

**AGREEMENT FOR ARCHITECTURAL SERVICES
BY AND BETWEEN
SAN MATEO-FOSTER CITY SCHOOL DISTRICT AND
HMC GROUP FOR
NEW SCHOOL AT FOSTER CITY PROJECT**

TABLE OF CONTENTS

Article 1	Definitions.....	1
Article 2	Scope, Responsibilities, and Services of Architect	3
Article 3	Architect Staff	5
Article 4	Schedule of Services	7
Article 5	Construction Cost Budget.....	7
Article 6	Fee and Method of Payment	7
Article 7	Payment for Extra Services or Changes.....	8
Article 8	Ownership of Data	8
Article 9	Termination of Agreement.....	9
Article 10	Architect Indemnity	10
Article 11	Mandatory Mediation for Claims	11
Article 12	Fingerprinting.....	12
Article 13	Responsibilities of the District.....	12
Article 14	Liability of District	12
Article 15	Nondiscrimination.....	13
Article 16	Insurance	13
Article 17	Covenant Against Contingent Fees	13
Article 18	Entire Agreement/Modification	13
Article 19	Non-Assignment of Agreement	13
Article 20	Law, Venue.....	14
Article 21	Alternative Dispute Resolution	14
Article 21	Severability	15
Article 22	Employment Status	15
Article 23	Warranty and Certification of Architect	16
Article 24	Cost Disclosure - Documents and Written Reports	16
Article 25	Notices and Communications	16
Article 26	Disabled Veteran Business Enterprise Participation	16
Article 27	District's Right to Audit	17
Article 29	Other Provisions.....	17

ATTACHMENT "1"

EXHIBITS "A" – "E"

AGREEMENT FOR ARCHITECTURAL SERVICES

This Agreement for Architectural Services is made as of the _____ day of _____ 2019, between the **San Mateo-Foster City School District**, a California public school district, ("**District**") and **HMC Group**, a California corporation ("**Architect**") (individually a "**Party**" and collectively the "**Parties**"), for the following project ("**Project**"):

New School at Foster City Project, as further described in the Project Scope attached hereto as **Exhibit "A"**.

The Project may include multiple components. Any one of the components or combination thereof may be changed, including terminated, in the same manner as the Project, as indicated herein, without changing in any way the remaining component(s). The provisions of this Agreement shall apply to each component without regard to the status of the remaining component(s). Architect shall invoice for each component separately and District shall compensate Architect for each component separately on a proportionate basis based on the level and scope of work completed for each component.

RECITALS

WHEREAS, Westlake Urban, Inc. and the District were negotiating the purchase of a new, developer-built school and the underlying property, located at Shell Boulevard, Foster City, California, which was formerly referred to by Westlake Urban, Inc. as "Foster City School #4;"

WHEREAS, Westlake Urban, Inc. and HMC Group entered into an agreement for architectural services for Foster City School #4, dated August 31, 2017 (hereafter referred to as "WUI-HMC Agreement");

WHEREAS, HMC Group prepared plans, drawings and specifications for Foster City School #4 under the WUI-HMC Agreement that the Division of the State Architect has approved ("Construction Documents");

WHEREAS, recently, Westlake Urban, Inc. offered to sell the property located at Shell Boulevard, Foster City, California without any structures;

WHEREAS, the Parties agree that the District is a successor-in-interest to the WUI-HMC Agreement for the use of the Construction Documents prepared under the WUI-HMC Agreement because those Construction Documents were part of the purchase of the property from Westlake Urban, Inc.;

WHEREAS, the Parties intend that liability to the extent arising out of any said Construction Documents will be covered by Architect's Professional Errors and Omission Liability insurance as set forth in this Agreement; and

WHEREAS, as provided in Exhibit "A," the District intends for Architect to complete the contract administration of the demolition and site work that was included in the WUI-HMC Agreement.

WITNESSETH, that for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

AGREEMENT

Article 1. Definitions

- 1.1. In addition to the definitions above, the following definitions for words and phrases shall apply when used in this Agreement, including all Exhibits:

- 1.1.1. **Agreement**: The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
- 1.1.2. **Architect**: The architect listed in the first paragraph of this Agreement, including all Consultants to the Architect, although there is no contractual relationship between the District and any Consultants employed by the Architect under terms of this Agreement.
- 1.1.3. **As-Built Drawings ("As-Built")**: Any document prepared and submitted by District's contractor(s) that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by change orders.
- 1.1.4. **Bid Set**: The plans, drawings, and specifications at the end of the Construction Documents Phase that DSA has approved and that the District can use to go out to bid for construction of the Project.
- 1.1.5. **Conforming Set**: The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase. The Architect shall ensure that DSA has approved all revisions to the Bid Set that are incorporated into the Conforming Set and for which DSA approval is required.
- 1.1.6. **Construction Cost Budget**: The acceptable estimate of Construction Costs by the District based upon the Construction Cost Estimate submitted by the Architect's estimator Counterpoint Construction Services, Inc. dated April 22, 2019, attached hereto as **Attachment "1,"** plus ten percent (10%). Should the bids come in less than ten percent (10%) of the Construction Cost Budget, District decide to reject all bids on May 10, 2019 and subsequently re-bid the Project, a second Construction Cost Estimate will be prepared prior to the re-bid ("Construction Cost Estimate #2"). The Construction Cost Budget will then be based on the Construction Cost Estimate #2 plus ten percent (10%).
- 1.1.7. **Construction Cost Estimate**: The total estimated cost to District of all elements of the Project designed or specified by the Architect, as provided by Counterpoint Construction Services, Inc.
- 1.1.8. **Construction Costs**: The total cost to the District of all work designed or specified by the Architect, which includes the total award from the initial construction Contract plus the work covered by the approved additive change orders and/or any alternates approved by the District. Costs excluded from the Construction Cost include, but are not limited to, payments to the Architect or other District consultants, costs of inspections, surveys, tests, and furniture, fixtures, and equipment not included in the Project.
- 1.1.9. **Consultant(s)**: Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Architect. Nothing in this Agreement shall create any contractual relationship between the District and any Consultants employed by the Architect under terms of this Agreement.
- 1.1.10. **Day(s)**: Unless otherwise designated, "day(s)" means calendar day(s).
- 1.1.11. **District**: The San Mateo-Foster City School District.
- 1.1.12. **DSA**: The Division of the State Architect.
- 1.1.13. **Record Drawings**: A final set of drawings prepared by the Architect based upon marked-up prints, drawings, and other data furnished to Architect by Contractor that incorporates all changes from all As-Built, sketches, details, and clarifications.

- 1.1.14. **Service(s)**: All labor, materials, supervision, services, tasks, and work that the Architect is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Project.
- 1.1.15. **Visually Verify**: To verify to the fullest extent possible by physical observation and reasonable investigation and without any destructive action.

Article 2. Scope, Responsibilities, and Services of Architect

- 2.1. Architect shall render the Services as described in **Exhibit "A,"** commencing with receipt of a written Notice to Proceed signed by the District representative. Architect's Services will be completed in accordance with the schedule attached as **Exhibit "C."**
- 2.2. Architect's Services hereunder shall be provided in conjunction with contracts between the District and other Project participants including the Contractor and the District's construction manager, if one is retained by the District for the Project.
- 2.3. Architect and its Consultants shall provide Services for a Project: (i) using its professional skill and judgment; (ii) acting with due care and in accordance with respective applicable standards of care under California law for those providing similar services for projects of the size, scope and complexity of the Project for California school districts in or around the same geographic area of the District; (iii) in compliance with the terms of this Agreement; and (iv) in accordance with said standards regarding application and interpretation of applicable law, code, rule or regulation at the time the Services are rendered ("Standard of Care").
- 2.4. Architect recognizes that the District may obtain the services of an independent consultant providing construction management services ("construction manager") for this Project. The construction manager, if any, would be authorized to give Architect Services authorizations, and issue written approvals and Notices to Proceed on behalf of District. The District reserves the right to designate a different construction manager at any time. Any task, including, but not limited to, reviews or approvals that the District may perform pursuant to this Agreement may be performed by the construction manager, unless that task indicates it shall be performed by the governing board of the District.
- 2.5. Architect shall provide Services that comply with professional architectural standards and applicable requirements of federal, state, and local law including, without limitation:
- 2.5.1. Uniform Building Code, latest addition, and the California Code of Regulations, Title 24, including amendments.
 - 2.5.2. Regulations of the State Fire Marshall (title 19, California Code of Regulations) and Pertinent Local Fire Safety Codes.
 - 2.5.3. Americans with Disabilities Act.
 - 2.5.4. Education Code of the State of California.
 - 2.5.5. Government Code of the State of California.
 - 2.5.6. Labor Code of the State of California, division 2, part 7, Public Works and Public Agencies.
 - 2.5.7. Public Contract Code of the State of California.

2.5.8. U. S. Copyright Act.

- 2.6. **Storm Water.** Architect, through its Consultant(s), shall be the District's Qualified Storm Water Developer (QSD) and shall prepare all documents necessary for the District to be in compliance with the current Construction General Permit (CGP) of the State Water Resources Control Board.
- 2.7. Architect shall contract for or employ at Architect's expense, Consultant(s) to the extent deemed necessary for completion of its Services on the Project including, but not limited to, architects, mechanical, electrical, structural, fire protection, civil engineers, landscape architects, food service, low voltage, data, and telephone Consultants, and interior designers, and cost estimation providers, licensed as required by applicable law. The names of Consultant(s) shall be submitted to the District for approval prior to commencement of Services, as indicated below. The District reserves the right to reject the Architect's use of any particular Consultant. Nothing in the foregoing procedure shall create any contractual relationship between the District and any Consultant(s) employed by the Architect under terms of the Agreement.
- 2.8. Architect shall coordinate with District personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project. This shall include, without limitation, coordination with the persons responsible for operation of the District's Labor Compliance Program, if any. If the Architect employs Consultant(s), the Architect shall ensure that its contract(s) with its Consultant(s) include language notifying the Consultant(s) of the District's Labor Compliance Program, if any.
- 2.9. Architect shall identify the regulatory agencies that have jurisdiction over essential building and design elements and coordinate with and implement the requirements of the regulatory agencies, including, without limitation, California Department of Education (CDE), the Office of Public School Construction (OPSC), the Department of General Services (DGS), DSA Fire/Life Safety, DSA Access Compliance Section, DSA Structural Safety, State Fire Marshal, County and City Health Inspectors and any regulatory office or agency that has authority for review and supervision of school district construction projects.
- 2.9.1. **Architect acknowledges the provisions in Exhibit A during the Construction Administration Phase entitled "Duty to Timely Respond to DSA Inquiries."**
- 2.10. Architect shall provide Services required to obtain local agencies' approval for off-site work related to the Project including review by regulatory agencies having jurisdiction over the Project.
- 2.11. Architect shall coordinate with the District's DSA Project Inspector(s).
- 2.12. Architect shall provide computer-generated pictures downloaded to computer files, updated as requested by the District, that the District may use on its website.
- 2.13. Architect shall coordinate and integrate its work with any of the following information and/or services as provided by District:
- 2.13.1. Ground contamination or hazardous material analysis.
- 2.13.2. Any asbestos and/or lead testing, design or abatement.
- 2.13.3. Compliance with the California Environmental Quality Act ("CEQA"). Architect agrees to coordinate its work with that of any CEQA consultants retained by the District, to provide current elevations and schematic drawings for use in CEQA compliance documents, and to incorporate any mitigation measures adopted by the District into the Project design at no

additional cost to the District. If the District and/or its CEQA consultant does not provide mitigation measures to the Architect when reasonably required for incorporation into the Project design, the Architect may invoice the District for the work required to incorporate those mitigation measures as Extra Services.

- 2.13.4. Historical significance report.
- 2.13.5. Soils investigation.
- 2.13.6. Geotechnical hazard report, except as indicated in **Exhibit "A."**
- 2.13.7. Topographic surveys of existing conditions.
- 2.13.8. State and local agency permit fees.
- 2.13.9. Commissioning Agent and Reports.
- 2.13.10. Testing and Inspection.

Article 3. Architect Staff

- 3.1. The Architect has been selected to perform the Services herein because of the skills and expertise of key individuals.
- 3.2. The Architect agrees that the following key people in Architect's firm shall be associated with the Project in the following capacities:

Principal in Charge:	Carrick Boshart, AIA
Senior Project Manager:	Judy Krall
Senior Architectural Designer:	Marko Blagojevich
Senior Interior Designer:	David Perez
Designer/Drafter:	Shweta Joshi
Senior Construction Administrator:	Alex Seefeldt
Construction Administrator/DSA	
Coordinator:	Monica Brillante

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Major Consultants:

Acoustic

Brian Smith Principal (NCE Board Certified), Acoustical Engineering Consultants, Elk Grove, CA, 95757

Civil

Janina Watson Civil Engineer, BKF Engineers, San Francisco, CA 94111
Mike O'Connell Sr Civil Engineer/Associate, BKF Engineers, San Francisco, CA 94111

Electrical

James Lim Sr Electrical Engineer, LP Consulting Engineers, Roseville, CA 95678
Ryan Schleppe Electrical, FAI Low Voltage Engineer, LP Consulting Engineers, Roseville, CA 95678
Tom Schleppe Electrical, FAI Low Voltage Sr Engineer, LP Consulting Engineers, Roseville, CA 95678

Fire Protection (Sprinklers)

David Soto Fire Protection Engineer, LP Consulting Engineers, Roseville, CA 95678

Food Services

Tim Stafford Principal, Stefford Design Group, Minden, NV 89423

Landscape

Alicia Noguera Landscape Architect/Owner, ANLA Associates, Inc., San Jose, CA 95126
Erik Plato Landscape Designer, ANLA Associates, Inc., San Jose, CA 95126

Mechanical

Sean Pourvakli Principal, LP Consulting Engineers, Roseville, CA 95678
Jason DeDona Sr Mech/P Engineer, LP Consulting Engineers, Roseville, CA 95678
Larry Oliver T-24 Commissioning, LP Consulting Engineers, Roseville, CA 95678
Peter Oliver Mech/P Engineer, LP Consulting Engineers, Roseville, CA 95678

Structural

Kristen Bouma Structural Engineer/Ops Mgr, Crosby Group, San Mateo, CA 94402
Mary Phung Structural Engineer/Project Mgr, Crosby Group, San Mateo, CA 94402
Andy Yagin Structural Designer, Crosby Group, San Mateo, CA 94402

PGE Utilities Design + Processing Consultant

Phillip Pannino Owner, Pannino Management Group, Lodi, CA 95242

- 3.3. All proposed Consultants are subject to review and acceptance by the District prior to commencing work on the project. The District reserves the right to replace any consultant in the best interest of the project.
- 3.4. The Architect shall not change any of the key personnel listed above without prior notice to and written approval by District, unless said personnel cease to be employed by Architect. In either case, District shall be allowed to interview and approve replacement personnel.
- 3.5. If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice the Architect shall have five (5) days to remove that person from the Project and replace that person with personnel acceptable to the District. All lead or key personnel for any Consultant must also be designated by the Consultant and shall be subject to all conditions previously stated in this paragraph.
- 3.6. Architect represents that the Architect has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of the Services and that no person having any such interest shall be employed by Architect.
- 3.7. Architect shall comply with Education Code section 17302(a) and agrees that any plans, specifications and/or included in the Services shall be prepared under the supervision of licensed personnel, and that licensed personnel shall be in "responsible charge" of persons who observe the construction.

Article 4. Schedule of Services

The Architect shall commence Services under this Agreement upon receipt of a Notice to Proceed and shall perform the Services diligently as described in **Exhibit "A,"** so as to proceed with and complete the Services in compliance with the schedule in **Exhibit "C."** Time is of the essence and failure of Architect to perform Services on time as specified in this Agreement is a material breach of this Agreement. It shall not be a material breach if a delay is beyond the Architect's and/or its consultant(s)' reasonable control.

Article 5. Construction Cost Budget

- 5.1. Architect hereby accepts the District's established Construction Cost Budget and Project scope. In accordance with the **Exhibit "A,"** the Architect shall have responsibility to further develop, review, and reconcile the Construction Cost Budget for the District upon receipt of the lowest responsive, responsible bid. The District shall also have responsibility to develop, review, and reconcile the Construction Cost Budget with the Architect.
- 5.2. Architect shall complete all Services as described in **Exhibit "A,"** including all plans, designs, drawings, specifications and other construction documents, so that the cost to construct the work designed by the Architect will not exceed the Construction Cost Budget, as adjusted subsequently with the District's written approval. The Architect shall maintain cost controls throughout the Project to deliver the Project within the Construction Cost Budget.
- 5.3. If the lowest responsive base bid received is in excess of ten percent (10%) of the Construction Cost Budget, then the District, in its sole discretion, has one or a combination of the following alternatives:
 - 5.3.1. Give the Architect written approval on an agreed adjustment to the Construction Cost Budget.
 - 5.3.2. Authorize the Architect to assist the District to re-negotiate, when appropriate, and/or re-bid the Project within three (3) months' time of receipt of bids (exclusive of District and other agencies' review time) at no additional cost to the District.
 - 5.3.3. Terminate this Agreement if the Project is abandoned, without further obligation by either Party.
 - 5.3.4. Instruct Architect within three (3) months' time of receipt of bids to revise the drawings and specifications (in scope and quality as approved by the District) to bring the Project within the Construction Cost Budget for re-bidding at no additional cost to the District. The modification of Construction Documents shall be the limit of the Architect's responsibility arising out of the establishment of a Construction Cost Budget. All other obligations of the Architect, including construction administration services, remain as stated in the Agreement.

Article 6. Fee and Method of Payment

- 6.1. District shall pay Architect for all Services contracted for under this Agreement an amount equal to the following ("Fee"):

For the services under the Site Preservation and Bidding Phase described in Exhibit "A", the District shall compensate the Architect on an hourly basis not to exceed One Hundred Thirty Thousand, One Hundred Ten and 00/100 Dollars (\$130,110.00).

For the Construction Documents and services under the Construction Administration and Closeout Phase described in Exhibit "A", the District shall compensate the Architect as a fixed fee of Five Hundred Eighty Nine Thousand Eight Hundred Fifty-Five and 33/100 Dollars (\$589,855.33).

- 6.2. District shall pay Architect the Fee pursuant to the provisions of **Exhibit "D."**
- 6.3. Architect shall bill its work under this Agreement in accordance with **Exhibit "D."**
- 6.4. No increase in Fee will be due from change orders generated during the construction period to the extent caused by Architect's error or omission.
- 6.5. The Architect's Fee set forth in this Agreement shall be full compensation for all of Architect's Services incurred in the performance hereof as indicated in **Exhibit "D."**
- 6.6. Regardless of the structure of Architect's Fee, the Architect's Fee will be adjusted downward if the Scope of Services of this Agreement is reduced by the District in accordance with this Agreement. District shall pay for Services authorized and performed prior to the notice to Architect of a reduction as indicated here.

Article 7. Payment for Extra Services or Changes

District-authorized services outside of the scope in **Exhibit "A"** or District-authorized reimbursables not included in Architect's fee are "Extra Services." Any charges for Extra Services shall be paid by the District as described in **Exhibit "B"** only upon certification that the claimed Extra Services was authorized as indicated herein and that the Extra Services have been completed pursuant to the terms set forth in this Agreement. If any service is done by Architect without prior written authorization by the District or the District's authorized representative, the District will not be obligated to pay for such service, except if authorized by the District. The foregoing provision notwithstanding, the Architect will be paid by the District as described in **Exhibit "B"** for Extra Services that the District or the District's authorized representative verbally requests, provided that the Architect confirms such request in writing pursuant to the notice requirements of this Agreement, and proceeds with such Extra Services not earlier than two (2) business days after the District receives confirmation of the request from the Architect.

Article 8. Ownership of Data

- 8.1. Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for District to use, at its discretion, all plans, including, but not limited to, record drawings, specifications, and estimates that the Architect or its Consultants, prepares or causes to be prepared pursuant to this Agreement.
- 8.2. The Architect retains all rights to all copyrights, designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that the Architect or its Consultants prepares or causes to be prepared pursuant to this Agreement.
- 8.3. The Architect shall perform the Services and prepare all documents under this Agreement with the assistance of Computer Aided Design Drafting (CADD) (e.g., AutoCAD) Technology. The Architect shall deliver to the District, on request, a "thumb" drive, and/or compact disc with these documents in .pdf format and that is compatible with the most current version of AutoCAD. As to any drawings that Architect provides in a CADD file format, the District acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that the District should rely on hard copies of all documents.

- 8.4. In order to evidence what CADD information was provided to the District, Architect and District shall each sign a "hard" copy of reproducible documents in .pdf format that depict the information at the time Architect produces the CADD information. District agrees to release Architect from all liability, damages, and/or claims that arise due to any changes made to this information by any person other than the Architect or Consultant(s) subsequent to it being provided to the District.
- 8.5. Following the termination of this Agreement, for any reason whatsoever, the Architect shall promptly deliver to the District upon written request and at no cost to the District the following items (hereinafter "Instruments of Service") in an electronic format requested by District and which the District shall have the right to utilize in any way permitted by statute:
- 8.5.1. One (1) set of the Contract Documents, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy and in .pdf, reproducible format.
 - 8.5.2. One (1) set of fixed image CADD files in DWG format of the drawings that are part of the Contract Documents.
 - 8.5.3. One (1) set of non-fixed image CADD drawing files in DWG format of the site plan, floor plans (architectural, plumbing, structural mechanical and electrical), roof plan, sections and exterior elevations of the Project.
 - 8.5.4. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data and reports prepared by the Architect under this Agreement.
- 8.6. In the event the District changes or uses any fully or partially completed documents without the Architect's knowledge and participation, the District agrees to release Architect of responsibility for such changes, and shall indemnify the Architect harmless from and against any and all claims, including, but not limited to, reasonable attorneys' fees, on account of any damages or losses to property or persons, including injuries or death, arising out of that change or use except to the extent the Architect is found to be liable in a forum of competent jurisdiction. In the event District uses any fully or partially completed documents without the Architect's full involvement, the District shall remove all title blocks and other information that might identify the Architect and the Architect's Consultants.

Article 9. Termination of Agreement

- 9.1. If Architect fails to perform the Services to the reasonable satisfaction of the District and as required by this Agreement, or if Architect fails to fulfill in a timely and professional manner Architect's material obligations under this Agreement, or if Architect shall violate any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement, in whole or in part, effective immediately upon the District giving written notice thereof to the Architect. In the event of a termination pursuant to this subdivision, Architect may invoice District for all Services performed until the date of the notice of termination. District shall have the right to withhold payment and deduct from Architect's invoice, any amounts equal to District's costs caused by Architect's negligent errors or omissions, recklessness, or willful misconduct. The District may, at its discretion, provide the Architect time to cure its default or breach.
- 9.2. Notwithstanding any other provision of this Agreement, District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Architect may invoice District according to the percentage completed based on Exhibit D and District shall pay pursuant to the terms set forth in this Agreement for Services performed pursuant to the terms set forth in this Agreement until the date of District's written notice of termination, not to exceed the Fee.

- 9.3. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 9.4. The Architect has the right to terminate this Agreement if the District fails to make payment of amounts due to Architect hereunder. Such termination shall be effective on the date District receives written notice of the termination from Architect. Architect may invoice District according to the percentage completed based on Exhibit D and District shall pay pursuant to the terms set forth in this Agreement for Services performed pursuant to the terms set forth in this Agreement until the Architect's notice of termination, not to exceed the Fee. Any unpaid invoice(s) in dispute shall be submitted for determination pursuant to the terms set forth in Article 21.
- 9.5. If, at any time in the progress of the Design of the Project, the governing board of the District determines that the Project should be terminated, the Architect, upon written notice from the District of such termination, shall immediately cease performing Services. The District shall pay the Architect only the fee associated with the Services performed, from Architect's last paid invoice up to the date of the notice of termination, not to exceed the Fee.
- 9.6. If the District suspends the Project for more than one hundred twenty (120) consecutive days, the Architect shall be compensated for Services performed prior to the notice of suspension. When the Project is resumed, the schedule shall be adjusted and the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Architect's Services. If the District suspends the Project for more than eighteen (18) months, the Architect may terminate this Agreement by giving written notice.

Article 10. Architect Indemnity

- 10.1. To the fullest extent permitted by California law and in accordance with California Civil Code section 2782.8, Architect shall indemnify and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees and members ("Indemnified Parties") from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney's and consultants' fees and causes of action to property or persons, including personal injury and/or death ("Claim(s)"), arising out of, pertaining to, or relating to, the negligence, recklessness, or willful misconduct of Architect, its directors, officials, officers, employees, contractors, subcontractors, consultants, subconsultants or agents arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. This indemnity excludes Architect's liability as to the active or sole negligence or willful misconduct of the District. Architect shall also, to the fullest extent permitted by California law and in accordance with California Civil Code section 2782.8, defend, through reimbursement in accordance with the Architect's determined proportionate fault, the Indemnified Parties at Architect's own expense, including attorneys' fees and costs, from any and all Claim(s). HMC shall have the right to choose counsel to defend HMC. The Indemnified Parties shall have the right to choose counsel to defend the Indemnified Parties. The reasonable cost to defend the Indemnified Parties charged to the Architect as a reimbursement shall not exceed the proportionate percentage of Architect's fault as determined by a court of competent jurisdiction. 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.
- 10.2. The following shall be Claims, to the extent they satisfy the definition of Claims herein:
- 10.2.1. **The cost of Project delays.** Without limiting Architect's liability for indirect cost impacts due to Project delays, the direct costs for which the Architect shall be liable shall be proportionate

to the amount the District is liable to the Project contractor(s), subcontractor(s), suppliers, inspector(s), construction manager(s) for the Project delays, including the proportionate cost of interim housing necessitated by Project delays, to the extent that the Project delays arise out of, pertain to, relate to or result from the negligent errors or omissions, recklessness, or willful misconduct of Architect in the performance of any Services that falls below the Standard of Care as defined herein.

- 10.2.2. **The cost of construction change orders for errors and omissions.** Without limiting Architect's liability for indirect cost impacts, the direct costs for which the Architect shall be liable shall equal the difference between the cost of the change order(s) and the reasonable cost of the work had that work been a part of the originally prepared construction documents, to the extent that the change order(s) arise out of, pertain to, relate to or result from the negligent errors or omissions, recklessness, or willful misconduct of Architect in the performance of any Services that falls below the Standard of Care as defined herein.

These amounts may be paid by Architect to District or the District may in reasonable good faith withhold those costs from amounts owing to Architect, pending resolution of the dispute.

- 10.3. Architect's duty to indemnify under this Agreement shall apply during the term of this Agreement and shall survive any expiration or termination of this Agreement until any such Claim(s) are barred by the applicable statute of limitations and is in addition to any other rights or remedies that the District may have under the law or under this Agreement.

Article 11. Mandatory Mediation for Claims

- 11.1. The Parties hereto agree prior to commencing any legal action relating to any Claim, as defined herein, to submit the Claim to a mandatory good-faith mediation process ("Mediation"). The Parties' expectations are that if the Claim is made by a third party (e.g., a contractor), that the third party will be a participant in that Mediation. The Parties agree that any statute of limitations applicable to any Claim shall be tolled for the period from the date a Party requests Mediation through fourteen (14) days after termination of the Mediation, unless otherwise agreed to by the Parties.
- 11.2. Except as set forth below, the Parties agree to refrain from filing, maintaining or prosecuting any action related to the Claim during the pendency of the Mediation provided that the Mediation must commence within thirty (30) days after a Party makes written demand to the other for Mediation.
- 11.3. The Parties shall participate in a minimum of one full-day mediation session before the Mediation may be declared unsuccessful and terminated by either Party. The Mediation shall be conducted in accordance with such rules as the Parties agree upon, or in the absence of agreement, in accordance with the Commercial Mediation Rules of JAMS/Endispute. Evidence of anything said, any admissions made, and any documents prepared in the course of the Mediation shall not be admissible in evidence or subject to discovery in any court action pursuant to Evidence Code Section 1152.5.
- 11.4. The Parties shall mutually agree to the selection of a mediator who is an attorney that is experienced in public works construction claims. If the Parties are unable to agree upon a mediator, then the mediator shall be appointed by JAMS/Endispute.
- 11.5. The Mediation shall take place at a location within twenty (20) miles of the District's administrative office. The mediator's fees and administrative fees, if any, shall be split equally between the Parties, but, unless otherwise agreed to in writing, each Party shall bear its own attorney's fees.

- 11.6. If any Party commences a legal action without first attempting to resolve the Claim as required by this Article 11, that Party shall be in breach of this Agreement and shall not be entitled to recover attorney's fees that might have otherwise been recoverable.
- 11.7. This mandatory mediation process shall only apply to Claims pursuant to the Architect Indemnity provision herein and shall not apply to any disputes to be resolved pursuant to the Alternative Dispute Resolution provision herein.

Article 12. Fingerprinting

Pursuant to Education Code section 45125.2, District has determined on the basis of scope of Services, that Architect, Contractors, and their employees will have only limited contact with pupils at most. Architect shall promptly notify District in writing of any facts or circumstances which might reasonably lead District to determine that contact will be more than limited as defined by Education Code section 45125.1(d).

Article 13. Responsibilities of the District

- 13.1. The District shall examine the documents submitted by the Architect and shall render any decision(s) required of District, in a timely manner to avoid unreasonable delay in the performance of Architect's Services.
- 13.2. The District shall verbally or in writing advise the Architect if the District becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's documents. Failure to provide such notice shall not relieve Architect of its responsibility therefore, if any.
- 13.3. Unless the District and the Architect agree that a hazardous materials consultant shall be a Consultant of the Architect, the District shall furnish the services of a hazardous material consultant or other consultants when such services are requested in writing by Architect and deemed necessary by the District or are requested by the District. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to these matters which are to be incorporated into bid documents prepared by Architect. If the hazardous materials consultant is furnished by the District and is not a Consultant of the Architect, the specifications shall indicate that the specifications prepared by District's consultant relating to these matters, are included in the Architect's bid documents for the District's convenience and have not been prepared or reviewed by the Architect. The bid documents shall also direct questions about the hazardous materials consultant's specifications related to asbestos and lead paint survey and/or abatement documentation to the hazardous materials consultant who prepared those specifications.
- 13.4. District personnel and/or its designated representatives shall coordinate with Architect as may be requested and beneficial for the coordination or management of work related to the Project.
- 13.5. The District shall timely provide to the Architect all relevant information in its possession regarding the Project that is necessary for performance of Architect's Services.
- 13.6. The District shall pay all fees required by agencies having jurisdiction over the Project.

Article 14. Liability of District

- 14.1. Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not

limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed.

- 14.2. District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Architect, or by its employees and Consultants, even though such equipment may be furnished or loaned to Architect by District.

Article 15. Nondiscrimination

- 15.1. Architect agrees that no discrimination shall be made in the employment of persons under this Agreement because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military and veteran status, or any other protected characteristic of such person.
- 15.2. Architect shall comply with any and all applicable regulations and laws governing nondiscrimination in employment.

Article 16. Insurance

- 16.1. Architect shall comply with the insurance requirements for this Agreement, set forth in **Exhibit "E."**
- 16.2. Architect shall provide certificates of insurance and endorsements to District prior to commencement of the work of this Agreement as required in **Exhibit "E."**

Article 17. Covenant Against Contingent Fees

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

Article 18. Entire Agreement/Modification

This Agreement, including the Exhibits incorporated by reference into this Agreement, supersedes all previous contracts and constitutes the entire understanding of the Parties hereto. Architect shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both Parties. Architect specifically acknowledges that in entering this Agreement, Architect relies solely upon the provisions contained in this Agreement.

Article 19. Non-Assignment of Agreement

This Agreement is intended to secure the specialized Services of the Architect, therefore, Architect may not assign, transfer, delegate or sublet any interest therein without the prior written consent of District and any such assignment, transfer, delegation or sublease without the District's prior written consent shall be considered null and void. Likewise, District may not assign, transfer, delegate or sublet any interest therein without the prior written consent of Architect and any such assignment, transfer, delegation or sublease without Architect's prior written consent shall be considered null and void.

Article 20. Law, Venue

- 20.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.
- 20.2. The county in which the District administration office is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

Article 21. Alternative Dispute Resolution

21.1. Architect's Invoices.

- 21.1.1. If the District disapproves of any portion or amount(s) of the Architect's invoices, the District shall within thirty (30) days of receipt by the District of any of the Architect's invoices, communicate to the Architect in writing, with reasonable detail, the portion or amount of the Architect's invoices that are disapproved for payment, the portion or amount of the Architect's invoices that are approved for payment, and the basis for the District's disapproval of the disputed portion(s) or amount(s) of the Architect's invoices ("Disputed Architect Invoice Detail").
- 21.1.2. If the Architect disagrees with the Disputed Architect Invoice Detail, the Architect shall communicate to the District in writing, and request to meet and confer in good faith with respect to the Disputed Architect Invoice Detail, to determine if the disagreement can be resolved. The meet and confer shall be scheduled to occur within thirty (30) days of Architect's request. The meet and confer shall include, but are not limited to, face-to-face meeting(s) with the appropriate District and Architect personnel as appropriate and necessary.
- 21.1.3. If the Parties cannot resolve the matter during this meet and confer process, the Parties shall handle the matter as a "dispute" as provided herein.
- 21.2. Disputes between the parties arising out of this Agreement shall be resolved by the following processes:
 - 21.2.1. **Negotiation.** The parties shall first attempt in good faith to resolve any dispute arising out of or relating to this Agreement by negotiation. The Parties' meet and confer process for Disputed Architect Invoice Detail as detailed above, shall satisfy this negotiation requirement.
 - 21.2.2. **Mediation.** Within thirty (30) days following the earlier of receipt of notice by one Party from the other Party of a demand for mediation, the Parties shall:
 - 21.2.2.1. Administer the dispute pursuant to the Mandatory Mediation provisions indicated herein, or
 - 21.2.2.2. If there are no other parties involved, administer the dispute pursuant to non-binding mediation administered in accordance with the Commercial Mediation Rules of JAMS/Endispute, unless waived by mutual stipulation of both Parties.
 - 21.2.3. **Litigation.** Disputes arising from this Agreement that cannot be settled through negotiation or mediation (after those processes have been exhausted) the Architect shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Architect's right to bring a civil action against the District.

For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Architect submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process. After complying with the claims presentation requirements, disputes shall be litigated in the California Superior Court in the county in which the Project that is the subject of this Agreement is located.

- 21.3. Architect shall neither rescind nor stop the performance of its Services pending the outcome of any dispute, and the District agrees to make progress payments in accordance with this Agreement, except that the District may withhold only those funds that are in dispute. In no event shall the District withhold more than ten percent (10%) of the total computed Architect fee. If the withheld amount is greater than the maximum limit set forth above, the Architect shall be entitled to a reasonable meet and confer period with the District to resolve the dispute in good faith prior to any decision to suspend services pending the formal resolution of the dispute.

Article 22. Severability

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

Article 23. Employment Status

- 23.1. Architect shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the Architect performs the Services; provided always, however, that the Services to be provided by Architect shall be provided in a manner consistent with all applicable standards and regulations governing such Services.
- 23.2. Architect understands and agrees that the Architect's personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee.
- 23.3. Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Architect is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Architect which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 23.4. Should a relevant taxing authority determine a liability for Services performed by Architect for District, upon notification of such fact by District, Architect shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Architect under this Agreement (again, offsetting any amounts already paid by Architect which can be applied as a credit against such liability).
- 23.5. A determination of employment status pursuant to the preceding two (2) paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Architect shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Architect is an employee for any other purpose, then Architect agrees to a reduction in District's liability resulting from this Agreement pursuant to

principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Architect was not an employee.

- 23.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 24. Warranty and Certification of Architect

- 24.1. Architect warrants and certifies that the Architect is properly certified and licensed under the laws and regulations of the State of California to provide the Services that it has agreed to perform.
- 24.2. Architect warrants and certifies that it is aware of the provisions of the California Labor Code that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with those provisions before commencing the performance of the Services.
- 24.3. Architect warrants and certifies that it is aware of the provisions of California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since the Architect is performing Services as part of an applicable "public works" or "maintenance" project, and since the total compensation is One Thousand Dollars (\$1,000) or more, the Architect agrees to fully comply with and to require its Consultant(s) to fully comply with all applicable Prevailing Wage Laws.
- 24.3.1. Architect shall ensure that it and its subconsultants comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner, and are registered pursuant to Labor Code section 1725.5.

Article 25. Cost Disclosure - Documents and Written Reports

Architect shall be responsible for compliance with California Government Code section 7550, if the total cost of the Agreement exceeds Five Thousand Dollars (\$5,000).

Article 26. Notices and Communications

Notices and communications between the Parties may be sent to the following addresses:

District:
San Mateo-Foster City School District
1170 Chess Drive
Foster City, CA 94404
ATTN: _____
Telephone: (650) 312-7700

Architect:
HMC Group
3546 Concourse Street
Ontario, CA 91764
ATTN: Mitch Carp
Sr. Vice President Studio Operations
Telephone: (909) 989-9979

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the day after delivery. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

Article 27. Disabled Veteran Business Enterprise Participation

Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises (DVBES) of at least three (3) percent, per year, of funds expended each

year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the "Act"). This Project may use funds allocated under the Act. Therefore, to the extent feasible and pertaining to future hirings, the Architect, before it executes the Agreement, shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBEs in conjunction with the Agreement, and documentation demonstrating the Architect's good faith efforts to meet these DVBE goals.

Article 28. District's Right to Audit

- 28.1. District retains the right to review and audit, and the reasonable right of access to Architect's and any Consultant's premises to review and audit the Architect's compliance with the provisions of this Agreement ("District's Audit Right"). The District's Audit Right includes the right to inspect, photocopy, and to retain copies, outside of the Architect's premises, of any and all Project-related records, documents and other information with appropriate safeguards, if such retention is deemed necessary by the District in its sole discretion. The District shall keep this information confidential, as allowed by applicable law.
- 28.2. The District's Audit Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the District determines are necessary to discover and verify that the Architect is in compliance with the requirements of this Agreement.
- 28.3. If there is a claim for additional compensation or for Extra Services, the District's Audit Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the District determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.
- 28.4. The Architect shall maintain complete and accurate records for a minimum of seven (7) years and in accordance with generally accepted accounting practices in the industry. The Architect shall make available to the District for review and audit, all Project related accounting records and documents, and any other financial data. Upon District's request, the Architect shall submit exact duplicates of originals of all requested records to the District.
- 28.5. The Architect shall include audit provisions in any and all of its subcontracts, and shall ensure that this Article is binding upon all Consultants.
- 28.6. Architect shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of Architect's Project-related documents, records and information.
- 28.7. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of more than Ten Thousand Dollars (\$10,000), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of the District, or as part of any audit of the District, for a period of three (3) years after final payment under the Agreement.

Article 29. Other Provisions

- 29.1. Neither the District's review, approval of, nor payment for, any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Architect shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Architect's failure to perform any of the Services to the Standard of Care as defined herein.

- 29.2. Each Party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each Party acknowledges that the drafting of this Agreement was the product of negotiation, that no Party is the author of this Agreement, and that this Agreement shall not be construed against any Party as the drafter of the Agreement.
- 29.3. The Architect shall issue a credit to the District as an offset to the Architect's Fee equal to one hundred percent (100%) of the tax deduction and/or credit the Architect receives based on the Project per Internal Revenue Code Section 179(D).
- 29.4. The Architect acknowledges that the District is a public agency that is subject to heightened curiosity by the news media and the public and that the Architect may not be apprised of all facts surrounding the Project that Architect is working on. Accordingly, Architect shall promptly refer all inquiries from the news media or public concerning this Agreement or its performance under the Agreement to the District, and Architect shall not make any statements or disclose any documents to the media or the public relating to the performance under this Agreement or the effects caused thereby. If Architect receives a complaint from a citizen or member of the public concerning the performance or effects of this Agreement, it shall promptly inform the District of that complaint. In its sole discretion, the District shall determine the appropriate response to the complaint.
- 29.5. **Confidentiality.** Architect, and its Consultants, and employee(s) shall maintain the confidentiality of all information received in the course of performing the Services. Architect understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
- 29.6. The Recitals, **Attachment "1,"** and **Exhibits "A"** through **"E"** attached hereto are hereby incorporated by this reference and made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

Dated: 5/15, 2019

San Mateo-Foster City School District

By:

Print Name:

Print Title:

Dated: MAY 14, 2019

HMC Group

By:

Print Name:

Print Title:

ATTACHMENT "1"



www.counterpointcs.com

Revised 4/22/19

**100% CD Estimate for
New Elementary School
1050 Shell Blvd
Foster City, CA**

Prepared by:
Counterpoint Construction Services, Inc.

Prepared for:
HMC Architects
333 W. San Carlos Street, Studio 750
San Jose, CA 95110
Mr. Carrick Boshart, Principal in Charge

3663 North Laughlin Road, Suite 200, Santa Rosa, Calif 95403
707-824-8440 | Fax 707-824-0254 | Lic. # 407339, Class B



Page 1

Assumptions and Qualifications:

REVISED 4/22/19

HMC Architects – Carrick Boshart

Project Site: New Foster City Elementary School

Site Address 1050 Shell Blvd, Foster City, CA

Design Phase: DSA Approved, 100% CD (with DSA Addendum 4)

Plans Used: HMC – Dated 5/18/18

***Please note if any of the below assumptions change, this estimate shall be considered null and void until those changes are accounted for in this estimate. ***

- **Location:** Listed as Above
- **Start date:** Currently Bidding

Please note the following, specifically **included** within our budget:

- After review of the documents, we are assuming that the existing 2900CY of material is not usable.
- Based on the soils report and utility profiles, we have made a small allowance for Trench Shoring.
- Based upon the information in the soils report and for budgeting purposes our excavation sections assume a 36" cut with 36" of Class 2 Base (in 4 lifts) compacted at each lift.
- Cathodic Protection is now included.
- Vapor Mitigation is better addressed and shown as a Deductive Alternate (See Bldg B Cover)

Please note the following specifically **excluded** from our budget:

- * Design Contingencies
- * Agency Fees
- * Testing and Inspection Costs
- * Furniture and Equipment other than Kitchen Equipment
- * District Allowances



San Mateo Foster City School District
1050 Shell Blvd, Foster City, CA
SUMMARY
REVISED 04/22/19

Direct Construction Costs

Site Improvement/Landscape:	7,547,074
Bldg A:	2,148,182
Bldg B:	9,838,436
Bldg C:	1,412,082
Project General Conditions:	769,841

Sub-Total **\$21,715,615**

Indirect Construction Costs

Bonds & Insurance	2.50%	\$542,890
Contractor's Fee	7.00%	\$1,520,093
Profit	10.00%	\$2,171,561
Sub-Total Indirect Costs		\$4,234,545

Allowances

Sub-Grade Treatment **\$1.45** **20000** **\$29,000.00**

Note: The above sub-grade treatment has been verified and coordinated with Cornerstone and is **NOT** reflected in the Target Bid Price

Grand Total-Target Bid: **\$25,950,159**

Alternates

ADD Alt #1 C-Wing at Beach Blvd	1,920,124
Add Alt #2: Covered Walkway @ Westside of B	875,055
ADD Alt #3: Shade Structure at Play Area	302,554
ADD Alt#9: TRESPA at I MPR	161,924
ADD Alt 10A: Single Color VCT	200,388.77
ADD Alt#10B: Multi Colored VCT	233,271
ADD Alt #12: 3 Bays of Walkway between B&C	128,416
Total of Alternates	\$3,821,733

Bidding

We have assumed this project will be competitively bid. This assumes 4-6 bidders:

<u>No# of Bidders</u>	<u>Premium</u>
1-2	30-40%
3-4	15-29%
5-6	0-10%

PRINTED ON 4/23/2019

COUNTERPOINT CONSTRUCTION SERVICES, INC.

Construction Cost Estimate Page 1

District: San Mateo/Foster City School District
 Project: New Elementary School
 Phase of estimate: 100% DSA Approved Const. Docs
 Plans used: HMC Plans 5/18/18

Description	Subtotal:	Quantity	Unit Price	Cost	Totals
01 - General Conditions / Contractor's Jobsite Overhead					
Duration (Months)	allow	14 mo			
Duration (Weeks)		61 wks			
Site Management					
Project Manager/Superintendent		61 Wks	3500.00	\$ 213,500.00	
Superintendent/ Assistant		61 Wks	2030.00	\$ 123,830.00	
Project Clerk		61 Wks	800.00	\$ 48,800.00	
Job Office & Plant					
Job Trailer - Meetings and Staff		14 Mo	550.00	\$ 7,700.00	
Job Trailer - IOR		14 Mo	450.00	\$ 6,300.00	
Telephone & Internet Set up		1 LS	2500.00	\$ 2,500.00	
Telephone & Internet Monthly Service		14 Mo	500.00	\$ 7,000.00	
Cell Phone Use		14 Mo	250.00	\$ 3,500.00	
Superintendent Pickup, Insurance		14 Mo	750.00	\$ 10,500.00	
Gasoline for Supt Vehicle		5,490 Gal	5.00	\$ 27,450.00	
Chemical Toilets		14 Mo	950.00	\$ 13,300.00	
Miscellaneous Items					
Schedule - Initial		1 LS	5000.00	\$ 5,000.00	
Schedule - Monthly Updates		14 Mo	450.00	\$ 6,300.00	
Safety		14 Mo	600.00	\$ 8,400.00	
Custodial		14 Mo	300.00	\$ 4,200.00	
Weekly Cleanup		61 Wks	550.00	\$ 33,550.00	
Debris Boxes		183 EA	650.00	\$ 118,950.00	
Temporary Utility Pole Set Up		1 LS	3000.00	\$ 3,000.00	
Temporary Utility Pole Rent		2 Mo	175.00	\$ 350.00	
Blueprinting for Subs		30 Sets	300.00	\$ 9,000.00	
Final Clean		35,834 SF	1.25	\$ 44,792.50	
SWPP/BMP's		261,674 SF	0.25	\$ 65,418.50	
Winterization/Dress up during Winter		26 Wks	250.00	\$ 6,500.00	
Subtotal 01 - General Conditions and Jobsite Overhead				\$ 769,841.00	

4/23/2019

Revised 4/22/19

SITE IMPROVEMENTS/LANDSCAPING

Section Sub-Total: \$ 7,547,047.44

Major Additions:

- Cathodic Protection: \$ 1,478,897
- Haul-Off Existing Spoils \$ 87,000

Consultant Comments: Noted and adjusted accordingly

**Estimate: 949 SMFC - Site
Improvements/Landscaping**

Estimate Unit Costs

Description	Quantity	Unit Cost	Total Cost
02 Existing Conditions			
Disconnect from Curb Outlet - Allow	2.00 EA	1,500.00	3,000.00
Utility removal, abandon existing catch basin or manhole, excludes hauling	13.00 EA	219.79	2,857.27
Utility removal, pipe, sewer/water, 12" diameter, remove, excludes excavation, hauling	1,255.07 LF	8.76	10,994.41
Totals			\$16,851.68
03 Concrete			
Seat Walls	13.13 CY	1,200.00	15,756.00
Concrete Flatwork	42,532.37 SF	12.00	510,388.44
Truncated Domes	3,019.95 SF	30.00	90,598.50
Totals			\$616,742.94
13 Special Construction			
Cathodic Protection - Pipe Coating, Allow	7,500.00 LF	25.00	187,500.00
Cathodic protection, anodes, magnesium type, 32 lb, underground storage tanks	31.00 EA	514.29	15,942.99
Cathodic protection, cable, HMWPE, No. 8, underground storage tanks	750.00 MLF	1,680.93	1,260,697.50
Cathodic protection, test station, reference cell, coupling with plug, set flush, 2" diameter PVC conduit, underground storage tanks	31.00 EA	476.03	14,756.93
Totals			\$1,476,897.42
21 Fire Suppression			
DDC/PIV/FDC Assembly	2.00 EA	10,500.00	21,000.00
Fire Hydrant	6.00 EA	3,300.00	19,800.00
Thrust Blocks	19.00 EA	275.00	5,225.00
Totals			\$46,025.00
22 Plumbing			
Water Piping to Building	670.61 LF	71.50	47,948.62
Water Piping to 2"	66.97 LF	71.50	6,218.36
Backflow preventer, double check principle, corrosion resistant, automatic operation, gate valves, flanged, 8" pipe size, includes valves and four test cocks	1.00 EA	8,121.96	8,121.96
Backflow preventer, double check principle, corrosion resistant, automatic operation, OS&Y valves, flanged, 8" pipe size, includes valves and four test cocks	2.00 EA	15,295.28	30,590.56
Totals			\$82,879.50
26 Electrical			
2-5" Conduit for Primary Service	360.96 LF	279.50	100,888.32
Parking Lot Lighting - Allow	6,114.28 SF	1.25	7,642.85
Totals			\$108,531.17
28 Electronic Safety and Security			
Closed circuit television system (CCTV), industrial quality, for pan and tilt, add	10.00 EA	3,621.88	36,218.80
Totals			\$36,218.80

Description	Quantity	Unit Cost	Total Cost
31 Earthwork			
Haul-Off Existing Spoils	2,900.00 CY	30.00	87,000.00
Utility Trenching - SD Piping	5,070.00 LF	1.66	8,416.20
Class 2 Base at thickened edge pr k/L2.3	4.80 TON	30.00	144.00
Trench Shoring - Based on Soils/Ppe Trench Profile - Allow	1.00 EA	20,000.00	20,000.00
Excavation	5,880.12 CY	10.00	58,801.20
Excavation to minus 13 for paved area	1,263.56 CY	10.00	12,635.60
Machine fine grade at Bldg Pad	10,621.44 SF	0.23	2,442.93
Scarify and Compact subgrade	220,322.47 SF	0.75	165,241.85
Clear and Grub Site	311,118.98 SF	0.16	49,779.20
Remove curb/gutter/sidewalks	1,073.44 LF	3.90	4,186.42
Class 2 Base	5,371.05 TON	30.00	161,131.50
Sand bedding for trenches	6,760.00 TON	30.00	202,800.00
Red Dye Warning Cap	103.09 CY	300.00	30,927.00
Geo-Fabric	103,085.73 SF	1.50	154,628.60
Perforated Drain Pipe	1,194.93 LF	24.00	28,678.32
Totals			\$986,612.82
32 Exterior Improvements			
Safety Surfacing - Kinder	1,438.82 SF	18.00	25,898.76
Safety Surfacing - Primary	4,259.83 SF	18.00	76,676.94
Hydroseed	10,604.79 SF	1.25	13,255.99
World Map/Sun Dial Painting - Allow	2.00 EA	6,500.00	13,000.00
Drop Shot - Complete - Allow	4.00 EA	1,750.00	7,000.00
Fence Posts per D/L2.5	104.00 EA	40.00	4,160.00
Flag Pole - Allow Complete	1.00 EA	3,500.00	3,500.00
Ac Paving at Play Area - Kinder	1,445.83 SF	18.00	26,024.94
AC Paving at Primary Play Area	4,211.37 SF	18.00	75,804.66
Tetherball Poles - Complete - Allow	4.00 EA	1,500.00	6,000.00
Irrigation - Allowance	57,170.34 SF	7.00	400,192.38
Planting Allowance	57,170.00 SF	4.50	257,265.00
New Trees 24" Box	35.00 EA	624.00	21,840.00
Bio Retention Basin	32,400.96 SF	45.00	1,458,043.20
Basketball Court Striping	2.00 EA	3,900.00	7,800.00
Striping	47,725.00 SF	2.25	107,381.25
AC paving 4/12, fire lane/drive aisle	15,154.61 SF	7.54	114,265.76
AC Paving @ 3.5/12 per Civil	32,570.17 SF	7.50	244,276.28
Concrete Curbs @ Play Area Perimeter	317.13 LF	39.00	12,368.07
Concrete Curbs & Gutters	5,272.17 LF	39.00	205,614.63
Court striping - Primary	8,367.67 SF	3.90	32,633.91
Court striping - Kinder	5,115.74 SF	3.90	19,951.39

Description	Quantity	Unit Cost	Total Cost
Chain Link Fence	306.50 LF	50.00	15,325.00
Ornamental Iron Fence Gate	312.00 SF	33.00	10,296.00
Chain Link Fence Gate	268.00 SF	33.00	8,844.00
Wood fences & gates, rail fencing, board, shadow box, per D/L2.5	829.83 LF	81.65	67,755.61
Bike Racks	2.00 EA	390.00	780.00
Outdoor basketball goals	4.00 EA	1,755.00	7,020.00
Sod	14,570.77 SF	2.00	29,141.54
Totals			\$3,272,115.31
33 Utilities			
Sanitary Sewer Pipe-Fittings/Accessories - Allowance	1.00 EA	15,000.00	15,000.00
SD Pipe/Fittings/Accessories - Allowance	1.00	25,000.00	25,000.00
New Storm Drain Catch Basins - SDCB	8.00 EA	4,000.00	32,000.00
Storm Drain Clean Out SDCO to grade	41.00 EA	585.00	23,985.00
Sanitary Sewer Clean Out to Grade - COTG	5.00 EA	585.00	2,925.00
New Sanitary Sewer to 8" w/g incl. trench and backfill	745.64 LF	74.00	55,177.36
2 1/2" gas piping to building	978.03 LF	65.00	63,571.95
Gas Meter - Allow	1.00 EA	6,500.00	6,500.00
Seismic shut off valve @ Exterior Gas lines	5.00 EA	3,250.00	16,250.00
Domestic Water POC Building	5.00 EA	900.00	4,500.00
RPBP	1.00 EA	3,320.00	3,320.00
Fire Water POC Main	1.00 EA	1,300.00	1,300.00
Fire Water Main to 8" Incl. trench/backfill	2,786.75 LF	123.50	344,163.63
Fire Water - Valves and Accessories	1.00 EA	6,500.00	6,500.00
SD Bubble-Ups	23.00 EA	25.00	575.00
SD Piping 12" or larger	1,970.99 LF	78.00	153,737.22
SD Piping 12" or less	1,905.08 LF	58.00	110,494.64
SSMH	6.00 EA	4,500.00	27,000.00
Totals			\$691,999.80
Sub-Total (Base Cost)			\$7,547,074.44

Estimate Summary



■ Material (\$8,542,668)
■ Labor (\$8,882,326)
■ SubContractor (\$86,138,481)
■ Equipment (\$85,710)
■ Other (\$80)

Description	Total
Sub-Total (Base Cost)	\$7,547,074.44
Sub-Total (Direct Cost)	\$7,547,074.44
Contractor's Bonds & Insurance	0.00
Contractor's Fee	0.00
Design Contingency	0.00
Escalation	0.00
Change Order Contingency	0.00
Sub-Total (Indirect Cost)	\$7,547,074.44
Profit	0.00
Soft Cost Contingency	0.00
Total Estimate	\$7,547,074.44

EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF ARCHITECT

TABLE OF CONTENTS

1.	BASIC SERVICES	1
2.	[RESERVED]	7
3.	[RESERVED]	7
4.	[RESERVED]	7
5.	CONSTRUCTION DOCUMENTS.....	7
6.	BIDDING PHASE.....	7
7.	CONSTRUCTION ADMINISTRATION PHASE.....	8
8.	CLOSEOUT PHASE.....	12
9.	MEETINGS / SITE VISITS / WORKSHOPS	13

Architect shall provide all professional services necessary for completing the following:

1. BASIC SERVICES

Architect agrees to provide the services described below:

- 1.1. Architect shall be responsible for the professional quality and technical accuracy of all studies, reports, projections, master plans, designs, drawings, specifications and other services furnished by Architect under the Agreement as well as coordination with all Master plans, studies, reports and other information provided by District. Architect shall, without additional compensation, correct or revise any errors or omissions in its studies, reports, projections, master plans, design, drawings, specifications and other services.
- 1.2. The District shall provide all information available to it to the extent the information relates to Architect's scope of work. This information shall include, if available;
 - 1.2.1. Physical characteristics;
 - 1.2.2. Legal limitations and utility locations for the Project site(s);
 - 1.2.3. Written legal description(s) of the Project site(s);
 - 1.2.4. Grades and lines of streets, alleys, pavements, and adjoining property and structures;
 - 1.2.5. Adjacent drainage;
 - 1.2.6. Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the Project site(s);
 - 1.2.7. Locations, dimensions and necessary data with respect to existing buildings, other improvements and trees;
 - 1.2.8. Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths;
 - 1.2.9. Surveys, reports, as-built drawings; and

1.2.10. Subsoil data, chemical data, and other data logs of borings.

Architect shall Visually Verify this information and all existing utilities related to the Project, including capacity, and document the location of existing utility lines, telephone, water, sewage, storm drains and other lines on or around the Project to the extent determinable by the documents provided by the District.

If Architect determines that the information or documentation the District provides is insufficient for purposes of design or if the Architect requires a topographical survey; geotechnical report; structural, mechanical, and/or chemical tests; tests for air and/or water pollution; test borings; test pits; determinations of soil bearing values; percolation tests; ground corrosion tests; resistivity tests; tests for hazardous materials; tests for anticipating subsoil conditions; and/or other information that the District has not provided, the Architect shall request that the District acquire that information at the soonest possible time after Architect becomes aware that this additional information is needed. If the Parties mutually agree, this additional information and service shall be procured through the Architect, who may invoice the District for those services as Extra Services.

- 1.3. **Technology Backbone.** Architect shall be responsible for the coordination of the design and the layout of the technology backbone system with the District's Information Technology Department and/or the District's technology consultant, and lay out any included technology backbone system. The coordination effort shall include location and routing of raceways, conduits and outlets and the required spaces to accommodate electrical, data and communication wiring. Architect and consultant(s) shall prepare and be responsible for documents prepared by the Architect based on the information provided by the District's technology consultant as appropriate to the level of design completion.

- 1.4. **Interior Design.** Provide interior design and other similar services required for or in connection with selection and color coordination of materials. Architect is required to coordinate the placement of furniture, equipment layout, or schematic space allocation. The District shall procure furnishings and moveable equipment. Advise the District on lead times and availability of all Project equipment, materials, supplies, and furnishings to ensure that all of these will be available to the District in a timely fashion so as to not delay the Project and/or delay the District's beneficial occupancy of the Project.

- 1.5. **Mandatory Assistance**

If a third party dispute or litigation, or both, arises out of, or relates in any way to the Services provided under this Agreement, upon the District's request, the Architect agrees to assist in resolving the dispute or litigation. The Architect's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation ("Mandatory Assistance").

The Architect's Mandatory Assistance shall be provided at Architect's own expense and excluded from any reimbursement calculation. At the commencement of the Mandatory Assistance Phase, District and Architect shall work together in good faith as to the scope and extent of further assistance, including discussing whether a joint defense agreement would be mutually beneficial. During the Mandatory Assistance Phase, each Party shall be responsible for their own attorneys' fees and costs incurred; however, each Party reserves its rights pursuant to Civil Code section 2782.8.

1.6. Oversight and Inspection Requirements

The Architect acknowledges that the Division of the State Architect (DSA) inspection, approval and certification process for projects was revised in 2012-2013 and that the Architect must comply with the requirements of the most recent versions of DSA documents, including but not limited to, bulletins ("BU"), interpretations of regulations ("IR"), policies ("PL"), or procedures ("PR") such as PR 13-01 (Procedure: Construction Oversight Process) and IR A-6 (Interpretation of Regulations: Construction Change Document Submittal and Approval Process). Below are provisions of these two documents from 2012-2013:

1.6.1. PR 13-01 (Procedure: Construction Oversight Process)

- 1.6.1.1. Responsible to the school board and to the DSA to see that the completed work conforms in every material respect to the DSA approved construction documents.
- 1.6.1.2. Ensure the Project Inspector is approved by the DSA for the project by submitting form DSA 5 to and obtaining approval from the DSA prior to the start of construction and prior to requesting issuance of form DSA 152.
- 1.6.1.3. Provide a copy of the DSA approved construction documents to the Project Inspector and Laboratory of Record prior to the commencement of construction
- 1.6.1.4. Provide a copy of the DSA approved Statement of Structural Tests and Special Inspections (form DSA 103) to the Project Inspector and Laboratory of Record prior to the commencement of construction.
- 1.6.1.5. Provide general direction of the work of the Project Inspector.
- 1.6.1.6. Issue specific instructions to the testing facility and the special inspectors prior to start of construction.
- 1.6.1.7. Provide code required supervision of special inspectors not provided by the Laboratory of Record.
- 1.6.1.8. Notify the DSA as to the disposition of materials noted on laboratory testing, and/or special inspection, reports as not conforming to the DSA approved construction documents
- 1.6.1.9. Respond to DSA field trip notes as necessary.
- 1.6.1.10. Provide observation of the construction. All architects and engineers having responsibility for observation of the work as listed on the form DSA 1 - Application for Approval of Plans and Specifications, shall maintain such personal contact with the project as is necessary to assure themselves of compliance, in every material respect, with the DSA approved construction documents. Personal contact shall include visits to the project site by the architect or engineer or their qualified representative to observe the construction.
- 1.6.1.11. Submit Verified Reports. The architect or engineer, as identified above, is required to submit Verified Reports (form DSA 6-AE) to the DSA and to the Project Inspector. The reports are required to be submitted upon any of the following events occurring:

1.6.1.11.1. The project is complete. The DSA considers the project to be complete when the construction is sufficiently complete in accordance with the DSA approved construction documents so that the owner can occupy or utilize the project.

1.6.1.11.2. Work on the project is suspended for a period of more than one month.

1.6.1.11.3. The services of the architect or engineer are terminated for any reason prior to completion of the project.

1.6.1.11.4. The DSA requests a Verified Report. (See interim Verified Reports below. This is a "DSA request.")

1.6.1.12. Submit interim Verified Reports. The architect or engineer shall submit an interim Verified Report (form DSA 6-AE) to the DSA and a copy to the Project Inspector for each of the applicable sections of the form DSA 152 prior to the Project Inspector signing off that section of the project inspection card. The sections are:

1.6.1.12.1. Initial Site Work

1.6.1.12.2. Foundation Prep

1.6.1.12.3. Vertical Framing

1.6.1.12.4. Horizontal Framing

1.6.1.12.5. Appurtenances

1.6.1.12.6. Non-Building Site Structures

1.6.1.12.7. Finish Site Work

1.6.1.12.8. Other Work

1.6.1.12.9. Final

1.6.2. IR A-6 (Interpretation of Regulations: Construction Change Document Submittal and Approval Process)

1.6.2.1. **Submittal Requirements for Construction Changes:** After a contract for the work has been let, changes to the approved construction documents shall be made by means of Construction Change Documents (CCD). It is the responsibility of the Architect to determine if changes affect the Structural, Access or Fire & Life Safety Portions of the Project. The Architect shall prepare the CCD and is responsible for code and process compliance. The following define requirements for submittal of CCD to DSA.

1.6.2.1.1. Changes to or affecting the Structural, Access or Fire-Life Safety Portions of the Project:

- 1.6.2.1.1.1. These changes shall be classified as CCD Category A.
- 1.6.2.1.1.2. CCD Category A are required to be submitted to and approved by DSA prior to commencement of the affected work.
- 1.6.2.1.1.3. CCD Category A must be submitted to DSA using the CCD Category A form, DSA-140 available on the DSA web site, forms page, at <http://www.dgs.ca.gov/dsa/Forms.aspx>.
- 1.6.2.1.1.4. Submittal process requirements are defined herein below and must be followed.

1.6.2.1.2. Changes not affecting the Structural Safety, Access Compliance or Fire & Life Safety portions:

- 1.6.2.1.2.1. These changes shall be classified as **CCD Category B**.
- 1.6.2.1.2.2. CCD Category B are not required to be submitted to DSA unless specifically required, in writing, by DSA.
- 1.6.2.1.2.3. If DSA requires any CCD Category B to be submitted then they shall be submitted to DSA using the Category B form, DSA-141 available on the DSA web site, forms page, at <http://www.dgs.ca.gov/dsa/Forms.aspx>.
- 1.6.2.1.2.4. If DSA requires a CCD Category B to be submitted then DSA will review for concurrence that it does not contain changes to, or affect the Structural, Access or Fire & Life safety portions of the project. If necessary, and at its sole discretion, DSA will re-assign the CCD to Category A.

1.6.2.1.3. **Change Orders:** Change Orders are not required to be submitted to DSA. The CCD process replaces the need to submit Change Orders (except as noted herein). Changes to the construction cost are reported to DSA using form DSA-168 at the conclusion of the project.

1.6.2.2. Submittal Process: Submittal of CCDs must conform to the following requirements:

- 1.6.2.2.1. Must be submitted by the Architect.
- 1.6.2.2.2. Must be submitted to DSA using the appropriate form. The forms are available on the DSA web site, forms page, at <http://www.dgs.ca.gov/dsa/Forms.aspx>.
- 1.6.2.2.3. Each CCD submittal must use a separate DSA CCD Category form.
- 1.6.2.2.4. Each submittal must contain one DSA CCD Category form bound with two copies of the subject CCD except as noted herein.

1.6.2.2.5. The DSA CCD Category form must be filled out completely, leaving no fields blank.

1.6.2.2.6. Each CCD must be uniquely numbered. The numbering may be numeric or alpha-numeric.

1.6.2.2.6.1. If the submitted CCD is returned by DSA not approved, the CCD number used in the original submittal must remain the same for any subsequent re-submittals.

1.6.2.2.6.2. If a submitted CCD Category B is returned by DSA not approved, the CCD number used in the original submittal must remain the same when re-submitting as a CCD Category A.

1.6.2.2.7. Changes must be described clearly and completely.

1.6.2.2.8. Drawings, specifications, and calculations must be stamped and signed by the responsible Architect.

1.6.2.2.9. Reference to the specific portions of the drawings or specifications that are being changed must be included.

1.6.2.2.10. Changes to any testing or inspection requirements associated with the proposed change must be clearly described.

1.6.2.2.11. Each page in the CCD, including the pages in each attachment, shall be clearly and uniquely numbered. All drawings attached to describe the changes shall be clearly numbered, labeled, and referenced.

1.6.2.2.12. When drawings containing DSA approval stamps are revised and reissued as part of the CCD, all of the following requirements must be met:

1.6.2.2.12.1. Images of all DSA approval stamps must be removed from the drawing (or crossed out) prior to making any changes to the drawings.

1.6.2.2.12.2. Each change shall be clouded and identified on the drawing.

1.6.2.2.12.3. All drawings must be re-stamped and re-signed by the responsible Architect.

1.6.2.2.13. The submittal must be by mail or delivery. (Electronic submittals may be accepted at the discretion of the DSA Regional Office. For electronic submittals submit one copy of the subject CCD along with one DSA CCD Category form. Fax submittals are not acceptable.)

1.6.2.3. **Distribution of CCD Category A Documents:** The Architect shall provide the Contractor and Project Inspector with DSA approved CCD Category A prior to commencement of work shown thereon.

- 1.6.2.4. **CCD Category A Statement in Final Verified Report.** The final verified report (form DSA-6A/E) from the Architect must include a statement that all changes to or affecting the Structural Safety, Access Compliance or Fire & Life Safety portions of the project have been approved by DSA.

2. [RESERVED]

3. [RESERVED]

4. [RESERVED]

5. **CONSTRUCTION DOCUMENTS**

The Architect shall provide the Construction Documents for the Project prepared under the WUI-HMC Agreement with all necessary approvals from governmental agencies with jurisdiction therefor as necessary for the bidding and construction of the Work depicted in the Construction Documents, including without limitation, approvals by DSA. The final contract documents delivered to the District upon completion of the Architect's work shall be the Bid Set and shall consist of the following:

5.1. Drawings: Original tracings of all drawings on Architect's tracing paper with each Architect/consultant's State license stamp.

5.2. Specifications: Original word-processed technical specifications on reproducible masters in CSI format.

6. **SITE PRESERVATION AND BIDDING PHASE**

6.1. The Architect shall perform Site Preservation services for the District as follows:

6.1.1. Provide Basic Services for the demolition and site work performed by Lusardi Construction Company, the contractor retained by Westlake Urban, Inc.

6.2. The Architect shall perform Bidding Phase services for District as follows:

6.2.1. The Construction Cost Budget shall be tied to the latest estimate provided by Counterpoint Construction Services, Inc. Subject to Article 5 of the Agreement, any scope adjustments due to changes made to the Construction Cost Budget shall be provided as an Additional Service, subject to the prior written authorization of the District.

6.2.2. Contact potential bidders and encourage their participation in the Project.

6.2.3. Coordinate the development of the bidding procedures and the construction contract documents with the District. The development of the bidding procedures and the construction contract documents shall be the joint responsibility of the District and the Architect.

6.2.4. While the Project is being advertised for bids, all questions concerning intent shall be referred to the District for screening and subsequent processing through Architect.

6.2.5. In the event that items requiring interpretation of the drawings or specifications are discovered during the bidding period, those items shall be analyzed by the Architect for

decision by the District as to the proper procedure required. Corrective action will be in the form of an addendum prepared by the Architect and issued by the District.

- 6.2.6. Attend bid opening.
- 6.2.7. Coordinate with sub-consultants.
- 6.2.8. Respond to District questions and clarifications.
- 6.2.9. Deliverables and Number of Copies

Architect shall provide to the District a hard copy of the following items produced in this phase, together with one copy of each item in electronic format:

- 6.2.9.1. Two copies of meeting report/minutes from kick-off meeting;
- 6.2.9.2. Two copies of meeting report/minutes from pre-bid site walk;
- 6.2.9.3. Upon completion of the Bidding Phase, Architect shall produce a Conforming Set of plans and specifications incorporating all addenda issued thus far. Architect shall supply District with two (2) complete, reproducible sets of plans and specifications marked as a Conforming Set, and one (1) electronic set of plans in AutoCAD 2006 or compatible set and one (1) electronic copy of the conforming specifications in Microsoft Word.

7. CONSTRUCTION ADMINISTRATION PHASE

Upon District's acceptance of Architect's work in the previous Phase and assuming District has not delayed or terminated the Agreement, the Architect shall perform Construction Administration Phase services for the District as follows:

- 7.1. The Architect's responsibility to provide basic services for the Construction Phase under the Agreement commences with the award of the contract for construction and terminates upon satisfactory performance and completion of all tasks in this phase and commencement of the Closeout Phase or upon the District's terminating the Agreement, whichever is earlier.
- 7.2. **Change Orders**
 - 7.2.1. Architect shall review all of contractor's change order requests to determine if those requests are valid and appropriate. Architect shall provide a recommendation to District as to whether the change should be approved, partially approved, returned to the contractor for clarification, or rejected.
 - 7.2.2. The Architect shall furnish all necessary additional drawings for supplementing, clarifying, and/or correcting purposes and for change orders. The District shall request these drawings from the Architect and shall be at no additional cost unless designated as Extra Services by the District. The original tracing(s) and/or drawings and contract wording for change orders shall be submitted to the District for duplication and distribution.
- 7.3. **Submittals**
 - 7.3.1. Architect shall review and approve or take other appropriate action upon contractor's submittals such as: shop drawings, project data, samples and change orders, but only for

the limited purpose of checking for conformance with information given and the design concept expressed in the contract documents.

- 7.3.2. Architect shall review contractor's schedule of submittals and advise the District on whether that schedule is complete. The Architect shall provide the District with proposed revisions to this schedule and advise the District on whether the District should approve this schedule.
- 7.3.3. The Architect's action upon contractor's submittals shall be taken as expeditiously as possible so as to cause no unreasonable delay in the construction of the Project or in the work of separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. In no case shall the review period associated with a single, particular submittal exceed ten (10) business days from its receipt by the Architect, unless the complexity of the submittal warrants a longer time period for the review to be mutually agreed upon by both parties. Architect's response to each submittal shall be a substantive and acceptable response. This 10-day time period shall not include time when a submittal is within the District's control or if the submittal is being reviewed by DSA. In no way does this provision reduce the Architect's liability if it fails to prepare acceptable documents.
- 7.4. **RFIs.** During the course of construction, all Requests for Information ("RFI") must be responded to as expeditiously as possible so as not to impact and delay the construction progress. In no case shall the review period associated with an RFI exceed seven (7) calendar days from the receipt by the Architect. Architect's response to each RFI shall be a substantive and acceptable response. This 7-day time period shall not include time when a submittal is within the District's control or if the submittal is being reviewed by DSA. In no way does this provision reduce the Architect's liability if it fails to prepare acceptable documents.
- 7.5. On the basis of on-site observations, the Architect shall keep the District informed of the progress and the quality of the work, and shall endeavor to guard the District against defects and deficiencies in the work. Architect shall notify the District in writing of any defects or deficiencies in the work by any of the District's contractors that the Architect may observe. However, the Architect shall not be a guarantor of the contractor's performance. Further, The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work.
- 7.6. **Rejection of Work.** The Architect shall have the authority, only after pre-approval of the District, to reject Project contractor(s)'s work that does not conform to the requirements of the construction contract documents. The Architect shall have the authority, upon its sole discretion, to reject Project contractor(s)'s work that presents an immediate risk of injury to persons.
- 7.7. **Quality Control/Punch List Process.** Architect shall evaluate during the Construction Administration and Closeout Phases the contractor(s)' execution and overall delivery of its work throughout the construction process shall use its best efforts to ensure the Project meets or exceeds the criteria as set forth in the Conforming Set. The Parties acknowledge that this process is not commissioning of the Project or the Project's system(s).
 - 7.7.1. The Quality Control/Punch List ("QC"/"Punch") Process is a comprehensive and systematic process to verify that the building systems and assemblies are constructed and installed as designed to meet the District's requirements. Quality Control during the Construction Phase, the Closeout Phase, and all warranty periods shall achieve the following specific objectives:

- 7.7.1.1. Verify and document that assemblies and equipment are installed per manufacturer's recommendations, product minimum standards, and the design intent expressed in the Contract Documents.
 - 7.7.1.2. Verify and document that the manufacturer(s) and designer(s) of assemblies, equipment, and systems have approved the full compliance, performance, and operation of all completed assemblies, equipment, and systems for that they manufactured and/or designed.
 - 7.7.1.3. Verify and document assembly, equipment, and system function.
 - 7.7.1.4. Verify the completeness of operations and maintenance materials.
 - 7.7.1.5. Ensure that the District's operating personnel receive all required training and are offered additional and supplemental training, on the operation and maintenance of building assemblies, equipment, and systems.
 - 7.7.1.6. In addition to all incomplete items on its punch list, document items of known non-compliance in materials, installation or operation.
- 7.7.2. The QC/Punch Process does not reduce the responsibility of any designers or contractors to provide a finished and fully functioning product.
- 7.8. **As-Built Drawings.** Architect shall review and evaluate for District, the contractor(s)' documentation of the actual construction performed during the Project that the contractor(s) should prepare and submit as As-Built. As-Built are documents that show the actual construction performed during the Project, including changes necessitated by change orders, and detailed by the District's construction contractor(s) on a Conforming Set.
 - 7.8.1. Architect shall provide to contractor(s), electronic "background" copies of all plans on which the contractor(s) shall indicate its "As-Built" in electronic format back to the District.
- 7.9. **Record Drawings.** Only if requested specifically by the District, Architect shall incorporate all information on all As-Built, sketches, details, and clarifications, and prepare one set of final Record Drawings for the District. The Record Drawings shall incorporate onto one set of electronic drawings, all changes from all As-Built, sketches, details, and clarifications. If a set of Record Drawings has been requested by the District, then (1) the Architect shall deliver it to the District at completion of the construction and (2) it shall be a condition precedent to the District's approval of the Architect's final payment. The Architect may insert the following notice on the Record Drawings:

These drawings [or corrected specifications] have been prepared based on information submitted, in part, by others. The Architect has provided a review consistent with its legal standard of care.
- 7.10. **O&M Manuals / Warranties.** Architect shall review equipment, operation and maintenance manuals, and a complete set of warranty documents for all equipment and installed systems, to ensure that they meet the requirements of the plans and specifications.
- 7.11. Architect shall also provide, at the District's request, architectural/engineering advice to the District on start-up, break-in, and debugging of facility systems and equipment, and apparent deficiencies in construction following the acceptance of the contractor's work.
- 7.12. **Contractor's Application for Payment.** Failure of Architect to perform the following tasks shall be a material breach of the Agreement.

- 7.12.1. **Development of Payment Procedures.** In consultation with the District and the construction manager, the Architect shall assist in the development and implementation of procedures, forms and documents for the submittal, review, processing and disbursement of Progress Payments to the Project contractor(s).
- 7.12.2. **Certification of Payment Due.** Based on the Architect's observations and evaluations, the Architect shall certify the amount due on each application for progress payment. The Architect shall review and respond to applications for progress payment in a prompt manner so as to allow the District to timely meet its payment obligations to the Project contractor(s) under the terms of the construction contract documents and applicable law, rule or regulation.
- 7.12.3. **Final Payment.** The Architect shall review, evaluate and certify for payment the Project contractor(s)'s application for final payment. The Architect shall review and respond to the Project contractor(s)'s application for final payment in a prompt manner so as to allow the District to timely meet its obligation to make payment of the Final Payment under applicable law, rule or regulation.
- 7.12.4. Recommendations of Payment by Architect constitute Architect's representation to the District that work has progressed to the point indicated to the best of Architect's knowledge, information, and belief, and that the quality of the work is in general conformance with the contract documents.

7.13. **Deliverables and Number of Copies**

Architect shall provide to the District a hard copy of the following items produced in this phase, together with one copy of each item in electronic format:

- 7.13.1. Two copies of meeting report/minutes from kick-off meeting;
- 7.13.2. Two copies of observation reports;
- 7.13.3. Two copies of weekly meeting reports.

7.14. **Meetings**

During this phase, Architect shall attend, take part in, and, when indicated, conduct meetings, and site visits. Architect shall take comprehensive meeting minutes such that all discussed items and actionable items are clearly stated. Meeting minutes must be distributed within 72 hours after the meeting.

- 7.15. **Duty to Timely Respond to DSA Inquiries.** Architect acknowledges that the District, DSA, and/or the Inspector of Record may require Architect to submit changes or clarifications to the Construction Drawings and other documentation to DSA for its consideration and approval during the Construction Administration Phase ("DSA Request"). Any delay by Architect in responding to the DSA Request is likely to result in delays to the Project. Accordingly, Architect shall respond expeditiously and with all due diligence to any DSA Request ("DSA Response"), provided that in no event shall the Architect's DSA Response occur later than two (2) days after Architect receives notice of the DSA Request, unless a longer period of time is approved in writing, in advance, by the District.

8. CLOSEOUT PHASE

- 8.1. As the Construction Administration Phase progresses, the Architect shall perform the following Closeout Phase services for the District as required:
 - 8.1.1. Architect shall review the project and observe the construction as required to determine when the contractor has completed the construction of the Project and shall prepare punch lists of items that remain in need of correction or completion.
 - 8.1.2. Architect shall collect from the contractor, review, and forward to the District all written warranties, operation manuals, spare parts, lien waivers, and Certificates of Inspection and Occupancy with Architect's recommendation as to the adequacy of these items.
 - 8.1.3. Architect shall prepare or collect, as applicable, and provide to DSA, all reports required by DSA related to the design and construction of the Project.
 - 8.1.4. Architect shall obtain all required DSA approval on all change orders and addenda to the contractor's contract.
 - 8.1.5. Architect shall prepare verified report(s) for the Project (DSA-6A/E Verified Report, Rev 04/08, or more recent revision if available).
 - 8.1.6. Architect shall prepare a set of Record Drawings for the Project, as requested by the District.
 - 8.1.7. Architect shall review and prepare a package of all warranty and O&M documentation.
 - 8.1.8. Architect shall organize electronic files, plans and prepare a Project binder.
 - 8.1.9. Architect shall coordinate all Services required to close-out the design and construction of the Project with the District and between consultants.
 - 8.1.10. Architect shall coordinate and obtain DSA approval of the Project in a time period not to exceed twelve months from the date of the start of the Closeout Phase (see Exhibit "C") or issuance final payment release to the contractor(s); whichever is soonest.
- 8.2. When the design and construction of the Project is complete, the District shall prepare and record with the County Recorder a Notice of Completion for the Project.
- 8.3. **Deliverables and Number of Copies**
 - 8.3.1. Punch lists for each site;
 - 8.3.2. Upon completion of the Project, all related project documents, including As-Built, Record Drawings. These are the sole property of the District.
- 8.4. **Meetings**

During this phase, Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops.

9. MEETINGS / SITE VISITS

9.1. Architect shall attend, take part in, and, when indicated, conduct meetings, site visits and workshops, as indicated below. Architect shall chair, conduct and take minutes of all meetings Architect attends (excluding Governing Board meetings and Citizens' Bond Oversight Committee meetings). Architect shall invite the District and/or its representative to participate in these meetings. Architect shall keep a separate log to document design/coordination comments generated in these meetings. The approximate number of meetings below is an estimated requisite to adequately achieve the indicated meeting objective. The exact number of meetings required to accomplish the meeting objectives will be based on the Architectural team's performance. Additional meetings or fewer meetings may be held, as necessary, to achieve the meeting objectives, but at no additional compensation to the Architect.

9.2. General Meeting and Site Visit Requirements

9.2.1. Architect shall always be prepared to answer questions and issues from District staff, site staff, potential bidders, and/or contractors, as applicable.

9.2.2. Architect shall maintain documentation of all meetings, site visits or site observations held in conjunction with the design and construction of the Project, with documentation of major discussion points, observations, decisions, questions or comments. These shall be furnished to the District and/or its representative for inclusion in the overall Project documentation.

9.2.3. As required, Architect shall provide at no additional cost to the District copies of all documents or other information needed for each meeting, site visit, and workshop.

9.2.4. Each meeting may last up to six (6) hours) and shall be held at the District office or at the Project site, unless otherwise indicated.

9.3. Meetings During Bidding Phase (Three (3) meetings)

9.3.1. Attend and take part in two meetings with all potential bidders, District staff, and Construction Manager.

9.3.2. Conduct one kick-off meeting with the successful bidder, District staff, and Construction Manager to finalize the roles and responsibilities of each party and provide protocols and processes to follow during construction.

9.4. Meetings During Construction Administration Phase

9.4.1. Architect shall visit the Project site as necessary or when requested, and in no case less than once per week, sufficient to determine that the Project is being constructed in accordance with the plans and specifications, and to resolve discrepancies in the contract documents and to monitor the progress of the construction of the Project.

9.4.2. Conduct weekly project meetings with District staff to review with District staff the progress of the work at the site.

9.4.3. Architect shall ensure that consultant(s) visit the site in conformance with their agreement.

9.5. Citizens' Bond Oversight Committee Meetings

Architect shall, at the District's direction, attend District citizen bond oversight committee meeting(s) and present to the District's citizen bond oversight committee as requested but not to exceed two 2-hour meetings.

9.6. Governing Board Meetings

Architect shall, at the District's direction, attend District governing board meeting(s) and present to the District's governing board as requested but not to exceed three 2-hour meetings.

EXHIBIT "B"

CRITERIA AND BILLING FOR EXTRA SERVICES

The following Extra Services to the Agreement shall be performed by Architect if needed and if authorized in writing by the District in accordance with the Article "Payment for Extra Services or Changes" in the Agreement:

1. Making revisions in drawings, specifications, or other documents when such revisions are:
 - 1.1. Required to comply with direction from the District that is substantively different than approvals or instructions previously given by the District.
 - 1.2. Required by the enactment or revisions of codes, laws, or regulations subsequent to the preparation of the Conforming Set, unless those enactments or revisions were foreseeable or reasonably should have been foreseeable by the Architect prior to preparation of the Conforming Set.
 - 1.3. Due to changes required as a result of the District's failure to respond to a written request from the Architect within a reasonable time, as requested by Architect.
 - 1.4. Required to provide services in connection with Change Orders and directive not the fault of the Architect.
2. Providing services required because of significant documented changes in a Project initiated by the District, including but not limited to size, quality, complexity, the District's schedule, or method of bidding or negotiating and contracting for construction.
3. Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of that work.
4. Providing services made necessary by the default of contractor(s), by major defects, or deficiencies in the work of contractor(s).
5. In the absence of a final Certificate of Payment or Notice of Completion, providing Services more than sixty (60) days after the date of completion of work by contractor(s) and after Architect has completed all of its obligations and tasks under the Agreement.
6. Providing deliverables or other items in excess of the number indicated in **Exhibit "A."** Before preparing, providing, sending, or invoicing for extra deliverables, Architect shall inform the District that expected deliverables may be in excess of the number indicated in **Exhibit "A,"** so that District can procure the additional deliverables itself or direct Architect to procure the deliverables at District's expense or on District's account at a specific vendor.
7. Providing services as directed by the District that are not part of the Services of this Agreement.
8. Providing services as an expert and/or witness for the District in any mediation, arbitration, and/or trial in which the Architect is (1) not a party, and (2) did not in any way cause the dispute that is being adjudicated.
9. Providing training, adjusting, or balancing of systems and/or equipment sixty (60) days after completion of work by Contractor(s) and after Architect has completed all of its obligations and tasks under the Agreement.

10. Providing services sixty (60) days after the original completion date for construction services at the time of contract award not due to the fault of the Architect or sixty (60) days after issuance to the Owner of the final Certificate for Payment, whichever is earlier.
11. Providing services of consultants, if any other than those specified as Basic Services under this Agreement.
12. If the Project is placed on hold by the Owner for more than 90 days due to circumstances beyond the direct control of the Architect, the schedule shall be adjusted and the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services.
13. The following rates, which include overhead, administrative cost and profit, shall be utilized in billing for Bidding Phase and arriving at the fee for Extra Services and shall not be changed for the term of the Agreement.

HMC Rate Schedule
Standard Hourly Rate by Professional Category
 (Not all categories need apply to this contract)

Description	Rate
Principal in Charge	\$ 235
Sr Project Manager/Sr Project Architect/Sr Technical Manager	\$ 205
Project Manager/Project Architect/Technical Manager	\$ 185
Project Leader/Technical Leader	\$ 165
Project Coordinator	\$ 135
Sr Construction Administrator	\$ 205
Construction Administrator	\$ 155
Construction Administration Support	\$ 100
Design Director	\$ 235
Senior Project Designer	\$ 205
Project Designer	\$ 185
Design Leader	\$ 165
Designer II	\$ 120
Designer	\$ 100
Senior Interior Designer	\$ 205
Senior Interior Project Designer	\$ 205
Sr. Estimator	\$ 205
Sr. Specifications Writer	\$ 205
Sustainable Design	\$ 205
Specifications Technician	\$ 190
Visualization Arts	\$ 170
Agency Compliance	\$ 130
Senior Education Facilities Planner	\$ 195
Education Facilities Planner	\$ 160

14. The mark-up on any approved item of Extra Services performed by Consultant(s) shall not exceed ten **percent (10%)**.
15. Mileage to/from Project is **NOT** reimbursable as Extra Services.

EXHIBIT "C"

SCHEDULE OF WORK

1. Promptly after the execution of this Agreement, the Architect shall prepare and submit for approval to the District a Schedule of Work showing the order in which Architect proposes to carry out Architect's work ("Schedule of Work"). The Schedule of Work shall apply to the completion of all services listed hereunder within the times established by this Agreement. The Schedule of Work shall be in the form of a progress chart clearly delineating all important increments and review dates. Architect shall update the Schedule of Work on a monthly basis and deliver two (2) copies to the District along with the monthly billing.
2. Architect shall complete all work and services required per the Schedule of Work after written authorization from the District to proceed.
3. The durations stated in the Schedule of Work shall include the review periods required by the District and all other regulatory agencies.
4. All times to complete tasks set forth in this Exhibit are of the essence, as per Article 2 of the Agreement. If delays in the Schedule of Work are imposed by the District's inability to comply with requested meeting schedules, Architect shall maintain the right to request an adjustment in the Schedule of Work if deemed necessary to meet the deadlines set forth in this Exhibit. If approved, such extensions shall be authorized in writing by the District.
5. The District and Architect agree and acknowledge, however, that the performance of the Architect's services may depend upon other parties and circumstances which the Architect cannot control. The schedule, therefore, may be extended by agreement between the District and Architect, except where the Architect is solely responsible for Project delays.

EXHIBIT "D"

PAYMENT SCHEDULE AND INVOICING

1. Compensation

- 1.1. The payment of consideration to Architect as provided herein shall be full compensation for all of Architect's Services incurred in the performance hereof, including, without limitation, all costs for personnel, travel within two hundred (200) miles of a Project location, offices, per diem expenses, printing and shipping of deliverables in the quantities set forth in **Exhibit "A,"** or any other direct or indirect expenses incident to providing the services. Except as expressly set forth in the Agreement and **Exhibit "B,"** there shall be no payment for extra costs or expenses.
- 1.2. The total compensation to Architect shall be as stated in Article 6 of the Agreement.
- 1.3. District shall pay Architect for all Services contracted for under this Agreement pursuant to the following schedule ("Payment Schedule"):

PERCENTAGE OF TOTAL FEE PER PHASE		
Phase		Phase Amount
Bidding Phase		Hourly NTE
Construction Administration Phase		83.7%
Closeout Phase		16.3%
Generate Punch List	3.26%	
Sign Off On Punch List	3.26%	
Receive and Review All O&M Documents	3.26%	
Filing All DSA Required Closeout Documents	3.26%	
Receiving DSA Closeout, including DSA approval of the final As-Built set of drawings	3.26%	

2. Method of Payment

Invoices shall be on a form approved by the District and are to be submitted to the District via the District's authorized representative.

- 2.1. If reasonably requested by District and, as a precondition of payment, Architect shall submit to District documentation showing proof that payments were made to Architect's consultant(s).
- 2.2. Architect shall submit to the District for approval a copy of the Architect's monthly pay request format.
- 2.3. Upon receipt and approval of Architect's invoices, the District agrees to make payments within thirty (30) days of receipt of the invoice as follows:
 - 2.3.1. For Bidding Phase:

Monthly payments for the percentage of Services complete up to ninety-five percent (95%) of the fee for the phase; one hundred percent (100%) payment upon the District's award of the bid.

2.3.2. For Construction Administration Phase:

Monthly payments for the percentage of construction work completed, as mutually agreed upon by the District, its consultant(s) and/or representative(s), and the Architect up to ninety-five percent (95%) of the fee for the phase; one hundred percent (100%) payment upon the District's agreement that the Architect can generate a Punch List as part of the Closeout Phase.

2.3.3. For Closeout:

Individual payment(s) proportionate to the items completed within this Phase.

3. Format and Content of Invoices

3.1. Architect acknowledges that the District requires Architect's invoices for Basic Services must include explanations of the Services performed.

3.2. For invoices for Extra Services, a more detailed explanation, with specificity, is required. For example, the following descriptions, in addition to complying with all other terms of this Agreement, would be payable for invoices for Extra Services. The times indicated below are just placeholders:

Review/Respond RFI's, Const. Admin Mtgs., Review Shop Drawings, Field Sketches	5.5 hours
Prepare Construction Documents: floor plans, exterior elevations, consultant coordination.	7.5 hours
Master Budget update, Master Schedule Update, Board Presentation, Accounting coordination	6.5 hours

EXHIBIT "E"

INSURANCE REQUIREMENTS

Architect shall procure prior to commencement of the Services of this Agreement and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services hereunder by the Architect, his agents, representatives, employees and consultant(s). Architect's liabilities, including but not limited to Architect's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Architect's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated as a material breach of contract by the District.

1. **Minimum Scope and limits of Insurance:**

Coverage shall be at least as broad as the following scopes and limits:

- 1.1. **Commercial General Liability.** One million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage and the general aggregate limit shall be twice the required occurrence limit.
- 1.2. **Commercial Automobile Liability, Any Auto.** One million dollars (\$1,000,000) per accident for bodily injury and property damage.
- 1.3. **Workers' Compensation Liability.** For all of the Architect's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Architect shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide employers' liability coverage with minimum liability coverage of one million dollars (\$1,000,000) per accident for bodily injury or disease. The Architect shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
- 1.4. **Employers' Liability.** For all of the Architect's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Architect shall keep in full force and effect, an Employers' Liability policy. That policy shall provide employers' liability coverage with minimum liability coverage of one million dollars (\$1,000,000) per occurrence.
- 1.5. **Professional Liability.** This insurance shall cover the prime design professional and his/her/its liability arising from the services of consultant(s) with a minimum of five million dollars (\$5,000,000) per claim limit and five million dollars (\$5,000,000) aggregate limit, and subject to no more than two hundred thousand dollars (\$200,000) per claim deductible, coverage to continue through completion of construction plus "tail" coverage for two (2) years thereafter. Architect shall require all Consultants to maintain the level of insurance Architect deems appropriate with respect to the Consultant's scope of the Work, which may be a minimum of one million dollars (\$1,000,000) per claim limit and two million dollars (\$2,000,000) aggregate limit, and subject to no more than twenty-five thousand dollars (\$25,000) per claim deductible, coverage to continue through completion of construction plus "tail" coverage for two (2) years thereafter. Should Architect not require Consultants to provide the same level of insurance as is required of Architect, as provided in this Agreement, Architect is not relieved of its indemnity obligations to District or fulfilling its insurance requirements as provided in this Agreement.

The District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.

2. Deductibles and Self-Insured Retention:

The Architect shall inform the District in writing if any deductibles or self-insured retention exceeds \$200,000. At the option of the District, either:

- 2.1. The District can accept the higher deductible; or
- 2.2. The Architect's insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers.

3. Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- 3.1. The District, the Construction Manager, their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Architect; instruments of Service and completed operations of the Architect; premises owned, occupied or used by the Architect; or automobiles owned, leased, hired or borrowed by the Architect. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.
- 3.2. For any claims related to the projects, the Architect's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Architect's insurance and shall not contribute with it.
- 3.3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.
- 3.4. The Architect's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 3.5. The Architect shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
- 3.6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District. At the option of the District, the Architect shall be the party required to provide the District this notice in lieu of the Architect's insurance provider.

4. Acceptability of Insurers:

Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A:VII. The Architect shall inform the District in writing if any of its insurer(s) have an A.M. Best's rating less than A:VII. At the option of the District, either:

- 4.1. The District can accept the lower rating;

4.2. Require the Architect to procure insurance from another insurer.

5. **Verification of Coverage:**

Architect shall furnish the District with:

- 5.1. Certificates of insurance showing maintenance of the required insurance coverage;
- 5.2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before Services commence.