

MASTER AGREEMENT
FOR
ARCHITECTURAL SERVICES
BETWEEN
NORTH MONTEREY COUNTY UNIFIED SCHOOL DISTRICT
AND
KASAVAN ARCHITECTS, INC.

FEBRUARY __, 2015

NORTH MONTEREY COUNTY UNIFIED SCHOOL DISTRICT
8142 Moss Landing Road
Moss Landing, CA 95309

TABLE OF CONTENTS

DEFINITIONS	1
RETENTION OF ARCHITECT; STANDARD OF CARE	2
DESCRIPTION OF PROJECT	3
COMPENSATION	3
BASIC SERVICES TO BE RENDERED BY ARCHITECT	5
ADDITIONAL SERVICES TO BE RENDERED BY ARCHITECT	17
RESPONSIBILITIES OF DISTRICT	18
PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE	19
WORKER'S COMPENSATION INSURANCE	21
ERRORS AND OMISSIONS INSURANCE.....	21
COMPLIANCE WITH LAWS	22
TERMINATION OF AGREEMENT	22
ARCHITECT AN INDEPENDENT CONTRACTOR	24
STANDARDIZED MANUFACTURED ITEMS	24
OWNERSHIP OF DOCUMENTS	24
LICENSING OF INTELLECTUAL PROPERTY	25
ACCOUNTING RECORDS OF ARCHITECT	26
INDEMNITY	26
TIME SCHEDULE	27
MISCELLANEOUS PROVISIONS.....	27

**MASTER AGREEMENT
FOR
ARCHITECTURAL SERVICES**

This Master Agreement for Architectural Services (“Agreement”) is between North Monterey County Unified School District, a California public school district (the “District”), and Kasavan Architects, Inc. (the “Architect”), with respect to the following recitals:

- A. District proposes to undertake the construction of improvement projects which require the services of a duly qualified and licensed architect.
- B. Architect represents that Architect is licensed to provide architectural/engineering services in the State of California and is qualified to provide the services required by the District, specifically the design and construction administration of public school(s).
- C. The Parties have negotiated the terms under which Architect will provide such services and reduce such terms to writing by this Agreement.

The Parties therefore agree as follows:

**ARTICLE 1
DEFINITIONS**

- 1.1 **Additional Services.** “Additional Services” shall mean those services in addition to the Basic Services that are provided by Architect and authorized in writing by the District, and as further defined in Article 6 below.
- 1.2 **Agreement.** “Agreement” shall mean this Agreement for Architectural Services.
- 1.3 **Architect.** “Architect” shall mean Kasavan Architects, Inc., and its officers, shareholders, owners, partners, employees, agents and authorized representatives.
- 1.4 **Basic Services.** Architect’s Basic Services consist of the design services, including landscaping architectural services and landscape irrigation design, civil, structural, mechanical, and electrical engineering services, normally required to complete the Project, as further defined in Article 5.
- 1.5 **Contract Documents.** “Contract Documents” shall mean those documents which are required for the actual construction of the Project, including but not limited to the Agreement between Owner and Contractor, complete working drawings and specifications setting forth in detail sufficient for construction the work to be done and the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work.

1.6 **Contractor.** “Contractor” shall mean one or more contractors ultimately selected to perform work on the Project or any replacement.

1.7 **District.** “District” shall mean North Monterey County Unified School District, and its governing board members, employees, agents and authorized representatives.

1.8 **Project.** “Project” shall mean each work of improvement, described in Article 3 and the amendments to this Agreement that will be attached hereto as exhibits, and the construction thereof, including the Architect’s services thereon, as described in this Agreement.

1.9 **Project Estimate.** “Project Estimate” shall mean the estimate of total construction costs to the District for the Project as initially agreed upon in writing by the District and the Architect and as subsequently revised, pursuant to the terms hereof hereof. The Project Estimate shall not be revised at the time the District enters a construction contract, even if the value of the construction contract exceeds the Project Estimate, but shall be increased by the dollar amounts of all approved additive contract change order items, with the exception of (i) items resulting from wrongful acts or omissions on the part of the Architect, including but not limited to those items covered by Section 5.7.19.2, below, (ii) payments to Architect or consultants for costs of inspections, surveys, tests and sites and landscaping not included in the Project, and (iii) items where Architect and District agreed to compensate the Architect for its services on an hourly basis, pursuant to Section 5.7.19.1, below.

ARTICLE 2

RETENTION OF ARCHITECT; STANDARD OF CARE

District retains Architect to perform, and Architect agrees to provide to District, for the consideration and upon the terms and conditions set forth below, the architectural and engineering services specified in this Agreement and related incidental services. The Architect agrees to perform such services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. All services performed by the Architect under and required by this Agreement shall be performed (a) in compliance with this Agreement, and (b) in a manner consistent with the level of care and skill ordinarily exercised by architects in the same discipline, on similar projects in California with similar complexity and with similar agreements, who are qualified to provide the services required by the District; and all such services shall be conducted in conformance to, and compliance with, all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the [provisions of the Americans with Disabilities Act \(“ADA”\) that concern site and building design](#). Architect shall be responsible for the completeness and accuracy of the plans and specifications.

ARTICLE 3 DESCRIPTION OF PROJECTS

Each Project under this Agreement shall be described by the District in an amendment to this Agreement, which shall be attached hereto as an exhibit. Each exhibit for a Project shall include: (1) a Project scope developed with the Architect; (2) the agreed-upon compensation for the Project, including a fee schedule for Additional Services, and an estimate of Reimbursable Expenses (if required by the District); (3) a Project schedule; and (4) an amount or percentage of the Architect's total compensation which shall be withheld from payment to the Architect until the District receives certification of Field Act approval.

ARTICLE 4 COMPENSATION

4.1 **Basic Services.** Unless otherwise agreed to by the Parties in an exhibit attached hereto pursuant to Article 3, for all "Basic Services" as defined in Articles 1 and 5 of this Agreement, the total compensation paid to the Architect for the Project shall be an agreed upon percentage of the Project Estimate. This compensation shall be paid pursuant to the following schedule:

Initial Payment	None
Upon Completion of:	
Schematic Design	20%
Design Development Phase	20%
Contract Documents Phase	30%
DSA Back Check	5%
Contract Procurement Phase	5%
Construction Phase	20%
<u>TOTAL BASIC COMPENSATION</u>	<u>100%</u>

Upon any adjustment (increase or decrease) to the Project Estimate as contemplated by section 1.9, the Architect's total compensation for Basic Services for the Project shall also be increased or decreased, including retroactively for Basic Services already performed and payments already made, except that compensation shall not be decreased due to District-directed changes in the scope of the Project. Architect will not be compensated for any Basic Services required as a result of wrongful acts or omissions.

4.2 **Additional Services.** Architect may invoice separately for Additional Services if provided by Architect under Article 6. However, Architect will not be compensated for any Additional Services required as a result of wrongful acts or omissions.

4.3 Reimbursable Expenses

4.3.1 Reimbursable Expenses are those actual out-of-pocket expenses directly incurred as a result of Architect's performance of Basic or Additional Services under this Agreement. Architect may only charge for Reimbursable Expenses upon the prior written approval of the District, and may charge a mark up of 15% on such Reimbursable Expenses. Reimbursable Expenses are limited to these expenses related to the Project: ~~Fax~~, reproduction expense when not included in the Basic Services under this Agreement (excluding such expense for reproductions for office use by Architect and its consultants), postage, expense of renderings, models and mock-ups requested by District, expense of publishing under Section 5.6.5, expense of data processing and photographic production techniques when used in connection with Additional Services, and, if authorized in advance by the District, expense of overtime work requiring higher than regular rates. Reimbursable Expenses do not include indirect costs, such as general overhead (for example, home office overhead [including technology hardware and software] or insurance premiums), for which Architect must pay out of its compensation for services under Section 4.1, above; nor do they include expenses incurred in connection with Basic or Additional Services that result from wrongful acts or omissions.

4.3.2 Architect shall be reimbursed by District for its Reimbursable Expenses as estimated and agreed upon by the Parties in exhibit for each Project attached hereto pursuant to Article 3. Architect's total reimbursement for Reimbursable Expenses shall not exceed Architect's estimate of the maximum total cost of Reimbursable Expenses on the Project unless approved in writing.

4.4 For services satisfactorily performed, payment for Basic Services, Additional Services and Reimbursable Expenses shall be made on a monthly basis after receipt and approval by the District of the Architect's properly documented and submitted invoices. To be "properly documented and submitted," an invoice for Additional Services shall be timely, be accompanied by all necessary documentation, list all activities performed, and for each activity performed list the person performing it and the person's rate of compensation. Architect's invoice shall be submitted within ten (10) days of the end of the monthly billing period. Invoices, receipts and other documentation to establish the validity of all Reimbursable Expenses shall be a prerequisite to District payment of such expenses. If District disputes a portion of a properly submitted invoice, it shall notify Architect of the dispute and, upon Architect's request, arrange for a meeting to confer about, and potentially resolve, the dispute. Prior to this meeting, Architect shall provide all documentation requested to support disputed portions of properly submitted invoice. Regardless of any such dispute about an invoice or payment, Architect shall continue to provide all services required by this Agreement and law until the end of the Project, even if District and Architect cannot resolve all such disputes. Payments of undisputed portions of a properly submitted invoice shall be made within 60 days of receipt of the invoice.

4.5 The Architect's compensation shall be paid notwithstanding a Contractor-caused delay in completion of the project or reduction of final construction cost by reason of penalties, liquidated damages, or other amounts withheld from the Contractor. However, District may withhold from payments to Architect to the extent that (i) Basic and Additional Services remain to be

performed, including but not limited to those required for project closeout and payments to Contractor, and (ii) wrongful acts or omissions of Architect caused District to incur damages, losses, liabilities or costs, including but not limited to withholding any amounts for which Architect is responsible under Section 5.7.20. If the total amount invoiced by Architect reaches the not-to-exceed Basic Services amount before Architect's Basic Services under this Agreement are complete, Architect must complete the Basic Services without submitting additional invoices, or receiving additional payment, for Basic Services.

4.6 Should District cancel the Project under section 12.1 of this Agreement at any time during the performance of this Agreement, Architect shall, upon notice of such cancellation, immediately cease all work under this Agreement. In such event, Architect's total fee for all services performed shall be computed as set forth in Section 12.1.

4.7 District has the right to audit Architect's records and files regarding any of the work performed by Architect for District on this Project during or after the Project. Architect shall keep complete records showing all hours worked and all costs and charges applicable to its work under this Agreement. Architect will be responsible for Architect's consultants keeping similar records. District shall be given reasonable access to those records for audit purposes within ten (10) days of receipt of District's request. Architect shall keep and maintain records and files for ten (10) years.

4.8 Architect shall not accept compensation or other benefits from other persons related to the Project, including payments from manufacturers of construction materials that are specified in the design.

ARTICLE 5

BASIC SERVICES TO BE RENDERED BY ARCHITECT

5.1 General.

5.1.1 Architect's Basic Services consist of the design services, including landscaping architectural services and landscape irrigation design, civil, structural, mechanical, and electrical engineering services, normally required to complete the Project. The Basic Services also include the services described in this Article 5, below, including but not limited to bid package preparation, bid handling, preparation and processing of change orders, requests for information, and other contract administration duties. The District shall have the right to add or delete from the Architect's scope of services as it may determine is necessary for the best interests of the Project and/or the District. Architect shall expeditiously and diligently perform all of its work and obligations under this Agreement. Architect may not cease, delay or reduce, or threaten to cease, delay or reduce, its performance based on a payment dispute with District under Section 4.4, above. The Architect acknowledges that its priority is to complete the Project and the Architect's services, and that any payment disputes with the District under Section 4.4, if not resolved during the Project, must wait for resolution after the Project.

5.1.2 The Architect shall review the Project Estimate at each phase of Architect's services. If at any time the Project Estimate is in excess of the Project budget, the Architect shall revise the type or quality of construction to come within the budgeted limit.

5.1.3 Whenever the Architect's services include the presentation to the District of the Project Estimate, the Architect shall include a reasonable amount for contingency costs arising from, among other things, higher bids than anticipated, future increase in construction costs, and change orders based on unforeseen site conditions.

5.1.4 The Architect shall notify the District if there are any indicated adjustments in previously provided Project Estimate arising from market fluctuations or approved changes in scope or requirements based upon a mutually agreed upon index.

5.1.5 At the District's request, the Architect and Architect's consultants shall cooperate with District and the District's consultants in verifying that the Architect's plans, specifications, studies, drawings, estimates or other documents relating to the Project are constructible and otherwise comply with the Contract Documents. If there are project meetings during the design and construction phases, Architect shall attend those meetings.

5.1.6 The Architect shall visually [observe](#) existing conditions of facilities and thoroughly account for and [incorporate](#) in the construction documents any pertinent conditions of such facilities, all in a manner that satisfies the standard of care and level of performance required by this Agreement. Architect's investigation required by this provision shall be limited to non-destructive evaluation.

5.1.7 Architect shall provide a sufficient number of full-time employees both before construction commences, and after construction commences, as necessary to perform its duties and responsibilities under this Agreement. All personnel provided by Architect shall be qualified to perform the services for which they are provided. Architect shall obtain District's approval of each design professional employed by Architect who provides services under this Agreement, and approval of each change in the design professionals who are providing such services. District may, upon three (3) days' written notice, cause Architect to remove a person from the Project if he/she has failed to perform to District's satisfaction. Should additional employees be required to timely perform all of the services required under this Agreement and/or to avoid delay, Architect shall provide them as soon as practically possible.

5.1.8 Architect is an agent of District and shall reasonably represent the District at all times in relation to the Project.

5.1.9 Architect shall be fully licensed as required by law at all times when providing services under this Agreement.

5.2 Consultants.

5.2.1 The Architect shall employ or retain at Architect's own expense, engineers and other consultants necessary to Architect's performance of this Agreement and licensed to practice in their respective professions in the State of California. Engineers and consultants employed by Architect for this Project shall be approved by District prior to their commencement of work. Execution of this Agreement by the District represents its approval of Architect's engineers and consultants as listed in Exhibit A to this Agreement. The Architect's consultants shall be employed to provide assistance during all aspects of the Project and will include, in addition to design services: review of schedules, shop drawings, samples, submittals, and requests for information. The Architect's Consultants shall also conduct periodic observations of the site to determine conformance with the Project design and specifications and shall participate in the final inspections and development of any "punch list" items. Architect must disclose to District all such consultants retained.

5.2.2 Architect shall confer and cooperate with consultants retained by District as may be requested by District or as reasonably necessary. District may retain a construction manager to assist District in performance of District's duties for the Project.

5.2.3 The District shall procure a certified survey of the site if required, including grades and lines of streets, alleys, pavements, adjoining properties and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the building site, locations, dimensions and floor elevations of existing buildings, other improvements and trees; and full information as to available utility services and lines, both public and private above and below grade, including inverts and depths. The Architect will assist the District in its procurement of the survey and will provide guidance on the scope and direction of the survey. All the information on the survey customarily referenced to a project benchmark shall be referenced to a Project benchmark. The cost of any such survey shall be borne by the District, and the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Architect any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the survey.

5.2.4 The District shall procure chemical, mechanical or other tests required for proper design, tests for hazardous materials and borings or test pits necessary for determining subsoil conditions. The Architect will assist the District in procuring and coordinating such tests. The cost of any such tests shall be borne by the District, and the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Architect any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the testing.

5.2.5 Architect shall assist the District and its consultants to apply for funding for the Project from the State Allocation Board. Architect shall be responsible for all submittals required of the Architect by the Division of the State Architect ("DSA"), OPSC and California Department of Education in connection therewith.

5.3 Schematic Design Phase.

5.3.1 The Architect shall review all information concerning the Project delivered or communicated by the District to the Architect to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the District.

5.3.2 The Architect shall provide a preliminary evaluation of the District's Project, schedule and construction budget requirements, each in terms of the other.

5.3.3 The Architect shall review with the District alternative approaches to the design and construction of the Project, and shall include alternatives that may reduce the cost of the Project.

5.3.4 Based on a mutual understanding of the District's budget and scope of work requirements, the Architect shall prepare for the District's governing board's written approval, schematic design documents, which include but are not limited to, schematic design studies, site utilization plans, a description of the Project showing, among other things, the scale and relationship of the components of the Project, preparation of a written Project Estimate and a written schedule for the performance of the work that itemizes constraints and critical path issues. The schematic design documents shall represent a 15% complete design. The Project Estimate shall be based on current area, volume and other unit costs, shall conform to District's total construction cost budget, and shall include reasonable contingencies for all construction and construction management work. The written schedule shall conform to District's milestone and completion deadline requirements. Nevertheless, Architect is encouraged to make recommendations to District regarding additional benefits that could be realized by increasing the District's total construction cost budget, or by altering the District's completion deadlines. If District incorporates any recommended changes, then Architect shall, as an Additional Service, revise the schematic design documents, including but not limited to the written Project Estimate and written schedule for the performance of work, as necessary until District's governing board approves them in writing. Architect shall attend, and present at, as many meetings of the District's governing board as may be necessary to obtain the board's approval of the schematic design documents.

5.3.5 The Architect shall submit to the District a preliminary Project Estimate based on current area, volume and other unit costs.

5.4 Design Development Phase.

5.4.1 Following District's governing board's written approval of the schematic design documents, including the Project Estimate and schedule, Architect shall provide all necessary architectural and engineering services required herein to prepare design development documents for the District's governing board's written approval, which fix and describe the size and character of the project and which shall include, but are not limited to, site and floor plans, elevations and other approved drawings and shall outline the specifications of the entire Project as to kind and quality of materials, categories of proposed work such as architectural, structural, mechanical and electrical systems, types of structures and all such other work as may be

required. During the design development phase, Architect will keep the Project within all budget and scope constraints set by the District. Excluding the Construction Phase, the design development documents shall represent a 50% complete design. The design development documents shall include a revised Project Estimate, and a revised construction schedule. The revised Project Estimate shall be based on current area, volume and other unit costs. The revised Project Estimate shall conform to District's total construction cost budget and shall include reasonable contingencies for all construction and construction management work, and the revised construction schedule shall conform to District's milestone and completion deadline requirements. Nevertheless, Architect is encouraged to make recommendations to District regarding additional benefits that could be realized by altering the District's total construction cost budget or completion deadlines. If District incorporates any recommended changes, then Architect shall, as an Additional Service, revise the design development documents, including but not limited to the written Project Estimate and written schedule for the performance of work, as necessary until District's governing board approves them in writing. Architect shall attend, and present at, as many meetings of the District's governing board as may be necessary to obtain the board's approval of the design development documents.

5.4.2 The Architect shall assist the District and its consultants in the preparation and/or modification of the Storm Water Pollution Prevention Plan if any such plan is required for this Project.

5.4.3 Architect shall prepare necessary documents for and oversee the processing of District's application for and obtaining of required approvals from the DSA and the State Fire Marshall and shall assist the District in seeking the approvals of, the OPSC (if applicable), the Department of Education, and other agencies exercising jurisdiction over the Project. Architect shall also be responsible for the preparation and submission of any required applications, notices or certificates to public agencies as required by law. Architect shall provide a copy of all such documents to the District.

5.4.4 The Architect shall advise the District of any adjustments to the preliminary Project Estimate.

5.4.5 Architect shall identify areas of construction for which unit pricing shall be required as part of the Contractor's bid.

5.4.6 Architect shall provide at no expense to the District one complete set of preliminary plans for the review and written approval of the District and one set for each public agency having approval authority over such plans for their review and approval at no expense to the District.

5.5 Contract Documents Phase.

5.5.1 Following the District's governing board's written approval of the design development documents, including the Project Estimate and construction schedule, the Architect shall prepare Contract Documents for the written approval of District's governing board

consisting of 100% complete working drawings and specifications setting forth the work to be done in detail sufficient for construction, including but not limited to the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work. Architect shall [prepare](#) drawings and specifications [that](#) are, among other things, complete, accurate, and coordinated so as to [avoid](#) errors, omissions and conflicts, especially between the work of a subconsultant and other subconsultants or the Architect; and Architect may not shift its responsibility for completeness, accuracy and coordination to the Contractor, except on a clearly designated design-build project. Architect shall also update the construction schedule and the Project Estimate for written approval of District's governing board. The Contract Documents shall conform to, comply with, and satisfy all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the [provisions of the Americans with Disabilities Act \("ADA"\) that concern site and building design](#). As part of the Contract Documents, [the District's surveyor](#) shall prepare an accurate set of drawings indicating dimensions and locations of existing buried utility lines, which shall be included in the bid packages [by the Architect](#). If the project is intended to be split into multiple prime contracts, then the Contract Documents shall be structured in order to maximize the ability to create multiple prime bid packages for the Project, and shall identify the bid packages to be created.

5.5.2 The District will provide forms of necessary legal agreements and other documents for incorporation into the Contract Documents. Unless the District directs otherwise, the Architect shall incorporate such documents into the Contract Documents and shall prepare all Contract Documents during the Contract Documents Phase of the Project, and forward them to the District for written approval prior to their use.

5.5.3 Prior to submission of the Contract Documents to DSA for plan check, the Architect shall submit the Contract Documents to the District for an opportunity to review them for various issues, including but not limited to constructability, scheduling, general completeness, clarity, consistency, coordination, cost-effectiveness, value engineering, identification of possible add/delete bid alternatives, time of construction, and suitability for separation of the Project design, plans and specifications into bid packages for various categories and/or portions of the work.

5.5.4 After approval by the District's governing board and any constructability review, the Architect shall submit the Contract Documents to DSA for plan check, and make the necessary corrections to secure DSA approval.

5.5.5 At the time of DSA approval of the final form of the Contract Documents, the Architect shall prepare a final Project Estimate and a final construction schedule, which shall be given final written approval by the District's governing board along with the Contract Documents. The revised Project Estimate shall be based on current area, volume and other unit costs, and on a mutually acceptable recognized building cost index, and shall include a reasonable contingency. In preparing the final Contract Documents, including the contract schedule, the Architect shall consult with and involve the District in the process to [reasonably](#)

| [achieve](#) accuracy and completeness. The revised Project Estimate shall conform to District's total Project budget, and the revised construction schedule shall conform to District's milestone and completion deadline requirements. Architect shall attend, and present at, as many meetings of the District's governing board as may be necessary to obtain the board's written approval of the Contract Documents.

5.6 Construction Contract Procurement Phase.

5.6.1 Following DSA's and District's governing board's written approval of Contract Documents and District's governing board's written acceptance of the final Project Estimate and construction schedule, Architect shall continue to work with the District in finalizing the Contract Documents, including, if directed by the District, bid documents and a bid package. If the District will seek public bids for the Project, Architect shall reproduce the bid documents and bid package in the number requested by the District and distribute them among interested contractors. Architect shall also assist the District in obtaining of bids, and shall assist the District in evaluating contract proposals or bids and substitutions proposed by contractors, and in reviewing bids or proposals received from contractors. All sets of Contract Documents, which does not include those for the use of the Architect or its consultant, requested by the District in excess of three (3) shall be reproduced at District's expense.

5.6.2 The Project Estimate at the time of DSA approval of the Contract Documents shall be current as of that date. Should a construction contract for the Project be entered into more than ninety (90) days after the date of that Project Estimate, the District may, in its discretion, request that the Architect revise the Project Estimate.

5.6.3 Should the lowest price proposal or public bid received by the District exceed the final Project Estimate by more than ten percent (10%), Architect shall, on request by District and as part of Architect's Basic Services, make such changes in the plans and specifications as shall be necessary to obtain a further price proposal within ten percent (10%) of the final Project Estimate. In making such changes, Architect will exercise Architect's best judgment in determining the balance between the size of the Project, the type of construction, and the quality of the construction to achieve a satisfactory project within ten percent (10%) of the final Project Estimate.

5.6.4 If requested by the District, the Architect shall review the qualifications of all contractors under consideration for the construction of the Project, and shall make recommendations to the District as to whether, in the Architect's professional opinion, any prospective contractor meets the minimum requirements.

5.6.5 If, in the District's discretion, the District will seek total or partial State funding for this Project, the Architect may, at the direction of the District and in addition to the above, assist District in publication of a notice of the contract in the appropriate regional trade papers and publications devoted to Disabled Veteran Business Enterprises. The Architect shall also prepare and submit the appropriate documentation to the OPSC.

5.7 Construction Phase.

5.7.1 The construction phase shall begin on the date stated in the official Notice to Proceed.

5.7.2 All instructions to the Contractor shall be forwarded through the Architect unless otherwise directed by the District. The Architect shall advise and consult with the District in the general administration of the Project. The Architect will have authority to act on behalf of the District only to the extent provided in the Contract Documents, unless District grants additional authority in writing.

5.7.3 The Architect shall timely provide District with copies of all of its correspondence with the Contractors.

5.7.4 The Architect shall provide prompt and timely direction to the District, Project inspectors and/or contractors as to the interpretation of Contract Documents. Architect shall respond to all requests for information ("RFI's") from a Contractor within fourteen (14) calendar days of receipt, unless the subject of the RFI is impacting, or may impact, the critical path of the project and is causing, or may cause, delay, in which case the Architect shall respond as soon as possible, if not immediately. If the Architect is not able to take action within the time required due to reasons beyond Architect's control, the Architect may take action within a reasonable period of time under the circumstances; however, the Architect shall make such determination within seven (7) calendar days of receipt of the RFI, and shall notify the District and Contractor promptly after such determination with an explanation as to why the Architect cannot take action within the time required, what the Architect is doing to expedite its response, when the Architect expects to be able to issue a response, and what action, if any, should be taken by District or Contractor in the meantime to mitigate delays and/or costs.

5.7.5 Based on information provided by the Contractor and Architect's own knowledge of the Project (including documents in Architect's possession or reasonably available to it), Architect shall prepare or cause to be prepared an accurate set of as-built record drawings indicating dimensions and locations of all work, including but not limited to buried utility lines and mechanical, electrical and plumbing layouts, which shall be forwarded to the District upon completion of the Project. While Architect cannot guarantee precise accuracy of such drawings, Architect shall exercise reasonable care in reviewing such drawings to determine their general compliance with the Contract Documents. Architect shall have no responsibility for their conformity to field conditions, except that in the event that the Architect, consistent with standards of due care, becomes aware of non-conformity with field conditions, Architect shall have a duty promptly to notify the District in writing. Architect shall also cause to be assembled and delivered to District all written guarantees, instruction books, operation and maintenance manuals, diagrams, charts and other documents required of Contractors.

5.7.6 The Architect shall not be responsible for the preparation and submission of any notifications regarding excavation in areas which are known or suspected to contain subsurface installations under Government Code section 4216, *et seq.* The Architect shall assign this responsibility to a Contractor in the Contract Documents and bid package. Architect shall cause Contractor to provide a copy of all such notifications to the District.

5.7.7 The Architect shall, at all times, have access to the Project wherever it is in preparation and progress. To the extent reasonably possible given Contractor's work in progress, the District shall provide such access so that the Architect may perform its functions under the Agreement and Contract Documents.

5.7.8 In the discharge of its duties of observation and interpretation, the Architect shall review Contractor's compliance with the Contract Documents, and shall endeavor to guard the District against defects and deficiencies in the work of the Contractor. The Architect shall advise and consult with the District and inspectors concerning the Contractor's compliance with the Contract Documents and shall assist the District and inspectors in securing the Contractor's compliance.

Architect has the responsibility for the Project to coordinate the compliance of all parties, including the District's Inspector of Record/Project Inspector ("IOR"), Contractor, any Construction Manager, laboratories, District and Architect itself, with the DSA Construction Oversight Process.

The Architect must comply with the applicable requirements for architects of the DSA Construction Oversight Process, including but not limited to (a) submitting the inspection card request form (DSA 102-IC), (b) providing a verified report (DSA 6-AE) at the completion of each block and section of each inspection card, and (c) monitoring the IOR and laboratories of record, and (d) coordinating with the Owner, Contractor, any Construction Manager, laboratories, and the IOR to meet the DSA Construction Oversight Process requirements without delay or added costs to the Project.

The Architect shall be responsible for any additional DSA fees and delay damages related to review of proposed changes to the DSA-approved construction documents, to the extent that Architect's negligence, recklessness or willful misconduct actually caused the additional DSA fees, and for delay damages to the extent required under Section 5.7.20.2 below.

5.7.9 The Architect shall visit the site (both as the Architect deems necessary and as requested by the District), to maintain familiarity with the quality and progress of the Project, to determine that the Contractor's work substantially complies with all documents, drawings, plans and specifications and that the Project is progressing in substantial accordance with the Contract Documents. Such observations are to be distinguished from the continuous inspection provided by the Project inspector unless Architect has agreed in writing to serve as the District's Project inspector. The Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of work.

5.7.10 The Architect shall notify the District promptly of any significant defect in materials, equipment or workmanship, and of any default of which Architect becomes aware by any Contractor in the orderly and timely prosecution of the Project. Architect will exercise reasonable care in the discharge of Architect's obligation to discover significant defects and faults.

5.7.11 The Architect shall review and approve, take exception to, or take other appropriate action upon all schedules, shop drawings, samples and other submissions of the Contractor to determine general conformance with the Project design and specifications as set forth in the Contract Documents. All such action shall be taken within fourteen (14) days of receipt of the submittals, unless the critical path of the Project is impacted in which case Architect shall take such action as soon as reasonably possible. If Architect is not able to take such action within the required time due to reasons beyond Architect's control, the Architect may take action within a reasonable period of time under the circumstances; however, the Architect shall use best efforts to make such determination within four (4) calendar days of receipt of the submission, and shall notify the District and Contractor immediately after such determination with an explanation as to why the Architect cannot take action within the time required, what the Architect is doing to expedite its response, when the Architect expects to be able to issue a response, and what action, if any, should be taken by District or Contractor in the meantime to mitigate delays and/or costs. The Architect will have the authority to reject work and materials which do not conform to the Contract Documents. The Architect's approval of a specific item shall not be an approval of an assembly of which the item is a component. Whenever, in the Architect's reasonable judgment, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the Architect will have authority to require special inspection or testing of the work or materials in accordance with the Contract Documents whether or not such work or materials be then fabricated, installed or completed. The Architect will also recommend substitution of materials or equipment when, in the Architect's reasonable judgment, such action is necessary to the accomplishment of the intent and purpose of the Contract Documents. Such actions as are described in this paragraph shall be taken with reasonable promptness.

5.7.12 Architect shall assist the District in requiring Contractor to provide assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals and training personnel for operation and maintenance.

5.7.13 The Architect shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the work. The Architect shall not be responsible for acts or omissions of the Contractor, subcontractors, or their agents or employees or of any other persons performing portions of the Project not employed or retained by Architect, unless due to wrongful acts or omissions.

5.7.14 The Architect shall make such regular reports as shall be required by agencies having jurisdiction over the Project and keep the District informed in writing of the progress of the Project.

5.7.15 The Architect will, consistent with standards of due care, make reasonable professional efforts to exclude hazardous materials statutorily prohibited from new public school construction by applicable law. In the event the District or Architect is or becomes aware of the presence of, or exposure of persons to, asbestos, polychlorinated biphenyl (PCB) or any other toxic or hazardous contaminants, materials, air pollutants or water pollutants at the Project site ("Hazardous Substances"), or the substantial risk thereof, each shall have a duty immediately to notify the other in writing. The parties recognize, however, that neither Architect nor the District is trained or licensed in the recognition or remediation of Hazardous Substances.

With respect to asbestos and asbestos containing materials, lead based paint or other regulated hazardous materials, the parties acknowledge that the Architect has recommended and the District has agreed to retain a qualified consultant to evaluate the presence of such materials at certain District facilities which are included in the scope of this Agreement. In the event that said consultant recommends a procedure to deal with such materials, said consultant shall have the responsibility to draft specification language for the removal or other remediation of such materials, and subsequently may be required to certify that they have been properly removed or otherwise remediated. Architect shall include consultant's recommendations and specifications in the appropriate design documents for modernization and shall, as part of its Basic Services, provide designs and other bid documents consistent therewith.

When construction is properly completed, Architect shall provide such certification as to Hazardous Substances as is required of architects for such projects by the OPSC.

5.7.16 Based on the Architect's observations, and an evaluation of each Project Application for Payment, the Architect will review the amount of work completed by Contractor, and assist the District in (a) determining the amount owing to the Contractor, and (b) issuing Project Certificates for Payment incorporating such amount, all in accordance with the Contract Documents. The Architect's estimation of the amount of work completed by Contractor shall constitute representations by the Architect to the District that the quality of the completed work is in general conformance with the Contract Documents based upon Architect's observations of the completed work, and that the Contractor is entitled to payment for the completed work.

5.7.17 Notwithstanding anything else in this Agreement, the Architect shall assist the District in evaluating and responding to claims, disputes and other matters in question between the Contractor and the District, including but not limited to claims made against the District as a result of alleged or claimed wrongful acts or omissions, and shall in all instances provide such truthful testimonial assistance as may be required by the District at no cost to the District.

5.7.18 The Architect will provide corrective advice to the District on apparent deficiencies in construction, both during construction and after acceptance of the Project.

5.7.19 The Architect shall recommend, prepare and process the necessary change orders. Payment of fees to the Architect as a result of change orders shall be handled as follows:

5.7.19.1 District-initiated change orders. If a change order is initiated by the District, the Architect's fee for services related to such change order shall be paid as an Additional Service under Articles 4 and 6. If a change order is solicited by the District but not subsequently authorized by the District, the Architect shall be paid for time spent on the proposed change order.

5.7.19.2 *Change orders due to Architect.* When a change order is necessitated as a result of the Architect's negligence, the Architect's services in connection with that change order are not compensable and Architect shall not include those services on any invoice. This section 5.7.19.2 shall not apply to services performed within the standard of care set forth in Article 2 hereof.

5.7.19.3 *Change orders beyond District or Architect control.* If a change order is necessitated as a result of changes in law, in-field changes required by governing agencies after document approval, unknown, unforeseeable or hidden conditions, Contractor's default, or actual conditions inconsistent with available drawings of existing conditions, such change orders shall be handled in the same manner as District-initiated change orders.

5.7.20 Notwithstanding any other provision of this Agreement, in the event a change order is caused by, or necessitated as a result of, wrongful acts or omissions, or the District otherwise incurs costs or damages as a result of wrongful acts or omissions, the Architect shall be responsible for the following:

5.7.20.1 In the event of such a change order, Architect shall be responsible for the difference between (a) what the contractor would have added to its original bid for the Project if the wrongful act or omission had not occurred (i.e., the "added value" portion of the change order), and (b) what the contractor charges the District in the change order. The amount of added value of any change order work shall be based on the circumstances of the Architect's wrongful act or omission and the change order work necessitated by the wrongful act or omission. It is the parties' intent that the District should pay no more than what the District would have paid if the wrongful act or omission had not occurred.

5.7.20.2 In addition, Architect shall be responsible for any other costs or damages which the District incurs as a result of wrongful acts or omissions, including but not limited to any delay damages the District pays to, or cannot collect from, Contractor or any third party.

The District may backcharge, and withhold payment from, the Architect for these costs and damages, and may seek reimbursement for any amount which exceeds any retention of the contract amount at the time of collection. When District so backcharges and withholds, upon Architect's request District and Architect shall meet and confer in good faith in an effort to reach agreement on (a) whether a wrongful act or omission occurred, (b) whether it caused the change order expense, (c) what damages have been incurred by District, and (d) what portion of the damages are attributable to Architect as described above. If District and Architect do not reach agreement on all four of these items when meeting and conferring, then District and Architect

shall use mediation in good faith to resolve the dispute. If mediation fails, then either District or Architect can initiate a court action to resolve the dispute.

5.7.21 The Architect shall provide a color schedule of all finish materials in the Project for the District's review and approval.

5.7.22 The Architect shall assist District in determining the date of final completion and make a final detailed on-site review of the job with representatives of the District and the Contractor. Architect shall also perform a warranty review with District 30-60 days before expiration of the specified warranty on the Project.

5.7.23 The Architect shall assist the District in issuing the final certificate for payment and any other documents required to be recorded by law or generally accepted architectural or construction contract practice upon compliance with the requirements of the Contract Documents, provided that such certification shall not constitute an admission that the Project has been completed in accordance with Contract Documents or in conformance with this Agreement.

5.7.24 Architect shall make reasonable professional efforts so that the finished project complies with all standards imposed by the [provisions of the Americans with Disabilities Act, and](#) section 504 of the Rehabilitation Act of 1973 [that relate to site and building design](#), disability access requirements of the State Building Code and any other laws applicable to disability access. If a court, administrative agency or other trier of fact later determines that Architect has failed to exercise due professional care with respect to any of the above-referenced laws, or District, because of wrongful acts or omissions, has violated any of the above-referenced laws, Architect shall remedy the violation at its own cost. **Architect shall indemnify, defend and hold the District harmless under Article 18.1 of this Agreement for any breach of this paragraph due to Architect's negligence, recklessness or willful misconduct.** The Architect shall not be responsible for acts or omissions of the Contractor or of any other persons performing portions of the Project not employed or retained by Architect, nor shall Architect be responsible for any subsequent changes in the law or any regulation applicable to disabled access or any subsequent differing interpretation of the laws or regulations applicable to the Project at the time Architect's design is reviewed by DSA. In the event that the Architect is or becomes aware of possible non-compliance with the foregoing standards, Architect shall have a duty immediately to notify the District in writing of the possible non-compliance.

5.8 Use of Previously Prepared Materials. In the event that there exist previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Architect, whether supplied by District or by Architect, which are relied upon, altered or otherwise utilized by Architect, Architect shall be responsible for giving appropriate recognition to such other design professionals in any materials prepared by Architect under this Agreement.

ARTICLE 6
ADDITIONAL SERVICES TO BE RENDERED BY ARCHITECT

6.1 “Additional Services” shall be provided by Architect if authorized in writing by District. No additional compensation shall be paid to Architect for performing these Additional Services unless the District and the Architect agree in writing as to the amount of compensation for such services prior to such services being rendered. Additional Services may be provided on a time and materials or fixed fee basis as approved by the District. Such compensation shall be paid based on the agreed hourly rates for the Project. Any work performed by Architect without written authorization or without written agreement on compensation shall be presumed to be Basic Services.

6.2 The following is a list of services that are not included in the Basic Services to be provided under this Agreement, and will be performed only in accordance with Article 6.1, above:

6.2.1 providing financial feasibility or other special studies;

6.2.2 providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase;

6.2.3 providing coordination of Project performed by separate contractors or by the District's own forces;

6.2.4 providing analyses of owning and operating costs, or detailed quantity surveys or inventories of material, equipment and labor;

6.2.5 making revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given, are required by the enactment or revision of codes, laws or regulations subsequent to the District's approval of Contract Documents or are due to other causes not within the control of the Architect;

6.2.6 providing consultation concerning replacement of any work damaged by fire or other cause during construction of the Project, and furnishing services as may be required in connection with the replacement of such work;

6.2.7 providing services made necessary by the default of the Contractor;

6.2.8 preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding, other than when resulting from Architect's or its consultants' alleged wrongful acts or omissions;

6.2.9 providing services of consultants for other than the normal architectural, civil, soils, structural, mechanical and electrical engineering services for the Project;

6.2.10 at the District's request, selecting moveable furniture, equipment or articles which are not included in the Contract Documents;

6.2.11 providing services related to change orders requested by the District, as discussed in Section 5.7.19.1, above;

6.2.12 providing services associated with CHPS, LEED, or any other services not otherwise included in the Agreement and not customarily furnished in accordance with generally accepted architectural practice; and

6.2.13 providing services related to phasing or fast-track Project delivery if requested subsequent to the approval by the District of Architect's fee proposal for a Project.

ARTICLE 7 RESPONSIBILITIES OF DISTRICT

It shall be the duty of District to:

7.1 pay all fees required by any reviewing or licensing agency;

7.2 designate a representative authorized to act on the District's behalf with respect to the Project and in the administration of this Agreement and the Contract Documents;

7.3 furnish, at the District's expense, the services of a Project Inspector;

7.4 review all documents submitted by the Architect and advise the Architect of decisions thereon within a reasonable time after submission;

7.5 issue appropriate orders to Contractors through the Architect;

7.6 furnish existing soil investigation or geological hazard reports, which the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Architect;

7.7 furnish the services of a hydrologist or other consultants not routinely provided by the Architect when such services are reasonably required by the scope of the Project and are requested by the Architect;

7.8 provide hazardous materials report review and abatement, identifying materials which may qualify for same;

7.9 furnish available as-built drawings for buildings and utilities systems related to the Project, which the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by the Architect. The District will also provide information regarding programmatic needs and specific equipment selection data;

7.10 furnish structural, mechanical, chemical and other laboratory tests, inspections, subservice investigations and reports as required by law or the Contract Documents, which the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by the Architect;

7.11 furnish prompt notice of any fault or defects in the Project or nonconformance with the Contract Documents of which the District becomes aware (however, the District's failure to do so shall not relieve the Architect of Architect's responsibilities under Title 21, Title 24, and the Field Act for this Project and under this agreement); and

7.12 provide a written list of any and all District standards prior to the start of the Schematic Documents Phase.

ARTICLE 8

PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

8.1 Prior to the commencement of services under this Agreement, the Architect shall furnish to the District a certificate of insurance, Additional Insured Endorsement and Declarations Page for the period covered by this Agreement, for public liability and property damage with an insurance carrier satisfactory to the District, under forms satisfactory to the District, to protect the Architect and District against loss from liability imposed for damages (1) on account of bodily or personal injuries, including death, disease and sickness, accidentally suffered or alleged to have been suffered by any person or persons that may be caused directly or indirectly by the performance of this Agreement, and (2) on account of injury to or destruction of property, including the resultant loss of use of the Project or other District facilities or equipment, resulting from acts of commission or omission by the Architect, or otherwise resulting directly or indirectly from the Architect's operations in the performance of this Agreement. The District shall be named as an additional insured on all such policies.

8.2 The following insurance shall be maintained by the Architect in full force and effect during the entire period of performance of this Agreement, including any extensions, and shall be written on an "claims made" basis: Commercial general liability insurance, excluding coverage for motor vehicles, shall be in amounts not less than Three Million Dollars (\$3,000,000) general aggregate, One Million Dollars (\$1,000,000) personal and advertising injury aggregate, with a per occurrence limit of One Million Dollars (\$1,000,000); Automobile liability insurance covering motor vehicles shall be in an amount not less than One Million Dollars (\$1,000,000) combined single limit.

8.3 The Architect's insurance policies shall contain a provision for thirty (30) days written notice to the District of cancellation or reduction of coverage. The Architect shall name, on any policy of insurance required, the District as an additional insured. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of

the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability shall not be reduced by the existence of such other insurance. Architect shall not commence work under this Agreement until all required insurance certificates, declarations pages and additional insured endorsements have been obtained and delivered in duplicate to the District for approval subject to the following requirements. Thereafter Architect shall produce a certified copy of any insurance policy required under this section upon written request of the District.

8.4 At the time of making application for any extension of time, Architect shall submit evidence that insurance policies will be in effect during the requested additional period of time.

8.5 If the Architect fails to maintain such insurance, the District may, but shall not be required to, take out such insurance to cover any damages of the above-mentioned classes for which the District might be held liable on account of the Architect's failure to pay such damages, and deduct and retain the amount of the premiums from any sums due the Architect under this Agreement.

8.6 Nothing contained in this Agreement shall be construed as limiting, in any way, the extent to which the Architect may be held responsible for the payment of damages resulting from the Architect's operations.

8.7 Each of Architect's consultants shall comply with this Article, and Architect shall include such provisions in its contracts with them.

ARTICLE 9 WORKER'S COMPENSATION INSURANCE

9.1 Prior to the commencement of services under this Agreement, the Architect shall furnish to the District satisfactory proof that the Architect and all engineers, experts, consultants and subcontractors the Architect intends to employ have taken out, for the period covered by this Agreement, workers' compensation insurance with an insurance carrier satisfactory to the District for all persons whom they may employ in carrying out the work contemplated under this Agreement in accordance with the Workers' Compensation Laws of the State of California. If the Architect employs any engineer, expert, consultant or subcontractor which it did not intend to employ prior to commencement of services, it must furnish such proof of workers' compensation insurance to the District immediately upon employment. Such insurance shall be maintained in full force and effect during the period covered by this Agreement including any extensions of time. If the Architect is self-insured, the Architect shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the District.

9.2 Prior to the commencement of services under this Agreement, the Architect shall furnish to the District satisfactory proof that the Architect and all engineers, experts, consultants and subcontractors the Architect intends to employ have taken out employer's liability insurance with an insurance carrier satisfactory to the District. During the course of Architect's services, if Architect ever intends to employ additional or different engineers, experts, consultants or

subcontractors, before so employing them Architect shall furnish such satisfactory proof of insurance to the District. Such insurance shall be maintained in full force and effect during the period covered by this Agreement including any extensions of time. If the Architect is self-insured, the Architect shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the District.

ARTICLE 10 ERRORS AND OMISSIONS INSURANCE

10.1 Prior to the commencement of services under this Agreement, the Architect shall furnish to the District satisfactory proof that the Architect has, for the period covered by this Agreement, errors and omissions insurance on a claims made basis with limits of at least One Million (\$1,000,000) with a deductible in an amount not to exceed the sum of Twenty Five Thousand Dollars (\$25,000).

10.2 Each of Architect's professional sub-consultants (including consultants of Architect's) shall comply with this Article, and Architect shall include such provisions in its contracts with them.

ARTICLE 11 COMPLIANCE WITH LAWS

Architect shall be familiar with, and Architect and Architect's design shall comply with, all State and Federal laws and regulations applicable to the Project or lawfully imposed upon the Project by agencies having jurisdiction over the Project, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, prevailing wage law as it applies to Contractors, and the [provisions of the Americans with Disabilities Act \("ADA"\) that concern site and building design](#).

ARTICLE 12 TERMINATION OF AGREEMENT

12.1 **Termination by District.** This Agreement may be terminated, or the Project may be canceled, by the District for the District's convenience and without cause at any time immediately upon written notice to the Architect. In such event, the Architect shall be compensated for (a) all Basic or Additional Services completed, and Reimbursable Expenses incurred, under this Agreement through the date of termination, (b) such Basic or Additional Services performed, and Reimbursable Expenses incurred, after termination which are authorized by the District, and (c) any costs incurred by reason of such termination; but less any amounts the District is entitled to withhold under law or this Agreement. Upon the District's request and authorization, Architect shall perform any and all Basic and Additional Services necessary to complete the work in progress as of the date of termination.

For any material breach of contract by the Architect, the District may also terminate the Agreement for cause by delivering written Notice of Intent to Terminate to the Architect. Such Notice shall include the following: (1) A description of such material breach, and (2) a date not

less than fourteen days (14) after delivery of the notice by which the Architect must commence to cure such breach. In response to such Notice, if the Architect fails to cure, and fails to reasonably commence to cure, the breach(es) by the deadline set by the Notice, then the District may terminate the Agreement by written notice delivered to the Architect, which shall be effective upon such delivery. In such event, the Architect shall be compensated for all services completed under this Agreement through the date of termination, together with compensation for such services performed after termination which are authorized by the District, but less any amounts the District is entitled to withhold under law or this Agreement. Upon the District's request and authorization, Architect shall perform any and all services necessary to complete the work in progress as of the date of the termination.

12.2 Termination by Architect. For any material breach of contract by the District other than one related to a payment or invoice dispute as described in Section 4.4 of this Agreement, the Architect may terminate the Agreement by delivering written Notice of Intent to Terminate to the District. Such Notice shall include the following: (1) A description of such material breach, (2) a date not less than fourteen (14) days after delivery of the notice by which the District must cure such breach or reasonably commence to cure such breach, (3) the status of work completed as of the date of the Notice of Intent to Terminate, and (4) a description and cost estimate of the effort necessary to complete the work in progress. In response to such Notice, if the District fails to cure, and fails to reasonably commence to cure, the breach by the deadline set by the Notice, then Architect may terminate the Agreement by written notice delivered to the District within ten (10) days of the cure deadline, which shall be effective upon such delivery.

In the event of such termination by Architect, Architect shall be compensated for all Basic and Additional Services completed, and Reimbursable Expenses incurred, under this Agreement through the date of termination, together with compensation for such Basic and Additional Services performed, and Reimbursable Expenses incurred, after termination which are authorized by the District. Upon the District's request and authorization, Architect shall perform any and all Basic and Additional Services necessary to complete the work in progress as of the date of termination.

12.3 Miscellaneous Termination Provisions

12.3.1 Following the termination of this Agreement for any reason whatsoever, the District shall have the right to utilize any designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by the Architect, ~~not~~ only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316. Architect shall promptly make any such documents or materials available to the District upon request without additional compensation.

12.3.2 In the event of the termination of this Agreement for any reason whatsoever, all designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect or any of its agents under this Agreement shall immediately upon request by the District be delivered to the District. Architect may not refuse to provide such writings or materials for any reason whatsoever, including but not limited to a possessory interest lien for any claim the Architect may have against the District or a claim by the Architect to an ownership interest in the intellectual property embodied in the documents or materials.

ARTICLE 13

ARCHITECT AN INDEPENDENT CONTRACTOR

It is specifically agreed that in the making and performance of this Agreement, the Architect is an independent contractor and is not and shall not be construed to be an officer or employee of the District.

ARTICLE 14

STANDARDIZED MANUFACTURED ITEMS

The Architect shall consult and cooperate with the District in the use and selection of manufactured items to be used in the Project. Manufactured items, including but not limited to paint, finish hardware, plumbing fixtures and fittings, mechanical equipment, electrical fixtures and equipment, roofing materials, and floor coverings, shall be standardized to the District's criteria so long as the same does not interfere seriously with the building design or cost.

ARTICLE 15

OWNERSHIP OF DOCUMENTS

15.1 All designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect under this Agreement shall be and shall remain the property of the District for all purposes, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to any other project, provided that any invalidity of such ownership in relation to any other project shall not affect the validity of such ownership in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316.

15.2 The Architect will provide the District with a complete set of reproducible designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical

drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect under this Agreement, and will retain, on the District's behalf, the original documents or reproducible copies of all such original documents, however stored, in the Architect's files for a period of no less than ten (10) years. Architect shall promptly make available to District any original documents it has retained under this Agreement upon request by the District.

ARTICLE 16

LICENSING OF INTELLECTUAL PROPERTY

16.1 This Agreement creates a non-exclusive and perpetual license for the District to copy, use, modify, reuse or sublicense any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect under this Agreement, ~~not~~ only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316. The Architect shall require any and all subcontractors and consultants to agree in writing that the District is granted a similar non-exclusive and perpetual license for the work of such subcontractors or consultants performed under this Agreement.

16.2 The only other term or condition of such re-use shall be that if the District re-uses the plans prepared by the Architect and retains another certified architect or structural engineer for the preparation of those plans for the re-use, the District shall indemnify and hold harmless the Architect and its consultants, agents, and employees from and against any claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from, in whole or in part, the re-use to the extent required by Education Code section 17316, subdivision (c).

16.3 Architect represents and warrants that Architect has the legal right to license any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates or other documents that Architect or its consultants prepares or causes to be prepared under this Agreement. **Architect shall indemnify, defend and hold the District harmless under Article 18.1 of this Agreement for any breach of Article 16 due to Architect's negligence, recklessness or willful misconduct.** The Architect makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Architect and provided to Architect by the District.

ARTICLE 17

ACCOUNTING RECORDS OF ARCHITECT

Architect's records of accounts regarding the Project shall be kept in accordance with generally accepted accounting principles and shall be available to the District or its authorized representative at mutually convenient times.

ARTICLE 18 INDEMNITY

18.1 **Architect Indemnification.** The Architect shall defend, indemnify, and hold harmless the District, the governing Board of the District, each member of the Board, and their officers, agents and employees against the payment of any and all costs and expenses, including but not limited to attorney's fees and litigation costs, claims, suits and liability arising out of, pertaining to, or relating to negligence, recklessness or willful misconduct of the Architect, the Architect's officers, employees, or consultants in performing or failing to perform any work, services, or functions provided for, referred to, or in any way connected with any work, services, or functions to be performed under this Agreement.

However, the Architect's duty to defend shall be limited, as follows: (1) it shall only apply to defense of the portion of the claims against the District that arise out of, or pertain to, or relate to negligence, recklessness or willful misconduct of the Architect, the Architect's officers, employees, or consultants; and (2) Architect shall be entitled to reimbursement of reasonable defense costs if a judgment is entered on the claims which specifically finds no negligence, recklessness, or willful misconduct by Architect, the Architect's officers, employees, or consultants. In addition, nothing in this Article 18.1 shall constitute a duty on the part of the Architect to defend and indemnify beyond the limits of California Civil Code section 278.2.8.

Notwithstanding the foregoing, the Architect has no obligation to tender any defense costs prior to a final determination, by settlement, judgment or other resolution, that Architect is liable with respect to the claims that gave rise to the District's demand for defense and indemnification under this Article 18. Following a determination (by settlement, judgment or other resolution) that Architect is liable, in whole or in part, with respect to such claims, Architect shall tender a share of the District's defense costs proportional to the extent of Architect's liability for such claims.

18.2 **District Indemnification for Use of Third Party Materials.** The District shall defend, indemnify, and hold harmless the Architect and its employees against any and all copyright infringement claims by any design professional formerly retained by the District arising out of Architect's completion, use or re-use of that former design professional's designs or contract documents in performing this Agreement. Architect shall be entitled to such indemnification only if each of the following conditions are met: (a) Architect actually re-draws or completes such other designs or contract documents; (b) Architect complies with the provisions of Article 5.8 regarding use of materials prepared by other design professionals; (c) District has supplied Architect with the previously prepared documents or materials; and (d) District expressly requests that the Architect utilize the designs or contract documents in question. By providing this or any other indemnification in this Agreement, District does not waive any immunities.

ARTICLE 19 TIME SCHEDULE

19.1 **Time for Completion.** Time is of the essence of this Agreement. The Architect shall timely complete its Basic and Additional Services as expeditiously as possible and according to the schedule for the Project.

19.2 **Delays.** The District recognizes that circumstances may occur beyond the control of either the District or the Architect and extensions for such delays may be made to the schedule as approved by the District. Any time during which the Architect is delayed in the Architect's work by acts of District or its employees or those in a direct contractual relationship with District or by acts of nature or other occurrences which were not or could not have been reasonably foreseen and provided for, and which are not due to any wrongful acts or omissions, shall be added to the time for completion of any obligations of the Architect. District shall not be liable for damages to the Architect on account of any such delay.

ARTICLE 20 MISCELLANEOUS PROVISIONS

20.1 This Agreement shall be governed by and construed in accordance with the laws of the State of California excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Monterey, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

20.2 The Architect shall not assign or transfer any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of the District.

20.3 All notices, certificates, or other communications hereunder shall be deemed given when personally delivered or mailed by certified mail, postage prepaid, to the parties at the addresses set forth below:

District: North Monterey County Unified School District
8142 Moss Landing Road
Moss Landing, CA 95309
Attention: Bond Program Manager

Architect: Kasavan Architects
60 W. Market Street, Suite 300
Salinas, CA 93901
Attention: Peter Kasavan

20.4 This Agreement shall inure to the benefit of and shall be binding upon the Architect and the District and their respective successors and assigns.

20.5 If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

20.6 The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties.

20.7 Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either the District or the Architect.

20.8 This Agreement constitutes the entire agreement between the parties, and supersedes any prior agreement or understanding. There are no understandings, agreements, representations or warranties, expressed or implied, not specified in this Agreement. The Architect, by the execution of this Agreement, acknowledges that the Architect has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

20.9 The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's professional materials. The Architect's materials shall not include the District's confidential or proprietary information if the District has previously advised the Architect in writing of the specific information considered by the District to be confidential or proprietary.

20.10 Prior to executing this agreement, the Architect shall submit a certification if required by Public Contract Code section 3006(b) for roofing projects.

* * * * *

ARCHITECT:

DISTRICT:

NORTH MONTEREY COUNTY
UNIFIED SCHOOL DISTRICT

By: _____
Title:

By: _____
Superintendent



60 W. Market St., Suite 300 Salinas, CA 93901
Voice 831 424 2232 Fax 831 424 2501

Work Order

Project Name:	NMC High School Gym Bleachers & Floor Replacement; Upgrades to Student Restrooms in Bldg F2 & adjacent site ramp.	KA Project #:	1409.1
Owner:	North Monterey County USD	Date:	8/28/15 revised 2/20/15
Point of Contact:	Rick Diaz		
Project Address:	13990 Castroville Blvd		
City & State:	Castroville, Ca 95012		
Billing Address:	8142 Moss Landing Road	Billing Phone:	831-633-3343
City & State:	Moss Landing, Ca 95039	Billing Fax:	831-633-5189
		Billing Email:	rickdiaz@nmcusd.org

You have directed Kasavan Architects to proceed with the following work:

Provide Architectural/Engineering Services for replacement of bleachers, flooring & drinking fountains at the Gym, Bldg G plus accessibility upgrades to student restrooms and adjacent site ramp at Bldg F2 at North Monterey County High School. Scope of Work as outlined in attached Exhibit A.

☐ New Project ☒ Additional Services per Agreement Dated February 26, 2015.

Fee will be based on our current standard rates and terms (attached) and invoiced accordingly.

Fee proposal good for thirty (30) days after date signed by Kasavan Architects.

We will bill our efforts on a:

☐ T&M Basis ☒ Stipulated Sum (Including Initial Fee) **See Exhibit A**
☐ T&M Pending Stipulated Sum ☐ % of Construction Cost (Including Initial Fee) _____%

We request written authorization to proceed with the above referenced work. If this is acceptable, please sign and date where indicated below.

Sincerely,

Approved By:

Kasavan Architects

Client

Signature _____ Date Aug 28, 2015

Signature _____ Date _____

Peter Kasavan
Print Name

Print Name

President
Title

Title

Work Order

Standard Rate Schedule effective January 1, 2015

Principal Architect	\$195.00	Designer II	\$126.00
Senior Project Architect	\$ 185.00	Designer I	\$95.00
Project Architect	\$ 170.00	CADD Supervisor	\$107.00
Senior Project Manager	\$ 180.00	CADD II	\$100.00
Project Manager	\$ 165.00	CADD I	\$ 95.00
Asst. Project Manager	\$ 132.00	Administrative, Office Mgr	\$100.00
Senior Designer	\$165.00	Clerical	\$76.00

1. Reimbursable Expenses – Per Prime Agreement

2. Terms & Conditions – Per Prime Agreement

Exhibit A
KA Job #1409.1

North Monterey County Unified School District
Proposal for Architectural Services

Replacement of bleachers, flooring & drinking fountains at the Gym, Bldg G plus accessibility upgrades to student restrooms and adjacent site ramp at Bldg F2.

North Monterey County High School in Castroville, Ca.

Scope of Work

A. Pre-Design Services:	Complete
<ol style="list-style-type: none"> 1. Site visit to review existing conditions, site meeting with potential flooring product representative (Two). 2. Review As-built drawings provided by District. 3. Review and evaluation of potential bleacher and flooring systems with District. 4. Opinion of probable costs 	
B. Basic Services:	\$33,245
<ol style="list-style-type: none"> 1. Architectural, Mechanical, Plumbing, Electrical & Fire Alarm design services from Schematic Design through DSA Approval. 2. Site visits as needed by A/E team to document existing services & conditions. 3. Two meetings (2 hours each budgeted) with District to review design, budget &/or schedule. 4. Architectural, Mechanical, Plumbing, Electrical & Fire Alarm drawings & project manual (specification) for submittal and approval by DSA and suitable for competitive bidding and construction. 5. One (1) Back-Check plan review of Construction Documents at DSA - Oakland for approval. Additional trips to DSA, trips to DSA location other than Oakland, if needed, shall be provided on a Time & Material basis. 	
C. Bidding Support	\$5,130
<ol style="list-style-type: none"> 1. Bidding Support to include attendance of one (1) pre-construction meeting at the site. Review and response to Contractor RFI's. 2. Assumes a bid period of 4 weeks, KA will handle distribution & tracking of bid documents. 3. Attendance of Bid Opening at District Office. 	
D. Construction Support Services / Closeout:	\$19,760
<ol style="list-style-type: none"> 1. Construction Support Services. 2. Services during this phase are based on one site visit per week for construction duration of ten weeks. Includes review of submittals, expedited review of deferred approval item (bleachers) & coordination with DSA, weekly construction meeting, Construction Administration Reports, RFI's, Construction Change Directives (as needed) and related construction coordination. 3. Submittal of DSA required forms (DSA 5-PI, upon signature of all required parties & DSA 102-IC) prior to start of project construction. 4. Submittal of DSA form (DSA-6 A/E) at project completion. 5. Assist District with completion of DSA-168 for their submittal to DSA. 	
E. Reimbursable Allowance:	\$1,500
F. Project Total:	\$59,635

Exclusions:

1. Hazardous Materials reports, testing and/or monitoring
2. Inspection Services (DSA required Inspector of Record for site & in-plant inspections)
3. Topographic Survey
4. Testing Services
5. Meetings, other than those listed above.
6. Construction Documents Cost Opinion
7. Coordination of advertisement to bid.
8. FF&E (Furniture, Fixtures & Equipment)
9. Structural, Civil or Landscaping Design or services.
10. Other efforts not specifically listed above.
11. Coordination of District's direct consultants filing project required DSA forms.

District shall provide the following:

1. OPSC project tracking number.
2. DSA plan review fee.
3. Proposal is based on Design-Bid-Build delivery approach.
4. District will provide KA with project manual "front end" documents required for bidding. These documents include, but are not limited to: Notice to Contractors, Instruction to bidders, Bid Form, Bid Bond, Subcontractor's List form, Noncollusion Declaration form, Fingerprinting Notice, DVBE Participation form, Agreement, Performance Bond, Payment Bond, Escrow Agreement, General Conditions, etc.
5. Coordination of District's direct consultants filing project required DSA forms.
6. District will handle advertisement to bidders in the local papers.