

April 30, 2015

Mr. George Parker  
Director of Facilities Maintenance & Operations  
Davis Joint Unified School District  
1919 5th Street  
Davis, CA 95616



Re: Agreement for Architectural, Civil and Electrical Engineering Services  
Holmes Restroom Replacement Portables  
HMC #3447012000

Dear George:

HMC is pleased to submit the following Agreement to provide Architectural, Civil and Electrical Engineering Services for the above-mentioned project.

**A. Scope of Work:**

1. Provide Architectural, Civil, and Electrical design services to add two 12' x 40' Restroom Portables for Holmes Middle School.

**B. Exclusions:**

1. Engineering Services including, but not limited to Mechanical/Plumbing and Landscape Design Services.
2. Specialty Consultants.
3. Programming.
4. Special studies.
5. Surveying of existing conditions.
6. Topographical Surveys.
7. Geotechnical investigations.
8. Test and Inspections.
9. Structural Engineering Services – which may be required certifying that the existing building has not suffered structural deterioration or been structurally altered as required per DSA Policy 07-02, Appendix A – OTC Package Checklist, Item E.4. (This may be provided by the building manufacturer)

**C. Compensation:**

1. HMC will provide the services outlined in Item A of the Scope of Work above for a fixed fee of Twenty-Nine Thousand Eight Hundred Dollars (\$29,800) per Attachment "A", Basis of Compensation.

**D. Additional Services:**

If Additional Services are required beyond the original Scope of Work, such services described in Attachment "B", HMC will bill on an hourly basis per Attachment "C", HMC Hourly Rate Schedule.

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**E. Reimbursable Expenses:**

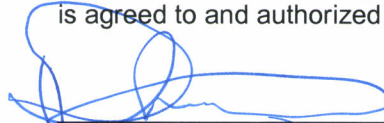
Reimbursable expenses are in addition to compensation for Basic and Owner approved Additional Services, including printing, plotting, delivery and other expenses related to Agency review, Bidding, Construction or other Owner requested costs. Expense of transportation (including mileage) in connection with the Project; Expenses in connection with authorized out-of-town travel, including travel time; and fees paid for securing approval of authorities having jurisdiction over the Project. The Architect's compensation shall be computed based on one and one-tenth (1.10) times the amounts invoiced to the Architect.

**F. Other Terms and Conditions of This Agreement:**

Reference Attachment "D" of this Agreement.

**G. Authorization/Agreement to Proceed:**

HMC is hereby requested and authorized by Davis Joint Unified school District to provide Architectural / Engineering Services as described above. All the foregoing is agreed to and authorized by:



Philip Nemeth, AIA  
Managing Principal  
License #C-21453

5.1.15

Date

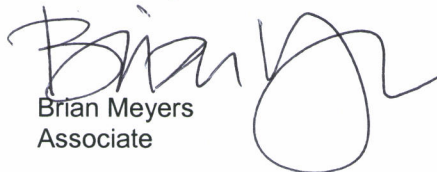
Bruce Colby  
Assistant Supt.  
Business Services

Date

Please review this Agreement and if it meets with your approval, please sign and return one (1) original to my attention.

Sincerely,

**HMC Group**



Brian Meyers  
Associate

Encls. Attachment "A" - Basis of Compensation  
Attachment "B" - Additional Service List  
Attachment "C" - HMC Hourly Rate Schedule  
Attachment "D" - Other Terms and Conditions

cc: L. Eloff, P. Nemeth, File-CN-AOA  
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**BASIS OF COMPENSATION (PORTABLE SCHEDULE)**  
**ATTACHMENT "A"**  
**April 30, 2015**

	<b>Restroom Portables</b>
Buildings on 1 Site	\$7,500
Fire Alarm Connections on 1 Site	\$4,000
Electrical Connections on 1 Site	\$4,000
Plumbing Connections on 1 Site	\$5,000
Construction Administration on 1 Site	\$3,000
Sitework	(9% of \$40K) \$3,600
ADA/Disabled Compliance	(12% of \$10K) \$1,200
Project Closeout	\$1,500
<b>TOTAL:</b>	<b>\$29,800</b>

## ATTACHMENT "B"

### ADDITIONAL SERVICES

The Additional Services described in this Attachment are not included in Basic Services and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. Additional Services may only be provided if authorized or confirmed in writing by the Owner and Architect.

#### Project Representation Beyond Basic Services:

1. **Revisions:** Making revisions in Drawings, Specifications, Project Manual or other documents when such revisions are:
  - a. Inconsistent with approvals or instructions previously given by the Owner;
  - b. Required by the enactment, revised interpretation, jurisdictional differences in interpretation, or revision of codes, laws or regulations subsequent to the preparation of such documents, or additional costs caused by delays resulting from such.
2. **Project Changes:** Providing services required because of changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction.
3. **Change Orders:** Preparing Drawings, Specifications and other documentation, analysis and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and directives.
4. **Default:** Providing services made necessary by the default or termination of the Contractor, by defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner, Contractor or others performing services or providing work on the Project.
5. **Claims:** Providing services in connection with claims submitted by Contractor or others.
6. **Hearings, Proceedings:** Providing services in connection with the preparation for, or attendance at, public hearings or other meetings, or legal proceedings, except where the Architect is a party thereto.

#### Contingent Additional Services

1. **Existing or Other Facilities:** Providing services to investigate facilities or existing conditions or to make measured drawings thereof.
2. **Detailed Estimates:** Providing detailed estimates of Construction Cost.
3. **Providing Other Consultants:** Providing services of consultants, if any other than those specified as Basic Services under this Agreement.
4. **Post Completion/Extended Construction:** Providing services after the original completion date not due to the fault of the Architect/Engineer or after issuance to the Owner of the final Certificate for Payment, or thirty (30) days after the date of Substantial Completion of the Work, whichever is earlier.
5. **Project Hold/Resumption:** 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.
6. **Other Additional Services:** Providing any other services not otherwise included in this Agreement.

## ATTACHMENT "C"

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

Description	Rates
Principal in Charge	\$ 195
Project Director	\$ 190
Project Leader/Technical Leader	\$ 135
Sr Project Manager/Sr Project Architect/Sr Technical Manager	\$ 185
Project Manager/Project Architect/Technical Manager	\$ 160
Project Coordinator	\$ 115
Intermediate Drafter	\$ 105
Sr Construction Administrator	\$ 190
Construction Administrator	\$ 140
Construction Administration Support	\$ 80
Design Director	\$ 195
Design Leader	\$ 120
Project Designer	\$ 150
Senior Project Designer	\$ 175
Designer II	\$ 110
Designer	\$ 85
Senior Interior Project Designer	\$ 165
Senior Interior Designer	\$ 170
Interior Design Coordinator	\$ 90
Interior Design Leader	\$ 115
Interior Designer	\$ 125
Sustainable Design	\$ 135
Cost Estimating	\$ 185
Specifications	\$ 165
Agency Compliance	\$ 90
Education Facilities Planner	\$ 160
Senior Education Facilities Planner II	\$ 175
Senior Education Facilities Planner I	\$ 195

These are the current hourly rates effective June 1, 2014 through June 30, 2015 and are subject to change one time annually effective June 1<sup>st</sup>

## **ATTACHMENT "D"**

### **OTHER TERMS AND CONDITIONS**

#### **Retainer**

An initial payment of zero (-0-) shall be made upon execution of this Agreement and credited to the fee earned at final payment.

#### **Invoicing**

The Architect shall invoice its time and reimbursable expenses monthly, and invoices are due and payable upon receipt. Amounts unpaid thirty (30) days after the receipt of the invoice will be subject to a service charge of eighteen percent (18%) per annum, pursuant to Civil Code §3320. Should the Owner fail to pay current invoices for more than sixty (60) days, the Architect may stop work on the Project until payment is received or terminate this Agreement with the Owner. The Architect shall not be held liable for any damages or losses that may result from such suspension or termination of services according to the provisions set forth in this proposal.

The Owner agrees to return disputed invoices within fifteen (15) days of that invoice with a clear description of the nature of the dispute.

#### **Project Suspension/Resumption**

If the Project is suspended by the Owner for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services. If the project is suspended by the Owner for more than ninety (90) consecutive days, the Architect may terminate the Agreement, by giving not less than seven (7) days written notice.

#### **Termination**

Either the Owner or Architect may, for any reason, terminate this Agreement upon not less than seven (7) days written notice to the other party. In the event of termination, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due. Termination Expenses are in addition to compensation for Basic and Additional Services and shall be computed as five percent (5%) of the Basic Services and Additional Service Fees.

#### **Owner's Responsibility**

The Owner shall provide full information, including a program which sets forth the Owner's objectives, schedule, constraints, and budget, with reasonable contingencies and criteria. The Owner shall also furnish any reports, tests, surveys, permits, inspection or other documentation of information or consultants reasonably requested by the Architect. All of foregoing shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

#### **Architect of Record**

Should the Project proceed beyond the phases of services in this Agreement, the Owner shall designate HMC as the Architect of Record for the Project and will enter into a mutually agreeable Owner/Architect Contract for the remaining phases of services to complete the Project.

#### **Ownership of Documents**

The Owner acknowledges that the Architect's Drawings, Specifications, Other Documents, Three Dimensional Computer Models and other design models are instruments of professional services. Nevertheless, the Drawings, Specifications, Other Documents, Three Dimensional Computer Models or

other design models prepared under this Agreement shall become the property of the Owner upon completion of this Project and upon payment of all amounts due the Architect. The Architect, however, shall be deemed the author of these documents and shall retain all common law, statutory, and other reserved rights, including the copyright. Should the Owner or any other person, firm or legal entity use, reuse or modify the Architects' Drawings, Specifications, Other Documents, Three Dimensional Computer Models or other design models prepared under this Agreement, for other than the Owner's use and occupancy of the completed Project, the Owner agrees to indemnify, defend, and hold the Architect harmless from and against any and all claims, liabilities, suits, demands, losses, costs, and expenses, including reasonable attorneys' fees and all legal expenses and fees incurred on appeal, and all interest thereon, accruing or resulting to any and all persons, firms or any other legal entity, arising out of such use, reuse or modification of the Architect's Drawings, Specifications, Other Documents, Three Dimensional Computer Models or other design models, except where the Architect is found to be solely liable for such damages or losses by a court or forum of competent jurisdiction.

### **Electronic Files**

When requested by Owner, the Architect may transfer documents in electronic file formats to the Owner. The creation of the computer files shall be considered an additional service and the Architect shall be compensated on an hourly basis. By accepting these files/disks and the above stipulations, the Owner agrees to indemnify the Architect, its agents and all consultants against all claims, resulting from the use of these files and the information they contain, by the Owner or their own Consultants, Contractor, Subcontractors, suppliers and all others who receive these files or data. In no event shall the Architect be liable for any loss or profit or any consequential damages as a result of the Clients use or reuse of the electronic files. Owner understands and agrees the Architect relies on various forms of data transmission by an uninterrupted delivery of electrical and telephone service as a means of conducting Architect's business, including the Internet, and that the Internet may be used for intentional and malicious purposes, including transmission of electronic applications commonly referred to as computer "viruses" or "worms". While the Architect endeavors to eliminate the propagation of such applications through its systems and network, the Architect has no control over the actions of third party internet service providers or users of the Internet or similar systems. Consequently, the Owner agrees to waive all claims against the Architect for the propagation of virus applications that may cause damage of any kind to the Owner unless the Architect was the creator of the virus.

### **Software and Data Exchange Protocols**

The Owner and Architect shall, at the earliest practical moment, meet and delineate the types of software to be used on the Project and establish protocols, standards and tolerances as may be required for the proper execution of the Work. If applicable, the Owner and Architect shall work together to establish the permitted uses for all digital information, including the Model, to be exchanged on the Project. Such determination shall be set forth in the BIM Addendum, or other similar document, that shall be incorporated by reference into all agreements for services or construction of the Project.

### **Limitation of Liability**

In recognition of the relative risks and benefits of the project to both the Owner and the Architect, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the Architect and his or her subconsultants to the Owner and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of the Architect and his or her subconsultants to all those named shall not exceed the Architect's total fee paid for services rendered on this project. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty. Further, no officer, director, shareholder, or employee of Architect shall bear any personal liability to Owner for any and all injuries, claims, demands, losses or damages of any nature.

## **Insurance**

During the term of this Agreement, the Architect agrees to provide evidence of insurance coverage of five million dollars (\$5M) Professional Liability (Errors and Omissions). In addition, the Architect agrees to attempt to maintain continuous professional liability coverage for the period of design and construction of this project if such coverage is reasonably available at commercially affordable premiums. The Architect further agrees that the applicable subconsultants will be required to maintain a minimum of one million dollars (\$1,000,000) Professional Liability (Errors and Omissions) coverage. For the purposes of this Agreement "reasonably available" and "commercially affordable" shall mean that more than half the Architect's practicing in this state in this discipline are able to obtain such coverage. Nothing contained in the Agreement or otherwise is intended to create a fiduciary relationship between the parties.

## **Mediation**

In an effort to resolve any conflicts that arise during the design or construction of the Project or following the completion of the Project, the Owner and the Architect agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

The Owner and the Architect further agree to include a similar mediation provision in all agreements with independent contractors and consultant retained for the Project and require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

If the parties do not resolve a dispute through mediation, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction. Architect shall make no claim against Owner without first providing Owner with a written notice of damages and providing Owner thirty (30) days to cure before an action is commenced. The Owner shall make no claim either directly or in a third party claim, against Architect unless the Owner has first provided Architect with a written certification executed by an independent architect currently practicing in California. This certification shall a) contain the name and license number of the certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of an architect performing architectural services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to Architect not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any judicial proceeding.

## **Assignment**

Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.

## **Hazardous Materials**

It is acknowledged by both parties that the Architect's scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event the Architect or any other party encounters asbestos or hazardous or toxic materials or toxic mold at the jobsite, or should it become known in any way that such materials at the jobsite, or any adjacent areas that may affect the performance of the Architect's services, the Architect may, at the Architect's option and without liability for consequential or any other damages, suspend performance of services on the project until the Owner retains appropriate specialist consultant(s) or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials, and warrant the jobsite is in full compliance with the applicable laws and regulations.



### **Consequential Damages**

The Architect and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination.

### **Third Party Contracts**

The Owner shall, upon request of the Architect, supply a copy of the executed Agreement with the Owner's Construction Manager or Project Management Firm, relating to services provided under this Agreement. The Owner shall require that the Contractor and Construction Manager or Project Management Firm (if any) defend, indemnify and hold harmless the Architect for any claims or damages arising from their respective work on the project.