect that is sufficient to increase the total portion of the Basic Fee paid to Architect to an amount that is proportionate to all Architectural Services adequately performed prior to termination or abandonment in relation to all Architectural Services required pursuant to this Agreement and pay to Architect for authorized reimbursable expenses incurred by the Architect. If, for reasons other than Architect's breach of this Agreement, the District terminates this Agreement with respect to only part of the Project, or abandons the Project in part only, the Basic Fee shall be recalculated pursuant to Paragraph A of Article IV based on the revised Construction Cost or estimate thereof, as applicable. In the event the District suspends the entire Project, until such time as the Project resumes, the Architect shall be entitled to payment only for Architectural Services provided prior to such suspension. In the event any suspension of the entire Project exceeds eighteen (18) months, the Project shall be deemed to have been abandoned in its entirety and Architect shall thereafter be entitled to payment as provided for abandonment of the entire Project. For purposes of determining the proportion of all Architectural Services actually performed prior to termination, abandonment or suspension in relation to all Architectural Services required pursuant to this Agreement, each allocation of the Basic Fee set forth in Paragraph C of Article IV is conclusively deemed to correspond to the percentage of the Architectural Services to be performed in relation



thereto. By way of example, at such time as the plans and specifications for the Work are one hundred percent (100%) complete and have been submitted for review and approval to all public agencies and private entities with jurisdiction over the Project, the Architect shall be deemed to have completed seventy percent (70%) of all required Architectural Services. In the event this Agreement is terminated as a result of a breach by the Architect, the compensation due Architect upon termination shall be reduced by the total amount of damages, including, but not limited to, attorneys' fees and expenses, sustained by District as a result of or related to such breach. If the parties dispute the amount of compensation due to Architect in the event of a termination of the Agreement, in whole or in part, or abandonment or suspension of the Project, in whole or in part, the parties may agree in writing to mediation or arbitration of the dispute.

#### *G. Delivery of Documents.*

Upon any termination, abandonment or suspension of the Project in whole or in part, the Architect shall deliver to the District all preliminary studies, sketches, working drawings, specifications, computations and all other documents and matters completed by Architect to which the District otherwise would have been entitled at the completion of the Architectural Services.

### **ARTICLE VI. INDEMNIFICATION.**

To the furthest extent permitted by California law, Architect shall indemnify, defend, and hold harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("the Indemnified Parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim") that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Architect, its officers, employees, subcontractors, consultants, or agents. The District shall have the right to accept or reject any legal representation that Architect proposes to defend the Indemnified Parties. Architect's duty to defend the Indemnified Parties at Architect's own expense, including attorneys' fees and costs, shall not exceed the proportionate percentage of Architect's fault as determined by a court of competent jurisdiction, and any amounts paid in excess of such established fault will be reimbursed by the District. Notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with other parties regarding unpaid defense costs. If a third party dispute, claim or litigation, or combination of any, arises out of, or relates in any way to the Services provided under this Agreement, upon the District's or the Architect's request, the District and the Architect, their agents, officers, and employees agree to undertake good faith measures to allow the Architect to assist the District in resolving the dispute or litigation. The Architect's assistance includes, but is not limited to, providing professional consultations, attending and participating in mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation ("Mandatory Assistance"). Prior to engaging the Architect's assistance under this provision, the District and the Architect shall in good faith meet and confer as to the scope and extent of the Mandatory Services including a joint defense agreement and the necessary tolling agreement if warranted. During the Mandatory Assistance Phase, each Party shall be responsible for their own attorney's fees and

Costs incurred, however each party shall reserve its right to seek reimbursement pursuant to Civil Code Section 2782.8.

Architect shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnified Parties in any Claim. Architect's obligation pursuant to Article 10.1 includes reimbursing the District for the cost of any settlement paid by the Indemnified Parties and for any and all fees and costs, including but not limited to legal fees and costs, expert witness fees, and consultant fees, incurred by the Indemnified Parties in the defense of any Claim(s), or to enforce the indemnity herein. Architect's obligation to defend or to indemnify shall not be restricted to insurance proceeds but shall be limited to the proportional percentage of fault of the Architect.

Subject to Civil Code section 3320, District may withhold any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Architect from amounts owing to Architect as limited to the proportional percentage of fault of the Architect.

## ARTICLE VII. STANDARDIZED MANUFACTURED ITEMS

The Architect shall consult and cooperate with the District in the use and selection of manufactured items to be used in the Project. Manufactured items, including, but not limited to, paint, finish hardware, plumbing fixtures and fittings, mechanical equipment, electrical fixtures and equipment, roofing materials, and floor covering shall be standardized to the District's criteria so long as those criteria do not substantially interfere with building design. District shall be required to provide the Architect with the District standardized criteria and the Architect shall be able to reasonably rely upon the information provided by the District.

## ARTICLE VIII. OWNERSHIP OF DOCUMENTS PREPARED FOR THE PROJECT

### *A. Ownership.*

Pursuant to Section 17316 of the Education Code, all plans, specifications, cost estimates, original or reproducible transparencies of working drawings and master plans, preliminary sketches, architectural presentation drawings, structural computations, all estimates and all other documents prepared by the Architect pursuant to this Agreement are and shall remain the property of the District for the purposes of repair, maintenance, renovation, modernization or other purposes as they relate to the PROJECT .

### *B. Right to Reuse.*

The District may utilize the drawings, specifications, estimates, and other Contract Documents prepared pursuant to this Agreement by the Architect as District sees fit with no additional compensation due Architect. The Architect hereby grants to the District the unconditional right to reuse all or any part of the Contract Documents or other documents or

materials prepared pursuant to this Agreement, for any purpose at District's sole discretion, with no additional compensation to Architect. Unless expressly agreed in writing, the District shall not be bound by this Agreement or any other agreement to employ the services of the Architect in the event such documents or materials are reused. Any reuse by District of such documents or materials in relation to any project other than this Project without employing the services of the Architect shall be at District's own risk, and the District shall indemnify the Architect in the event of any claim or action against the Architect related to such reuse. The District shall remove the Architect's seal, and any reference of any kind to the Architect's firm name, address, etc., from any documents or materials that it reuses. After completion of the Project, the Architect shall not permit reproductions to be made of any District-owned documents without the written approval of the District.

### *C. License.*

This Agreement creates a non-exclusive and perpetual license for District to copy, use, modify or reuse any and all Contract Documents prepared for the District by the Architect, and any intellectual property rights therein. Architect shall require any and all of its subcontractors and consultants to agree in writing that District is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

### *D. Right to License.*

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

E. Digital Media Files. The Architect shall provide its deliverables required herein using a traditional delivery system of two-dimensional (2D) documents on standard architectural size paper which when completed will represent the governing documentation for the Project. The Architect utilizes certain digital or electronic files that depict two- or three-dimensional models and other information relating to the Project for assisting with the preparation of the deliverables ("Digital Media Files"). If District requests the Digital Media Files for its use, such use shall be subject to the Architect's Digital Media File Disclaimer and Release. If District provides the Digital Media Files to any other party (including its Contractor), District agrees that it shall require such part to sign the Digital Media File Disclaimer and Release.

## **ARTICLE IX. ACCOUNTING RECORDS OF THE ARCHITECT**

Records of the Architect's reimbursable expenses, direct personnel costs incurred in connection with Additional Services, and records of accounts between the District and contractor

shall be kept on a generally recognized accounting basis and shall be available to the District or his authorized representative at all reasonable times.

## ARTICLE X. INSURANCE.

### *A. Insurance.*

The Architect, at its own cost, shall obtain and maintain during the term of this Agreement all insurance policies required pursuant to this Article. The District shall be named as an additional insured with respect to all such insurance except professional liability and Workers' Compensation Insurance. The insurance policies required pursuant to this Agreement shall be issued by one or more insurers licensed to do business in this State and having an A.M. Best Company rating of not less than an "A-9." Prior to commencing the Architectural Services, the Architect shall provide to the District with duly authorized and executed certificates of insurance evidencing that such insurance policies are in effect ("Certificates of Insurance"). The Certificates of Insurance name the District as an additional insured as required above and shall expressly require that the insurer notify the District not less than thirty (30) days prior to any cancellation or expiration without renewal of any such insurance policy, except for ten (10) days' notice for non-payment of premium. Language therein to the effect that the insurer shall "endeavor" to provide such notices shall not be acceptable. The District shall review the Certificates of Insurance required pursuant to this Paragraph to determine whether they comply with the requirements of this Agreement. The Architect shall provide updated Certificates of Insurance to the District for each renewal of an insurance policy required pursuant to this Article. Any failure by Architect to comply with the provisions of this Article shall be deemed a material breach of this Agreement.

1. Workers Compensation Insurance. The Architect shall obtain and maintain Workers' Compensation Insurance as required by the Labor Code and Employer's Liability Insurance with coverage in an amount not less than five hundred thousand dollars (\$500,000).

2. Valuable Document Insurance. The Architect shall obtain and maintain adequate insurance on all drawings and specifications as may be required to protect the District in the amount of its full equity in those drawings and specifications.

3. Professional Liability Insurance. The Architect shall obtain, and shall maintain until at least five (5) years after filing of the Notice of Completion, Professional Liability Insurance with coverage in an amount of not less than one million dollars (\$1,000,000.00).

4. General Liability Insurance. The Architect shall obtain and maintain during the term of the Agreement a policy of commercial general liability insurance, written on an "occurrence" basis, providing coverage with a combined single limit of not less than two million dollars (\$2,000,000) for all activities conducted by Architect pursuant to this Agreement ("Liability Policy"). The Liability Policy shall contain a cross-liability endorsement and a waiver of the insurer's rights of subrogation. The Liability Policy shall include limited coverage for the contractual liability assumed by the Architect pursuant to this Agreement. The Liability Policy

shall be primary with respect to any insurance or self-insurance programs covering the District, its Board members, officers, employees, agents and consultants.

5. Automobile Liability Insurance. The Architect shall obtain and maintain during the term of this Agreement policies of business automobile liability insurance with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.

#### ***B. Consultant Insurance.***

All architects, engineers, experts and other consultants employed by or under contract to the Architect in connection with this Agreement shall be required to independently comply with the insurance standards and requirements set forth in Paragraph A of this Article, unless other standards or requirements are approved by the District in writing. Unless such other insurance standards or requirements are approved in writing by the District, the Architect's agreements with its consultants shall contain provisions making them subject to the requirements set forth in Paragraph A of this Article.

### **ARTICLE XI. ASBESTOS CERTIFICATION.**

The Architect shall verify to the best of its knowledge, information and belief that the specifications for the Work shall provide that no asbestos, asbestos-containing materials, or other materials deemed to be hazardous by the State or federal government may be installed or incorporated into the Work or the Project, or used in conjunction with the Project. The Architect shall represent to District, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the State or federal government was specified as a building material in any construction document that the Architect prepared or approved for the Project. The Architect shall require all consultants who prepare any other documents for the Project to submit the same written representation. The Architect shall require in the Contract Documents that the contractor(s) provide the District with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the State or federal government. These certifications shall be part of the final Project submittal.

### **ARTICLE XII. MISCELLANEOUS PROVISIONS**

#### ***A. Election to Arbitrate.***

In the event of any dispute between the parties related to the interpretation or enforcement of this Agreement, the parties may agree to submit such dispute to arbitration, either binding or non-binding, for resolution by a neutral third-party arbitrator. In the event the parties elect to arbitrate any such dispute, the parties shall attempt to agree upon a retired judge of the Superior

Court in and for the County of Los Angeles. If the parties are unable to agree on an arbitrator within thirty (30) days of the receipt of a request for arbitration, they shall request that the presiding judge of the Superior Court designate an arbitrator. Any agreement to arbitrate shall specify the parties' agreement as to the procedures and rules to be followed in conducting the arbitration, which, at a minimum, shall specify that the arbitrator must adhere to and apply all substantive statutory and case law that is applicable to the dispute. The District and the Architect shall each pay one-half (1/2) the cost of the arbitration and each shall be responsible for its own attorneys' fees and costs related thereto. If the parties have elected binding arbitration and either party petitions to confirm, correct, or vacate the award as provided by Chapter 4 of Title 9 of the Code of Civil Procedure (commencing with Section 1285), the prevailing party shall be entitled as part of its costs to a reasonable attorney's fee to be fixed by the court. Disputes arising from this Agreement shall be submitted to good faith mediation as a condition precedent to litigation or, if mutually agreed by the parties as described above, arbitration. The type and process of mediation to be utilized shall be subject to the mutual agreement between the parties.

#### ***B. Successors and Assigns.***

This Agreement is binding upon and inures to the benefit of the successors, executors, administrators, and assigns of each party to this Agreement, provided, however, that the Architect shall not assign or transfer by operation of law or otherwise any or all rights, burdens, duties, or obligations without prior written consent of the District. Any attempted assignment by the Architect without District consent shall be invalid.

#### ***C. Governing Law.***

This Agreement shall be governed by the laws of the State of California. Arbitration, action or other proceeding arising from or related in any way to this Agreement shall be conducted only in the County of Los Angeles.

#### ***D. Incorporation of Recitals and Exhibits.***

All recitals set forth herein, and all exhibits attached hereto or referenced herein, are hereby incorporated as effective and operative parts of this Agreement.

#### ***E. Architect Not Officer or Employee of District.***

The District hereby retains Architect on an independent contractor basis. The Architect shall not be deemed or construed to be an employee of the District for any purpose whatsoever, including, but not limited to, for income tax purposes, and the Architect is not entitled to the rights or benefits afforded to District's employees. Except as agreed by the parties and set forth in this Agreement, the Architect shall have the sole discretion to determine the manner in which it will perform the Architectural Services. Any additional personnel performing the Architectural Services on behalf of Architect also shall not be deemed or construed to be employees of the District, and shall at all times be under Architect's exclusive direction and control. The Architect

shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Architectural Services and as required by law. The Architect shall be responsible for all reports and obligations with respect to such personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, disability insurance, and Workers' Compensation Insurance.

***F. No Third-Party Rights.***

The parties have entered into this Agreement solely for their own benefit, and no third party shall be entitled, directly or indirectly, to base any claim or to have any right arising from, or related to, this Agreement.

***G. Time of Essence.***

Time is of the essence with respect to this Agreement and each provision herein, provided that Architect shall not be responsible for delays caused by the District or third parties, such as the construction manager, if any, for whom Architect is not legally liable for any other circumstances beyond its reasonable control.

***H. Captions and References.***

The captions or headings set forth in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent or any Article, section, subsection, paragraph, or other provision of this Agreement. Any reference in this Agreement to an Article, section, subsection or paragraph, unless specified otherwise, shall be a reference to an Article, section, subsection or paragraph of this Agreement.

***I. Drafting of Agreement.***

In interpreting this Agreement, it shall be deemed to have been prepared by the parties jointly and no ambiguity shall be resolved against either party on the premise that it or its attorneys was responsible for drafting this Agreement or any provision hereof.

***J. Entire Agreement.***

This Agreement sets forth the entire agreement and understanding concerning the provision by the Architect to the District of Architectural Services for the Project, and this Agreement supersedes and replaces all prior negotiations and proposed agreements, written or oral. Each party acknowledges that the other party and the other party's agents, attorneys and other representatives have not made any promise, representation, or warranty whatsoever, express or implied, other than those contained herein to induce the execution of this Agreement and acknowledges that this Agreement has not been executed in reliance upon any promise, representation, or warranty not contained herein.

***K. Severability.***

If any Article, section, subsection, paragraph, sentence, clause or phrase contained in this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by a court of competent jurisdiction to be illegal, null or void or against public policy, the remaining Articles, sections, subsections, paragraphs, sentences, clauses and phrases contained in this Agreement shall not be affected thereby and shall, to the extent possible in light of the illegal, null or void language, continue in full force and effect.

***L. Waiver.***

The failure of a party at any time to require a performance by any other party of any provision hereof shall not affect in any way the full right to require such performance at any time thereafter. The waiver of any breach of any provision of this Agreement by a party shall not be deemed to be a waiver of any preceding or subsequent breach of the same or any other provision of this Agreement.

***M. Conflicting Provisions.***

In the event that provisions of any exhibit incorporated into this Agreement conflict in any way with the provisions set forth in this Agreement, the provisions herein shall control over the exhibits with respect to the actions and obligations of the parties and the interpretation of the parties' understanding concerning the performance of the Architectural Services.

***N. Amendment.***

This Agreement may be amended or modified only by means of a writing duly approved and executed by the parties.

***O. Prevailing Wages.***

The Architect acknowledges the requirements of Labor Code Section 1770 *et seq.*, which would require the payment of prevailing wages if the Architectural Services or any portions thereof are determined to be a "public work" as that term is defined in the Labor Code. The Architect shall defend, indemnify, and hold harmless the District, its Board members, officers, employees, agents and consultants from and against any claim or liability, including, without limitation, attorneys' fees and costs, arising from or related to any failure or alleged failure of Architect to comply with Labor Code Section 1770 *et seq.*

***P. Equal Opportunity Employment.***

The Architect represents and warrants that it is an equal opportunity employer and it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be



limited to, all activities related to initial employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

***Q. Counterparts.***

This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

***R. Due Authority of Signators.***

Each individual signing this Agreement represents and warrants that he or she has been authorized by appropriate action of the party that he or she represents to enter into this Agreement on behalf of that party.

IN WITNESS WHEREOF, the District and the Architect have executed this agreement the day and year first above written.

*La Cañada Unified School District*

*Architect*

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

Mark Evans, Associate  
Superintendent of Business  
and Administrative Services

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

## EXHIBIT A

(Architect's Proposal Dated May 29,2018

## SCOPE OF SERVICES AND FEE PROPOSAL

LA CANADA UNIFIED SCHOOL DISTRICT  
PALM CREST ES  
REVISED MAY 29, 2018



### PROJECT DESCRIPTION/ ASSUMPTIONS

LPA, INC. is pleased to submit the following Scope of Services and Fee Proposal to assist the La Canada Unified School District (DISTRICT) with architectural and engineering design services for **Palm Crest Elementary School Modernization/ New Construction Project**. The project consists of comprehensive services including field investigation, programming, schematic design, design development, construction documents, bidding, and construction administration. The project scopes consists of Modernization and New Construction projects as defined in the Request for Proposals RFP# LCF 17/18-03A dated April 25, 2018.

We understand the estimated hard cost construction budget (un-escalated) for the project listed above are as follows:

New Two-Story Classroom Addition  
Estimated Construction Budget: \$13,125,000

Site Utilities Improvement  
Estimated Construction Budget: \$835,000

Various Safety & Security Site Improvement  
Estimated Construction Budget: \$435,000

Modernization of Buildings A, B, C, D, E, & Library  
Estimated Construction Budget: \$2,600,000

New Parking Lot & Drop-off Improvement  
Estimated Construction Budget: \$1,275,000

Technology Upgrade  
Estimated Construction Budget: \$371,000

Interim Housing  
Estimated Construction Budget: \$250,000

**Grand Total**  
**2018 Hard Construction Budget: \$18,891,000.**

The above referenced construction budgets are as defined in the RFQ. We believe there may need to be construction escalation added to these numbers. Per the Agreement, our final fees are based on a percent of construction and will be adjusted at the appropriate time, once scope, schedule and cost are finalized, no sooner than at the completion of the Design Development phase.

The scope for Palm Crest ES is roughly based on the prioritized scope defined in the Facilities Master Plan (FMP), however, the ultimate approved solution may vary from the conceptual level solution depicted in the FMP.

### Project Drawing Packages

The project scopes will be “packaged” into the following drawings sets and are assumed to be submitted as individual

DSA Applications, requiring separate bidding/ construction activities.

#### Drawing Package 1:

New Two-Story Classroom Addition  
Estimated Construction Budget: \$13,125,000

Technology Upgrade (50% of this category assigned to this Package)  
Estimated Construction Budget: \$185,500.

Various Safety & Security Site Improvement (50% of this category assigned to this Package)  
Estimated Construction Budget: \$217,500

**Total estimated construction budget: for drawing Package 1: \$13,528,000**

#### Drawing Package 2:

Modernization of Buildings A, B, C, D, E, & Library  
Estimated Construction Budget: \$2,600,000

Technology Upgrade (50% of this category assigned to this Package)  
Estimated Construction Budget: \$185,500

Various Safety & Security Site Improvement (50% of this category assigned to this Package)  
Estimated Construction Budget: \$217,500

**Total estimated construction budget: for drawing Package 2: \$3,003,000**

#### Drawing Package 3:

Site Utilities Improvement

**Total Estimated Construction Budget for drawing Package 3: \$835,000**

#### Drawing Package 4:

Interim Housing (Relocation of existing Modular Classroom Buildings)

**Total Estimated Construction Budget for drawing Package 4: \$250,000**

#### Drawing Package 5:

New Parking Lot & Drop-off Improvement

**Total estimated Construction Budget for Drawing Package 5: \$1,275,000**

### 0 – GENERAL

During the project, certain activities occur in each phase. These activities, described below, are non-sequential and may not be applicable to all phases of the project. These activities include:

- 0.01 Project Administration services consisting of the following administrative functions:
  - .01 Project-related research.
  - .02 Meetings.

## SCOPE OF SERVICES AND FEE PROPOSAL

LA CANADA UNIFIED SCHOOL DISTRICT  
PALM CREST ES  
REVISED MAY 29, 2018



- .03 Communications.
- .04 Travel time.
- .05 Direction of the work of in-house personnel.

### 0.02 Inter Disciplinary Coordination/Document Checking services consisting of the following activities:

- .01 Coordination between LPA's work and the work of engineering and other involved disciplines for the Project.
- .02 Review and checking of documents prepared for the Project.

### 0.03 Coordination services for Owner-supplied Data:

- .01 Comprehensive Survey or scope areas including ground level survey data as necessary to determine accessibility requirements.
- .02 Geotechnical Investigations/ Reports as required for new construction.
- .03 Review and coordination of data furnished for the Project as a responsibility of DISTRICT inclusive of record drawings, California Environmental Quality Act (CEQA) requirements, etc. as provided to LPA by the District.
- .04 Review of existing conditions including field verification of Owner-supplied data.

The following project phases are not applicable to all Drawing Packages as referenced above. Drawing Packages 3 and 4 will have an abbreviated schedule and corresponding phases.

## 1 – PROGRAMMING/ SCHEMATIC DESIGN

During the Programming/ Schematic Design Phase, LPA, INC. will provide the following services to determine the scope for the construction of the project:

- 1.01 Architectural, Structural, Mechanical, Plumbing, Electrical, Civil, and Landscape Design / Documentation which may include the following:
  - .01 Programming/ Site Observation
  - .02 Conceptual site and building plans.
  - .03 Preliminary elevations.
  - .04 Preliminary selection of building systems and materials.
  - .05 Evaluation of existing site utilities, and preliminary identification of site utility connections / scope.
- 1.02 Statement of Probable Construction Cost services during the Schematic Design Phase consisting of development of a probable construction cost range for the Project based on the most recent schematic design studies, current and historic area, volume, or other unit costs, expected Project delivery process, and appropriate contingencies.

## 2 – DESIGN DEVELOPMENT

The Design Development Phase will commence upon approval of the schematic design documents and cost estimate. During the Design Development Phase, LPA, Inc. will provide the following services to determine the scope for the construction of the project:

- 2.01 Architectural, Structural, Mechanical, Electrical, Civil, Landscape and Irrigation Design / Documentation which may include the following:
  - .01 Developed site and building plans.
  - .02 Building elevations.
  - .03 Development of building systems and materials.
  - .04 Evaluation of existing site utilities, and identification of site utility connections / scope.
- 2.02 Project Development Scheduling services during the Design Development Phase consisting of reviewing and updating previously established Schematic Design Project Schedules for decision-making, design, documentation, contracting and construction.
- 2.03 Statement of Probable Construction Cost services during Design Development Phase consisting of development of a probable construction cost range for the Project based on the most recent schematic design studies, current and historic area, volume, or other unit costs, expected Project delivery process, and appropriate contingencies.

## 3 – CONSTRUCTION DOCUMENTS

Upon DISTRICT approval of the Design Development documents, scope of work, and budget, LPA, INC. will provide the following Construction Documents services:

- 3.01 Architectural, Structural, Mechanical, Electrical, Civil, Landscape and Irrigation Design / Documentation consisting of preparation of Drawings setting forth in detail the construction requirements for the Project. Civil documentation will include an Erosion Control Plan and wet utility connections as applicable.
- 3.02 Materials Research/Specifications during the Construction Documents Phase consisting of activities of in-house architectural personnel in:
  - .01 Development and preparation of architectural Specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.

## SCOPE OF SERVICES AND FEE PROPOSAL

LA CANADA UNIFIED SCHOOL DISTRICT  
PALM CREST ES  
REVISED MAY 29, 2018



- .02 Coordination of the development of Specifications by other disciplines.
- .03 Compilation of Project Manual including Conditions of the Contract and Bidding Documents provided to LPA by the DISTRICT and Specifications.

3.03 Statement of Probable Construction Cost services consisting of updating the Design Development phase statement of probable construction cost. Estimates will be provided at 100% CD milestone.

### 4 – DSA/ AGENCY PROCESSING

DSA Application Submittal and Processing services consisting of the preparation of the DSA application; coordination with the District regarding Owner-supplied data / plan check fees; processing of plans through the required plan review process; coordination with the DSA regarding final approved plans; and, transmitting an electronic copy of the approved plans to the District.

LPA will assist the District with the processing of plans through the CDE and OPSC. LPA will prepare the application and documents required for the submittal of plans to the CDE including drawings and Education Specifications. LPA will assist the District and the District's funding consultant with the necessary drawings and SDWAG Estimates for the funding application for the OPSC.

### 5 – BIDDING SUPPORT SERVICES

In the Bidding Phase, LPA, INC., following the District's approval of the Construction Documents and of the most recent Statement of Probable Construction Cost, shall provide the services designated necessary for LPA to assist the District in obtaining bids. Delivery method for this project has not yet been determined. Regardless of the delivery method, LPA provide the following services:

- 5.01 Bidding Materials services consisting of organizing Bidding Documents for reproduction and distribution by District (or District's vendor).
- 5.02 Addenda services consisting of preparation and distribution of Addenda as may be required during bidding or negotiation and including supplementary Drawings, Specifications, instructions and notice(s) of changes in the bidding schedule and procedure.
- 5.03 Bidding Support services consisting of:
  - .01 Participation in pre-bid conference(s) (as required in the Architect Professional Services Manual).

- .02 Responses to questions from Bidders or proposers and clarifications or interpretations of the Bidding Documents.
- .03 Attendance at bid opening(s) (as required in the Architect Professional Services Manual).

### 6 – CONSTRUCTION ADMINISTRATION SERVICES

In the Construction Contract Administration Phase, LPA shall provide services designated necessary for the administration of the construction contract as set forth in the General Conditions of the Contract for Construction. LPA will provide services necessary to reach project Certification by DSA.

### 7 – EXCLUSIONS / QUALIFICATIONS

The services and items described below are specifically not included in the Architect's Fixed Fee.

- 7.01 Exclusions include the following:
  - Topographic Survey/ Boundary Mapping
  - Geotechnical Investigations
  - Hazardous Materials Assessments
  - Furniture/ Fixture/ Equipment (FF&E) Procurement
  - Off-site design/ engineering as may be required by the City of La Canada; (LPA will coordinate with the City relative to the District owned property (Old District Office) and will provide required drawings and coordination for new utility connections.
  - Specialty security design services

### 8 – SCHEDULE

LPA, will develop a schedule in collaboration with the District and Linik Corporation to meet the needs of the District Bond Program.

### 9 – CONSULTANTS

We propose to utilize in-house staff for architectural, landscape, civil, structural, mechanical, and Electrical engineering services. Outside consultants are as follows:

- .01 Fire Protection design
- .02 Cost Estimating

## SCOPE OF SERVICES AND FEE PROPOSAL

LA CANADA UNIFIED SCHOOL DISTRICT  
PALM CREST ES  
REVISED MAY 29, 2018



### 10 – COMPENSATION

LPA, INC. proposes to provide the services described herein for a Lump Sum Fixed Fee of Fee of One Million, Six Hundred and Thirty One Thousand, and Seventy Dollars (\$1,631,070.00).

LPA utilized the State of California OPSC sliding scale for the basis of our Basic Services. Refer to Exhibit A attached for a complete breakdown of the Modernization and New Construction sliding scale calculations.

The schedule of fees for **Drawing Package 1 (New Two Story Classroom Building)** by phase are as follows:

Phase	Fee (%)	Fee Amount
<i>Schematic Design</i>	12%	\$115,495
<i>Design Development</i>	16%	\$153,993
<i>Construction Docs</i>	38%	\$365,733
<i>DSA / Agency Approval</i>	5%	\$48,123
<i>Bidding</i>	3%	\$28,874
<i>Construction Admin</i>	24%	\$230,990
<i>Project Close-out</i>	2%	\$19,249
<b>Grand Total</b>	<b>100%</b>	<b>\$962,456</b>

The schedule of fees for **Drawing Package 2 (Modernization)** by phase are as follows:

Phase	Fee (%)	Fee Amount
<i>Schematic Design</i>	12%	\$42,248
<i>Design Development</i>	16%	\$56,330
<i>Construction Docs</i>	38%	\$133,785
<i>DSA / Agency Approval</i>	5%	\$17,603
<i>Bidding</i>	3%	\$10,562
<i>Construction Admin</i>	24%	\$84,496
<i>Project Close-out</i>	2%	\$7,041
<b>Grand Total</b>	<b>100%</b>	<b>\$352,065</b>

The schedule of fees for **Drawing Package 3 (Site Utilities)** by phase are as follows:

Phase	Fee (%)	Fee Amount
<i>Schematic Design</i>	12%	\$12,603
<i>Construction Docs</i>	54%	\$56,714
<i>DSA / Agency Approval</i>	5%	\$5,251
<i>Bidding</i>	3%	\$3,151
<i>Construction Admin</i>	24%	\$25,206
<i>Project Close-out</i>	2%	\$2,101
<b>Grand Total</b>	<b>100%</b>	<b>\$105,026</b>

Our fees for **Drawing Package 4 (Interim Housing)** are based on a lump sum fixed fee of \$46,935. Based on the Master Plan, our assumption is to relocate or replace up to 8 modular classroom buildings and a toilet room portable.

The schedule of fees for **Drawing Package 4** by phase are as follows:

Phase	Fee (%)	Fee Amount
<i>Schematic Design</i>	12%	\$ 5,632
<i>Construction Docs</i>	54%	\$25,345
<i>DSA / Agency Approval</i>	5%	\$ 2,347
<i>Bidding</i>	3%	\$ 1,408
<i>Construction Admin</i>	24%	\$11,264
<i>Project Close-out</i>	2%	\$ 939
<b>Grand Total</b>	<b>100%</b>	<b>\$46,935</b>

The schedule of fees for **Drawing Package 5** by phase are as follows:

Phase	Fee (%)	Fee Amount
<i>Schematic Design</i>	12%	\$19,751
<i>Construction Docs</i>	54%	\$88,877
<i>DSA / Agency Approval</i>	5%	\$8,229
<i>Bidding</i>	3%	\$4,938
<i>Construction Admin</i>	24%	\$39,501
<i>Project Close-out</i>	2%	\$3,292
<b>Grand Total</b>	<b>100%</b>	<b>\$164,588</b>

## SCOPE OF SERVICES AND FEE PROPOSAL

LA CANADA UNIFIED SCHOOL DISTRICT  
PALM CREST ES  
REVISED MAY 29, 2018



LPA Project related expenses are included in the fees above. Any additional reimbursables will be as specifically requested by the District prior to any LPA incurred expense.

### 11 – CONTRACT

We are reviewing the Exhibit D Contract and will forward our comments under a separate cover. LPA has reviewed the District's proposed contract Indemnification language and find it generally acceptable with some minor clarifications to conform with LPA's professional liability policies and Section 2782.8 of the California Civil Code. However, we do reserve the right to negotiate the final terms and conditions subsequent to understanding the project-specific scope. In terms of indemnification, LPA will agree that the Architect's obligation to indemnify for acts of professional negligence does not include the obligation to defend actions or proceedings brought against the District, but rather to reimburse the District for attorney's fees and costs incurred by the District in defending such actions or proceedings brought against the District to the extent caused by the Architect; but not for any loss, injury, death or damage caused by the negligence or willful misconduct of District or of other third parties not under the supervision or control of the Architect.

**EXHIBIT B**  
Hourly Rates Schedule



# Exhibit B

## HOURLY RATES\*

Firm Name	LPA, Inc.
Firm's office location for this project (city, state)	Irvine, California

### BILLING RATES

Job Title	Hourly	Min. Daily (if applicable)	Max. Daily (if applicable)
Principal	\$ 250.00		
Discipline Director	\$ 215.00		
Project Director	\$ 195.00		
Project Leader	\$ 175.00		
Design Coordinator II	\$ 150.00		
Design Coordinator I	\$125.00		
Designer III	\$ 115.00		
Designer II	\$ 100.00		
Designer I	\$ 90.00		
Intern	\$ 70.00		

These rates become effective 7/1/18

-----  
**SIGNATURE**

\*Architect will **propose** all-inclusive hourly fees for all services performed on a Time and Material Basis. Provide separate sheet for Subconsultants.