



Hibser Yamauchi Architects, Inc.
AGREEMENT - Terms and Conditions

This document stipulates the Terms and Conditions of the AGREEMENT made between the Mill Valley School District, a California public school district ("OWNER" or "District") and Hibser Yamauchi Architects, Inc. ("ARCHITECT") on this 4th day of February 2021 ("AGREEMENT"). The AGREEMENT consists of these Terms and Conditions and the FEE PROPOSAL, dated January 5, 2021, attached hereto as **Exhibit A** and incorporated herein by this reference, and all attachments thereto, including, but not limited to, the Standard Hourly Rates ("FEE PROPOSAL"). The following Terms and Conditions shall apply to any services rendered under this AGREEMENT. The Owner and Architect may be individually referred to herein as a "Party," or collectively as the "Parties."

WHEREAS, the OWNER is a California public school district duly organized and validly existing under the law of the State of California.

WHEREAS, ARCHITECT is a professional services firm duly organized under the laws of the State of California. ARCHITECT represents it has the background, knowledge, licensing, experience and expertise necessary to provide the services set forth in this AGREEMENT.

WHEREAS, the OWNER and ARCHITECT desire to enter into an agreement for the ARCHITECT to provide the OWNER with professional services consisting of architectural and engineering services in connection with the OWNER's project ("Project") further described as follows: HVAC ASSESSMENT STUDY, and as further described herein and in the FEE PROPOSAL.

WHEREAS, as required by applicable law, ARCHITECT, ARCHITECT's personnel, and ARCHITECT's consultants are duly licensed as architects and/or registered as engineers under the laws of the State of California and are otherwise qualified and capable of providing and performing the services set forth herein and its other obligations under this AGREEMENT in accordance with the terms hereof.

NOW, THEREFORE, the Parties hereto mutually agree as follows:

Article 1 – Project Information:

- 1.1 Project Scope, Location, Schedule, Construction Budget, Delivery Method, Fee for Services and other special project parameters are as indicated in the FEE PROPOSAL, attached hereto as **Exhibit A** and incorporated by reference herein.
- 1.2 Should any of the parameters of the Project materially change from the FEE PROPOSAL, the OWNER and ARCHITECT shall, at the OWNER's discretion, agree upon respective adjustments to the Project Schedule, Services to be Rendered, OWNER's Construction Budget and Fees for Services.

Article 2 – ARCHITECT's Responsibilities:

- 2.1 The ARCHITECT's services shall consist of those services performed by the ARCHITECT, ARCHITECT's employees and ARCHITECT's consultants in accordance with the Scope of Services set forth in the FEE PROPOSAL, as may be enumerated by Articles 3, 4 and 5 of these Terms and Conditions.

The ARCHITECT's services shall be performed in a manner that is consistent with (i) the professional skill and care ordinarily provided by ARCHITECT's practicing in the same or similar locality under the same or similar circumstances, (ii) all applicable local, state and federal laws; (iii) the terms of this AGREEMENT; and (iv) using their professional skill and judgment ("Standard of Care"). The ARCHITECT shall perform its services expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. This Standard of Care shall govern all obligations under this AGREEMENT. ARCHITECT warrants that ARCHITECT, and all of its employees and subconsultants, if any, are qualified to perform the services and hold any licenses, permits, approvals, and/or qualifications so required.

- 2.2 While engaged in carrying out and complying with the Terms and Conditions of this AGREEMENT, the ARCHITECT is an independent contractor, and is not an officer, employee or agent of OWNER. The Parties agree that (1) ARCHITECT shall be responsible for the control and direction of its own employees, personnel, and subcontractors in the performance of this AGREEMENT, (2) the ARCHITECT's personnel shall only perform work that is outside the usual course of the OWNER's business, and (3) ARCHITECT's personnel shall be engaged in business independent of the OWNER. ARCHITECT shall defend and indemnify the OWNER against any claim by any worker that it is actually an employee of the OWNER.
- 2.3 The ARCHITECT shall identify a representative authorized to act on behalf of the ARCHITECT with respect to the Project.
- 2.4 OWNER acknowledges that ARCHITECT may employ subcontractors or subconsultants. In such a case, ARCHITECT shall remain responsible to OWNER for the quality and performance of all subconsultants' services. Every subcontract or agreement of any kind entered into between ARCHITECT and any subconsultant (or between any subconsultant and other independent contractor subconsultants) shall contain appropriate language whereby subconsultant, without creating any contractual obligation on the part of the OWNER to the subconsultant or anyone working under contract to subconsultant, accepts and agrees to be bound by all of the obligations of this AGREEMENT, including, without limitation, those obligations pertaining to indemnification, insurance, and ownership of documents.
- 2.5 ARCHITECT's authority to act on behalf of the OWNER is limited to its scope of authority set forth in this AGREEMENT. Notwithstanding anything else stated in this AGREEMENT, ARCHITECT does not have the express or implied authority to obligate OWNER to any expenditure of money or extension of contractual time periods, including, without limitation, any adjustment to the price or time of performance of any contract between OWNER and its contractors, construction manager, consultants or any other third persons or parties. ARCHITECT shall be liable to OWNER and third parties for the consequences of the ARCHITECT's actions or conduct exceeding the limited scope of the ARCHITECT's authority to act on behalf of the OWNER.

Article 3 – Scope of ARCHITECT's Services:

- 3.1 The ARCHITECT will perform only those specific services identified in the FEE PROPOSAL. Those services will be performed as indicated in Article 4 and as described in the FEE PROPOSAL. To the extent there are any ambiguities and/or conflicting terms and provisions as between the FEE PROPOSAL and this AGREEMENT, this AGREEMENT shall control and govern. The ARCHITECT'S FEE PROPOSAL, including the applicable Billing Rates, is attached hereto and incorporated by reference as **Exhibit A**.
- 3.2 The ARCHITECT shall manage the ARCHITECT's services, staff and consultants, consult with the

OWNER, research applicable design criteria, communicate with members of the Project team and report progress to the OWNER, when required and reasonable under the circumstances.

- 3.3 The ARCHITECT shall recommend services required due to programmatic changes in the PROJECT including, but not limited to, size, quality, complexity, method of bidding or negotiating the contract for construction. The ARCHITECT shall be prepared to prioritize and prepare a priority list to address critical Program and Project needs in the case where there are Budget constraints.
- 3.4 The ARCHITECT shall, at appropriate times, contact the primary Authorities Having Jurisdiction (AHJ or Agencies) responsible for the review and approval of the Construction Documents. These Agencies shall include the primary building department, local fire marshal, local health department, Division of the State Architect ("DSA"), California Department of Education and other Agencies that are typically involved in the review and approval of projects undertaken by California public school districts. ARCHITECT shall conduct all required reviews with the required agencies, including but not limited to the AHJ and all other agencies identified herein, as part of its scope of Basic Services. In designing the Project, the ARCHITECT shall respond to applicable design requirements imposed by such AHJ and by such entities providing utility services.
- 3.5 The ARCHITECT shall assist the OWNER in connection with the OWNER's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.
- 3.6 The duties, responsibilities and limitations of authority of the ARCHITECT shall not be modified, or extended without written agreement between the OWNER and ARCHITECT.
- 3.7 The ARCHITECT shall have access to the Project location at all reasonable times subject to the OWNER's sole discretion and permission.
- 3.8 The ARCHITECT shall, at no cost to the OWNER, promptly and satisfactorily correct any and all errors, omissions, deficiencies, ambiguities, conflicts or violations of applicable federal, State or local laws and regulations set forth in the Construction Documents prepared by the Architect or its Consultants.

Article 4 – ARCHITECT's Basic Services:

- 4.1 Those services identified in the FEE PROPOSAL shall be performed per this article. For services identified in the FEE PROPOSAL but not listed in this article, those services will be performed per the description in the FEE PROPOSAL.
- 4.2 Programming
 - 4.2.1 Coordinate meetings with OWNER and establish overall guidelines for the development of a of the Project.
 - 4.2.2 Review programming and departmental standards as provided by OWNER.
 - 4.2.3 Meet with individual departments or committees to establish the number of occupants and identify required space allocations, relationships, operational requirements, required equipment and overall space needs.
- 4.3 Scoping/Conceptual Design
 - 4.3.1 Based upon the written approval of the Program Document (or the presentation of such a document if it was prepared by others) by the OWNER, the ARCHITECT will prepare

Scoping/Conceptual Design Drawings per the following:

- 4.3.2 Perform pre-design investigations to establish appropriate guidelines around which and within which the Project is to be designed. Identify design issues relating to functional needs, directives and constraints imposed by regulatory codes. Review all data pertinent to the Project including survey, site maps, geotechnical reports and recommendations, soil testing results reports, and pertinent historical data, and other relevant information provided by OWNER.
- 4.3.3 Field survey and photograph existing conditions.
- 4.3.4 Prepare conceptual block diagrams to indicate layout of spaces and general configuration for signoff by the users and the OWNER's Project manager.
- 4.3.5 Review the California Building Code (CBC) and Municipal Code pertaining to the proposed Project design.
- 4.3.6 Identify design issues relating to functional needs, directives and constraints imposed by applicable regulatory codes.
- 4.3.7 Based on survey and topography data provided by the OWNER, develop existing conditions base for the Schematic Design Phase. Administer Project as required to coordinate work with the OWNER and among Consultants.
- 4.3.8 The number of design iterations at this phase shall be limited to those indicated in the FEE PROPOSAL.

4.4 Schematic Design

- 4.4.1 Based upon the written approval of the Scoping/Conceptual Design (or the presentation of such a document if it was prepared by others) by the OWNER, the ARCHITECT will prepare Schematic Design Documents per the following:
- 4.4.2 Prepare scaled floor plans showing overall dimensions, identifying the various major areas and their relationships. Include circulation and room-by-room tabulation of all net usable floor areas and a summary of gross floor area. Also, provide typical layouts of major equipment or operational layout.
- 4.4.3 For new construction and exterior renovations, develop preliminary building exterior elevations and sections in sufficient detail to demonstrate design concept indicating location and size of fenestration.
- 4.4.4 Identify minimum finish requirements, including ceiling, floors, walls, doors, windows, and types of hardware.
- 4.4.5 Confirm code requirements, including occupancy classification(s) and type of construction.
- 4.4.6 Administer Project as required to coordinate work with the OWNER and among Consultants.
- 4.4.7 The number of design iterations at this phase shall be limited to those indicated in the FEE PROPOSAL.

4.5 Design Development

- 4.5.1 Based upon the written approval of the Schematic Design by the OWNER, the ARCHITECT will prepare Design Development Documents per the following:

- 4.5.2 Prepared updated scaled, dimensioned floor plans with final room locations including all openings.
- 4.5.3 Develop 1/8" scale building sections showing dimensional relationships, materials and component relationships.
- 4.5.4 Develop exterior elevations of all proposed new buildings, existing buildings to be renovated and all architectural elements of the Project.
- 4.5.5 Identify all fixed equipment to be installed in Project.
- 4.5.6 Interior finishes identified and located within the rooms of all buildings.
- 4.5.7 Site plan completely drawn with preliminary notes and dimensions.
- 4.5.8 Prepare enlarged floor plans at 1/4" scale of detailed areas.
- 4.5.9 Show standard details.
- 4.5.10 Legend showing all symbols used on drawings.
- 4.5.11 Development of Outline Specifications.
- 4.5.12 Typical reflected ceiling development including ceiling grid and heights for each ceiling to be used.
- 4.5.13 Administer Project as required to coordinate work with the OWNER and among Consultants.
- 4.5.14 The number of design iterations at this phase shall be limited to those indicated in the FEE PROPOSAL.

4.6 Construction Documents

- 4.6.1 Based upon the written approval of the Design Development Documents by the Owner, the ARCHITECT will prepare Construction Documents Drawings per the following:
- 4.6.2 Construction Documents and Specifications will set forth in detail the quality levels of materials and systems and other requirements for the construction of Project.
- 4.6.3 Site Plans, Floor plans, Reflected Ceiling Plans and Roof Plans at a scale appropriate to convey appropriate information to the CONTRACTOR and/or Authority Having Jurisdiction.
- 4.6.4 Elevations (exterior and interior) sections and floor plans.
- 4.6.5 Developed finish, door and hardware schedules.
- 4.6.6 Architectural details.
- 4.6.7 Fixed Equipment details and identification.
- 4.6.8 Review the California Building Code (CBC) and Municipal Code and all DSA requirements pertaining to the proposed Project design.
- 4.6.9 Identify design issues relating to functional needs, directives and constraints imposed by applicable regulatory codes.

4.7 Permitting

- 4.7.1 ARCHITECT shall submit Construction Documents to Agencies having approval authority (Agencies Having Jurisdiction) over the Project, including but not limited to DSA, in order to begin construction. Those specific agencies are identified herein and in the FEE PROPOSAL.
- 4.7.2 OWNER will coordinate the preparation of reports outside of the ARCHITECT's control if such reports are required to be submitted to the Agencies Having Jurisdiction.
- 4.7.3 The ARCHITECT will respond to comments from the Agencies Having Jurisdiction and make such corrections as may be required to obtain permit approval.

4.8 Project Bidding

- 4.8.1 Based upon the OWNER's direction, the ARCHITECT shall perform Bidding Phase services as follows:
- 4.8.2 Contact potential bidders and encourage their participation in the Project.
- 4.8.3 Coordinate the development of the bidding procedures and the construction contract documents with the OWNER.
- 4.8.4 While the Project is being advertised for bids, all questions concerning intent shall be referred to the ARCHITECT.
- 4.8.5 In the event that items requiring interpretation of the drawings or specifications are discovered during the bidding period, those items shall be analyzed by the ARCHITECT for decision by the OWNER as to the proper procedure required. Corrective action will be in the form of an addendum prepared and issued by the ARCHITECT.
- 4.8.6 Attend bid opening.

4.9 Construction Administration

- 4.9.1 Upon award of a contract to a CONTRACTOR, the ARCHITECT shall perform the following services during the construction:

All instructions to the CONTRACTOR shall be forwarded through the ARCHITECT. The ARCHITECT shall advise and consult with the OWNER in the general administration of the Project. The ARCHITECT will have authority to act on behalf of the OWNER only to the extent provided in the Contract Documents, unless OWNER grants additional authority in writing.
- 4.9.2 The ARCHITECT shall timely provide OWNER with copies of all of its correspondence with the CONTRACTOR.
- 4.9.3 The ARCHITECT shall, at all times, subject to the OWNER's discretion, have access to the Project wherever it is in preparation and progress. To the extent reasonably possible given CONTRACTOR's work in progress, the OWNER shall provide such access so that the ARCHITECT may perform its functions under the AGREEMENT and Contract Documents.
- 4.9.4 The ARCHITECT shall visit the site as the ARCHITECT deems necessary, but under no circumstances less than once (1) per week, to maintain familiarity with the quality and progress

of the Project, to determine that the CONTRACTOR's work visually 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 any Project Inspector as hired by the OWNER.

- 4.9.5 RFIs: The ARCHITECT shall provide prompt and timely direction to the OWNER, Project inspectors and/or CONTRACTOR as to the interpretation of Contract Documents. ARCHITECT shall respond to all Requests for Information ("RFI's") from a CONTRACTOR within seven (7) 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 reasonably possible. 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 OWNER 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 OWNER or CONTRACTOR in the meantime to mitigate delays and/or costs.
- 4.9.6 SUBMITTALS: 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 seven (7) days of receipt of the submittals. 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 make such determination within seven (7) calendar days of receipt of the submission, and shall notify the OWNER 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 OWNER or CONTRACTOR in the meantime to mitigate delays and/or costs.
- 4.9.7 PAYMENT APPLICATIONS: Based on the ARCHITECT's observations, and an evaluation of each Project Application for Payment, the ARCHITECT will estimate the amount of work completed by CONTRACTOR, and assist the OWNER in determining the amount owing to the CONTRACTOR. The ARCHITECT's estimation of the amount of work completed by CONTRACTOR shall constitute representations by the ARCHITECT to the OWNER that the quality of the completed work is in accordance 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.
- 4.9.8 CHANGE ORDERS: The ARCHITECT shall recommend, prepare and process necessary change orders.
- 4.9.9 In the discharge of its duties of observation and interpretation, the ARCHITECT shall require CONTRACTOR to comply with the Contract Documents, and shall guard the OWNER against defects and deficiencies in the work of the CONTRACTOR. The ARCHITECT shall advise and consult with the OWNER and inspectors concerning the CONTRACTOR's compliance with the Contract Documents and shall assist the OWNER and inspectors in securing the CONTRACTOR's compliance.

- 4.9.10 The ARCHITECT shall notify the OWNER promptly in writing of any significant defect in materials, equipment or workmanship, and of any default by any CONTRACTOR in the orderly and timely prosecution of the Project.
- 4.9.11 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.
- 4.9.12 The ARCHITECT will file reports with the primary Agency Having Jurisdiction as may be required from time to time.
- 4.9.13 ARCHITECT shall assist the OWNER 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.
- 4.9.14 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.
- 4.9.15 The ARCHITECT shall assist OWNER in determining the date of final completion and make a final detailed on-site review of the job with representatives of the OWNER and the CONTRACTOR.

Article 5 – Extra Services:

- 5.1 Services other than those listed in Article 4 and/or the FEE PROPOSAL will be performed as indicated in the FEE PROPOSAL. Services beyond that listed in Article 4 or the FEE PROPOSAL that are requested subsequent to the initial AGREEMENT shall be provided at the request of the OWNER upon written agreement including a specific scope, fee and schedule adjustment as may be required. In no event shall ARCHITECT undertake performance of extra/additional services without first obtaining the prior written consent of OWNER.
- 5.2 Extra Services not specifically mentioned in Article 4 and/or the Basic Services section of the FEE PROPOSAL are considered beyond basic services and, if included, are described in detail in the FEE PROPOSAL. If not included and described in detail herein or in the FEE PROPOSAL, these Extra Services are specifically excluded from ARCHITECT's scope of service. These Extra Services may include:
 - 5.2.1 Conversion of printed drawings into BIM or CAD format;
 - 5.2.2 Accessibility or ADA surveys or reports other than those required for the area of design;
 - 5.2.3 Development of segmented bid documents to accommodate multi-prime project delivery;

- 5.2.4 Creation of as-built CAD/BIM files that incorporates all changes identified by the ARCHITECT or CONTRACTOR during construction;
- 5.2.5 Building Commissioning;
- 5.2.6 3-D renderings;
- 5.2.7 Coordination and preparation of any scorecards, applications, documentation or support for LEED, CHPS, Green Rater or other sustainability rating system;
- 5.2.8 Preparing drawings, specifications and other documentation and supporting data, and providing other services in connection with change orders required by causes beyond the control of the ARCHITECT which are not the result of the direct negligence, errors, or omissions on the part of the ARCHITECT;
- 5.2.9 Providing consultation concerning the replacement of work damaged by fire and furnishing services required in connection with the replacement of such work;
- 5.2.10 Providing services made necessary by the default of the CONTRACTOR, which does not arise directly from negligence, errors, or omissions of ARCHITECT;
- 5.2.11 Providing contract administration services after the construction Contract time has been exceeded through no fault of the ARCHITECT;
- 5.2.12 Providing furniture planning and layout;
- 5.2.13 Providing furniture design and specification;
- 5.2.14 Interior signage program, drawings and specifications for signs not required by any relevant Building Code;
- 5.2.15 Wayfinding signage program, drawings and specifications;
- 5.2.16 Development of finish standards;
- 5.2.17 Artwork coordination;
- 5.2.18 Providing BIM documents that exceeds LOD 200; and
- 5.2.19 Providing any other services not otherwise included in this AGREEMENT.

Article 6 – OWNER’s Responsibilities:

- 6.1 Unless otherwise provided for under this AGREEMENT, the OWNER shall, upon request, provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the OWNER's Construction Budget, objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.
- 6.2 The OWNER shall identify a representative authorized to act on the OWNER's behalf with respect to the Project. The OWNER's representative(s) are: Julio Arroyo, Maintenance, Operations and Safety Director.
- 6.3 The OWNER shall promptly render decisions and approve the ARCHITECT's submittals per the design

schedule in order to avoid unreasonable delay in the orderly and sequential progress of the ARCHITECT's services. Such approval can take the form of verbal confirmation as recorded in meeting minutes, electronic responses, signatures on documents, or any other written format.

- 6.4 Upon request, the OWNER shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. If available, the survey shall be provided electronically in CAD or BIM format.
- 6.5 For any new construction or exterior paving, the OWNER shall furnish services of geotechnical engineers who will provide written reports and appropriate recommendations for the design of structural systems for building or site components, pavement sections and sub-surface improvements.
- 6.6 The ARCHITECT shall be entitled to rely on the accuracy and completeness of services and information furnished by the OWNER and the OWNER's consultants. The ARCHITECT shall provide prompt written notice to the OWNER if the ARCHITECT becomes aware of any error, omission or inconsistency in such services or information.
- 6.7 The OWNER shall coordinate the services of its own consultants with those services provided by the ARCHITECT.
- 6.8 The OWNER may furnish the services of consultants other than those designated in this AGREEMENT, or authorize the ARCHITECT to furnish them as an Additional Service, when the ARCHITECT requests such services and demonstrates that they are reasonably required by the scope of the Project. The OWNER shall require that its consultants maintain professional liability insurance as appropriate to the services provided and at the appropriate limits specified herein.
- 6.9 The OWNER shall furnish tests, inspections and reports required by the Authority Having Jurisdiction (AHJ).
- 6.10 The OWNER shall provide written notice within a reasonable time to the ARCHITECT if the OWNER becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the ARCHITECT's Instruments of Service.
- 6.11 The OWNER shall retain others besides ARCHITECT or ARCHITECT's Consultants to be solely responsible for the identification, investigation, evaluation, planning, collection, removal, transportation, and disposal of any and all hazardous materials or toxic substances in conjunction with the Project or Project Site. Where the ARCHITECT actually becomes aware of the presence of such hazardous materials or toxic substances at the Project Site, they may voluntarily advise the OWNER who shall be solely responsible for the identification and retention of persons or entities to undertake the tasks set forth above. The ARCHITECT shall have no responsibility in this regard. The OWNER shall look solely to persons or entities retained other than the ARCHITECT or ARCHITECT's Consultants for such tasks in the event of any claim or liability.
- 6.12 Unless specifically authorized, the OWNER shall communicate with the ARCHITECT's consultants through the ARCHITECT about matters arising out of or relating to the Contract Documents and/or this AGREEMENT. The OWNER shall promptly notify the ARCHITECT and keep ARCHITECT

informed in writing of any request for or direct communications that may affect the ARCHITECT's services. Direct communications between OWNER and ARCHITECT's consultants may occur only upon ARCHITECT's written approval.

Article 7 – Construction Budget:

- 7.1 The Project's "Construction Cost," as used in this AGREEMENT, means the total cost to the OWNER of all work designed or specified by the ARCHITECT, or as designed and specified by the OWNER's consultants and included in a bid package to a CONTRACTOR including any alternates approved by the OWNER. The Construction Cost does not include, unless specifically included in the bid package as described above, furniture, equipment, design fees, permit fees, inspection or testing fees or any other costs related to the management of the Project.
- 7.2 If indicated in the FEE PROPOSAL, at the completion of Conceptual Design, Schematic Design, Design Development and Construction Documents phases, the ARCHITECT will prepare a Construction Cost Estimate that will evaluate the potential Construction Cost at the time the Project is intended to be bid. The ARCHITECT's Estimate of Construction Cost shall be reconciled against the Budget as provided by the OWNER pursuant to section 6.1. If the preparation of a cost estimate is not indicated in the FEE PROPOSAL, then it is specifically excluded from this AGREEMENT.
- 7.3 The Construction Budget and Construction Cost Estimate shall be of no effect if the bidding has not commenced within ninety (90) days after the ARCHITECT submits the Construction Cost Estimate for the Construction Documents to the OWNER to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the OWNER and the date on which bids are sought for the PROJECT. The ARCHITECT and OWNER may adjust the Construction Cost Estimate and Budget upon written agreement.
- 7.4 In preparing Estimates of Construction Cost, the ARCHITECT shall be permitted to include contingencies for design, bidding and price escalation, and to include in the Contract Documents alternate bids as may be necessary to adjust the Estimate of Construction Cost to meet the OWNER's Construction Budget.
- 7.5 If at any time the ARCHITECT's Estimate of Construction Cost exceeds the OWNER's budget for the Cost of the Work, the ARCHITECT shall make recommendations to the OWNER to adjust the Project's size, quality or Construction Budget, and the OWNER shall cooperate with the ARCHITECT in making such adjustments.

Article 8 – Project Schedule:

- 8.1 Within ten (10) working days after the date this AGREEMENT is fully executed, the ARCHITECT shall submit for the OWNER's review a schedule for the performance of the ARCHITECT's services. The schedule initially shall indicate time frames for all design phases and assumed construction duration. The schedule shall include allowances for periods of time required for the OWNER's review, for the performance of the OWNER's consultants, and for approval of submissions by Authorities Having Jurisdiction over the Project, as applicable. Once reviewed by the OWNER, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the ARCHITECT or OWNER.
- 8.2 All Parties agree that review periods by any Agency Having Jurisdiction are estimates only and actual review periods may vary.

Article 9 – Ownership and License:

- 9.1 Pursuant to Education Code section 17316, all plans, specifications, digital reports, and estimates

("Instruments of Service") prepared pursuant to this AGREEMENT shall be and remain the property of the OWNER. Such drawings and specifications supplied as herein required shall be the property of the OWNER whether or not the work for which they were made is executed.

- 9.2 The OWNER reserves the right to reuse all or part of the aforementioned documents at its sole discretion for the construction of all or part of another Project constructed for OWNER. The OWNER is not bound by this AGREEMENT to employ the services of ARCHITECT in the event such documents are reused.
- 9.3 In the event the OWNER uses the Instruments of Service without retaining the ARCHITECT or its consultants, the OWNER will indemnify and hold harmless the ARCHITECT and ARCHITECT's consultant(s) from all claims and causes of action arising from such uses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the OWNER's use of the Instruments of Service.
- 9.4 Any use of the Instruments of Service shall be at the OWNER's sole risk and without liability to the ARCHITECT and the ARCHITECT's consultants.

Article 10 – Dispute Resolution:

- 10.1 Resolution of Claims. All claims, disputes or other matters in controversy between the ARCHITECT and the OWNER arising out of or pertaining to the Project or this AGREEMENT (hereinafter "Claims") shall be resolved by the Parties in accordance with the provisions of this Article 10, in lieu of any and all rights under the law that either Party may have to have its rights adjudged by a trial court or jury. All Claims shall be subject to the Claims Dispute Resolution Process set forth in this Article 10, which shall be the exclusive recourse of ARCHITECT and OWNER for determination and resolution of Claims.
- 10.2 Resolution of Other Disputes. Disputes between ARCHITECT and OWNER that do not constitute Claims shall be resolved by way of an action filed in the Superior Court of the State of California, County of Marin and shall not be subject to the Claims Dispute Resolution Process.
- 10.3 Claims Dispute Resolution Process.

(i) Continuation of ARCHITECT Services. Except in the event of the OWNER's failure to make undisputed payment of the amounts due ARCHITECT for the Project, notwithstanding any disputes between ARCHITECT and OWNER hereunder or in connection with the Project, ARCHITECT and OWNER shall each continue to perform their respective obligations hereunder; including the obligation of the ARCHITECT to continue to provide and perform services hereunder pending a subsequent resolution of such disputes.

(ii) Direct Negotiation. Designated representatives of ARCHITECT and OWNER shall meet as soon as possible (but not later than ten (10) Days after receipt of a written Claim) in a good faith effort to negotiate a resolution to the Claim. Each Party shall be represented in such negotiations by an authorized representative with full knowledge of the details of the Claim or defenses being asserted by such Party, and with full authority to resolve such Claim then and there, subject only to the OWNER's right and obligation to obtain the OWNER's Governing Board's approval of any agreed settlement or resolution. If the Claim involves an assertion of a right or claim by a consultant against ARCHITECT that is in turn being asserted by ARCHITECT against OWNER, then such consultant shall also have a representative attend such negotiations, with the same authority and knowledge as just described. Upon completion of the meeting, if the Claim is not resolved, the Parties may either continue the negotiations or either Party may declare negotiations ended. All discussions that occur

during such negotiation and all documents prepared solely for the purpose of such negotiations shall be confidential and privileged pursuant to California Evidence Code §§ 1119 and 1152.

(iii) Mandatory Mediation. If the Claim remains unresolved after direct negotiations, all claims, disputes and other matters in controversy between the ARCHITECT and the OWNER arising out of or pertaining to this AGREEMENT shall be submitted for resolution by non-binding mediation conducted under the auspices of the American Arbitration Association ("AAA"), and the Construction Mediation Rules of the AAA in effect at the time that a Demand For Mediation is filed. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the ARCHITECT or the OWNER commencing arbitration proceedings pursuant to Section (v) below.

(iv) Government Code Claim Requirements. Pursuant to Government Code § 930.6, any claim, demand, dispute, disagreement or other matter in controversy asserted by the ARCHITECT against the OWNER for money or damages, including, without limitation, a Demand for Arbitration, shall be deemed a "suit for money or damages" and shall be subject to the provisions of Government Code §§ 945.4, 945.6 and 946. Notwithstanding the resolution of disputes pursuant to the arbitration provisions set forth in this Section (iv), any claim, demand, dispute, disagreement or other matter in controversy between the ARCHITECT and the OWNER seeking money or damages shall first be presented to the OWNER and acted upon or deemed rejected by the OWNER in accordance with Government Code § 900, *et seq.*, as an express condition precedent to the ARCHITECT's commencement of arbitration proceedings.

(v) Arbitration. All claims, disputes or other matters in controversy between ARCHITECT and OWNER arising out of or pertaining to this AGREEMENT which are not fully resolved through the mandatory mediation set forth in section (iii) above shall be settled and resolved by binding arbitration conducted under the auspices of the AAA Construction Industry Arbitration Rules in effect at the time of the filing of a Demand for Arbitration, as modified herein. The award rendered by the Arbitrator(s) shall be final and binding upon the ARCHITECT and the OWNER and shall be supported by law and substantial evidence pursuant to California Code of Civil Procedure § 1296. Any written arbitration award that does not include findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296 and Rule R-47 of the AAA Construction Industry Arbitration Rules shall be invalid and unenforceable. The ARCHITECT and OWNER hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§ 1286.4 and 1296, vacate the award if, after review of the award, the Court determines either that the award is not supported by substantial evidence or that it is based on an error of law. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure § 1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference. If any claim or dispute is asserted by the Contractor, the Program Manager, the Construction Manager or the OWNER relating to the Project and arising in whole or in part out of this AGREEMENT, the services provided by or through the ARCHITECT hereunder or the Instruments of Service prepared by or through the ARCHITECT, the ARCHITECT and OWNER agree that any arbitration proceedings initiated between the ARCHITECT and OWNER hereunder shall be consolidated with any arbitration proceedings initiated in connection with such other claim or dispute with the ARCHITECT, the Contractor, the Program Manager or the Construction Manager.

Article 11 – Termination:

11.1 If the OWNER fails to make undisputed payments to the ARCHITECT in accordance with this

AGREEMENT, such failure shall be considered substantial nonperformance and cause for termination or, at the ARCHITECT's option, cause for suspension of performance of services under this AGREEMENT; provided, however, that ARCHITECT shall first provide OWNER with written notice and a 30 day opportunity to cure before ARCHITECT may initiate a termination for cause. If the ARCHITECT elects to suspend services, the ARCHITECT shall give thirty (30) days written notice to the OWNER before suspending services. In the event of a suspension of services, the ARCHITECT shall have no liability to the OWNER for delay or damage caused the OWNER because of such suspension of services. Before resuming services, the ARCHITECT shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the ARCHITECT's services. The ARCHITECT's fees for the remaining services and the time schedules shall be equitably adjusted.

- 11.2 The OWNER hereby reserves the right to suspend or abandon at any time all or any of the construction work on the Project or to terminate this AGREEMENT at any time. In the event of such suspension, abandonment or termination, the ARCHITECT shall be paid pursuant to the schedule of payments set forth in this Agreement for services rendered up to the date of such suspension. If the OWNER suspends the Project for more than 60 days, the ARCHITECT shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the ARCHITECT shall be compensated for expenses incurred in the interruption and resumption of the ARCHITECT's services. The ARCHITECT's fees for the remaining services and the time schedules shall be equitably adjusted.
- 11.3 If the OWNER suspends the Project for more than 90 cumulative days for reasons other than the fault of the ARCHITECT, the ARCHITECT may terminate this AGREEMENT by giving not less than thirty (30) days written notice.
- 11.4 The OWNER may terminate this AGREEMENT upon not less than fourteen (14) days written notice to ARCHITECT for the OWNER's convenience and without cause, in which case OWNER will pay ARCHITECT as provided for herein for all Basic Services and authorized Extra Services performed, and all authorized Reimbursable Expenses incurred and paid, under and in accordance with this AGREEMENT up to and including the date of termination. Such payment shall be ARCHITECT's sole and exclusive compensation and OWNER shall have no liability to ARCHITECT for any other compensation or damages, including without limitation, anticipated profit, prospective losses or consequential damages, of any kind.
- 11.5 The OWNER may terminate all or part of this AGREEMENT for cause If OWNER determines that ARCHITECT has failed to perform in accordance with the Terms and Conditions of this AGREEMENT. This termination shall be effective if ARCHITECT does not begin to cure its failure to perform within ten (10) Days (or longer, if authorized in writing by OWNER) after receipt of a notice of intention to terminate from OWNER specifying the failure in performance. If a termination for cause does occur, OWNER will have the right to withhold monies otherwise payable to ARCHITECT resulting from the ARCHITECT's cited failure to perform. If the OWNER incurs additional costs, expenses or other damages due to the negligent failure of ARCHITECT to properly perform pursuant to this AGREEMENT, these costs, expenses or other damages shall be deducted from the amounts withheld. Should the amounts withheld exceed the amounts deducted; the balance will be paid to ARCHITECT upon Final Completion of the Project. If the costs, expenses or other damages incurred by OWNER exceed the amounts withheld, ARCHITECT shall be liable to OWNER for the difference
- 11.6 In the event of termination not the fault of the ARCHITECT, the ARCHITECT shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due, if any.

Article 12 – Indemnification:

- 12.1 To the greatest extent permitted by law, OWNER shall indemnify and hold harmless ARCHITECT, and its directors, officers, employees and consultants (all of which persons are referred to herein collectively or individually as "Indemnitees") from and against any claim, suit, demand, liability, damage, loss or expense (including attorney's fees and costs of defense) related to the design or construction of the Project except to the extent of the Indemnitees' sole negligence or willful misconduct as found by a court of competent jurisdiction.
- 12.2 To the greatest extent permitted by law, ARCHITECT shall indemnify and hold harmless OWNER, and its Governing Board, directors, officers, employees, agents and consultants (all of which persons are referred to herein collectively or individually as "OWNER Indemnitees") from and against any claim, suit, demand, liability, damage, loss or expense (including attorney's fees and costs of defense) related to, arising from, or in any way connected to ARCHITECT's work on the Project except to the extent of the OWNER Indemnitees' sole negligence or willful misconduct as found by a court of competent jurisdiction.

Article 13 – Insurance:

- 13.1 Unless otherwise provided in the FEE PROPOSAL, ARCHITECT shall acquire and maintain the following insurance coverages, at the minimum limits of liability specified, with insurance companies authorized to do business in the State of California and in the location of the Project, if different, assigned an A.M. Best's rating of no less than A-(IX):
- 13.1.1 Professional Liability Insurance with minimum of \$1,000,000 per claim, and minimum of \$2,000,000 aggregate,
 - 13.1.2 Workers Compensation insurance as required under California law,
 - 13.1.3 Commercial general and automobile liability insurance with limits of not less than \$1,000,000 combined single limit, bodily injury and property damage liability per occurrence/aggregate, including owned, non-owned and hired vehicles, blanket contractual, broad form property damage, products/completed operations and personal and advertising injury; and,
 - 13.1.4 Employer's Liability Insurance with a \$1,000,000 policy limit.
- 13.2 The commercial general and automobile liability policy shall waive all rights of subrogation, and shall be endorsed to include the OWNER to be named as an Additional Insured.
- 13.3 Prior to commencing work under this AGREEMENT, ARCHITECT shall provide OWNER with Certificates of Insurance evidencing compliance with the foregoing requirements.
- 13.4 Failure to maintain insurance coverage required pursuant to this AGREEMENT, shall be deemed a material breach of this AGREEMENT and the OWNER may terminate this AGREEMENT for cause resulting from said breach. Alternatively, OWNER may purchase such coverage (but has no obligation to do so), and without further notice to ARCHITECT, Owner may deduct from sums due to ARCHITECT any premium costs advanced by OWNER for such insurance.
- 13.5 ARCHITECT's Consultants shall be required by their consultant agreements with ARCHITECT to maintain insurance on the same terms and under the same coverage as required by ARCHITECT under this AGREEMENT.
- 13.6 The insurance coverage required herein shall be maintained without interruption for a period of three (3) years after the Final Completion of the Project.

Article 14 – Billing and Payments:

- 14.1 The Fee includes all amounts identified in the FEE PROPOSAL plus any subsequent adjustments to the fee approved in writing by both the OWNER and the ARCHITECT. All Billing Rates submitted as part of the ARCHITECT'S FEE PROPOSAL will apply to this AGREEMENT.
- 14.2 The ARCHITECT shall bill monthly for the percentage complete of each phase for services rendered the month prior. Invoices submitted for payment shall be accompanied by a detailed summary description of the progress of performance to date, including but not limited to, phase/task/employee, (a) a description of the status of completion of basic services by percent complete; and (b) a description of the percent complete of any Additional Services and summary of hours worked. Undisputed amounts of invoices are due and payable within 30 days.
- 14.3 Time-and Materials projects will bill the hours spent the prior month per the rate schedule attached to the FEE PROPOSAL.
- 14.4 Time-and-Materials Not-to-Exceed projects will bill the hours spent the prior month per the rate schedule attached to the FEE PROPOSAL. Hours spent beyond the percentage completion of the project phase will not be billed until the subsequent phase.
- 14.5 Reimbursable Expenses, if any, to the OWNER, to be billed as incurred, subject to prior written approval by OWNER.
- 14.6 Fixed Fee and Time-and-Materials, Not-to-Exceed fees for services are allocated per the following schedule for this Project:

<u>Phase</u>	<u>Percentage of Fee</u>
Programming	0
Scoping/Conceptual Design	100
Schematic Design	0
Design Development	0
Construction Documents	0
Agency Review and Approval	0
Bid	0
Construction Administration	0
Project Closeout	0
Total	100%

Article 15 – Miscellaneous Provisions:

- 15.1 Where the ARCHITECT's documents incorporate, reference, or co-exist with other documents relative to the discovery, presence, handling, removal or disposal of hazardous materials or toxic substances, the ARCHITECT does so solely as an administrative function without any responsibility for the content of such documents.
- 15.2 The OWNER and ARCHITECT, respectively, bind themselves, their agents, successors, assigns and legal representatives to this AGREEMENT. Neither the OWNER nor the ARCHITECT shall assign this AGREEMENT without the written consent of the other, except that the OWNER may assign this AGREEMENT to a lender providing financing for the Project if the lender agrees to assume the OWNER's rights and obligations under this AGREEMENT.
- 15.3 Nothing contained in this AGREEMENT shall create a contractual relationship with, or a cause of action

in favor of, any third party against either the OWNER or ARCHITECT.

- 15.4 This AGREEMENT shall be governed by the laws of the State of California.
- 15.5 If either Party becomes involved in litigation arising out of this AGREEMENT or the performance thereof, each Party shall bear its own litigation costs and expenses, including reasonable attorneys' fees.
- 15.6 These TERMS AND CONDITIONS apply to all services rendered by the ARCHITECT on behalf of the OWNER. This includes all services identified in the initial AGREEMENT and any services agreed to by amendment to the initial AGREEMENT which may only be done through written instrument signed by both OWNER and ARCHITECT.
- 15.7 Force Majeure. In the event either Party is unable to perform its obligations under the terms of this AGREEMENT because of acts of God, strikes, pandemics, epidemics or other such events reasonably beyond the Parties' control, such non-performing Party shall not be liable for damages resulting from such failure to perform; provided, however, that such non-performing Party must notify the other Party of its inability to perform due to a force majeure event and must resume performance as soon as is reasonably practicable thereafter.
- 15.8 ARCHITECT shall at all times comply with any and all state, local, and federal regulations regarding the COVID-19 pandemic or any other pandemic or epidemic at ARCHITECT's own expense, including but not limited to phased reopening and access to the site, wearing masks or other personal protective equipment, social distancing, and any resulting or related reduction in site capacity.
- 15.9 Any notice required or permitted to be given under this AGREEMENT shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, to the addresses of the respective Parties.
- 15.10 It is the policy of the OWNER that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status and therefore the ARCHITECT agree to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OWNER's policies and procedures. In addition, the Consultant agrees to require like compliance by all its Consultants.
- 15.11 Prevailing Wages. ARCHITECT and its Consultants shall, to the extent applicable to work or services performed under this AGREEMENT, comply with the provisions of the California Labor Code (including, without limitation, California Labor Code Section 1720, 1735, 1775, 1777.5 and 1776.6) applicable to persons performing services or work for "construction", including but not limited to inspection and land surveying work, as defined in California Labor Code Section 1720. Pursuant to California Labor Code Section 1773, the Department of Industrial Relations has determined the general prevailing rates of wages per diem, and for holiday and overtime work, in the locality in which this AGREEMENT is to be performed, for persons performing such work or services and said rates are on file with the OWNER at its principal office and available to any interested party upon request.

15.12 OWNER shall not be bound by the terms of this AGREEMENT until it has been formally approved by the OWNER's Governing Board, and no payment shall be made or owed to ARCHITECT absent that formal approval. This AGREEMENT is deemed approved when it has been signed by the Governing Board and/or the Superintendent or designee thereof, and each person signing this AGREEMENT warrants that they have such authority to sign.

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties hereto have executed this AGREEMENT.

ARCHITECT:
Hibser Yamauchi Architects, Inc.
Marcus Hibser

OWNER:
Mill Valley School District

Signature

Signature

Print Name and Title

Print Name and Title

Date

Date

Address

Address

EXHIBIT A
FEE PROPOSAL

[INSERT January 5, 2021 Fee Proposal]

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