

SEPARATE COVER ITEM 14.1.3

CONTRACTS FOR  
ARCHITECTURAL SERVICES

Central  
McKinley  
Monte Vista  
North  
South/West Park

MEETING: FEBRUARY 10, 2009

CENTRAL

**CONTRACT FOR ARCHITECTURAL SERVICES  
BETWEEN  
TRACY UNIFIED SCHOOL DISTRICT  
AND  
RAINFORTH GRAU ARCHITECTS  
CENTRAL ELEMENTARY SCHOOL MODERNIZATION**

THIS AGREEMENT is entered into this 22<sup>nd</sup> day of December, 2008, between the TRACY UNIFIED SCHOOL DISTRICT, of the County of San Joaquin, California, hereinafter referred to as the "District," and Rainforth Grau Architects, a Professional Corporation, hereinafter called the "Architect."

District intends to construct the Project ("Project") as described in Attachment A, which is hereby incorporated by the parties as a term of this Agreement.

Architect represents that Architect is fully licensed, qualified, and willing to perform the services required by this Agreement (with the understanding that if Architect is a corporation or other organization, the Project Architect specified in and pursuant to Article 1, and not Architect itself, is fully licensed to practice as an architect in the State of California).

Accordingly, the parties agree as follows:

**ARTICLE 1. PROJECT BUDGET**

**1.1** The Project budget is, or will be, established as indicated on Attachment B.

**1.2** The size of the Project and the type and quality of construction are dependent upon the funds available for the Project. Architect will exercise his best judgment in determining the balance between the size of the Project, the type of construction, and the quality of construction to achieve a satisfactory solution within budget limitations.

**1.3** Architect is required to exercise its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Project's construction allowance. It is the duty of Architect to design a Project within the budget as indicated on Attachment B. If a construction bid exceeds such standards, Architect will be responsible for making the necessary changes in the approved plans, specifications and bid documents at no additional cost to the District.

**ARTICLE 2. EMPLOYMENT OF ARCHITECT.**

District employs Architect pursuant to Government Code section 53060 to perform the necessary professional services, including, but not limited to, those hereinafter set forth in connection with the Project. Architect shall name a specific person fully licensed to practice as an architect in the State of California to be Project Architect, subject to approval of District. The Project Architect shall maintain personal oversight of the Project and act as principal contact with District, the contractor, Architect's consultants, engineers, and with all inspectors on the Project. Any change by Architect of the Project Architect shall be in writing and subject to approval by District.

Project Architect is Kevin Arwood, Associate Architect/Studio Leader, licence number C26738, and Michael Rainforth Principal-in-Charge, licence number C8289.

### **ARTICLE 3. ARCHITECT'S SERVICES.**

**3.1** Architect accepts employment and agrees to perform all reasonable professional architectural, engineering, consulting, and construction administration services in a professional manner, consistent with the usual and customary standards of the profession at the time those services are performed. The basic services to be performed by Architect are set forth in subparagraphs 3.1.1 through 3.1.12.30 below.

#### **3.1.1 General Responsible Charge.**

Architect agrees to accept "general responsible charge" of the Project as required by Sections 16 and 41 of Division 1 of Title 21 of the California Code of Regulations and State Building Code Part 1, Title 24, Article 6, Section 4-341.

#### **3.1.2 Communication with District.**

Architect shall participate in consultations and conferences with authorized representatives of District and/or other local, regional, or state agencies concerned with the Project necessary for the development of the drawings, specifications, and documents in accordance with the applicable standards and requirements of law and District. Such consultations and conferences shall continue through the planning and construction of the Project and the contractor's warranty period. Architect shall only take direction from staff specifically designated in writing by the District Representative. The District Representative for the Project shall be the District's Director, Facilities and Planning, unless and until the District specifically designates a different District representative. District hereby certifies that the District Representative has been duly authorized by District's Governing Board to represent District on the Project. District may designate new and/or different individuals to act as District Representative from time to time.

#### **3.1.3 Hiring of Consultants and Personnel.**

**3.1.3.1** Architect shall have the option, unless given written objection of District, to employ, at its expense, architects, engineers, or other persons qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Architect may delegate without relieving Architect from administrative responsibility under this Agreement. Architect shall be responsible for the coordination and cooperation of Architect's consultants. Architect shall notify District in writing of the identity of all consultants prior to their commencement of work.

**3.1.3.2** Architect, as part of the basic professional services, shall furnish at his expense the services of civil, structural, mechanical, electrical engineers, food service and landscape architecture properly skilled in the various aspects of the design and construction of facilities required. Consulting services on energy

(including unconventional) systems and requirements, acoustical, technology, traffic and cost estimating services, and other services necessary for the completion of the Project shall be an additional service of the Architect as provided in section 3.2.

**3.1.3.3** All engineers, experts and consultants retained by Architect in performance of this Agreement shall be licensed to practice in their respective professions and licensed by the State of California, where required by law.

**3.1.3.4** Engineers and consultants hired by Architect in the following categories shall be required to show evidence of a policy of professional liability and/or project insurance meeting the same requirements set forth in Article 15 hereof: structural, mechanical, civil, electrical engineers and landscape architects.

**3.1.3.5** Architect shall promptly obtain written District approval of assignment and/or reassignment or replacement of such engineers or consultants or of other staff changes of key personnel working on the Project. Any changes in Architect's consultants and staff shall be subject to approval by District, and such approval shall not be unreasonably withheld.

**3.1.3.6** Draftsperson and other clerical personnel shall be retained by Architect at Architect's sole expense.

**3.1.3.7** California Education Code section 45125.2 requires entities providing construction services to the District, where the employees of the entity or subcontractor (i.e., engineers and/or consultants) will have contact with pupils, to ensure the safety of pupils. Therefore, Architect shall verify that methods are being undertaken to promote pupils' safety. Certification must be accomplished by completing the "Declaration Regarding Employee Fingerprinting and Criminal Background Check." A certification form is available from the District. Any fees generated for the submission of fingerprint cards are an Architect cost and not reimbursable by the District.

#### **3.1.4 Initial Planning Phase of Project.**

**3.1.4.1** Assist District in the preparation of educational programming for the Project to define scope, size, cost, space relationship, and site development. The Architect is also required to determine the scope and estimated cost of the survey work, testing work, and inspection services required for the Project.

**3.1.4.2** Provide advice and assistance to District in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

**3.1.4.3** Architect shall notify District in writing of potential complications, cost overruns, unusual conditions, and general needs that could significantly affect the Project budget and time line.

3.1.4.4 Architect shall advise District in securing easements, encroachment permits, right of ways, dedications, infrastructures, and road improvements and coordinating with utilities and adjacent property owners. This includes all utilities: water, drainage, sewer, power, cable and any special utilities necessary to achieve the Project.

### **3.1.5 Schematic Plan Phase of Project.**

3.1.5.1 Architect shall review the program approved by the District to ascertain the requirements of the Project and shall review Architect's understanding of such requirements with the District.

3.1.5.2 Architect shall provide a site plan and other Project-related information necessary and required for an application by District to any federal, state, regional, or local agency for funds to finance the construction Project. Architect shall also, with assistance of District, establish a project schedule.

3.1.5.3 In cooperation with District planners and educational committees, Architect shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project and the plot plan development at the site, and the proposed architectural concept of the buildings, incorporating the educational program and the functional requirements of District. Such drawings and plans shall meet the requirements of the State Department of Education regulations (Cal. Code Regs., Title 5, § 14000 *et seq.*) and guidelines and shall be prepared in such form as may be submitted to the State Department of Education for approval. Such drawings and plans shall show in single-line drawings all rooms incorporated in each building in the Project, and shall include all revisions required by District or by any federal, state, regional, or local agency having jurisdiction over the Project. All architectural representation drawings for the Project shall be in Computer Aided Draft (CAD) form suitable for reproduction.

3.1.5.3.1 Architect is to advocate on District's behalf and obtain a favorable regulatory condition for the Project.

3.1.5.4 If directed by the District Representative at the time of approval of construction schemes, the preliminary and final working drawings and specifications shall be prepared so that portions of the work of the Project may be performed under separate constructions contracts, or so that the construction of certain buildings, facilities, or other portions of the Project may be deferred.

3.1.5.5 Architect shall establish a preliminary project budget or allowance in the format required by District, or if applicable, by the school construction funding agency identified by District. The purpose of the cost estimate is to show probable cost in relation to District's budget. If Architect perceives site considerations which render the Project expensive or cost prohibitive, Architect

shall disclose such conditions and recommend action required for corrective action in writing to District immediately.

**3.1.5.5.1** Architect shall provide a preliminary written time schedule for the performance of work on the Project.

**3.1.5.6** Architect, at District expense, shall provide sufficient complete sets of the schematic plans described in paragraph 3.1.5.3 for District review and approval. Architect shall also present the schematic plans to the District Board. Additionally, at District's expense, Architect shall provide copies of such documents as required by any federal, state, regional, or local agencies concerned with the Project, including, but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services, and any other appropriate federal, state, regional, or local regulatory bodies. Any additional copies required by District shall be provided at cost to District.

### **3.1.6 Design Development Phase of Project.**

**3.1.6.1** On specific written approval by District of the plans described in paragraph 3.1.5.1 through 3.1.5.6 of this article, Architect shall prepare design development documents consisting of site and floor plans, elevations, and any other drawings and documents sufficient to fix and describe the size and character of the Project's structural, mechanical, and electrical systems, types and makeup of materials and outline specifications for presentation to District's Governing Board for approval.

**3.1.6.2** Architect shall provide at District expense sufficient complete sets of the design development documents described in section 3.1.6.1 for District review and approval. During the design development phase, Architect shall be responsible for filing preliminary plans and other documents including, but not limited to, 2A Diagram as required by law with the California Department of Education ("CDE"). Architect shall provide the District's Director, Facilities and Planning with a copy and proof of filing of each document so filed. Additionally, Architect shall provide copies of such documents as required by any federal, state, regional, or local agencies concerned with the Project, including, but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services, local fire marshal and any other appropriate federal, state, local, or regional regulatory bodies. Any additional copies required shall be provided at cost to District.

**3.1.6.3** Architect shall provide District with an updated estimate of probable construction costs, containing detail consistent with the design development documents required by paragraph 3.1.6.1 of this article and containing a breakdown based on types of materials and specifications identified in paragraph 3.1.6.1 of this article.

3.1.6.4 Architect shall provide a timetable for completion of the Project to District.

3.1.6.5 Architect shall assist District in applying for and obtaining required approvals from the Division of the State Architect, and/or any other agencies with jurisdiction, and shall furnish and process all architectural and engineering information required to prepare and process applications to applicable utilities for the securing of priorities, materials, as an aid in the construction of the Project and obtain final Project approval and acceptance by said agency as required.

3.1.6.6 Architect shall provide a color schedule suitable for presentation to an audience of 10-15 of all materials and selections of textures, finishes, and other matters requiring an aesthetic decision at this phase of the Project for District's review and approval.

3.1.6.7 The Architect shall determine all testing, surveys, explorations required to develop the intended design. The Architect will notify the District what chemical, mechanical, or other tests are required for proper design of the Project.

3.1.6.8 The Architect shall provide the District with 3A Diagrams.

**3.1.7 Building Permits and Conformity to Legal Requirements.**

3.1.7.1 Architect shall exercise due professional care to cause drawings and specifications to conform to applicable requirements of law, local, regional, and state, and to requirements of the Division of State Architect (structural safety, fire/life safety, and access compliance section), and the State Department of Education, and/or any other agencies or special districts (i.e., PG&E) with jurisdiction, whose approval of the drawings and specifications must be obtained, and shall cause the necessary copies of such drawings and specifications to be filed with these bodies for approval in accordance with paragraph 3.1.6.2 of this article. Architect shall provide District with a copy of all approvals from said entities.

3.1.7.2 Architect will exercise usual and customary care to interpret applicable ADA requirements and California law to inform District of any inconsistencies between federal and state accessibility regulations and of requirements which are subject to conflicting interpretations of the law.

3.1.7.3 Architect shall exercise usual and customary care to coordinate the requirements of various public and private entities as they pertain to the Project to the extent such requirements apply to Projects financed under the Leroy F. Greene School Facilities Act of 1998 as amended (hereinafter the "State Program") or other applicable programs. The aforesaid various entities include state, local and federal governmental entities, utility companies (including but not limited to gas, electric, telephone and water companies or districts), sewer districts, drainage districts and the like. Architect shall determine if any local zoning and building ordinances apply to the Project pursuant to Government Code section 53097 and,



if so, give an opinion as to compliance with such local ordinances. Architect shall assist the District in obtaining written cost commitments and approval of design from all involved public and private entities regarding utility, sewer, drainage, grading, road improvement, telephone, water, local fire marshal, health department, traffic department, city/county public works departments and other like services for the Project prior to approval by DSA and OPSC or other regulatory body of the final plans. All cost commitments, approvals and Agreements successfully complete shall be forwarded to the District Representative.

### **3.1.8 Final Working Drawings and Specifications.**

**3.1.8.1** On specific written approval by District of the plans described in section 3.1.6.1 of this article, Architect shall prepare such complete working drawings and specifications as are necessary for obtaining complete bids and for efficient and thorough execution of work. Such working drawings shall be developed from the preliminary drawings approved by District. The final working drawings and specifications shall set forth in detail the work to be done, materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems and utility service connection equipment and site work. It shall be District's responsibility to supply Architect with the necessary information to determine the proper location of all improvements on existing sites, including record drawings ("as-built drawings") in District's possession. Architect will make a good-faith effort to verify the accuracy of such information and as-built drawings by means of a thorough interior and exterior visual survey and measurements of site conditions. District shall also make a good-faith effort to verify the accuracy of the as-built drawings and provide any supplemental information to Architect, which may not be shown on the as-built drawings.

The final working drawings and specifications must be in such form as will enable Architect and District to secure the required permits and approvals from the Division of State Architect and the Office of Public School Construction or other jurisdictional agencies for District to obtain, by competitive bidding, a responsive and responsible bid. The final working drawings shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Architect.

**3.1.8.2** District, with or without outside professional services, shall review, study, and check the final working drawings and specifications presented to it by Architect and make revisions and provide approvals of such final plans subject to the approval of the Division of the State Architect and regulatory agencies. Architect shall make all District-requested changes, additions, deletions, and corrections in the final working drawings and specifications so long as they are not in conflict with the requirements of agencies, including, but not limited to,

private and public utilities having jurisdiction. Architect shall bring any such conflicts and/or inconsistencies to the attention of District.

**3.1.8.3** It is understood by Architect that should final working drawings and specifications be ordered by District, District shall specify the sum of money set aside to cover the total cost of the construction of the work exclusive of Architect's fees. Should it become evident that the total construction cost will exceed the specified sum, Architect shall at once present a statement in writing to District Representative setting forth this fact and giving a full, professionally-prepared statement of the cost estimates on which the conclusion is based. In the event that bids received by District from contractors for the construction of the work indicate the work cannot be constructed in accordance with the plans and specifications furnished by Architect for the specified sum, in accordance with paragraph 3.1.10 and subparagraphs, Architect shall, if requested by District, and without extra compensation therefor, so revise the plans and specifications for the work that the construction may be completed for the total cost which does not exceed the specified sum or so that certain portions of the Project may be omitted, deferred, or separately bid.

**3.1.8.3.1** At the request of District, Architect shall provide specifications, which include alternate bids as deemed advisable by District.

**3.1.8.4** Architect, at District expense, shall provide sufficient complete sets of the final working drawings and specifications described in paragraph 3.1.8.1, for District review and approval. During the Construction Document Phase, Architect shall be responsible for filing the final plans, specifications, bid documents, and other documents as required by law with CDE, and the Division of the State Architect ("DSA"). Architect shall provide District Representative with a copy and proof of filing of each document so filed. Additionally, at District's expense, Architect shall provide copies of such documents as required by federal, state, regional, county local agencies, and utility districts concerned with the Project.

**3.1.8.5** Thirty days prior to the bid, Architect will verify by field examination that site conditions are reasonably presented on the bid documents.

**3.1.8.6** Architect shall submit within 7 (seven) days of DSA's approval of the final plans all plans, cost estimates and other documents necessary to receive OPSC funding approval in the format that OPSC requires.

**3.1.8.7** The Architect shall provide District with 3A Diagrams in the format designated by the District for the Project.

### **3.1.9 Construction Contract Documents.**

As required by District, Architect shall assist District in the completion of construction documents, including, but not limited to, Advertisement for Bids,

Information for Bidders, Bid Forms (including Alternate Bids as requested by District), Bonds, General Conditions, Special Conditions, Agreement, Veteran Business Enterprise preferences, and/or affirmative action documents, if required, and any other documents reasonably required in order to obtain bids responsive to the specifications. All such documents shall be subject to the approval of District and District's counsel. At the time of delivery of the aforementioned construction documents, which shall include the final working drawings and specifications (collectively, the "Construction Documents"), Architect shall provide District with its final estimate of probable construction cost ("Final Estimate") in accordance with the estimates and procedures set forth in Paragraph 3.1.6.3

### **3.1.10 Bid Phase.**

**3.1.10.1** Upon authorization by the Governing Board of District (the "Board") to bid the Project, District with the Architect's assistance shall establish a date on which the bids will be opened (the "Bid Open Date"). The Bid Open Date shall be at least one week prior to a regularly scheduled meeting of the Board and shall be approved by the District Representative.

**3.1.10.2** Architect and the District Representative shall agree on the date the Notice Inviting Bids is to be first published in a newspaper as required by law. Any inquiries regarding crafts and trades will be referred to Architect for resolution

**3.1.10.3** Architect, after consultation with the District, shall prepare the necessary bidding information and the form of the Contract Documents as provided for in paragraph 3.1.9 hereof. These shall be prepared for review by District's attorney, and shall be available for such legal review at least two weeks prior to need for their utilization. Architect shall make such changes as are recommended by District or District's attorney. Architect shall provide the District Representative with a typed Notice Inviting Bids suitable for publication. Said notice shall be complete and shall incorporate to the best of Architect's ability the most recent changes in any laws pertaining to competitive bidding by school districts. District will publish said notice in a newspaper or newspapers as required by law prior to the Bid Open Date once a week for a minimum of two weeks, commencing at least fifteen (15) days prior to the Bid Open Date.

**3.1.10.4** Architect shall provide a complete Bid Set to the District Representative and other bid documents prepared by Architect at least ten (10) business days prior to the date selected as the first day of publication of the Notice Inviting Bids; provided that the District Representative may waive this time limit. Upon approval of the District Representative, additional Bid Sets will be provided at the cost of the District. Architect shall make his best effort to revise the Bid Set to comply with any changes in the applicable laws.

**3.1.10.5** Architect shall assist District in making the Bid Set available for review by potential bidders. The Bid Set shall clearly specify the terms on which the Bid

Set may be checked out by potential bidders, the amount of money deposits for checking out the Bid Set and the terms on which money deposits for the Bid Set will be forfeited to District. Architect shall aggressively market the Project, in addition to newspaper notice to advise potential bidders, whom Architect knows to be responsive and responsible Contractors, of the Notice Inviting Bids for the District's Project for maximum bidder interest.

**3.1.10.6** Architect shall include the date of any pre-bid meeting in the Notice Inviting Bids and advise whether it is mandatory attendance. The Notice Inviting Bids shall specify whether the prebid meeting is to be held at District's Facilities and Planning Office, the Project site or an alternate site. Architect shall conduct the prebid meeting and shall be responsible for distributing any Addendum clarifications and interpretations created by the pre-bid meeting. Architect shall take minutes of the prebid meeting and deliver said minutes to the District Representative.

**3.1.10.7** District Representative shall conduct the bid opening. Architect shall attend the bid opening and prepare a table or schedule showing:

- 3.1.10.7.1** The names of the Contractors who have inspected or received the Bid Set and any Addendum thereto. If a bidder has not inspected or received the Bid Set or any such Addendum, Architect shall so note.
- 3.1.10.7.2** Receipt or nonreceipt of the ten percent (10%) Bid Bond.
- 3.1.10.7.3** Receipt or nonreceipt of the List of Subcontractors submitted by the bidder.
- 3.1.10.7.4** Receipt or nonreceipt of the Non-Collusion Affidavit submitted by the bidder.
- 3.1.10.7.5** Receipt or nonreceipt of Disabled Veteran Business Enterprise Certification forms, if required by existing law or directed by District.
- 3.1.10.7.6** The amount of the base bid.
- 3.1.10.7.7** The amount of each alternative bid.
- 3.1.10.7.8** A roster of all persons who attended the bid opening and the capacity in which they attended.
- 3.1.10.7.9** Receipt or nonreceipt of fingerprinting certification.

**3.1.10.8** After the bids are opened, Architect shall verify that the bids are in order prior to the District reading the amount of the bids. Any irregularities shall be

recorded by Architect in the minutes of the bid opening. Prior to the next meeting of the Board, Architect shall verify the validity of the General Contractor's bid proposal, License and Bond. After the Board accepts the successful bidder and the contract is signed, the District Representative will be responsible for returning the Bid Bonds to the bidders.

**3.1.10.9** Within such time as the District Representative shall specify, Architect shall call a meeting with the successful bidder, the District Representative, and Architect for the purpose of obtaining Payment and Performance Bonds and executing the Contract Documents. The meeting shall be held at the District's Facilities and Planning Office. Architect shall assemble and have present all documents necessary for distribution and signing at this meeting. Architect shall conduct the meeting. Architect shall be prepared to explain the construction administration procedures at the meeting. Architect shall be prepared to distribute a Notice to Proceed at this meeting. Architect shall supervise the signing of the Contract Documents at this meeting.

**3.1.10.10** "Contract Documents" means the following:

- 3.1.10.10.1** Specifications (execution copies).
- 3.1.10.10.2** Plans (execution copies).
- 3.1.10.10.3** Addenda (execution copies).
- 3.1.10.10.4** Bid Documents (Notice Inviting Bids, Instructions to Bidders, Completed Bid Form, Bid Bond, List of Subcontractors, Non Collusion Affidavit and Fingerprinting Certification).
- 3.1.10.10.5** Construction Contract, including the Agreement, the general conditions, any supplemental conditions, any special conditions, and any Addenda (execution copies) (hereinafter "the Contract").
- 3.1.10.10.6** Fully executed and completed Performance Bond.
- 3.1.10.10.7** Fully executed and completed Payment and Materials Bond.
- 3.1.10.10.8** Insurance Certificates and Policies showing that the Contractor has obtained all the insurance required by the Contract.
- 3.1.10.10.9** And such further documents as Architect and District Representative may recommend and approve.

- 3.1.10.11 District shall provide a notary public at the signing, but Architect shall be responsible, with the District's assistance, for determining that all documents requiring a notary's signature have been notarized before the signatories leave the meeting.
- 3.1.10.12 Architect shall provide five (5) original sets of Contract Documents in bound form to be distributed as follows: two to the District Representative, one to the inspector of record, one to the Contractor and one to the Architect. Architect shall be responsible for confirming that each original set and each copy of the Contract Documents is identical at no cost to District.
- 3.1.10.13 If the lowest responsive and reasonable bid on the Project exceeds the Project budget as established in Attachment B, District may request Architect to amend the final drawings and specifications to rebid the Project so that bids are within budget.

### **3.1.11 Examination of Project.**

Examination of the work executed from the final working drawings and specifications shall be in person by Project Architect provided that District may, in its discretion, consent to such examination by another competent representative of Architect.

### **3.1.12 Construction of Project.**

Architect shall provide general administration of the Construction Documents, including the following:

- 3.1.12.1 Deliver the Notice to Proceed to the Contractor at the Contract signing meeting unless there is good cause not to do so. If necessary, the meeting may be continued until the Contract Documents are in order. The Notice to Proceed should specify the start date, the start time and the completion date.
- 3.1.12.2 Hold a preconstruction meeting as soon as practicable after service of the Notice to Proceed. Architect shall keep minutes of the pre-construction meeting and send a copy of the minutes to the District Representative and the Contractor. The Contract signing meeting and the pre-construction meeting may be held on the same day.
- 3.1.12.3 Take minutes of the pre-construction meeting and prepare an agenda for the pre-construction meeting.
- 3.1.12.4 Site visits, as often as necessary and appropriate to the stage of construction, including a minimum weekly visit at the site unless found unnecessary by the District, but at least to observe contractor's work for general conformance with the plans and specifications and to

confirm work is progressing in accordance with the Construction Documents and contractor's schedule.

- 3.1.12.4.1** Architect shall provide technical direction to the Inspector of Record (IOR) employed by and responsible to the District as required by applicable law. The Architect will periodically receive copies of the daily reports of the IOR and will make comments and take action as necessary.
- 3.1.12.5** Site visits to communicate and observe the activities of the Project Inspector of Record, mutually acceptable to Architect and District, and employed by District. Architect shall direct the Inspector and/or contractor and coordinate in the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.
- 3.1.12.6** Cause engineers and other consultants, as may be hired by Architect pursuant to paragraph 3.1.3 and subparagraphs of this article, to make site visits to observe the work in progress under their engineering disciplines as required, and approve and review all test results for general conformance with the original approved documents for their portion of the Project.
- 3.1.12.7** Make regular reports as may be required by the applicable federal, state, regional, or local agencies.
- 3.1.12.8** Attend all construction meetings, take minutes of this meeting and provide written reports as well as minutes to District after each construction meeting to keep District informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the work, but no less than once per week.
- 3.1.12.9** Make written reports to District as necessary to inform District of problems arising during construction, changes contemplated as a result of each such problem, and progress of work.
- 3.1.12.10** Keep records of construction progress and time schedules and advise contractor and District of any deviations from the time schedule which could delay timely completion of Project.
- 3.1.12.11** Check and process, in a timely manner, all required material and test reports and report to the Division of the State Architect, the contractor, and District any deficiencies in material as reflected by those reports, with recommendation for correction of such deficiencies.

- 3.1.12.12 Review and respond to all schedules, submittals, shop drawings, samples, information requests, and other submissions of the contractor and subcontractors for compliance with design and specifications and General Conditions, in a timely manner so as to not interrupt progress of the work. Architect is to maintain RFI log, RFP log, and submittal log and review them at each site meeting.
- 3.1.12.13 Promptly reject, after discussing with District Representative, work or materials that do not conform to the Construction Documents and notify District of such rejection.
- 3.1.12.14 Consult with District, in a timely manner, with regard to substitution of materials, equipment, and laboratory reports thereof prior to the final approvals of such substitutions by District in writing.
- 3.1.12.15 Architect's responsibility shall include the preparation of all documents and/or drawings made necessary by errors and omissions in the originally approved drawings or specifications and such modifications therein as may be necessary to meet unanticipated conditions encountered during construction, at no additional expense to District. The District's approval, acceptance, use of, or payment for all or any part of the Architect's services hereunder or the Project itself shall in no way diminish or limit the Architect's obligations and liabilities or the District's rights.
- 3.1.12.16 All Project related correspondence either initiated by Architect to Contractor or Contractor to Architect shall be copied to the District.
- 3.1.12.17 Evaluate and notify District, in a timely manner and in writing, of any change requests, material change or changes, requested or necessary, in the plans and specifications of the Project. (Written notification may be by way of providing a copy of any such request.)
- 3.1.12.18 Architect shall prepare Change Orders along with any related plans, specifications, drawings and other documents needed to comply with the Construction Contract.
- 3.1.12.19 Change Orders and related documentation pertaining to Change Orders shall be submitted by Architect to the District Representative in accordance with provided schedule. Change Orders shall specify:
  - 3.1.12.19.1 All items agreed to by the Contractor, any additional time allowed, the actual or anticipated date of completion and the agreed cost.
  - 3.1.12.19.2 Cost items shall be verified for accuracy and reasonableness.



- 3.1.12.19.3 Time extensions shall be reviewed by the Inspector.
- 3.1.12.19.4 Signature blocks shall be completed.
- 3.1.12.19.5 The Change Order shall be signed by the Contractor.
- 3.1.12.19.6 Architect and any consultants retained by Architect with responsibility for any item in the Change Order shall indicate their approval of the Change Order by signing it. If they disapprove of the Change Order, they should submit a written explanation for their disapproval.
- 3.1.12.20 In addition to the obligations previously set forth in this Agreement, after the Board approves a Change Order, Architect shall, within five (5) business days after Board approval, **submit** the Change Order as approved by the Board to DSA. If, at the time of performance, the requirements of DSA or other agency with jurisdictional authority is inconsistent with submittal as provided herein, Architect is responsible for complying with these requirements unless specifically directed otherwise by the District Representative.
- 3.1.12.21 Examine, verify, and approve the Contractor's notarized applications for payment and issue certificates for payment for work and materials approved by the Inspector which reflect Architect's recommendation, if any, as to any amount which should be retained or deducted from those payments under the terms of the Construction Documents, by operation of law, or for some other reason.
- 3.1.12.22 Coordinate and recommend color selection with District's original design concept for District approval in a timely manner and coordinate product selection in accordance with specification requirements.
- 3.1.12.23 Determine date of completion.
- 3.1.12.24 After being notified the Project is nearing completion, Architect shall inspect the Project and review the punch-list prepared by the contractor, including minor items ("punch-list items"). The Punch List shall list all observed items remaining to be completed or corrected. Architect shall review and revise the list as necessary and shall advise the District Representative in writing of any defects, omissions, errors or changes that need to be made to the Architect's Punch List. Architect shall notify contractor in writing that all deficiencies and punch-list items must be corrected prior to acceptance of the Project and final payment.

**3.1.12.25** Review materials assembled by the Contractor and assemble for and provide to District written warranties, guarantees, owners' manuals, instruction books, diagrams, record drawings ("as-builts"), and any other materials required from the Contractors and subcontractors in accordance with the Construction Documents.

**3.1.12.26 Notice of Completion and Final Payment.**

**3.1.12.26.1** The District Representative shall see that approval of final payment (including payment of the retainage) and approval of the Notice of Completion is placed on the agenda for the Board's regularly scheduled meeting after receipt from Architect of the Certificate for Final Payment and the execution copy of the Notice of Completion.

**3.1.12.26.2** District will file the approved Notice of Completion with the County Recorder within the statutory period from the date of the Board's acceptance of the project. The District will send a filed and stamped copy of the Notice of Completion to the Architect.

**3.1.12.27 Release of Final Payment and Retention**

**3.1.12.27.1** Within 35 days after the Notice of Completion is filed, Architect shall make sure the following has been completed and final payment and payment of the remaining retainage is warranted:

**3.1.12.27.2** The Contractor has provided all guarantees and warranties as required by the Contract.

**3.1.12.27.3** The Contractor has provided all Operation Manuals to the District Representative as required by the Contract.

**3.1.12.27.4** DSA and all other agencies with jurisdictional authority have received all reports and given all approvals required by law for the Project.

**3.1.12.27.5** Architect has submitted verified "record drawings" plans to the District Representative.

**3.1.12.27.6** Architect has verified to the best of Architect's ability all certificates and documents required by law, OPSC, DSA, CDE, this Agreement, and the Contract Documents are on file with the District

Representative. The Architect has verified completion of the punch list items.

**3.1.12.27.7** Architect shall represent in writing that all of the above has been completed and final payment, including payment of the retainage, is due and payable specifying the date when the payment is due. If Architect cannot so certify, he shall submit a detailed explanation to the District Representative explaining what needs to be done and why and, giving his best estimate, as to when final payment may be released. If final payment has been delayed for any reason, Architect shall immediately notify the District Representative in writing when there is no longer any reason to delay final payment.

**3.1.12.27.8** The Contractor has provided all in-service training to District personnel.

**3.1.12.28** Cause engineers and other consultants, as may be hired by Architect pursuant to paragraph 3.1.3 and subparagraphs of this article, to file required documentation with governmental authorities necessary to close out the Project.

**3.1.12.29 District Wants Drawings.**

**3.1.12.29.1** Not later than 30 days after completion of construction, and before receipt of final payment, Architect shall direct record drawings be prepared by the General Contractor, signed by the Inspector of Record (IOR) and the General Contractor and delivered to the District. Record drawings will show, among other things, the location of all concealed pipe, buried conduit runs, and other similar elements within the completed Project. Architect shall personally review the drawings for completeness and correct representation of the information supplied by the Inspector and the contractor and shall obtain the certificate of the Inspector and the contractor that the drawings are correct.

**3.1.12.29.2** On approval by District Representative of the completed record drawings, Architect shall forward to District the complete set of reproducible duplicates of the original drawings corrected to "record" condition. The tracing shall be of such quality that

clear and legible prints may be made without appreciable and objectionable loss of detail.

- 3.1.12.29.3** Prior to the receipt of Architect's final payment, Architect shall forward to District one clear and legible set of reproductions of the computations, the original copy of the specifications, the record drawings, the final verified progress report pursuant to Title 21 of the California Code of Regulations, and Architect's Certificate of Completion.

**3.1.12.30 Guarantee Period.**

- 3.1.12.30.1** Architect shall provide advice to District on apparent deficiencies in construction during warranty period following acceptance of work.

- 3.1.12.30.2** Architect, as part of his basic professional services, will attempt to resolve to the satisfaction of District apparent deficiencies in construction following the acceptance of the work and prior to the expiration of the one-year General Construction Contract guarantee period of the Project. Architect shall conduct a final one-year quality inspection walk-through with District, IOR and Contractor to ascertain that all warranty items are completed.

**3.2 Additional Services of Architect.**

At District's request, Architect may be asked to perform services not otherwise included in this Agreement and/or services not customarily furnished in accordance with generally accepted architectural practice. District may agree to pay Architect for such services, pursuant to paragraph 7.4 and subparagraphs hereof, if such services cause Architect additional expense and are necessitated due to unusual circumstances and through no fault or neglect on the part of Architect. No additional compensation shall be paid to Architect for performing such services unless District and Architect agree in writing as to the amount of compensation for such services prior to such services being rendered. Such services may include, but shall not be limited to:

- 3.2.1** Plan preparation and/or administration of work on portions of the Project separately bid.
- 3.2.2** Assistance to District, if requested for the selection of moveable furniture, equipment, or articles which are not included in Construction Documents.
- 3.2.3** Services caused by delinquency, default, or insolvency of contractor or by major defects in the work of the contractor in the performance of the construction

contract, provided that any such services made necessary by the failure of Architect to detect and report such matters earlier shall not be compensated.

- 3.2.4 Revisions in drawings, specifications, or other documents when such revisions are inconsistent with written approvals or instructions previously given and due to causes beyond the control of Architect.
- 3.2.5 Serving as an expert witness on District's behalf.
- 3.2.6 Observation of repair of damages to structure.
- 3.2.7 Additional work required for environmental conditions, i.e., asbestos, unforeseen site conditions.
- 3.2.8 The hiring if required by the District of the following consultants: energy, traffic, cost estimating, acoustical, technology, and traffic. Fees for such services shall be determined on a not to exceed basis and approved by the District in writing.

#### **ARTICLE 4. DISTRICT RESPONSIBILITIES.**

District's responsibilities shall include the following:

- 4.1 Make available to Architect all necessary data and information concerning the purpose and requirements of the Project, including realistic scheduling and budget limitations.
- 4.2 Depending upon the scope of the Project, furnish Architect with a survey of the Project site preparation by a registered surveyor or civil engineer and any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information. District shall also provide a soils investigation report and a geological report, if required by law, and may provide these, or other, reports at the District's option.
- 4.3 Appoint and pay, upon mutual agreement with Architect, an Inspector of Record as provided by state law. Said Inspector shall be qualified and approved by Architect and by the Division of State Architect, shall be under direction of Architect, and shall be responsible to, and act in accordance with the policies of, District. The administration by Architect and its engineers shall be in addition to the continuous personal supervision of the Inspector.
- 4.4 Assist Architect in the distribution of plans to bidders and conduct the opening of bids on the Project, if applicable.
- 4.5 When requested by the Architect, District will pay for chemical, mechanical, or other tests required for proper design of the Project. Furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known for the proper development of the required drawings and specifications and to determine soil condition.
- 4.6 Retain a testing service for materials testing and inspection as required by Title 21 of the California Code of Regulations.

4.7 Directly pay or reimburse the payment without mark-up of all fees required by any reviewing or licensing agency.

4.8 Designate a representative authorized to act as liaison between Architect and District in the administration of this Agreement and the Project. Such person or persons shall assist Architect in making inspections and preparing the list of deficiencies required by paragraph 3.1.12.24 hereof, and accompany Architect and the Contractor on the final inspection.

4.9 Review all documents submitted by Architect, including change orders and other matters requiring District's Governing Board approval or approval of District officials. Advise Architect of decisions pertaining to such documents within a reasonable time after submission.

4.10 Notify Architect if any deficiencies in material or workmanship become apparent during contractor's warranty period.

#### **ARTICLE 5. PROJECT CONSTRUCTION COST.**

5.1 Project construction cost as used in this Agreement means the total cost to the District of all work designed or specified by Architect, including work covered by approved change orders and/or alternates, but excluding the following: any payments to Architect or consultants for costs of inspections, surveys, tests and sites, and landscaping not included in Project.

5.2 When labor or material is furnished by the District below its market cost, the Project construction cost shall be based upon current market cost of labor and new material.

5.3 The Project construction cost shall be the acceptable estimate of construction costs to the District as submitted by Architect until such time as bids have been received, whereupon it shall be the construction contract amount.

#### **ARTICLE 6. ESTIMATE OF PROJECT CONSTRUCTION COSTS.**

6.1 If a Project budget is set forth in Article 1 or thereafter established by the District, Architect shall review the estimate at each phase of his services. If such estimates are in excess of the Project budget, Architect shall revise the type or quality of construction to come within the budgeted limit.

6.2 Construction cost estimates are to be determined at each phase. Said estimates shall be a detailed breakdown of costs based upon materials and schedule. The Architect shall provide a list of bid alternates for the Project. The total dollar amount of the list must be greater than the difference between estimate and the budget and must include suggestions from all professional consultants. Prior to District letting the Project for bidding, Architect shall prepare for no additional compensation design changes as requested by District to meet budget requirements of the project or to meet education specifications. If Educational Specification requirements have changed since design development approval in writing by District, then such changes shall be considered extra services subject to an agreed fixed amount.

## **ARTICLE 7. ARCHITECT'S COMPENSATION.**

### **7.1 Basic Services.**

Architect is to design the Project within the budget as Attachment B indicates or other allowance established by District, under basic services ("Basic Services"). Basic Services shall be those defined in paragraphs 3.1 through 3.1.12.30 (all 3.1 subparagraphs). Each portion of the Project let separately on a segregated bid basis shall be considered a separate project for purposes of determining the fee. Compensation for the performance of all services rendered herein by Architect shall be in accordance with Attachment C.

### **7.2 Change Orders.**

The total cost of the Project shall be adjusted to reflect District agreed upon Change Orders so that Architect receives extra compensation in accordance with the Agreement when the Change Order results in an increase in total cost (and was not the result of errors and omissions) and a reduction in compensation when Change Orders result in a decrease in the total cost and where either required to meet the budget or were an error and omission of the Architect.

### **7.3 Complete Payment.**

District shall pay to Architect, for the performance of all services rendered herein, the amount specified on Attachment C incorporated herein by reference, which constitutes complete payment for Architect's services under this Agreement.

### **7.4 Payment for Additional Services.**

Architect shall be paid for additional services not originally contemplated by the parties to this Agreement as follows, provided the additional services have received advance written approval by the District

7.4.1 Five percent of the cost of furnishings, equipment, or other articles incorporated in the Construction Documents by Architect and not included in the cost of the work, as defined in Attachment C.

7.4.2 For services in addition to the basic services of Architect set forth in Article 3 hereof, a fee to be agreed upon by the parties in writing prior to performance of such services by Architect, which fee may be a flat amount or Architect's standard hourly rates.

7.4.3 Special consultants, prior approval of which is required, shall be paid a fee to be agreed upon by the parties in writing prior to performance of such services, which fee may be a flat amount or standard hourly rates. Special consultants do not include the engineers and consultants hired pursuant to section 3.1.3 and noted as basic professional services.

## **7.5 Reimbursable Expenses.**

Reimbursable expenses are in addition to compensation for basic and additional services (as set forth in Article 3 and paragraph 7.4 and subparagraphs above) and include actual expenses incurred by Architect and Architect's employees and consultants in the interest of the Project, as identified in the following clauses:

- 7.5.1 Expense of written preauthorized transportation, excluding ordinary mileage normally incurred, in connection with the Project.
- 7.5.2 Expenses in connection with written preauthorized out-of-town travel.
- 7.5.3 Fees paid at cost for securing approval of authorities having jurisdiction over the Project.
- 7.5.4 Expenses of reproductions of drawings and specifications, as authorized herein.
- 7.5.5 Other costs/expenses preauthorized by District.

## **ARTICLE 8. PAYMENTS TO ARCHITECT.**

8.1 Architect's compensation shall be paid by District to Architect monthly, incrementally, based upon the percentage of work completed, and as appropriate, in accordance with normal phasing and funding schedule, or such other schedule as may be established by the District.

8.2 In order to receive payment, Architect shall present to District a claim for payment for approval by District's authorized representative, which claim shall designate services performed, percentage of work completed or actual work completed depending upon fee arrangement, method of computation of amount payable, and amount to be paid.

8.3 Payments made for extra work or special services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the parties shall specify when such services are agreed upon.

8.4 Upon cancellation or termination of this Agreement, Architect shall be compensated as set forth in Article 11 hereof.

8.5 Final payment to Architect shall be made by the District after the Notice of Completion is approved by the Board. However, this payment shall not exclude Architect from continuing to provide services to resolve outstanding punch list items and warranty items.

8.6 Architect's compensation shall be payable as follows:

8.6.1 Ten percent (10%) of the total fee shall be due upon approval of the schematic site plan.

8.6.2 The amount due shall be increased to twenty-five percent (25%) of the total fee upon approval of the preliminary plans consisting of site plan, floor plans,



architectural cross sections of the buildings and interior and exterior elevations of the buildings.

- 8.6.3 The amount due shall be increased to fifty percent (50%) of the total fee at fifty percent (50%) completion of the bidding documents.
- 8.6.4 The amount due shall be increased to seventy percent (70%) of the total fee upon submission of the bidding documents to the Division of the State Architect for review.
- 8.6.5 The amount shall be increased to seventy-five percent (75%) of the total fee upon approval of the bidding documents by the Division of the State Architect and the District.
- 8.6.6 The amount due shall be increased to eighty percent (80%) of the total fee upon acceptance of the bid.
- 8.6.7 The remaining twenty percent (20%) of the fee shall be prorated based upon the percentage of the construction, which has been completed and shall be billable on a monthly basis. Final payment to the Architect, less any errors, omissions and compensations due the District, shall be made by the District after the Notice of Completion is approved by the Board. However, this payment shall not exclude the Architect from continuing to provide services to resolve outstanding punch list items.
- 8.6.8 When more than one contract is issued the percentage of the fee due shall be calculated on the point of completion of each separate contract.
- 8.6.9 The estimated cost of the project shall be used to calculate the fee until the District accepts the bid for a contract, at which time the actual contract amount shall be used to calculate the fee and the fee shall be adjusted to reflect the actual contract amount and the estimates.
- 8.6.10 Reasonable expenses, without markup for reproduction, postage and handling of drawings and specifications.

## **8.7 Times of Payment.**

Payments under this Agreement shall be as follows:

- 8.7.1 Following the District's written authorization to proceed with the work required under this Agreement, the Architect will submit a monthly billing statement to the District for services rendered.
- 8.7.2 The District will review each of the Architect's statements, and, within thirty (30) days of receipt of the Architect's statement, the District will submit a warrant to the Stanislaus County Office of Education requesting that payment be made to the Architect for the amount of the approved statement.

## **ARTICLE 9. INSTRUCTIONS TO PROCEED.**

Architect is not to proceed with performance of any services under this Agreement without first securing written authorization from District to do so.

## **ARTICLE 10. TIME SCHEDULE.**

**10.1** Architect shall perform all services hereunder as expeditiously as is consistent with professional skill and care and the orderly progress of the work. Upon request of District, Architect shall prepare an estimated time schedule for the performance of Architect's services, to be adjusted as the Project proceeds. Such schedule shall include allowances for periods of time required for District's review and approval of submissions and for approvals of authorities having jurisdiction over Project approval and for funding. The schedule shall not be exceeded by Architect, without the prior written approval of District.

**10.2** Any delays in Architect's work because of the actions of District or its employees, those in direct contractual relationship with District, by a governmental agency having jurisdiction over the Project, or by an act of God or other unforeseen occurrence, not due to any fault or negligence on the part of Architect, shall be added to the time for completion of any obligations of Architect.

**10.3** Should Architect make an application for an extension of time, Architect shall submit evidence that the insurance policies required by Article 15 remain in effect during the requested additional period of time.

## **ARTICLE 11. SUSPENSION, ABANDONMENT, TERMINATION.**

**11.1** District 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, Architect shall be paid pursuant to the schedule of payments set forth in Articles 7 and 8 of the Agreement for services rendered up to the date of such suspension, abandonment, or termination, less any damages suffered by District as a result of the default, if any, by Architect. Architect hereby expressly waives any and all claims for damages or compensation arising under this Contract, except as set forth herein, in the event of such suspension, abandonment, or termination.

**11.2** If Architect's services are suspended by District, District may require Architect to resume services within ninety (90) days after written notice from District.

**11.3** Upon suspension, abandonment, or termination, Architect shall, if requested by District, turn over to District all preliminary studies, sketches, working drawings, specifications, computations, and all other matters to which District would have been entitled at the completion of Architect's services. Upon payment of the amount required to be paid under this article following the termination of this Agreement, District shall have the right to use any completed contract documents or other work product prepared by Architect under this Agreement for the original project for which they were intended and not for other or subsequent reuses on other sites. Architect shall make such documents available to District upon request and without additional compensation.

## **ARTICLE 12. OWNERSHIP AND USE OF DOCUMENTS.**

12.1 Pursuant to Education Code section 17316, all plans, specifications, and estimates prepared pursuant to this Agreement shall be and remain the property of District. Such drawings and specifications supplied as herein required shall be the property of District whether or not the work for which they were made is executed.

## **ARTICLE 13. INDEMNITY.**

Architect shall indemnify and hold harmless District, District's Governing Board, each member of the Board, and District's officers, and employees from any and all claims, liability, causes of action, damages and expenses of any kind (including reasonable attorney's fees) to the extent of arising out of the intentional or negligent acts, errors, or omissions of Architect, its subcontractors, consultants, or employees in the performance of this Contract. District shall indemnify and hold harmless Architect, its officers, and employees from any and all claims of any kind arising out of the negligent acts, errors, or omissions of the District, its officers, or employees in the performance of this Contract.

## **ARTICLE 14. ERRORS AND OMISSIONS.**

Architect shall be liable for damages and costs incurred by, and any claims against, District that result from Architect's negligence in the performance of this Agreement as provided by California law. Additionally, Architect shall not be paid a fee for work required due to Architect's negligence or the negligence of Architect's subcontractors, consultants, and/or employees in the performance of services under this Agreement.

## **ARTICLE 15. INSURANCE.**

Architect shall maintain in full force and effect, at its sole cost and expense, from the time this Agreement is entered into until the date of acceptance of the work by District, insurance as set forth in this article. All insurance provided for under this article shall be with a carrier satisfactory to District. Prior to commencement of work, Architect shall furnish to District a certificate of insurance evidencing the required coverage. District shall not be obligated to make any payment to Architect until after its receipt and acceptance of said certificate.

15.1 Workers' compensation insurance as required by applicable laws, and employer's liability insurance, with a limit of not less than \$1,000,000.

15.2 Commercial general liability insurance for bodily injury and property damage liability, the limits of which shall not be less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Commercial general liability policies obtained and maintained by Architect shall contain endorsements naming District and other interested parties, who have insurable interests and who are designated by District, as additional insureds and shall include products' completed coverage and operations coverage as well as contractual liability coverage for liability assumed by Architect under this Agreement. Auto liability insurance covering motor vehicles shall be in an amount not less than \$500,000 combines single limit. Policies under this section shall be endorsed to name the District as an additional insured.

**15.3** Architect shall procure and maintain professional liability insurance (errors and omissions insurance) in the amount of \$1,000,000 for protection from claims arising out of the performance of professional services caused by a negligent error, omission or act for which the insured is legally liable. Architect will likewise require the consultants to carry the same insurance package. It will be Architect's responsibility to require the carrier to deliver certificates to the District. The obligation to maintain professional liability insurance coverage shall survive termination of this Agreement. Architect is liable for the entire cost of the insurance required by this Agreement.

All insurance required above shall be purchased from an insurance company licensed and admitted in California. Each policy of insurance shall state that the policy is primary and any insurance carried by District is excess and non-contributory; shall state that not less than thirty (30) days' written notice shall be given to District prior to cancellation, except for Professional Liability policy, and shall waive all rights of subrogation. Architect shall deliver to District certificates of insurance and endorsement as evidence of compliance with the requirements herein.

In the event that Architect subcontracts any portion of Architect's duties, Architect shall require any such subcontractor to purchase and maintain insurance coverage for the types of insurances referenced above, in the amounts which are appropriate with respect to that subcontractor's part of work, which shall in no event be less than five hundred thousand dollars (\$500,000.00) per occurrence.

#### **ARTICLE 16. RECORDS.**

Architect shall maintain records of direct personnel and reimbursable expenses pertaining to the extra and special services of the Project that are compensable by other than a flat rate. Architect shall maintain all records of accounts between District and Architect on a generally recognized accounting basis. Such records shall be available to District or its authorized representative for inspection or audit at any reasonable time. Architect shall maintain all records concerning the Project for a period of three years after its completion.

#### **ARTICLE 17. STANDARDIZED MANUFACTURED ITEMS.**

Architect shall cooperate and consult with District in use and selection of manufactured items on the Project, including, but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials, and floor coverings. All such manufactured items shall be standardized to District's criteria to the extent such criteria do not interfere with Project design.

#### **ARTICLE 18. LIMITATION OF AGREEMENT.**

This Agreement is limited to and includes only the work included in the Project described above and as determined at the time the design development documents prepared pursuant to paragraph 3.1.6 and subparagraphs are approved, unless this Agreement is amended by the parties to include additional work as part of the Project. Any subsequent construction at the site of the Project, or at

any other site in District, will be covered by, and be the subject of, a separate Agreement for architectural services between District and Architect chosen therefor by District.

#### **ARTICLE 19. MEDIATION.**

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the parties hereto. The parties shall select a disinterested third person mediator within a reasonable period of time, mutually agreed to by the parties. The mediation shall be commenced within 30 days of the selection of the mediator. If the parties elect to mediate but fail to select a mediator within a 15-day period, any party may petition the Superior Court of Stanislaus County to appoint the mediator.

#### **ARTICLE 20. COMPLIANCE WITH THE LAWS.**

Architect shall exercise due professional care so that Architect's work shall comply with and meet applicable requirements of federal, state, regional, or local law, including, but not limited to, the Uniform Building Code, the Education Code, Title 19, Title 21 and Title 24 of the California Code of Regulations, and all requirements prescribed by the California Department of General Services.

#### **ARTICLE 21. INDEPENDENT CONTRACTOR.**

Architect is, for all purposes arising out of this Agreement, an independent contractor, and neither Architect nor its subcontractors, consultants, or employees shall be deemed an employee of District for any purpose. It is expressly understood and agreed that Architect shall in no event be entitled to any benefits to which District employees are entitled, including, but not limited to, overtime, retirement benefits, insurance, vacation, worker's compensation benefits, sick or injury leave, or other benefits.

#### **ARTICLE 22. SUCCESSORS IN INTEREST AND ASSIGNS.**

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

#### **ARTICLE 23. ASBESTOS CERTIFICATION.**

Architect shall verify to the best of its information pursuant to 40 Code Federal Regulation, section 763.99(a)(7), that no asbestos-containing material was specified as a building material in any construction document for the Project and will require that contractors provide District with certification that all materials used in the construction of any school building are free from any asbestos containing building materials ("ACBMs"). Architect shall include statements in specifications that materials containing asbestos are not to be included. This certification shall be part of the final Project submittal.

## **ARTICLE 24. FINGERPRINTING CERTIFICATION.**

California Education Code section 45125.2 requires entities providing construction services to the District to ensure the safety of pupils where employees of the entity or subcontractors will have contact with pupils. Therefore, Contractor shall certify that methods are being undertaken to ensure the pupils' safety. Certification must be accomplished by completing the "Declaration Regarding Employee Fingerprinting and Criminal Background Check." A certification form is available from the Facilities and Planning Office at the District.

## **ARTICLE 25. NO RIGHTS IN THIRD PARTIES.**

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

## **ARTICLE 26. MISCELLANEOUS.**

The following terms and conditions shall be applied to this Agreement:

### **26.1 Governing Law.**

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California.

### **26.2 Entire Agreement.**

This Agreement with its exhibits supersedes any and all other prior or contemporaneous oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises, or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.

### **26.3 Severability.**

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

### **26.4 Non-Waiver.**

None of the provisions of this Agreement shall be considered waived by either party unless such waiver is specifically specified in writing.

### **26.5 Business Day.**

"Business day" as used herein means any day the District Office is open to the public.

### **26.6 Supplemental Conditions.**

Any supplemental conditions shall be attached as an exhibit to this Agreement and incorporated by reference.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed this 22nd day of December, 2008.

**ARCHITECT**

Michael Rainforth  
Jeffrey Grau-Architects  
A Professional Corporation

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

Michael Rainforth  
Principal Architect  
Licence number C8289

**DISTRICT**

Tracy Unified School District

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


Casey Goodall  
Associate Superintendent, Business Services

**ATTACHMENT A TO AGREEMENT BETWEEN  
TRACY UNIFIED SCHOOL DISTRICT AND  
RAINFORTH GRAU ARCHITECTS**

**PROJECT DESCRIPTION**

This Project will repair, renovate, modernize or reconstruct facilities that no longer fulfil their intended purposes, are unsightly and/or require continuing maintenance that is no longer cost effective or any facility that is expected to no longer fulfill its purpose in the next five years. The scope of work is expected to include general up-grading of classrooms, replacement of aging roofing systems, replacement of old heating and cooling and ventilation systems with energy-efficient systems, replacement and up-grading of electrical systems, improvement of security and technology systems increasing student safety and access to computers and such work discovered to be in the interests of the long term use of these buildings.

To be initialed by the parties:

  
\_\_\_\_\_  
ARCHITECT

Michael Rainforth  
Principal Architect  
Licence number C8289

\_\_\_\_\_  
DISTRICT

Casey Goodall  
Associate Superintendent, Business Services  
Tracy Unified School District



**ATTACHMENT B TO AGREEMENT BETWEEN  
TRACY UNIFIED SCHOOL DISTRICT AND  
RAINFORTH GRAU ARCHITECTS**

**BUDGET FOR PROJECT**

Project Budget Based on Cost Estimate of \$8,090,000

**PROJECT COSTS:**

Modernization:	\$ 5,100,000
Contingency:	<u>\$ 570,000</u>
Construction Total:	\$ 5,670,000
Soft Costs:	<u>\$ 2,420,000</u>
<b>TOTAL PROJECT COSTS:</b>	<u><b>\$ 8,090,000</b></u>

To be initialed by the parties:

  
\_\_\_\_\_  
ARCHITECT

Michael Rainforth  
Principal Architect  
Licence number C8289

\_\_\_\_\_  
DISTRICT

Casey Goodall  
Associate Superintendent, Business Services  
Tracy Unified School District

**ATTACHMENT C TO AGREEMENT BETWEEN  
TRACY UNIFIED SCHOOL DISTRICT AND  
RAINFORTH GRAU ARCHITECTS**

**Fee Schedule Based upon the Actual Construction Cost: \$5,670,000**

\$0	Through	\$1,000,000	12.0%
\$1,000,001	Through	\$2,000,000	11.5%
\$2,000,001	Through	\$4,000,000	11.0%
\$4,000,001	Through	\$8,000,000	10.0%
\$8,000,001	Through	\$12,000,000	9.0%
Total Estimated Fee			\$622,000.00

**Fee Allocation/Phase Billing:**

1. Architect compensation shall be paid by the District to the Architect monthly in arrears incrementally within the phases and based upon the percentage of work completed all as described in Article 8 of the Agreement:

To be initialed by the parties:

  
\_\_\_\_\_  
ARCHITECT

Michael Rainforth  
Principal Architect  
Licence number C8289

\_\_\_\_\_  
DISTRICT

Casey Goodall  
Associate Superintendent, Business Services  
Tracy Unified School District

McKINLEY

**CONTRACT FOR ARCHITECTURAL SERVICES  
BETWEEN  
TRACY UNIFIED SCHOOL DISTRICT  
AND  
RAINFORTH GRAU ARCHITECTS  
MCKINLEY ELEMENTARY SCHOOL MODERNIZATION**

THIS AGREEMENT is entered into this 22<sup>nd</sup> day of December, 2008, between the TRACY UNIFIED SCHOOL DISTRICT, of the County of San Joaquin, California, hereinafter referred to as the "District," and Rainforth Grau Architects, a Professional Corporation, hereinafter called the "Architect."

District intends to construct the Project ("Project") as described in Attachment A, which is hereby incorporated by the parties as a term of this Agreement.

Architect represents that Architect is fully licensed, qualified, and willing to perform the services required by this Agreement (with the understanding that if Architect is a corporation or other organization, the Project Architect specified in and pursuant to Article 1, and not Architect itself, is fully licensed to practice as an architect in the State of California).

Accordingly, the parties agree as follows:

**ARTICLE 1. PROJECT BUDGET**

1.1 The Project budget is, or will be, established as indicated on Attachment B.

1.2 The size of the Project and the type and quality of construction are dependent upon the funds available for the Project. Architect will exercise his best judgment in determining the balance between the size of the Project, the type of construction, and the quality of construction to achieve a satisfactory solution within budget limitations.

1.3 Architect is required to exercise its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Project's construction allowance. It is the duty of Architect to design a Project within the budget as indicated on Attachment B. If a construction bid exceeds such standards, Architect will be responsible for making the necessary changes in the approved plans, specifications and bid documents at no additional cost to the District.

**ARTICLE 2. EMPLOYMENT OF ARCHITECT.**

District employs Architect pursuant to Government Code section 53060 to perform the necessary professional services, including, but not limited to, those hereinafter set forth in connection with the Project. Architect shall name a specific person fully licensed to practice as an architect in the State of California to be Project Architect, subject to approval of District. The Project Architect shall maintain personal oversight of the Project and act as principal contact with District, the contractor, Architect's consultants, engineers, and with all inspectors on the Project. Any change by Architect of the Project Architect shall be in writing and subject to approval by District.

Project Architect is Kevin Arwood, Associate Architect/Studio Leader, licence number C26738, and Michael Rainforth Principal-in-Charge, licence number C8289.

### **ARTICLE 3. ARCHITECT'S SERVICES.**

**3.1** Architect accepts employment and agrees to perform all reasonable professional architectural, engineering, consulting, and construction administration services in a professional manner, consistent with the usual and customary standards of the profession at the time those services are performed. The basic services to be performed by Architect are set forth in subparagraphs 3.1.1 through 3.1.12.30 below.

#### **3.1.1 General Responsible Charge.**

Architect agrees to accept "general responsible charge" of the Project as required by Sections 16 and 41 of Division 1 of Title 21 of the California Code of Regulations and State Building Code Part 1, Title 24, Article 6, Section 4-341.

#### **3.1.2 Communication with District.**

Architect shall participate in consultations and conferences with authorized representatives of District and/or other local, regional, or state agencies concerned with the Project necessary for the development of the drawings, specifications, and documents in accordance with the applicable standards and requirements of law and District. Such consultations and conferences shall continue through the planning and construction of the Project and the contractor's warranty period. Architect shall only take direction from staff specifically designated in writing by the District Representative. The District Representative for the Project shall be the District's Director, Facilities and Planning, unless and until the District specifically designates a different District representative. District hereby certifies that the District Representative has been duly authorized by District's Governing Board to represent District on the Project. District may designate new and/or different individuals to act as District Representative from time to time.

#### **3.1.3 Hiring of Consultants and Personnel.**

**3.1.3.1** Architect shall have the option, unless given written objection of District, to employ, at its expense, architects, engineers, or other persons qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Architect may delegate without relieving Architect from administrative responsibility under this Agreement. Architect shall be responsible for the coordination and cooperation of Architect's consultants. Architect shall notify District in writing of the identity of all consultants prior to their commencement of work.

**3.1.3.2** Architect, as part of the basic professional services, shall furnish at his expense the services of civil, structural, mechanical, electrical engineers, food service and landscape architecture properly skilled in the various aspects of the design and construction of facilities required. Consulting services on energy

(including unconventional) systems and requirements, acoustical, technology, traffic and cost estimating services, and other services necessary for the completion of the Project shall be an additional service of the Architect as provided in section 3.2.

**3.1.3.3** All engineers, experts and consultants retained by Architect in performance of this Agreement shall be licensed to practice in their respective professions and licensed by the State of California, where required by law.

**3.1.3.4** Engineers and consultants hired by Architect in the following categories shall be required to show evidence of a policy of professional liability and/or project insurance meeting the same requirements set forth in Article 15 hereof: structural, mechanical, civil, electrical engineers and landscape architects.

**3.1.3.5** Architect shall promptly obtain written District approval of assignment and/or reassignment or replacement of such engineers or consultants or of other staff changes of key personnel working on the Project. Any changes in Architect's consultants and staff shall be subject to approval by District, and such approval shall not be unreasonably withheld.

**3.1.3.6** Draftsperson and other clerical personnel shall be retained by Architect at Architect's sole expense.

**3.1.3.7** California Education Code section 45125.2 requires entities providing construction services to the District, where the employees of the entity or subcontractor (i.e., engineers and/or consultants) will have contact with pupils, to ensure the safety of pupils. Therefore, Architect shall verify that methods are being undertaken to promote pupils' safety. Certification must be accomplished by completing the "Declaration Regarding Employee Fingerprinting and Criminal Background Check." A certification form is available from the District. Any fees generated for the submission of fingerprint cards are an Architect cost and not reimbursable by the District.

#### **3.1.4 Initial Planning Phase of Project.**

**3.1.4.1** Assist District in the preparation of educational programming for the Project to define scope, size, cost, space relationship, and site development. The Architect is also required to determine the scope and estimated cost of the survey work, testing work, and inspection services required for the Project.

**3.1.4.2** Provide advice and assistance to District in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

**3.1.4.3** Architect shall notify District in writing of potential complications, cost overruns, unusual conditions, and general needs that could significantly affect the Project budget and time line.

3.1.4.4 Architect shall advise District in securing easements, encroachment permits, right of ways, dedications, infrastructures, and road improvements and coordinating with utilities and adjacent property owners. This includes all utilities: water, drainage, sewer, power, cable and any special utilities necessary to achieve the Project.

### 3.1.5 Schematic Plan Phase of Project.

3.1.5.1 Architect shall review the program approved by the District to ascertain the requirements of the Project and shall review Architect's understanding of such requirements with the District.

3.1.5.2 Architect shall provide a site plan and other Project-related information necessary and required for an application by District to any federal, state, regional, or local agency for funds to finance the construction Project. Architect shall also, with assistance of District, establish a project schedule.

3.1.5.3 In cooperation with District planners and educational committees, Architect shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project and the plot plan development at the site, and the proposed architectural concept of the buildings, incorporating the educational program and the functional requirements of District. Such drawings and plans shall meet the requirements of the State Department of Education regulations (Cal. Code Regs., Title 5, § 14000 *et seq.*) and guidelines and shall be prepared in such form as may be submitted to the State Department of Education for approval. Such drawings and plans shall show in single-line drawings all rooms incorporated in each building in the Project, and shall include all revisions required by District or by any federal, state, regional, or local agency having jurisdiction over the Project. All architectural representation drawings for the Project shall be in Computer Aided Draft (CAD) form suitable for reproduction.

3.1.5.3.1 Architect is to advocate on District's behalf and obtain a favorable regulatory condition for the Project.

3.1.5.4 If directed by the District Representative at the time of approval of construction schemes, the preliminary and final working drawings and specifications shall be prepared so that portions of the work of the Project may be performed under separate constructions contracts, or so that the construction of certain buildings, facilities, or other portions of the Project may be deferred.

3.1.5.5 Architect shall establish a preliminary project budget or allowance in the format required by District, or if applicable, by the school construction funding agency identified by District. The purpose of the cost estimate is to show probable cost in relation to District's budget. If Architect perceives site considerations which render the Project expensive or cost prohibitive, Architect

shall disclose such conditions and recommend action required for corrective action in writing to District immediately.

**3.1.5.5.1** Architect shall provide a preliminary written time schedule for the performance of work on the Project.

**3.1.5.6** Architect, at District expense, shall provide sufficient complete sets of the schematic plans described in paragraph 3.1.5.3 for District review and approval. Architect shall also present the schematic plans to the District Board. Additionally, at District's expense, Architect shall provide copies of such documents as required by any federal, state, regional, or local agencies concerned with the Project, including, but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services, and any other appropriate federal, state, regional, or local regulatory bodies. Any additional copies required by District shall be provided at cost to District.

### **3.1.6 Design Development Phase of Project.**

**3.1.6.1** On specific written approval by District of the plans described in paragraph 3.1.5.1 through 3.1.5.6 of this article, Architect shall prepare design development documents consisting of site and floor plans, elevations, and any other drawings and documents sufficient to fix and describe the size and character of the Project's structural, mechanical, and electrical systems, types and makeup of materials and outline specifications for presentation to District's Governing Board for approval.

**3.1.6.2** Architect shall provide at District expense sufficient complete sets of the design development documents described in section 3.1.6.1 for District review and approval. During the design development phase, Architect shall be responsible for filing preliminary plans and other documents including, but not limited to, 2A Diagram as required by law with the California Department of Education ("CDE"). Architect shall provide the District's Director, Facilities and Planning with a copy and proof of filing of each document so filed. Additionally, Architect shall provide copies of such documents as required by any federal, state, regional, or local agencies concerned with the Project, including, but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services, local fire marshal and any other appropriate federal, state, local, or regional regulatory bodies. Any additional copies required shall be provided at cost to District.

**3.1.6.3** Architect shall provide District with an updated estimate of probable construction costs, containing detail consistent with the design development documents required by paragraph 3.1.6.1 of this article and containing a breakdown based on types of materials and specifications identified in paragraph 3.1.6.1 of this article.



3.1.6.4 Architect shall provide a timetable for completion of the Project to District.

3.1.6.5 Architect shall assist District in applying for and obtaining required approvals from the Division of the State Architect, and/or any other agencies with jurisdiction, and shall furnish and process all architectural and engineering information required to prepare and process applications to applicable utilities for the securing of priorities, materials, as an aid in the construction of the Project and obtain final Project approval and acceptance by said agency as required.

3.1.6.6 Architect shall provide a color schedule suitable for presentation to an audience of 10-15 of all materials and selections of textures, finishes, and other matters requiring an aesthetic decision at this phase of the Project for District's review and approval.

3.1.6.7 The Architect shall determine all testing, surveys, explorations required to develop the intended design. The Architect will notify the District what chemical, mechanical, or other tests are required for proper design of the Project.

3.1.6.8 The Architect shall provide the District with 3A Diagrams.

### **3.1.7 Building Permits and Conformity to Legal Requirements.**

3.1.7.1 Architect shall exercise due professional care to cause drawings and specifications to conform to applicable requirements of law, local, regional, and state, and to requirements of the Division of State Architect (structural safety, fire/life safety, and access compliance section), and the State Department of Education, and/or any other agencies or special districts (i.e., PG&E) with jurisdiction, whose approval of the drawings and specifications must be obtained, and shall cause the necessary copies of such drawings and specifications to be filed with these bodies for approval in accordance with paragraph 3.1.6.2 of this article. Architect shall provide District with a copy of all approvals from said entities.

3.1.7.2 Architect will exercise usual and customary care to interpret applicable ADA requirements and California law to inform District of any inconsistencies between federal and state accessibility regulations and of requirements which are subject to conflicting interpretations of the law.

3.1.7.3 Architect shall exercise usual and customary care to coordinate the requirements of various public and private entities as they pertain to the Project to the extent such requirements apply to Projects financed under the Leroy F. Greene School Facilities Act of 1998 as amended (hereinafter the "State Program") or other applicable programs. The aforesaid various entities include state, local and federal governmental entities, utility companies (including but not limited to gas, electric, telephone and water companies or districts), sewer districts, drainage districts and the like. Architect shall determine if any local zoning and building ordinances apply to the Project pursuant to Government Code section 53097 and,

if so, give an opinion as to compliance with such local ordinances. Architect shall assist the District in obtaining written cost commitments and approval of design from all involved public and private entities regarding utility, sewer, drainage, grading, road improvement, telephone, water, local fire marshal, health department, traffic department, city/county public works departments and other like services for the Project prior to approval by DSA and OPSC or other regulatory body of the final plans. All cost commitments, approvals and Agreements successfully complete shall be forwarded to the District Representative.

### **3.1.8 Final Working Drawings and Specifications.**

**3.1.8.1** On specific written approval by District of the plans described in section 3.1.6.1 of this article, Architect shall prepare such complete working drawings and specifications as are necessary for obtaining complete bids and for efficient and thorough execution of work. Such working drawings shall be developed from the preliminary drawings approved by District. The final working drawings and specifications shall set forth in detail the work to be done, materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems and utility service connection equipment and site work. It shall be District's responsibility to supply Architect with the necessary information to determine the proper location of all improvements on existing sites, including record drawings ("as-built drawings") in District's possession. Architect will make a good-faith effort to verify the accuracy of such information and as-built drawings by means of a thorough interior and exterior visual survey and measurements of site conditions. District shall also make a good-faith effort to verify the accuracy of the as-built drawings and provide any supplemental information to Architect, which may not be shown on the as-built drawings.

The final working drawings and specifications must be in such form as will enable Architect and District to secure the required permits and approvals from the Division of State Architect and the Office of Public School Construction or other jurisdictional agencies for District to obtain, by competitive bidding, a responsive and responsible bid. The final working drawings shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Architect.

**3.1.8.2** District, with or without outside professional services, shall review, study, and check the final working drawings and specifications presented to it by Architect and make revisions and provide approvals of such final plans subject to the approval of the Division of the State Architect and regulatory agencies. Architect shall make all District-requested changes, additions, deletions, and corrections in the final working drawings and specifications so long as they are not in conflict with the requirements of agencies, including, but not limited to,

private and public utilities having jurisdiction. Architect shall bring any such conflicts and/or inconsistencies to the attention of District.

**3.1.8.3** It is understood by Architect that should final working drawings and specifications be ordered by District, District shall specify the sum of money set aside to cover the total cost of the construction of the work exclusive of Architect's fees. Should it become evident that the total construction cost will exceed the specified sum, Architect shall at once present a statement in writing to District Representative setting forth this fact and giving a full, professionally-prepared statement of the cost estimates on which the conclusion is based. In the event that bids received by District from contractors for the construction of the work indicate the work cannot be constructed in accordance with the plans and specifications furnished by Architect for the specified sum, in accordance with paragraph 3.1.10 and subparagraphs, Architect shall, if requested by District, and without extra compensation therefor, so revise the plans and specifications for the work that the construction may be completed for the total cost which does not exceed the specified sum or so that certain portions of the Project may be omitted, deferred, or separately bid.

**3.1.8.3.1** At the request of District, Architect shall provide specifications, which include alternate bids as deemed advisable by District.

**3.1.8.4** Architect, at District expense, shall provide sufficient complete sets of the final working drawings and specifications described in paragraph 3.1.8.1, for District review and approval. During the Construction Document Phase, Architect shall be responsible for filing the final plans, specifications, bid documents, and other documents as required by law with CDE, and the Division of the State Architect ("DSA"). Architect shall provide District Representative with a copy and proof of filing of each document so filed. Additionally, at District's expense, Architect shall provide copies of such documents as required by federal, state, regional, county local agencies, and utility districts concerned with the Project.

**3.1.8.5** Thirty days prior to the bid, Architect will verify by field examination that site conditions are reasonably presented on the bid documents.

**3.1.8.6** Architect shall submit within 7 (seven) days of DSA's approval of the final plans all plans, cost estimates and other documents necessary to receive OPSC funding approval in the format that OPSC requires.

**3.1.8.7** The Architect shall provide District with 3A Diagrams in the format designated by the District for the Project.

### **3.1.9 Construction Contract Documents.**

As required by District, Architect shall assist District in the completion of construction documents, including, but not limited to, Advertisement for Bids,

Information for Bidders, Bid Forms (including Alternate Bids as requested by District), Bonds, General Conditions, Special Conditions, Agreement, Veteran Business Enterprise preferences, and/or affirmative action documents, if required, and any other documents reasonably required in order to obtain bids responsive to the specifications. All such documents shall be subject to the approval of District and District's counsel. At the time of delivery of the aforementioned construction documents, which shall include the final working drawings and specifications (collectively, the "Construction Documents"), Architect shall provide District with its final estimate of probable construction cost ("Final Estimate") in accordance with the estimates and procedures set forth in Paragraph 3.1.6.3

### **3.1.10 Bid Phase.**

**3.1.10.1** Upon authorization by the Governing Board of District (the "Board") to bid the Project, District with the Architect's assistance shall establish a date on which the bids will be opened (the "Bid Open Date"). The Bid Open Date shall be at least one week prior to a regularly scheduled meeting of the Board and shall be approved by the District Representative.

**3.1.10.2** Architect and the District Representative shall agree on the date the Notice Inviting Bids is to be first published in a newspaper as required by law. Any inquiries regarding crafts and trades will be referred to Architect for resolution

**3.1.10.3** Architect, after consultation with the District, shall prepare the necessary bidding information and the form of the Contract Documents as provided for in paragraph 3.1.9 hereof. These shall be prepared for review by District's attorney, and shall be available for such legal review at least two weeks prior to need for their utilization. Architect shall make such changes as are recommended by District or District's attorney. Architect shall provide the District Representative with a typed Notice Inviting Bids suitable for publication. Said notice shall be complete and shall incorporate to the best of Architect's ability the most recent changes in any laws pertaining to competitive bidding by school districts. District will publish said notice in a newspaper or newspapers as required by law prior to the Bid Open Date once a week for a minimum of two weeks, commencing at least fifteen (15) days prior to the Bid Open Date.

**3.1.10.4** Architect shall provide a complete Bid Set to the District Representative and other bid documents prepared by Architect at least ten (10) business days prior to the date selected as the first day of publication of the Notice Inviting Bids; provided that the District Representative may waive this time limit. Upon approval of the District Representative, additional Bid Sets will be provided at the cost of the District. Architect shall make his best effort to revise the Bid Set to comply with any changes in the applicable laws.

**3.1.10.5** Architect shall assist District in making the Bid Set available for review by potential bidders. The Bid Set shall clearly specify the terms on which the Bid

Set may be checked out by potential bidders, the amount of money deposits for checking out the Bid Set and the terms on which money deposits for the Bid Set will be forfeited to District. Architect shall aggressively market the Project, in addition to newspaper notice to advise potential bidders, whom Architect knows to be responsive and responsible Contractors, of the Notice Inviting Bids for the District's Project for maximum bidder interest.

**3.1.10.6** Architect shall include the date of any pre-bid meeting in the Notice Inviting Bids and advise whether it is mandatory attendance. The Notice Inviting Bids shall specify whether the prebid meeting is to be held at District's Facilities and Planning Office, the Project site or an alternate site. Architect shall conduct the prebid meeting and shall be responsible for distributing any Addendum clarifications and interpretations created by the pre-bid meeting. Architect shall take minutes of the prebid meeting and deliver said minutes to the District Representative.

**3.1.10.7** District Representative shall conduct the bid opening. Architect shall attend the bid opening and prepare a table or schedule showing:

- 3.1.10.7.1** The names of the Contractors who have inspected or received the Bid Set and any Addendum thereto. If a bidder has not inspected or received the Bid Set or any such Addendum, Architect shall so note.
- 3.1.10.7.2** Receipt or nonreceipt of the ten percent (10%) Bid Bond.
- 3.1.10.7.3** Receipt or nonreceipt of the List of Subcontractors submitted by the bidder.
- 3.1.10.7.4** Receipt or nonreceipt of the Non-Collusion Affidavit submitted by the bidder.
- 3.1.10.7.5** Receipt or nonreceipt of Disabled Veteran Business Enterprise Certification forms, if required by existing law or directed by District.
- 3.1.10.7.6** The amount of the base bid.
- 3.1.10.7.7** The amount of each alternative bid.
- 3.1.10.7.8** A roster of all persons who attended the bid opening and the capacity in which they attended.
- 3.1.10.7.9** Receipt or nonreceipt of fingerprinting certification.

**3.1.10.8** After the bids are opened, Architect shall verify that the bids are in order prior to the District reading the amount of the bids. Any irregularities shall be

recorded by Architect in the minutes of the bid opening. Prior to the next meeting of the Board, Architect shall verify the validity of the General Contractor's bid proposal, License and Bond. After the Board accepts the successful bidder and the contract is signed, the District Representative will be responsible for returning the Bid Bonds to the bidders.

**3.1.10.9** Within such time as the District Representative shall specify, Architect shall call a meeting with the successful bidder, the District Representative, and Architect for the purpose of obtaining Payment and Performance Bonds and executing the Contract Documents. The meeting shall be held at the District's Facilities and Planning Office. Architect shall assemble and have present all documents necessary for distribution and signing at this meeting. Architect shall conduct the meeting. Architect shall be prepared to explain the construction administration procedures at the meeting. Architect shall be prepared to distribute a Notice to Proceed at this meeting. Architect shall supervise the signing of the Contract Documents at this meeting.

**3.1.10.10** "Contract Documents" means the following:

- 3.1.10.10.1** Specifications (execution copies).
- 3.1.10.10.2** Plans (execution copies).
- 3.1.10.10.3** Addenda (execution copies).
- 3.1.10.10.4** Bid Documents (Notice Inviting Bids, Instructions to Bidders, Completed Bid Form, Bid Bond, List of Subcontractors, Non Collusion Affidavit and Fingerprinting Certification).
- 3.1.10.10.5** Construction Contract, including the Agreement, the general conditions, any supplemental conditions, any special conditions, and any Addenda (execution copies) (hereinafter "the Contract").
- 3.1.10.10.6** Fully executed and completed Performance Bond.
- 3.1.10.10.7** Fully executed and completed Payment and Materials Bond.
- 3.1.10.10.8** Insurance Certificates and Policies showing that the Contractor has obtained all the insurance required by the Contract.
- 3.1.10.10.9** And such further documents as Architect and District Representative may recommend and approve.

**3.1.10.11** District shall provide a notary public at the signing, but Architect shall be responsible, with the District's assistance, for determining that all documents requiring a notary's signature have been notarized before the signatories leave the meeting.

**3.1.10.12** Architect shall provide five (5) original sets of Contract Documents in bound form to be distributed as follows: two to the District Representative, one to the inspector of record, one to the Contractor and one to the Architect. Architect shall be responsible for confirming that each original set and each copy of the Contract Documents is identical at no cost to District.

**3.1.10.13** If the lowest responsive and reasonable bid on the Project exceeds the Project budget as established in Attachment B, District may request Architect to amend the final drawings and specifications to rebid the Project so that bids are within budget.

**3.1.11 Examination of Project.**

Examination of the work executed from the final working drawings and specifications shall be in person by Project Architect provided that District may, in its discretion, consent to such examination by another competent representative of Architect.

**3.1.12 Construction of Project.**

Architect shall provide general administration of the Construction Documents, including the following:

**3.1.12.1** Deliver the Notice to Proceed to the Contractor at the Contract signing meeting unless there is good cause not to do so. If necessary, the meeting may be continued until the Contract Documents are in order. The Notice to Proceed should specify the start date, the start time and the completion date.

**3.1.12.2** Hold a preconstruction meeting as soon as practicable after service of the Notice to Proceed. Architect shall keep minutes of the preconstruction meeting and send a copy of the minutes to the District Representative and the Contractor. The Contract signing meeting and the pre-construction meeting may be held on the same day.

**3.1.12.3** Take minutes of the pre-construction meeting and prepare an agenda for the pre-construction meeting.

**3.1.12.4** Site visits, as often as necessary and appropriate to the stage of construction, including a minimum weekly visit at the site unless found unnecessary by the District, but at least to observe contractor's work for general conformance with the plans and specifications and to

confirm work is progressing in accordance with the Construction Documents and contractor's schedule.

- 3.1.12.4.1 Architect shall provide technical direction to the Inspector of Record (IOR) employed by and responsible to the District as required by applicable law. The Architect will periodically receive copies of the daily reports of the IOR and will make comments and take action as necessary.
- 3.1.12.5 Site visits to communicate and observe the activities of the Project Inspector of Record, mutually acceptable to Architect and District, and employed by District. Architect shall direct the Inspector and/or contractor and coordinate in the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.
- 3.1.12.6 Cause engineers and other consultants, as may be hired by Architect pursuant to paragraph 3.1.3 and subparagraphs of this article, to make site visits to observe the work in progress under their engineering disciplines as required, and approve and review all test results for general conformance with the original approved documents for their portion of the Project.
- 3.1.12.7 Make regular reports as may be required by the applicable federal, state, regional, or local agencies.
- 3.1.12.8 Attend all construction meetings, take minutes of this meeting and provide written reports as well as minutes to District after each construction meeting to keep District informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the work, but no less than once per week.
- 3.1.12.9 Make written reports to District as necessary to inform District of problems arising during construction, changes contemplated as a result of each such problem, and progress of work.
- 3.1.12.10 Keep records of construction progress and time schedules and advise contractor and District of any deviations from the time schedule which could delay timely completion of Project.
- 3.1.12.11 Check and process, in a timely manner, all required material and test reports and report to the Division of the State Architect, the contractor, and District any deficiencies in material as reflected by those reports, with recommendation for correction of such deficiencies.



- 3.1.12.12 Review and respond to all schedules, submittals, shop drawings, samples, information requests, and other submissions of the contractor and subcontractors for compliance with design and specifications and General Conditions, in a timely manner so as to not interrupt progress of the work. Architect is to maintain RFI log, RFP log, and submittal log and review them at each site meeting.
- 3.1.12.13 Promptly reject, after discussing with District Representative, work or materials that do not conform to the Construction Documents and notify District of such rejection.
- 3.1.12.14 Consult with District, in a timely manner, with regard to substitution of materials, equipment, and laboratory reports thereof prior to the final approvals of such substitutions by District in writing.
- 3.1.12.15 Architect's responsibility shall include the preparation of all documents and/or drawings made necessary by errors and omissions in the originally approved drawings or specifications and such modifications therein as may be necessary to meet unanticipated conditions encountered during construction, at no additional expense to District. The District's approval, acceptance, use of, or payment for all or any part of the Architect's services hereunder or the Project itself shall in no way diminish or limit the Architect's obligations and liabilities or the District's rights.
- 3.1.12.16 All Project related correspondence either initiated by Architect to Contractor or Contractor to Architect shall be copied to the District.
- 3.1.12.17 Evaluate and notify District, in a timely manner and in writing, of any change requests, material change or changes, requested or necessary, in the plans and specifications of the Project. (Written notification may be by way of providing a copy of any such request.)
- 3.1.12.18 Architect shall prepare Change Orders along with any related plans, specifications, drawings and other documents needed to comply with the Construction Contract.
- 3.1.12.19 Change Orders and related documentation pertaining to Change Orders shall be submitted by Architect to the District Representative in accordance with provided schedule. Change Orders shall specify:
  - 3.1.12.19.1 All items agreed to by the Contractor, any additional time allowed, the actual or anticipated date of completion and the agreed cost.
  - 3.1.12.19.2 Cost items shall be verified for accuracy and reasonableness.

- 3.1.12.19.3 Time extensions shall be reviewed by the Inspector.
- 3.1.12.19.4 Signature blocks shall be completed.
- 3.1.12.19.5 The Change Order shall be signed by the Contractor.
- 3.1.12.19.6 Architect and any consultants retained by Architect with responsibility for any item in the Change Order shall indicate their approval of the Change Order by signing it. If they disapprove of the Change Order, they should submit a written explanation for their disapproval.
- 3.1.12.20 In addition to the obligations previously set forth in this Agreement, after the Board approves a Change Order, Architect shall, within five (5) business days after Board approval, **submit** the Change Order as approved by the Board to DSA. If, at the time of performance, the requirements of DSA or other agency with jurisdictional authority is inconsistent with submittal as provided herein, Architect is responsible for complying with these requirements unless specifically directed otherwise by the District Representative.
- 3.1.12.21 Examine, verify, and approve the Contractor's notarized applications for payment and issue certificates for payment for work and materials approved by the Inspector which reflect Architect's recommendation, if any, as to any amount which should be retained or deducted from those payments under the terms of the Construction Documents, by operation of law, or for some other reason.
- 3.1.12.22 Coordinate and recommend color selection with District's original design concept for District approval in a timely manner and coordinate product selection in accordance with specification requirements.
- 3.1.12.23 Determine date of completion.
- 3.1.12.24 After being notified the Project is nearing completion, Architect shall inspect the Project and review the punch-list prepared by the contractor, including minor items ("punch-list items"). The Punch List shall list all observed items remaining to be completed or corrected. Architect shall review and revise the list as necessary and shall advise the District Representative in writing of any defects, omissions, errors or changes that need to be made to the Architect's Punch List. Architect shall notify contractor in writing that all deficiencies and punch-list items must be corrected prior to acceptance of the Project and final payment.

**3.1.12.25** Review materials assembled by the Contractor and assemble for and provide to District written warranties, guarantees, owners' manuals, instruction books, diagrams, record drawings ("as-builts"), and any other materials required from the Contractors and subcontractors in accordance with the Construction Documents.

**3.1.12.26 Notice of Completion and Final Payment.**

**3.1.12.26.1** The District Representative shall see that approval of final payment (including payment of the retainage) and approval of the Notice of Completion is placed on the agenda for the Board's regularly scheduled meeting after receipt from Architect of the Certificate for Final Payment and the execution copy of the Notice of Completion.

**3.1.12.26.2** District will file the approved Notice of Completion with the County Recorder within the statutory period from the date of the Board's acceptance of the project. The District will send a filed and stamped copy of the Notice of Completion to the Architect.

**3.1.12.27 Release of Final Payment and Retention**

**3.1.12.27.1** Within 35 days after the Notice of Completion is filed, Architect shall make sure the following has been completed and final payment and payment of the remaining retainage is warranted:

**3.1.12.27.2** The Contractor has provided all guarantees and warranties as required by the Contract.

**3.1.12.27.3** The Contractor has provided all Operation Manuals to the District Representative as required by the Contract.

**3.1.12.27.4** DSA and all other agencies with jurisdictional authority have received all reports and given all approvals required by law for the Project.

**3.1.12.27.5** Architect has submitted verified "record drawings" plans to the District Representative.

**3.1.12.27.6** Architect has verified to the best of Architect's ability all certificates and documents required by law, OPSC, DSA, CDE, this Agreement, and the Contract Documents are on file with the District

Representative. The Architect has verified completion of the punch list items.

**3.1.12.27.7** Architect shall represent in writing that all of the above has been completed and final payment, including payment of the retainage, is due and payable specifying the date when the payment is due. If Architect cannot so certify, he shall submit a detailed explanation to the District Representative explaining what needs to be done and why and, giving his best estimate, as to when final payment may be released. If final payment has been delayed for any reason, Architect shall immediately notify the District Representative in writing when there is no longer any reason to delay final payment.

**3.1.12.27.8** The Contractor has provided all in-service training to District personnel.

**3.1.12.28** Cause engineers and other consultants, as may be hired by Architect pursuant to paragraph 3.1.3 and subparagraphs of this article, to file required documentation with governmental authorities necessary to close out the Project.

**3.1.12.29 District Wants Drawings.**

**3.1.12.29.1** Not later than 30 days after completion of construction, and before receipt of final payment, Architect shall direct record drawings be prepared by the General Contractor, signed by the Inspector of Record (IOR) and the General Contractor and delivered to the District. Record drawings will show, among other things, the location of all concealed pipe, buried conduit runs, and other similar elements within the completed Project. Architect shall personally review the drawings for completeness and correct representation of the information supplied by the Inspector and the contractor and shall obtain the certificate of the Inspector and the contractor that the drawings are correct.

**3.1.12.29.2** On approval by District Representative of the completed record drawings, Architect shall forward to District the complete set of reproducible duplicates of the original drawings corrected to "record" condition. The tracing shall be of such quality that

clear and legible prints may be made without appreciable and objectionable loss of detail.

- 3.1.12.29.3** Prior to the receipt of Architect's final payment, Architect shall forward to District one clear and legible set of reproductions of the computations, the original copy of the specifications, the record drawings, the final verified progress report pursuant to Title 21 of the California Code of Regulations, and Architect's Certificate of Completion.

**3.1.12.30 Guarantee Period.**

- 3.1.12.30.1** Architect shall provide advice to District on apparent deficiencies in construction during warranty period following acceptance of work.
- 3.1.12.30.2** Architect, as part of his basic professional services, will attempt to resolve to the satisfaction of District apparent deficiencies in construction following the acceptance of the work and prior to the expiration of the one-year General Construction Contract guarantee period of the Project. Architect shall conduct a final one-year quality inspection walk-through with District, IOR and Contractor to ascertain that all warranty items are completed.

**3.2 Additional Services of Architect.**

At District's request, Architect may be asked to perform services not otherwise included in this Agreement and/or services not customarily furnished in accordance with generally accepted architectural practice. District may agree to pay Architect for such services, pursuant to paragraph 7.4 and subparagraphs hereof, if such services cause Architect additional expense and are necessitated due to unusual circumstances and through no fault or neglect on the part of Architect. No additional compensation shall be paid to Architect for performing such services unless District and Architect agree in writing as to the amount of compensation for such services prior to such services being rendered. Such services may include, but shall not be limited to:

- 3.2.1** Plan preparation and/or administration of work on portions of the Project separately bid.
- 3.2.2** Assistance to District, if requested for the selection of moveable furniture, equipment, or articles which are not included in Construction Documents.
- 3.2.3** Services caused by delinquency, default, or insolvency of contractor or by major defects in the work of the contractor in the performance of the construction

contract, provided that any such services made necessary by the failure of Architect to detect and report such matters earlier shall not be compensated.

- 3.2.4 Revisions in drawings, specifications, or other documents when such revisions are inconsistent with written approvals or instructions previously given and due to causes beyond the control of Architect.
- 3.2.5 Serving as an expert witness on District's behalf.
- 3.2.6 Observation of repair of damages to structure.
- 3.2.7 Additional work required for environmental conditions, i.e., asbestos, unforeseen site conditions.
- 3.2.8 The hiring if required by the District of the following consultants: energy, traffic, cost estimating, acoustical, technology, and traffic. Fees for such services shall be determined on a not to exceed basis and approved by the District in writing.

#### **ARTICLE 4. DISTRICT RESPONSIBILITIES.**

District's responsibilities shall include the following:

- 4.1 Make available to Architect all necessary data and information concerning the purpose and requirements of the Project, including realistic scheduling and budget limitations.
- 4.2 Depending upon the scope of the Project, furnish Architect with a survey of the Project site preparation by a registered surveyor or civil engineer and any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information. District shall also provide a soils investigation report and a geological report, if required by law, and may provide these, or other, reports at the District's option.
- 4.3 Appoint and pay, upon mutual agreement with Architect, an Inspector of Record as provided by state law. Said Inspector shall be qualified and approved by Architect and by the Division of State Architect, shall be under direction of Architect, and shall be responsible to, and act in accordance with the policies of, District. The administration by Architect and its engineers shall be in addition to the continuous personal supervision of the Inspector.
- 4.4 Assist Architect in the distribution of plans to bidders and conduct the opening of bids on the Project, if applicable.
- 4.5 When requested by the Architect, District will pay for chemical, mechanical, or other tests required for proper design of the Project. Furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known for the proper development of the required drawings and specifications and to determine soil condition.
- 4.6 Retain a testing service for materials testing and inspection as required by Title 21 of the California Code of Regulations.

4.7 Directly pay or reimburse the payment without mark-up of all fees required by any reviewing or licensing agency.

4.8 Designate a representative authorized to act as liaison between Architect and District in the administration of this Agreement and the Project. Such person or persons shall assist Architect in making inspections and preparing the list of deficiencies required by paragraph 3.1.12.24 hereof, and accompany Architect and the Contractor on the final inspection.

4.9 Review all documents submitted by Architect, including change orders and other matters requiring District's Governing Board approval or approval of District officials. Advise Architect of decisions pertaining to such documents within a reasonable time after submission.

4.10 Notify Architect if any deficiencies in material or workmanship become apparent during contractor's warranty period.

#### **ARTICLE 5. PROJECT CONSTRUCTION COST.**

5.1 Project construction cost as used in this Agreement means the total cost to the District of all work designed or specified by Architect, including work covered by approved change orders and/or alternates, but excluding the following: any payments to Architect or consultants for costs of inspections, surveys, tests and sites, and landscaping not included in Project.

5.2 When labor or material is furnished by the District below its market cost, the Project construction cost shall be based upon current market cost of labor and new material.

5.3 The Project construction cost shall be the acceptable estimate of construction costs to the District as submitted by Architect until such time as bids have been received, whereupon it shall be the construction contract amount.

#### **ARTICLE 6. ESTIMATE OF PROJECT CONSTRUCTION COSTS.**

6.1 If a Project budget is set forth in Article 1 or thereafter established by the District, Architect shall review the estimate at each phase of his services. If such estimates are in excess of the Project budget, Architect shall revise the type or quality of construction to come within the budgeted limit.

6.2 Construction cost estimates are to be determined at each phase. Said estimates shall be a detailed breakdown of costs based upon materials and schedule. The Architect shall provide a list of bid alternates for the Project. The total dollar amount of the list must be greater than the difference between estimate and the budget and must include suggestions from all professional consultants. Prior to District letting the Project for bidding, Architect shall prepare for no additional compensation design changes as requested by District to meet budget requirements of the project or to meet education specifications. If Educational Specification requirements have changed since design development approval in writing by District, then such changes shall be considered extra services subject to an agreed fixed amount.

## **ARTICLE 7. ARCHITECT'S COMPENSATION.**

### **7.1 Basic Services.**

Architect is to design the Project within the budget as Attachment B indicates or other allowance established by District, under basic services ("Basic Services"). Basic Services shall be those defined in paragraphs 3.1 through 3.1.12.30 (all 3.1 subparagraphs). Each portion of the Project let separately on a segregated bid basis shall be considered a separate project for purposes of determining the fee. Compensation for the performance of all services rendered herein by Architect shall be in accordance with Attachment C.

### **7.2 Change Orders.**

The total cost of the Project shall be adjusted to reflect District agreed upon Change Orders so that Architect receives extra compensation in accordance with the Agreement when the Change Order results in an increase in total cost (and was not the result of errors and omissions) and a reduction in compensation when Change Orders result in a decrease in the total cost and where either required to meet the budget or were an error and omission of the Architect.

### **7.3 Complete Payment.**

District shall pay to Architect, for the performance of all services rendered herein, the amount specified on Attachment C incorporated herein by reference, which constitutes complete payment for Architect's services under this Agreement.

### **7.4 Payment for Additional Services.**

Architect shall be paid for additional services not originally contemplated by the parties to this Agreement as follows, provided the additional services have received advance written approval by the District

**7.4.1** Five percent of the cost of furnishings, equipment, or other articles incorporated in the Construction Documents by Architect and not included in the cost of the work, as defined in Attachment C.

**7.4.2** For services in addition to the basic services of Architect set forth in Article 3 hereof, a fee to be agreed upon by the parties in writing prior to performance of such services by Architect, which fee may be a flat amount or Architect's standard hourly rates.

**7.4.3** Special consultants, prior approval of which is required, shall be paid a fee to be agreed upon by the parties in writing prior to performance of such services, which fee may be a flat amount or standard hourly rates. Special consultants do not include the engineers and consultants hired pursuant to section 3.1.3 and noted as basic professional services.



## **7.5 Reimbursable Expenses.**

Reimbursable expenses are in addition to compensation for basic and additional services (as set forth in Article 3 and paragraph 7.4 and subparagraphs above) and include actual expenses incurred by Architect and Architect's employees and consultants in the interest of the Project, as identified in the following clauses:

- 7.5.1 Expense of written preauthorized transportation, excluding ordinary mileage normally incurred, in connection with the Project.
- 7.5.2 Expenses in connection with written preauthorized out-of-town travel.
- 7.5.3 Fees paid at cost for securing approval of authorities having jurisdiction over the Project.
- 7.5.4 Expenses of reproductions of drawings and specifications, as authorized herein.
- 7.5.5 Other costs/expenses preauthorized by District.

## **ARTICLE 8. PAYMENTS TO ARCHITECT.**

8.1 Architect's compensation shall be paid by District to Architect monthly, incrementally, based upon the percentage of work completed, and as appropriate, in accordance with normal phasing and funding schedule, or such other schedule as may be established by the District.

8.2 In order to receive payment, Architect shall present to District a claim for payment for approval by District's authorized representative, which claim shall designate services performed, percentage of work completed or actual work completed depending upon fee arrangement, method of computation of amount payable, and amount to be paid.

8.3 Payments made for extra work or special services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the parties shall specify when such services are agreed upon.

8.4 Upon cancellation or termination of this Agreement, Architect shall be compensated as set forth in Article 11 hereof.

8.5 Final payment to Architect shall be made by the District after the Notice of Completion is approved by the Board. However, this payment shall not exclude Architect from continuing to provide services to resolve outstanding punch list items and warranty items.

8.6 Architect's compensation shall be payable as follows:

- 8.6.1 Ten percent (10%) of the total fee shall be due upon approval of the schematic site plan.
- 8.6.2 The amount due shall be increased to twenty-five percent (25%) of the total fee upon approval of the preliminary plans consisting of site plan, floor plans,

architectural cross sections of the buildings and interior and exterior elevations of the buildings.

- 8.6.3 The amount due shall be increased to fifty percent (50%) of the total fee at fifty percent (50%) completion of the bidding documents.
- 8.6.4 The amount due shall be increased to seventy percent (70%) of the total fee upon submission of the bidding documents to the Division of the State Architect for review.
- 8.6.5 The amount shall be increased to seventy-five percent (75%) of the total fee upon approval of the bidding documents by the Division of the State Architect and the District.
- 8.6.6 The amount due shall be increased to eighty percent (80%) of the total fee upon acceptance of the bid.
- 8.6.7 The remaining twenty percent (20%) of the fee shall be prorated based upon the percentage of the construction, which has been completed and shall be billable on a monthly basis. Final payment to the Architect, less any errors, omissions and compensations due the District, shall be made by the District after the Notice of Completion is approved by the Board. However, this payment shall not exclude the Architect from continuing to provide services to resolve outstanding punch list items.
- 8.6.8 When more than one contract is issued the percentage of the fee due shall be calculated on the point of completion of each separate contract.
- 8.6.9 The estimated cost of the project shall be used to calculate the fee until the District accepts the bid for a contract, at which time the actual contract amount shall be used to calculate the fee and the fee shall be adjusted to reflect the actual contract amount and the estimates.
- 8.6.10 Reasonable expenses, without markup for reproduction, postage and handling of drawings and specifications.

## **8.7 Times of Payment.**

Payments under this Agreement shall be as follows:

- 8.7.1 Following the District's written authorization to proceed with the work required under this Agreement, the Architect will submit a monthly billing statement to the District for services rendered.
- 8.7.2 The District will review each of the Architect's statements, and, within thirty (30) days of receipt of the Architect's statement, the District will submit a warrant to the Stanislaus County Office of Education requesting that payment be made to the Architect for the amount of the approved statement.

## **ARTICLE 9. INSTRUCTIONS TO PROCEED.**

Architect is not to proceed with performance of any services under this Agreement without first securing written authorization from District to do so.

## **ARTICLE 10. TIME SCHEDULE.**

**10.1** Architect shall perform all services hereunder as expeditiously as is consistent with professional skill and care and the orderly progress of the work. Upon request of District, Architect shall prepare an estimated time schedule for the performance of Architect's services, to be adjusted as the Project proceeds. Such schedule shall include allowances for periods of time required for District's review and approval of submissions and for approvals of authorities having jurisdiction over Project approval and for funding. The schedule shall not be exceeded by Architect, without the prior written approval of District.

**10.2** Any delays in Architect's work because of the actions of District or its employees, those in direct contractual relationship with District, by a governmental agency having jurisdiction over the Project, or by an act of God or other unforeseen occurrence, not due to any fault or negligence on the part of Architect, shall be added to the time for completion of any obligations of Architect.

**10.3** Should Architect make an application for an extension of time, Architect shall submit evidence that the insurance policies required by Article 15 remain in effect during the requested additional period of time.

## **ARTICLE 11. SUSPENSION, ABANDONMENT, TERMINATION.**

**11.1** District 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, Architect shall be paid pursuant to the schedule of payments set forth in Articles 7 and 8 of the Agreement for services rendered up to the date of such suspension, abandonment, or termination, less any damages suffered by District as a result of the default, if any, by Architect. Architect hereby expressly waives any and all claims for damages or compensation arising under this Contract, except as set forth herein, in the event of such suspension, abandonment, or termination.

**11.2** If Architect's services are suspended by District, District may require Architect to resume services within ninety (90) days after written notice from District.

**11.3** Upon suspension, abandonment, or termination, Architect shall, if requested by District, turn over to District all preliminary studies, sketches, working drawings, specifications, computations, and all other matters to which District would have been entitled at the completion of Architect's services. Upon payment of the amount required to be paid under this article following the termination of this Agreement, District shall have the right to use any completed contract documents or other work product prepared by Architect under this Agreement for the original project for which they were intended and not for other or subsequent reuses on other sites. Architect shall make such documents available to District upon request and without additional compensation.

## **ARTICLE 12. OWNERSHIP AND USE OF DOCUMENTS.**

12.1 Pursuant to Education Code section 17316, all plans, specifications, and estimates prepared pursuant to this Agreement shall be and remain the property of District. Such drawings and specifications supplied as herein required shall be the property of District whether or not the work for which they were made is executed.

## **ARTICLE 13. INDEMNITY.**

Architect shall indemnify and hold harmless District, District's Governing Board, each member of the Board, and District's officers, and employees from any and all claims, liability, causes of action, damages and expenses of any kind (including reasonable attorney's fees) to the extent of arising out of the intentional or negligent acts, errors, or omissions of Architect, its subcontractors, consultants, or employees in the performance of this Contract. District shall indemnify and hold harmless Architect, its officers, and employees from any and all claims of any kind arising out of the negligent acts, errors, or omissions of the District, its officers, or employees in the performance of this Contract.

## **ARTICLE 14. ERRORS AND OMISSIONS.**

Architect shall be liable for damages and costs incurred by, and any claims against, District that result from Architect's negligence in the performance of this Agreement as provided by California law. Additionally, Architect shall not be paid a fee for work required due to Architect's negligence or the negligence of Architect's subcontractors, consultants, and/or employees in the performance of services under this Agreement.

## **ARTICLE 15. INSURANCE.**

Architect shall maintain in full force and effect, at its sole cost and expense, from the time this Agreement is entered into until the date of acceptance of the work by District, insurance as set forth in this article. All insurance provided for under this article shall be with a carrier satisfactory to District. Prior to commencement of work, Architect shall furnish to District a certificate of insurance evidencing the required coverage. District shall not be obligated to make any payment to Architect until after its receipt and acceptance of said certificate.

15.1 Workers' compensation insurance as required by applicable laws, and employer's liability insurance, with a limit of not less than \$1,000,000.

15.2 Commercial general liability insurance for bodily injury and property damage liability, the limits of which shall not be less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Commercial general liability policies obtained and maintained by Architect shall contain endorsements naming District and other interested parties, who have insurable interests and who are designated by District, as additional insureds and shall include products' completed coverage and operations coverage as well as contractual liability coverage for liability assumed by Architect under this Agreement. Auto liability insurance covering motor vehicles shall be in an amount not less than \$500,000 combines single limit. Policies under this section shall be endorsed to name the District as an additional insured.

**15.3** Architect shall procure and maintain professional liability insurance (errors and omissions insurance) in the amount of \$1,000,000 for protection from claims arising out of the performance of professional services caused by a negligent error, omission or act for which the insured is legally liable. Architect will likewise require the consultants to carry the same insurance package. It will be Architect's responsibility to require the carrier to deliver certificates to the District. The obligation to maintain professional liability insurance coverage shall survive termination of this Agreement. Architect is liable for the entire cost of the insurance required by this Agreement.

All insurance required above shall be purchased from an insurance company licensed and admitted in California. Each policy of insurance shall state that the policy is primary and any insurance carried by District is excess and non-contributory; shall state that not less than thirty (30) days' written notice shall be given to District prior to cancellation, except for Professional Liability policy, and shall waive all rights of subrogation. Architect shall deliver to District certificates of insurance and endorsement as evidence of compliance with the requirements herein.

In the event that Architect subcontracts any portion of Architect's duties, Architect shall require any such subcontractor to purchase and maintain insurance coverage for the types of insurances referenced above, in the amounts which are appropriate with respect to that subcontractor's part of work, which shall in no event be less than five hundred thousand dollars (\$500,000.00) per occurrence.

#### **ARTICLE 16. RECORDS.**

Architect shall maintain records of direct personnel and reimbursable expenses pertaining to the extra and special services of the Project that are compensable by other than a flat rate. Architect shall maintain all records of accounts between District and Architect on a generally recognized accounting basis. Such records shall be available to District or its authorized representative for inspection or audit at any reasonable time. Architect shall maintain all records concerning the Project for a period of three years after its completion.

#### **ARTICLE 17. STANDARDIZED MANUFACTURED ITEMS.**

Architect shall cooperate and consult with District in use and selection of manufactured items on the Project, including, but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials, and floor coverings. All such manufactured items shall be standardized to District's criteria to the extent such criteria do not interfere with Project design.

#### **ARTICLE 18. LIMITATION OF AGREEMENT.**

This Agreement is limited to and includes only the work included in the Project described above and as determined at the time the design development documents prepared pursuant to paragraph 3.1.6 and subparagraphs are approved, unless this Agreement is amended by the parties to include additional work as part of the Project. Any subsequent construction at the site of the Project, or at

any other site in District, will be covered by, and be the subject of, a separate Agreement for architectural services between District and Architect chosen therefor by District.

#### **ARTICLE 19. MEDIATION.**

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the parties hereto. The parties shall select a disinterested third person mediator within a reasonable period of time, mutually agreed to by the parties. The mediation shall be commenced within 30 days of the selection of the mediator. If the parties elect to mediate but fail to select a mediator within a 15-day period, any party may petition the Superior Court of Stanislaus County to appoint the mediator.

#### **ARTICLE 20. COMPLIANCE WITH THE LAWS.**

Architect shall exercise due professional care so that Architect's work shall comply with and meet applicable requirements of federal, state, regional, or local law, including, but not limited to, the Uniform Building Code, the Education Code, Title 19, Title 21 and Title 24 of the California Code of Regulations, and all requirements prescribed by the California Department of General Services.

#### **ARTICLE 21. INDEPENDENT CONTRACTOR.**

Architect is, for all purposes arising out of this Agreement, an independent contractor, and neither Architect nor its subcontractors, consultants, or employees shall be deemed an employee of District for any purpose. It is expressly understood and agreed that Architect shall in no event be entitled to any benefits to which District employees are entitled, including, but not limited to, overtime, retirement benefits, insurance, vacation, worker's compensation benefits, sick or injury leave, or other benefits.

#### **ARTICLE 22. SUCCESSORS IN INTEREST AND ASSIGNS.**

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

#### **ARTICLE 23. ASBESTOS CERTIFICATION.**

Architect shall verify to the best of its information pursuant to 40 Code Federal Regulation, section 763.99(a)(7), that no asbestos-containing material was specified as a building material in any construction document for the Project and will require that contractors provide District with certification that all materials used in the construction of any school building are free from any asbestos containing building materials ("ACBMs"). Architect shall include statements in specifications that materials containing asbestos are not to be included. This certification shall be part of the final Project submittal.

## **ARTICLE 24. FINGERPRINTING CERTIFICATION.**

California Education Code section 45125.2 requires entities providing construction services to the District to ensure the safety of pupils where employees of the entity or subcontractors will have contact with pupils. Therefore, Contractor shall certify that methods are being undertaken to ensure the pupils' safety. Certification must be accomplished by completing the "Declaration Regarding Employee Fingerprinting and Criminal Background Check." A certification form is available from the Facilities and Planning Office at the District.

## **ARTICLE 25. NO RIGHTS IN THIRD PARTIES.**

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

## **ARTICLE 26. MISCELLANEOUS.**

The following terms and conditions shall be applied to this Agreement:

### **26.1 Governing Law.**

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California.

### **26.2 Entire Agreement.**

This Agreement with its exhibits supersedes any and all other prior or contemporaneous oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises, or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.

### **26.3 Severability.**

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

### **26.4 Non-Waiver.**

None of the provisions of this Agreement shall be considered waived by either party unless such waiver is specifically specified in writing.

### **26.5 Business Day.**

"Business day" as used herein means any day the District Office is open to the public.

### **26.6 Supplemental Conditions.**

Any supplemental conditions shall be attached as an exhibit to this Agreement and incorporated by reference.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed this 22nd day of December, 2008.

**ARCHITECT**

Michael Rainforth  
Jeffrey Grau-Architects  
A Professional Corporation

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

Michael Rainforth  
Principal Architect  
Licence number C8289

**DISTRICT**

Tracy Unified School District

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

Casey Goodall  
Associate Superintendent, Business Services



**ATTACHMENT A TO AGREEMENT BETWEEN  
TRACY UNIFIED SCHOOL DISTRICT AND  
RAINFORTH GRAU ARCHITECTS**

**PROJECT DESCRIPTION**

This Project will repair, renovate, modernize or reconstruct facilities that no longer fulfil their intended purposes, are unsightly and/or require continuing maintenance that is no longer cost effective or any facility that is expected to no longer fulfill its purpose in the next five years. The scope of work is expected to include general up-grading of classrooms, replacement of aging roofing systems, replacement of old heating and cooling and ventilation systems with energy-efficient systems, replacement and up-grading of electrical systems, improvement of security and technology systems increasing student safety and access to computers and such work discovered to be in the interests of the long term use of these buildings.

To be initialed by the parties:



\_\_\_\_\_  
ARCHITECT

Michael Rainforth  
Principal Architect  
Licence number C8289

\_\_\_\_\_  
DISTRICT

Casey Goodall  
Associate Superintendent, Business Services  
Tracy Unified School District

**ATTACHMENT B TO AGREEMENT BETWEEN  
TRACY UNIFIED SCHOOL DISTRICT AND  
RAINFORTH GRAU ARCHITECTS**

**BUDGET FOR PROJECT**

Project Budget Based on Cost Estimate of \$6,160,000

**PROJECT COSTS:**

Modernization:	\$ 3,880,000
Contingency:	<u>\$ 430,000</u>
Construction Total:	\$ 4,310,000
Soft Costs:	<u>\$ 1,850,000</u>
<b>TOTAL PROJECT COSTS:</b>	<u><b>\$ 6,160,000</b></u>

To be initialed by the parties:

  
\_\_\_\_\_  
ARCHITECT

Michael Rainforth  
Principal Architect  
Licence number C8289

\_\_\_\_\_  
DISTRICT

Casey Goodall  
Associate Superintendent, Business Services  
Tracy Unified School District

**ATTACHMENT C TO AGREEMENT BETWEEN  
TRACY UNIFIED SCHOOL DISTRICT AND  
RAINFORTH GRAU ARCHITECTS**


**Fee Schedule Based upon the Actual Construction Cost: \$4,310,000**

\$0	Through	\$1,000,000	12.0%
\$1,000,001	Through	\$2,000,000	11.5%
\$2,000,001	Through	\$4,000,000	11.0%
\$4,000,001	Through	\$8,000,000	10.0%
\$8,000,001	Through	\$12,000,000	9.0%
Total Estimated Fee			\$486,000.00

**Fee Allocation/Phase Billing:**

1. Architect compensation shall be paid by the District to the Architect monthly in arrears incrementally within the phases and based upon the percentage of work completed all as described in Article 8 of the Agreement:

To be initialed by the parties:

  
\_\_\_\_\_  
ARCHITECT

\_\_\_\_\_  
DISTRICT

Michael Rainforth  
Principal Architect  
Licence number C8289

Casey Goodall  
Associate Superintendent, Business Services  
Tracy Unified School District

# MONTE VISTA

**CONTRACT FOR ARCHITECTURAL SERVICES  
BETWEEN  
TRACY UNIFIED SCHOOL DISTRICT  
AND  
RAINFORTH GRAU ARCHITECTS  
MONTE VISTA MIDDLE SCHOOL MODERNIZATION**

THIS AGREEMENT is entered into this 22<sup>nd</sup> day of December, 2008, between the TRACY UNIFIED SCHOOL DISTRICT, of the County of San Joaquin, California, hereinafter referred to as the "District," and Rainforth Grau Architects, a Professional Corporation, hereinafter called the "Architect."

District intends to construct the Project ("Project") as described in Attachment A, which is hereby incorporated by the parties as a term of this Agreement.

Architect represents that Architect is fully licensed, qualified, and willing to perform the services required by this Agreement (with the understanding that if Architect is a corporation or other organization, the Project Architect specified in and pursuant to Article 1, and not Architect itself, is fully licensed to practice as an architect in the State of California).

Accordingly, the parties agree as follows:

**ARTICLE 1. PROJECT BUDGET**

1.1 The Project budget is, or will be, established as indicated on Attachment B.

1.2 The size of the Project and the type and quality of construction are dependent upon the funds available for the Project. Architect will exercise his best judgment in determining the balance between the size of the Project, the type of construction, and the quality of construction to achieve a satisfactory solution within budget limitations.

1.3 Architect is required to exercise its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Project's construction allowance. It is the duty of Architect to design a Project within the budget as indicated on Attachment B. If a construction bid exceeds such standards, Architect will be responsible for making the necessary changes in the approved plans, specifications and bid documents at no additional cost to the District.

**ARTICLE 2. EMPLOYMENT OF ARCHITECT.**

District employs Architect pursuant to Government Code section 53060 to perform the necessary professional services, including, but not limited to, those hereinafter set forth in connection with the Project. Architect shall name a specific person fully licensed to practice as an architect in the State of California to be Project Architect, subject to approval of District. The Project Architect shall maintain personal oversight of the Project and act as principal contact with District, the contractor, Architect's consultants, engineers, and with all inspectors on the Project. Any change by Architect of the Project Architect shall be in writing and subject to approval by District.

Project Architect is Kevin Arwood, Associate Architect/Studio Leader, licence number C26738, and Michael Rainforth Principal-in-Charge, licence number C8289.

### **ARTICLE 3. ARCHITECT'S SERVICES.**

**3.1** Architect accepts employment and agrees to perform all reasonable professional architectural, engineering, consulting, and construction administration services in a professional manner, consistent with the usual and customary standards of the profession at the time those services are performed. The basic services to be performed by Architect are set forth in subparagraphs 3.1.1 through 3.1.12.30 below.

#### **3.1.1 General Responsible Charge.**

Architect agrees to accept "general responsible charge" of the Project as required by Sections 16 and 41 of Division 1 of Title 21 of the California Code of Regulations and State Building Code Part 1, Title 24, Article 6, Section 4-341.

#### **3.1.2 Communication with District.**

Architect shall participate in consultations and conferences with authorized representatives of District and/or other local, regional, or state agencies concerned with the Project necessary for the development of the drawings, specifications, and documents in accordance with the applicable standards and requirements of law and District. Such consultations and conferences shall continue through the planning and construction of the Project and the contractor's warranty period. Architect shall only take direction from staff specifically designated in writing by the District Representative. The District Representative for the Project shall be the District's Director, Facilities and Planning, unless and until the District specifically designates a different District representative. District hereby certifies that the District Representative has been duly authorized by District's Governing Board to represent District on the Project. District may designate new and/or different individuals to act as District Representative from time to time.

#### **3.1.3 Hiring of Consultants and Personnel.**

**3.1.3.1** Architect shall have the option, unless given written objection of District, to employ, at its expense, architects, engineers, or other persons qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Architect may delegate without relieving Architect from administrative responsibility under this Agreement. Architect shall be responsible for the coordination and cooperation of Architect's consultants. Architect shall notify District in writing of the identity of all consultants prior to their commencement of work.

**3.1.3.2** Architect, as part of the basic professional services, shall furnish at his expense the services of civil, structural, mechanical, electrical engineers, food service and landscape architecture properly skilled in the various aspects of the design and construction of facilities required. Consulting services on energy

(including unconventional) systems and requirements, acoustical, technology, traffic and cost estimating services, and other services necessary for the completion of the Project shall be an additional service of the Architect as provided in section 3.2.

**3.1.3.3** All engineers, experts and consultants retained by Architect in performance of this Agreement shall be licensed to practice in their respective professions and licensed by the State of California, where required by law.

**3.1.3.4** Engineers and consultants hired by Architect in the following categories shall be required to show evidence of a policy of professional liability and/or project insurance meeting the same requirements set forth in Article 15 hereof: structural, mechanical, civil, electrical engineers and landscape architects.

**3.1.3.5** Architect shall promptly obtain written District approval of assignment and/or reassignment or replacement of such engineers or consultants or of other staff changes of key personnel working on the Project. Any changes in Architect's consultants and staff shall be subject to approval by District, and such approval shall not be unreasonably withheld.

**3.1.3.6** Draftsperson and other clerical personnel shall be retained by Architect at Architect's sole expense.

**3.1.3.7** California Education Code section 45125.2 requires entities providing construction services to the District, where the employees of the entity or subcontractor (i.e., engineers and/or consultants) will have contact with pupils, to ensure the safety of pupils. Therefore, Architect shall verify that methods are being undertaken to promote pupils' safety. Certification must be accomplished by completing the "Declaration Regarding Employee Fingerprinting and Criminal Background Check." A certification form is available from the District. Any fees generated for the submission of fingerprint cards are an Architect cost and not reimbursable by the District.

### **3.1.4 Initial Planning Phase of Project.**

**3.1.4.1** Assist District in the preparation of educational programming for the Project to define scope, size, cost, space relationship, and site development. The Architect is also required to determine the scope and estimated cost of the survey work, testing work, and inspection services required for the Project.

**3.1.4.2** Provide advice and assistance to District in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

**3.1.4.3** Architect shall notify District in writing of potential complications, cost overruns, unusual conditions, and general needs that could significantly affect the Project budget and time line.

3.1.4.4 Architect shall advise District in securing easements, encroachment permits, right of ways, dedications, infrastructures, and road improvements and coordinating with utilities and adjacent property owners. This includes all utilities: water, drainage, sewer, power, cable and any special utilities necessary to achieve the Project.

### **3.1.5 Schematic Plan Phase of Project.**

3.1.5.1 Architect shall review the program approved by the District to ascertain the requirements of the Project and shall review Architect's understanding of such requirements with the District.

3.1.5.2 Architect shall provide a site plan and other Project-related information necessary and required for an application by District to any federal, state, regional, or local agency for funds to finance the construction Project. Architect shall also, with assistance of District, establish a project schedule.

3.1.5.3 In cooperation with District planners and educational committees, Architect shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project and the plot plan development at the site, and the proposed architectural concept of the buildings, incorporating the educational program and the functional requirements of District. Such drawings and plans shall meet the requirements of the State Department of Education regulations (Cal. Code Regs., Title 5, § 14000 *et seq.*) and guidelines and shall be prepared in such form as may be submitted to the State Department of Education for approval. Such drawings and plans shall show in single-line drawings all rooms incorporated in each building in the Project, and shall include all revisions required by District or by any federal, state, regional, or local agency having jurisdiction over the Project. All architectural representation drawings for the Project shall be in Computer Aided Draft (CAD) form suitable for reproduction.

3.1.5.3.1 Architect is to advocate on District's behalf and obtain a favorable regulatory condition for the Project.

3.1.5.4 If directed by the District Representative at the time of approval of construction schemes, the preliminary and final working drawings and specifications shall be prepared so that portions of the work of the Project may be performed under separate constructions contracts, or so that the construction of certain buildings, facilities, or other portions of the Project may be deferred.

3.1.5.5 Architect shall establish a preliminary project budget or allowance in the format required by District, or if applicable, by the school construction funding agency identified by District. The purpose of the cost estimate is to show probable cost in relation to District's budget. If Architect perceives site considerations which render the Project expensive or cost prohibitive, Architect



shall disclose such conditions and recommend action required for corrective action in writing to District immediately.

**3.1.5.5.1** Architect shall provide a preliminary written time schedule for the performance of work on the Project.

**3.1.5.6** Architect, at District expense, shall provide sufficient complete sets of the schematic plans described in paragraph 3.1.5.3 for District review and approval. Architect shall also present the schematic plans to the District Board. Additionally, at District's expense, Architect shall provide copies of such documents as required by any federal, state, regional, or local agencies concerned with the Project, including, but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services, and any other appropriate federal, state, regional, or local regulatory bodies. Any additional copies required by District shall be provided at cost to District.

### **3.1.6 Design Development Phase of Project.**

**3.1.6.1** On specific written approval by District of the plans described in paragraph 3.1.5.1 through 3.1.5.6 of this article, Architect shall prepare design development documents consisting of site and floor plans, elevations, and any other drawings and documents sufficient to fix and describe the size and character of the Project's structural, mechanical, and electrical systems, types and makeup of materials and outline specifications for presentation to District's Governing Board for approval.

**3.1.6.2** Architect shall provide at District expense sufficient complete sets of the design development documents described in section 3.1.6.1 for District review and approval. During the design development phase, Architect shall be responsible for filing preliminary plans and other documents including, but not limited to, 2A Diagram as required by law with the California Department of Education ("CDE"). Architect shall provide the District's Director, Facilities and Planning with a copy and proof of filing of each document so filed. Additionally, Architect shall provide copies of such documents as required by any federal, state, regional, or local agencies concerned with the Project, including, but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services, local fire marshal and any other appropriate federal, state, local, or regional regulatory bodies. Any additional copies required shall be provided at cost to District.

**3.1.6.3** Architect shall provide District with an updated estimate of probable construction costs, containing detail consistent with the design development documents required by paragraph 3.1.6.1 of this article and containing a breakdown based on types of materials and specifications identified in paragraph 3.1.6.1 of this article.

3.1.6.4 Architect shall provide a timetable for completion of the Project to District.

3.1.6.5 Architect shall assist District in applying for and obtaining required approvals from the Division of the State Architect, and/or any other agencies with jurisdiction, and shall furnish and process all architectural and engineering information required to prepare and process applications to applicable utilities for the securing of priorities, materials, as an aid in the construction of the Project and obtain final Project approval and acceptance by said agency as required.

3.1.6.6 Architect shall provide a color schedule suitable for presentation to an audience of 10-15 of all materials and selections of textures, finishes, and other matters requiring an aesthetic decision at this phase of the Project for District's review and approval.

3.1.6.7 The Architect shall determine all testing, surveys, explorations required to develop the intended design. The Architect will notify the District what chemical, mechanical, or other tests are required for proper design of the Project.

3.1.6.8 The Architect shall provide the District with 3A Diagrams.

### **3.1.7 Building Permits and Conformity to Legal Requirements.**

3.1.7.1 Architect shall exercise due professional care to cause drawings and specifications to conform to applicable requirements of law, local, regional, and state, and to requirements of the Division of State Architect (structural safety, fire/life safety, and access compliance section), and the State Department of Education, and/or any other agencies or special districts (i.e., PG&E) with jurisdiction, whose approval of the drawings and specifications must be obtained, and shall cause the necessary copies of such drawings and specifications to be filed with these bodies for approval in accordance with paragraph 3.1.6.2 of this article. Architect shall provide District with a copy of all approvals from said entities.

3.1.7.2 Architect will exercise usual and customary care to interpret applicable ADA requirements and California law to inform District of any inconsistencies between federal and state accessibility regulations and of requirements which are subject to conflicting interpretations of the law.

3.1.7.3 Architect shall exercise usual and customary care to coordinate the requirements of various public and private entities as they pertain to the Project to the extent such requirements apply to Projects financed under the Leroy F. Greene School Facilities Act of 1998 as amended (hereinafter the "State Program") or other applicable programs. The aforesaid various entities include state, local and federal governmental entities, utility companies (including but not limited to gas, electric, telephone and water companies or districts), sewer districts, drainage districts and the like. Architect shall determine if any local zoning and building ordinances apply to the Project pursuant to Government Code section 53097 and,

if so, give an opinion as to compliance with such local ordinances. Architect shall assist the District in obtaining written cost commitments and approval of design from all involved public and private entities regarding utility, sewer, drainage, grading, road improvement, telephone, water, local fire marshal, health department, traffic department, city/county public works departments and other like services for the Project prior to approval by DSA and OPSC or other regulatory body of the final plans. All cost commitments, approvals and Agreements successfully complete shall be forwarded to the District Representative.

### **3.1.8 Final Working Drawings and Specifications.**

**3.1.8.1** On specific written approval by District of the plans described in section 3.1.6.1 of this article, Architect shall prepare such complete working drawings and specifications as are necessary for obtaining complete bids and for efficient and thorough execution of work. Such working drawings shall be developed from the preliminary drawings approved by District. The final working drawings and specifications shall set forth in detail the work to be done, materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems and utility service connection equipment and site work. It shall be District's responsibility to supply Architect with the necessary information to determine the proper location of all improvements on existing sites, including record drawings ("as-built drawings") in District's possession. Architect will make a good-faith effort to verify the accuracy of such information and as-built drawings by means of a thorough interior and exterior visual survey and measurements of site conditions. District shall also make a good-faith effort to verify the accuracy of the as-built drawings and provide any supplemental information to Architect, which may not be shown on the as-built drawings.

The final working drawings and specifications must be in such form as will enable Architect and District to secure the required permits and approvals from the Division of State Architect and the Office of Public School Construction or other jurisdictional agencies for District to obtain, by competitive bidding, a responsive and responsible bid. The final working drawings shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Architect.

**3.1.8.2** District, with or without outside professional services, shall review, study, and check the final working drawings and specifications presented to it by Architect and make revisions and provide approvals of such final plans subject to the approval of the Division of the State Architect and regulatory agencies. Architect shall make all District-requested changes, additions, deletions, and corrections in the final working drawings and specifications so long as they are not in conflict with the requirements of agencies, including, but not limited to,

private and public utilities having jurisdiction. Architect shall bring any such conflicts and/or inconsistencies to the attention of District.

**3.1.8.3** It is understood by Architect that should final working drawings and specifications be ordered by District, District shall specify the sum of money set aside to cover the total cost of the construction of the work exclusive of Architect's fees. Should it become evident that the total construction cost will exceed the specified sum, Architect shall at once present a statement in writing to District Representative setting forth this fact and giving a full, professionally-prepared statement of the cost estimates on which the conclusion is based. In the event that bids received by District from contractors for the construction of the work indicate the work cannot be constructed in accordance with the plans and specifications furnished by Architect for the specified sum, in accordance with paragraph 3.1.10 and subparagraphs, Architect shall, if requested by District, and without extra compensation therefor, so revise the plans and specifications for the work that the construction may be completed for the total cost which does not exceed the specified sum or so that certain portions of the Project may be omitted, deferred, or separately bid.

**3.1.8.3.1** At the request of District, Architect shall provide specifications, which include alternate bids as deemed advisable by District.

**3.1.8.4** Architect, at District expense, shall provide sufficient complete sets of the final working drawings and specifications described in paragraph 3.1.8.1, for District review and approval. During the Construction Document Phase, Architect shall be responsible for filing the final plans, specifications, bid documents, and other documents as required by law with CDE, and the Division of the State Architect ("DSA"). Architect shall provide District Representative with a copy and proof of filing of each document so filed. Additionally, at District's expense, Architect shall provide copies of such documents as required by federal, state, regional, county local agencies, and utility districts concerned with the Project.

**3.1.8.5** Thirty days prior to the bid, Architect will verify by field examination that site conditions are reasonably presented on the bid documents.

**3.1.8.6** Architect shall submit within 7 (seven) days of DSA's approval of the final plans all plans, cost estimates and other documents necessary to receive OPSC funding approval in the format that OPSC requires.

**3.1.8.7** The Architect shall provide District with 3A Diagrams in the format designated by the District for the Project.

### **3.1.9 Construction Contract Documents.**

As required by District, Architect shall assist District in the completion of construction documents, including, but not limited to, Advertisement for Bids,

Information for Bidders, Bid Forms (including Alternate Bids as requested by District), Bonds, General Conditions, Special Conditions, Agreement, Veteran Business Enterprise preferences, and/or affirmative action documents, if required, and any other documents reasonably required in order to obtain bids responsive to the specifications. All such documents shall be subject to the approval of District and District's counsel. At the time of delivery of the aforementioned construction documents, which shall include the final working drawings and specifications (collectively, the "Construction Documents"), Architect shall provide District with its final estimate of probable construction cost ("Final Estimate") in accordance with the estimates and procedures set forth in Paragraph 3.1.6.3

### **3.1.10 Bid Phase.**

**3.1.10.1** Upon authorization by the Governing Board of District (the "Board") to bid the Project, District with the Architect's assistance shall establish a date on which the bids will be opened (the "Bid Open Date"). The Bid Open Date shall be at least one week prior to a regularly scheduled meeting of the Board and shall be approved by the District Representative.

**3.1.10.2** Architect and the District Representative shall agree on the date the Notice Inviting Bids is to be first published in a newspaper as required by law. Any inquiries regarding crafts and trades will be referred to Architect for resolution

**3.1.10.3** Architect, after consultation with the District, shall prepare the necessary bidding information and the form of the Contract Documents as provided for in paragraph 3.1.9 hereof. These shall be prepared for review by District's attorney, and shall be available for such legal review at least two weeks prior to need for their utilization. Architect shall make such changes as are recommended by District or District's attorney. Architect shall provide the District Representative with a typed Notice Inviting Bids suitable for publication. Said notice shall be complete and shall incorporate to the best of Architect's ability the most recent changes in any laws pertaining to competitive bidding by school districts. District will publish said notice in a newspaper or newspapers as required by law prior to the Bid Open Date once a week for a minimum of two weeks, commencing at least fifteen (15) days prior to the Bid Open Date.

**3.1.10.4** Architect shall provide a complete Bid Set to the District Representative and other bid documents prepared by Architect at least ten (10) business days prior to the date selected as the first day of publication of the Notice Inviting Bids; provided that the District Representative may waive this time limit. Upon approval of the District Representative, additional Bid Sets will be provided at the cost of the District. Architect shall make his best effort to revise the Bid Set to comply with any changes in the applicable laws.

**3.1.10.5** Architect shall assist District in making the Bid Set available for review by potential bidders. The Bid Set shall clearly specify the terms on which the Bid

Set may be checked out by potential bidders, the amount of money deposits for checking out the Bid Set and the terms on which money deposits for the Bid Set will be forfeited to District. Architect shall aggressively market the Project, in addition to newspaper notice to advise potential bidders, whom Architect knows to be responsive and responsible Contractors, of the Notice Inviting Bids for the District's Project for maximum bidder interest.

**3.1.10.6** Architect shall include the date of any pre-bid meeting in the Notice Inviting Bids and advise whether it is mandatory attendance. The Notice Inviting Bids shall specify whether the prebid meeting is to be held at District's Facilities and Planning Office, the Project site or an alternate site. Architect shall conduct the prebid meeting and shall be responsible for distributing any Addendum clarifications and interpretations created by the pre-bid meeting. Architect shall take minutes of the prebid meeting and deliver said minutes to the District Representative.

**3.1.10.7** District Representative shall conduct the bid opening. Architect shall attend the bid opening and prepare a table or schedule showing:

- 3.1.10.7.1** The names of the Contractors who have inspected or received the Bid Set and any Addendum thereto. If a bidder has not inspected or received the Bid Set or any such Addendum, Architect shall so note.
- 3.1.10.7.2** Receipt or nonreceipt of the ten percent (10%) Bid Bond.
- 3.1.10.7.3** Receipt or nonreceipt of the List of Subcontractors submitted by the bidder.
- 3.1.10.7.4** Receipt or nonreceipt of the Non-Collusion Affidavit submitted by the bidder.
- 3.1.10.7.5** Receipt or nonreceipt of Disabled Veteran Business Enterprise Certification forms, if required by existing law or directed by District.
- 3.1.10.7.6** The amount of the base bid.
- 3.1.10.7.7** The amount of each alternative bid.
- 3.1.10.7.8** A roster of all persons who attended the bid opening and the capacity in which they attended.
- 3.1.10.7.9** Receipt or nonreceipt of fingerprinting certification.

**3.1.10.8** After the bids are opened, Architect shall verify that the bids are in order prior to the District reading the amount of the bids. Any irregularities shall be

recorded by Architect in the minutes of the bid opening. Prior to the next meeting of the Board, Architect shall verify the validity of the General Contractor's bid proposal, License and Bond. After the Board accepts the successful bidder and the contract is signed, the District Representative will be responsible for returning the Bid Bonds to the bidders.

**3.1.10.9** Within such time as the District Representative shall specify, Architect shall call a meeting with the successful bidder, the District Representative, and Architect for the purpose of obtaining Payment and Performance Bonds and executing the Contract Documents. The meeting shall be held at the District's Facilities and Planning Office. Architect shall assemble and have present all documents necessary for distribution and signing at this meeting. Architect shall conduct the meeting. Architect shall be prepared to explain the construction administration procedures at the meeting. Architect shall be prepared to distribute a Notice to Proceed at this meeting. Architect shall supervise the signing of the Contract Documents at this meeting.

**3.1.10.10** "Contract Documents" means the following:

- 3.1.10.10.1** Specifications (execution copies).
- 3.1.10.10.2** Plans (execution copies).
- 3.1.10.10.3** Addenda (execution copies).
- 3.1.10.10.4** Bid Documents (Notice Inviting Bids, Instructions to Bidders, Completed Bid Form, Bid Bond, List of Subcontractors, Non Collusion Affidavit and Fingerprinting Certification).
- 3.1.10.10.5** Construction Contract, including the Agreement, the general conditions, any supplemental conditions, any special conditions, and any Addenda (execution copies) (hereinafter "the Contract").
- 3.1.10.10.6** Fully executed and completed Performance Bond.
- 3.1.10.10.7** Fully executed and completed Payment and Materials Bond.
- 3.1.10.10.8** Insurance Certificates and Policies showing that the Contractor has obtained all the insurance required by the Contract.
- 3.1.10.10.9** And such further documents as Architect and District Representative may recommend and approve.

**3.1.10.11** District shall provide a notary public at the signing, but Architect shall be responsible, with the District's assistance, for determining that all documents requiring a notary's signature have been notarized before the signatories leave the meeting.

**3.1.10.12** Architect shall provide five (5) original sets of Contract Documents in bound form to be distributed as follows: two to the District Representative, one to the inspector of record, one to the Contractor and one to the Architect. Architect shall be responsible for confirming that each original set and each copy of the Contract Documents is identical at no cost to District.

**3.1.10.13** If the lowest responsive and reasonable bid on the Project exceeds the Project budget as established in Attachment B, District may request Architect to amend the final drawings and specifications to rebid the Project so that bids are within budget.

### **3.1.11 Examination of Project.**

Examination of the work executed from the final working drawings and specifications shall be in person by Project Architect provided that District may, in its discretion, consent to such examination by another competent representative of Architect.

### **3.1.12 Construction of Project.**

Architect shall provide general administration of the Construction Documents, including the following:

**3.1.12.1** Deliver the Notice to Proceed to the Contractor at the Contract signing meeting unless there is good cause not to do so. If necessary, the meeting may be continued until the Contract Documents are in order. The Notice to Proceed should specify the start date, the start time and the completion date.

**3.1.12.2** Hold a preconstruction meeting as soon as practicable after service of the Notice to Proceed. Architect shall keep minutes of the pre-construction meeting and send a copy of the minutes to the District Representative and the Contractor. The Contract signing meeting and the pre-construction meeting may be held on the same day.

**3.1.12.3** Take minutes of the pre-construction meeting and prepare an agenda for the pre-construction meeting.

**3.1.12.4** Site visits, as often as necessary and appropriate to the stage of construction, including a minimum weekly visit at the site unless found unnecessary by the District, but at least to observe contractor's work for general conformance with the plans and specifications and to



confirm work is progressing in accordance with the Construction Documents and contractor's schedule.

- 3.1.12.4.1 Architect shall provide technical direction to the Inspector of Record (IOR) employed by and responsible to the District as required by applicable law. The Architect will periodically receive copies of the daily reports of the IOR and will make comments and take action as necessary.
- 3.1.12.5 Site visits to communicate and observe the activities of the Project Inspector of Record, mutually acceptable to Architect and District, and employed by District. Architect shall direct the Inspector and/or contractor and coordinate in the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.
- 3.1.12.6 Cause engineers and other consultants, as may be hired by Architect pursuant to paragraph 3.1.3 and subparagraphs of this article, to make site visits to observe the work in progress under their engineering disciplines as required, and approve and review all test results for general conformance with the original approved documents for their portion of the Project.
- 3.1.12.7 Make regular reports as may be required by the applicable federal, state, regional, or local agencies.
- 3.1.12.8 Attend all construction meetings, take minutes of this meeting and provide written reports as well as minutes to District after each construction meeting to keep District informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the work, but no less than once per week.
- 3.1.12.9 Make written reports to District as necessary to inform District of problems arising during construction, changes contemplated as a result of each such problem, and progress of work.
- 3.1.12.10 Keep records of construction progress and time schedules and advise contractor and District of any deviations from the time schedule which could delay timely completion of Project.
- 3.1.12.11 Check and process, in a timely manner, all required material and test reports and report to the Division of the State Architect, the contractor, and District any deficiencies in material as reflected by those reports, with recommendation for correction of such deficiencies.

- 3.1.12.12 Review and respond to all schedules, submittals, shop drawings, samples, information requests, and other submissions of the contractor and subcontractors for compliance with design and specifications and General Conditions, in a timely manner so as to not interrupt progress of the work. Architect is to maintain RFI log, RFP log, and submittal log and review them at each site meeting.
- 3.1.12.13 Promptly reject, after discussing with District Representative, work or materials that do not conform to the Construction Documents and notify District of such rejection.
- 3.1.12.14 Consult with District, in a timely manner, with regard to substitution of materials, equipment, and laboratory reports thereof prior to the final approvals of such substitutions by District in writing.
- 3.1.12.15 Architect's responsibility shall include the preparation of all documents and/or drawings made necessary by errors and omissions in the originally approved drawings or specifications and such modifications therein as may be necessary to meet unanticipated conditions encountered during construction, at no additional expense to District. The District's approval, acceptance, use of, or payment for all or any part of the Architect's services hereunder or the Project itself shall in no way diminish or limit the Architect's obligations and liabilities or the District's rights.
- 3.1.12.16 All Project related correspondence either initiated by Architect to Contractor or Contractor to Architect shall be copied to the District.
- 3.1.12.17 Evaluate and notify District, in a timely manner and in writing, of any change requests, material change or changes, requested or necessary, in the plans and specifications of the Project. (Written notification may be by way of providing a copy of any such request.)
- 3.1.12.18 Architect shall prepare Change Orders along with any related plans, specifications, drawings and other documents needed to comply with the Construction Contract.
- 3.1.12.19 Change Orders and related documentation pertaining to Change Orders shall be submitted by Architect to the District Representative in accordance with provided schedule. Change Orders shall specify:
  - 3.1.12.19.1 All items agreed to by the Contractor, any additional time allowed, the actual or anticipated date of completion and the agreed cost.
  - 3.1.12.19.2 Cost items shall be verified for accuracy and reasonableness.

- 3.1.12.19.3 Time extensions shall be reviewed by the Inspector.
  - 3.1.12.19.4 Signature blocks shall be completed.
  - 3.1.12.19.5 The Change Order shall be signed by the Contractor.
  - 3.1.12.19.6 Architect and any consultants retained by Architect with responsibility for any item in the Change Order shall indicate their approval of the Change Order by signing it. If they disapprove of the Change Order, they should submit a written explanation for their disapproval.
- 3.1.12.20 In addition to the obligations previously set forth in this Agreement, after the Board approves a Change Order, Architect shall, within five (5) business days after Board approval, **submit** the Change Order as approved by the Board to DSA. If, at the time of performance, the requirements of DSA or other agency with jurisdictional authority is inconsistent with submittal as provided herein, Architect is responsible for complying with these requirements unless specifically directed otherwise by the District Representative.
- 3.1.12.21 Examine, verify, and approve the Contractor's notarized applications for payment and issue certificates for payment for work and materials approved by the Inspector which reflect Architect's recommendation, if any, as to any amount which should be retained or deducted from those payments under the terms of the Construction Documents, by operation of law, or for some other reason.
- 3.1.12.22 Coordinate and recommend color selection with District's original design concept for District approval in a timely manner and coordinate product selection in accordance with specification requirements.
- 3.1.12.23 Determine date of completion.
- 3.1.12.24 After being notified the Project is nearing completion, Architect shall inspect the Project and review the punch-list prepared by the contractor, including minor items ("punch-list items"). The Punch List shall list all observed items remaining to be completed or corrected. Architect shall review and revise the list as necessary and shall advise the District Representative in writing of any defects, omissions, errors or changes that need to be made to the Architect's Punch List. Architect shall notify contractor in writing that all deficiencies and punch-list items must be corrected prior to acceptance of the Project and final payment.

**3.1.12.25** Review materials assembled by the Contractor and assemble for and provide to District written warranties, guarantees, owners' manuals, instruction books, diagrams, record drawings ("as-builts"), and any other materials required from the Contractors and subcontractors in accordance with the Construction Documents.

**3.1.12.26 Notice of Completion and Final Payment.**

**3.1.12.26.1** The District Representative shall see that approval of final payment (including payment of the retainage) and approval of the Notice of Completion is placed on the agenda for the Board's regularly scheduled meeting after receipt from Architect of the Certificate for Final Payment and the execution copy of the Notice of Completion.

**3.1.12.26.2** District will file the approved Notice of Completion with the County Recorder within the statutory period from the date of the Board's acceptance of the project. The District will send a filed and stamped copy of the Notice of Completion to the Architect.

**3.1.12.27 Release of Final Payment and Retention**

**3.1.12.27.1** Within 35 days after the Notice of Completion is filed, Architect shall make sure the following has been completed and final payment and payment of the remaining retainage is warranted:

**3.1.12.27.2** The Contractor has provided all guarantees and warranties as required by the Contract.

**3.1.12.27.3** The Contractor has provided all Operation Manuals to the District Representative as required by the Contract.

**3.1.12.27.4** DSA and all other agencies with jurisdictional authority have received all reports and given all approvals required by law for the Project.

**3.1.12.27.5** Architect has submitted verified "record drawings" plans to the District Representative.

**3.1.12.27.6** Architect has verified to the best of Architect's ability all certificates and documents required by law, OPSC, DSA, CDE, this Agreement, and the Contract Documents are on file with the District

Representative. The Architect has verified completion of the punch list items.

**3.1.12.27.7** Architect shall represent in writing that all of the above has been completed and final payment, including payment of the retainage, is due and payable specifying the date when the payment is due. If Architect cannot so certify, he shall submit a detailed explanation to the District Representative explaining what needs to be done and why and, giving his best estimate, as to when final payment may be released. If final payment has been delayed for any reason, Architect shall immediately notify the District Representative in writing when there is no longer any reason to delay final payment.

**3.1.12.27.8** The Contractor has provided all in-service training to District personnel.

**3.1.12.28** Cause engineers and other consultants, as may be hired by Architect pursuant to paragraph 3.1.3 and subparagraphs of this article, to file required documentation with governmental authorities necessary to close out the Project.

**3.1.12.29 District Wants Drawings.**

**3.1.12.29.1** Not later than 30 days after completion of construction, and before receipt of final payment, Architect shall direct record drawings be prepared by the General Contractor, signed by the Inspector of Record (IOR) and the General Contractor and delivered to the District. Record drawings will show, among other things, the location of all concealed pipe, buried conduit runs, and other similar elements within the completed Project. Architect shall personally review the drawings for completeness and correct representation of the information supplied by the Inspector and the contractor and shall obtain the certificate of the Inspector and the contractor that the drawings are correct.

**3.1.12.29.2** On approval by District Representative of the completed record drawings, Architect shall forward to District the complete set of reproducible duplicates of the original drawings corrected to "record" condition. The tracing shall be of such quality that

clear and legible prints may be made without appreciable and objectionable loss of detail.

- 3.1.12.29.3** Prior to the receipt of Architect's final payment, Architect shall forward to District one clear and legible set of reproductions of the computations, the original copy of the specifications, the record drawings, the final verified progress report pursuant to Title 21 of the California Code of Regulations, and Architect's Certificate of Completion.

**3.1.12.30 Guarantee Period.**

- 3.1.12.30.1** Architect shall provide advice to District on apparent deficiencies in construction during warranty period following acceptance of work.

- 3.1.12.30.2** Architect, as part of his basic professional services, will attempt to resolve to the satisfaction of District apparent deficiencies in construction following the acceptance of the work and prior to the expiration of the one-year General Construction Contract guarantee period of the Project. Architect shall conduct a final one-year quality inspection walk-through with District, IOR and Contractor to ascertain that all warranty items are completed.

**3.2 Additional Services of Architect.**

At District's request, Architect may be asked to perform services not otherwise included in this Agreement and/or services not customarily furnished in accordance with generally accepted architectural practice. District may agree to pay Architect for such services, pursuant to paragraph 7.4 and subparagraphs hereof, if such services cause Architect additional expense and are necessitated due to unusual circumstances and through no fault or neglect on the part of Architect. No additional compensation shall be paid to Architect for performing such services unless District and Architect agree in writing as to the amount of compensation for such services prior to such services being rendered. Such services may include, but shall not be limited to:

- 3.2.1** Plan preparation and/or administration of work on portions of the Project separately bid.
- 3.2.2** Assistance to District, if requested for the selection of moveable furniture, equipment, or articles which are not included in Construction Documents.
- 3.2.3** Services caused by delinquency, default, or insolvency of contractor or by major defects in the work of the contractor in the performance of the construction

contract, provided that any such services made necessary by the failure of Architect to detect and report such matters earlier shall not be compensated.

- 3.2.4 Revisions in drawings, specifications, or other documents when such revisions are inconsistent with written approvals or instructions previously given and due to causes beyond the control of Architect.
- 3.2.5 Serving as an expert witness on District's behalf.
- 3.2.6 Observation of repair of damages to structure.
- 3.2.7 Additional work required for environmental conditions, i.e., asbestos, unforeseen site conditions.
- 3.2.8 The hiring if required by the District of the following consultants: energy, traffic, cost estimating, acoustical, technology, and traffic. Fees for such services shall be determined on a not to exceed basis and approved by the District in writing.

#### **ARTICLE 4. DISTRICT RESPONSIBILITIES.**

District's responsibilities shall include the following:

- 4.1 Make available to Architect all necessary data and information concerning the purpose and requirements of the Project, including realistic scheduling and budget limitations.
- 4.2 Depending upon the scope of the Project, furnish Architect with a survey of the Project site preparation by a registered surveyor or civil engineer and any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information. District shall also provide a soils investigation report and a geological report, if required by law, and may provide these, or other, reports at the District's option.
- 4.3 Appoint and pay, upon mutual agreement with Architect, an Inspector of Record as provided by state law. Said Inspector shall be qualified and approved by Architect and by the Division of State Architect, shall be under direction of Architect, and shall be responsible to, and act in accordance with the policies of, District. The administration by Architect and its engineers shall be in addition to the continuous personal supervision of the Inspector.
- 4.4 Assist Architect in the distribution of plans to bidders and conduct the opening of bids on the Project, if applicable.
- 4.5 When requested by the Architect, District will pay for chemical, mechanical, or other tests required for proper design of the Project. Furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known for the proper development of the required drawings and specifications and to determine soil condition.
- 4.6 Retain a testing service for materials testing and inspection as required by Title 21 of the California Code of Regulations.

4.7 Directly pay or reimburse the payment without mark-up of all fees required by any reviewing or licensing agency.

4.8 Designate a representative authorized to act as liaison between Architect and District in the administration of this Agreement and the Project. Such person or persons shall assist Architect in making inspections and preparing the list of deficiencies required by paragraph 3.1.12.24 hereof, and accompany Architect and the Contractor on the final inspection.

4.9 Review all documents submitted by Architect, including change orders and other matters requiring District's Governing Board approval or approval of District officials. Advise Architect of decisions pertaining to such documents within a reasonable time after submission.

4.10 Notify Architect if any deficiencies in material or workmanship become apparent during contractor's warranty period.

#### **ARTICLE 5. PROJECT CONSTRUCTION COST.**

5.1 Project construction cost as used in this Agreement means the total cost to the District of all work designed or specified by Architect, including work covered by approved change orders and/or alternates, but excluding the following: any payments to Architect or consultants for costs of inspections, surveys, tests and sites, and landscaping not included in Project.

5.2 When labor or material is furnished by the District below its market cost, the Project construction cost shall be based upon current market cost of labor and new material.

5.3 The Project construction cost shall be the acceptable estimate of construction costs to the District as submitted by Architect until such time as bids have been received, whereupon it shall be the construction contract amount.

#### **ARTICLE 6. ESTIMATE OF PROJECT CONSTRUCTION COSTS.**

6.1 If a Project budget is set forth in Article 1 or thereafter established by the District, Architect shall review the estimate at each phase of his services. If such estimates are in excess of the Project budget, Architect shall revise the type or quality of construction to come within the budgeted limit.

6.2 Construction cost estimates are to be determined at each phase. Said estimates shall be a detailed breakdown of costs based upon materials and schedule. The Architect shall provide a list of bid alternates for the Project. The total dollar amount of the list must be greater than the difference between estimate and the budget and must include suggestions from all professional consultants. Prior to District letting the Project for bidding, Architect shall prepare for no additional compensation design changes as requested by District to meet budget requirements of the project or to meet education specifications. If Educational Specification requirements have changed since design development approval in writing by District, then such changes shall be considered extra services subject to an agreed fixed amount.



## **ARTICLE 7. ARCHITECT'S COMPENSATION.**

### **7.1 Basic Services.**

Architect is to design the Project within the budget as Attachment B indicates or other allowance established by District, under basic services ("Basic Services"). Basic Services shall be those defined in paragraphs 3.1 through 3.1.12.30 (all 3.1 subparagraphs). Each portion of the Project let separately on a segregated bid basis shall be considered a separate project for purposes of determining the fee. Compensation for the performance of all services rendered herein by Architect shall be in accordance with Attachment C.

### **7.2 Change Orders.**

The total cost of the Project shall be adjusted to reflect District agreed upon Change Orders so that Architect receives extra compensation in accordance with the Agreement when the Change Order results in an increase in total cost (and was not the result of errors and omissions) and a reduction in compensation when Change Orders result in a decrease in the total cost and where either required to meet the budget or were an error and omission of the Architect.

### **7.3 Complete Payment.**

District shall pay to Architect, for the performance of all services rendered herein, the amount specified on Attachment C incorporated herein by reference, which constitutes complete payment for Architect's services under this Agreement.

### **7.4 Payment for Additional Services.**

Architect shall be paid for additional services not originally contemplated by the parties to this Agreement as follows, provided the additional services have received advance written approval by the District

7.4.1 Five percent of the cost of furnishings, equipment, or other articles incorporated in the Construction Documents by Architect and not included in the cost of the work, as defined in Attachment C.

7.4.2 For services in addition to the basic services of Architect set forth in Article 3 hereof, a fee to be agreed upon by the parties in writing prior to performance of such services by Architect, which fee may be a flat amount or Architect's standard hourly rates.

7.4.3 Special consultants, prior approval of which is required, shall be paid a fee to be agreed upon by the parties in writing prior to performance of such services, which fee may be a flat amount or standard hourly rates. Special consultants do not include the engineers and consultants hired pursuant to section 3.1.3 and noted as basic professional services.

## **7.5 Reimbursable Expenses.**

Reimbursable expenses are in addition to compensation for basic and additional services (as set forth in Article 3 and paragraph 7.4 and subparagraphs above) and include actual expenses incurred by Architect and Architect's employees and consultants in the interest of the Project, as identified in the following clauses:

- 7.5.1 Expense of written preauthorized transportation, excluding ordinary mileage normally incurred, in connection with the Project.
- 7.5.2 Expenses in connection with written preauthorized out-of-town travel.
- 7.5.3 Fees paid at cost for securing approval of authorities having jurisdiction over the Project.
- 7.5.4 Expenses of reproductions of drawings and specifications, as authorized herein.
- 7.5.5 Other costs/expenses preauthorized by District.

## **ARTICLE 8. PAYMENTS TO ARCHITECT.**

8.1 Architect's compensation shall be paid by District to Architect monthly, incrementally, based upon the percentage of work completed, and as appropriate, in accordance with normal phasing and funding schedule, or such other schedule as may be established by the District.

8.2 In order to receive payment, Architect shall present to District a claim for payment for approval by District's authorized representative, which claim shall designate services performed, percentage of work completed or actual work completed depending upon fee arrangement, method of computation of amount payable, and amount to be paid.

8.3 Payments made for extra work or special services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the parties shall specify when such services are agreed upon.

8.4 Upon cancellation or termination of this Agreement, Architect shall be compensated as set forth in Article 11 hereof.

8.5 Final payment to Architect shall be made by the District after the Notice of Completion is approved by the Board. However, this payment shall not exclude Architect from continuing to provide services to resolve outstanding punch list items and warranty items.

8.6 Architect's compensation shall be payable as follows:

- 8.6.1 Ten percent (10%) of the total fee shall be due upon approval of the schematic site plan.
- 8.6.2 The amount due shall be increased to twenty-five percent (25%) of the total fee upon approval of the preliminary plans consisting of site plan, floor plans,

architectural cross sections of the buildings and interior and exterior elevations of the buildings.

- 8.6.3 The amount due shall be increased to fifty percent (50%) of the total fee at fifty percent (50%) completion of the bidding documents.
- 8.6.4 The amount due shall be increased to seventy percent (70%) of the total fee upon submission of the bidding documents to the Division of the State Architect for review.
- 8.6.5 The amount shall be increased to seventy-five percent (75%) of the total fee upon approval of the bidding documents by the Division of the State Architect and the District.
- 8.6.6 The amount due shall be increased to eighty percent (80%) of the total fee upon acceptance of the bid.
- 8.6.7 The remaining twenty percent (20%) of the fee shall be prorated based upon the percentage of the construction, which has been completed and shall be billable on a monthly basis. Final payment to the Architect, less any errors, omissions and compensations due the District, shall be made by the District after the Notice of Completion is approved by the Board. However, this payment shall not exclude the Architect from continuing to provide services to resolve outstanding punch list items.
- 8.6.8 When more than one contract is issued the percentage of the fee due shall be calculated on the point of completion of each separate contract.
- 8.6.9 The estimated cost of the project shall be used to calculate the fee until the District accepts the bid for a contract, at which time the actual contract amount shall be used to calculate the fee and the fee shall be adjusted to reflect the actual contract amount and the estimates.
- 8.6.10 Reasonable expenses, without markup for reproduction, postage and handling of drawings and specifications.

## **8.7 Times of Payment.**

Payments under this Agreement shall be as follows:

- 8.7.1 Following the District's written authorization to proceed with the work required under this Agreement, the Architect will submit a monthly billing statement to the District for services rendered.
- 8.7.2 The District will review each of the Architect's statements, and, within thirty (30) days of receipt of the Architect's statement, the District will submit a warrant to the Stanislaus County Office of Education requesting that payment be made to the Architect for the amount of the approved statement.

## **ARTICLE 9. INSTRUCTIONS TO PROCEED.**

Architect is not to proceed with performance of any services under this Agreement without first securing written authorization from District to do so.

## **ARTICLE 10. TIME SCHEDULE.**

**10.1** Architect shall perform all services hereunder as expeditiously as is consistent with professional skill and care and the orderly progress of the work. Upon request of District, Architect shall prepare an estimated time schedule for the performance of Architect's services, to be adjusted as the Project proceeds. Such schedule shall include allowances for periods of time required for District's review and approval of submissions and for approvals of authorities having jurisdiction over Project approval and for funding. The schedule shall not be exceeded by Architect, without the prior written approval of District.

**10.2** Any delays in Architect's work because of the actions of District or its employees, those in direct contractual relationship with District, by a governmental agency having jurisdiction over the Project, or by an act of God or other unforeseen occurrence, not due to any fault or negligence on the part of Architect, shall be added to the time for completion of any obligations of Architect.

**10.3** Should Architect make an application for an extension of time, Architect shall submit evidence that the insurance policies required by Article 15 remain in effect during the requested additional period of time.

## **ARTICLE 11. SUSPENSION, ABANDONMENT, TERMINATION.**

**11.1** District 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, Architect shall be paid pursuant to the schedule of payments set forth in Articles 7 and 8 of the Agreement for services rendered up to the date of such suspension, abandonment, or termination, less any damages suffered by District as a result of the default, if any, by Architect. Architect hereby expressly waives any and all claims for damages or compensation arising under this Contract, except as set forth herein, in the event of such suspension, abandonment, or termination.

**11.2** If Architect's services are suspended by District, District may require Architect to resume services within ninety (90) days after written notice from District.

**11.3** Upon suspension, abandonment, or termination, Architect shall, if requested by District, turn over to District all preliminary studies, sketches, working drawings, specifications, computations, and all other matters to which District would have been entitled at the completion of Architect's services. Upon payment of the amount required to be paid under this article following the termination of this Agreement, District shall have the right to use any completed contract documents or other work product prepared by Architect under this Agreement for the original project for which they were intended and not for other or subsequent reuses on other sites. Architect shall make such documents available to District upon request and without additional compensation.

## **ARTICLE 12. OWNERSHIP AND USE OF DOCUMENTS.**

**12.1** Pursuant to Education Code section 17316, all plans, specifications, and estimates prepared pursuant to this Agreement shall be and remain the property of District. Such drawings and specifications supplied as herein required shall be the property of District whether or not the work for which they were made is executed.

## **ARTICLE 13. INDEMNITY.**

Architect shall indemnify and hold harmless District, District's Governing Board, each member of the Board, and District's officers, and employees from any and all claims, liability, causes of action, damages and expenses of any kind (including reasonable attorney's fees) to the extent of arising out of the intentional or negligent acts, errors, or omissions of Architect, its subcontractors, consultants, or employees in the performance of this Contract. District shall indemnify and hold harmless Architect, its officers, and employees from any and all claims of any kind arising out of the negligent acts, errors, or omissions of the District, its officers, or employees in the performance of this Contract.

## **ARTICLE 14. ERRORS AND OMISSIONS.**

Architect shall be liable for damages and costs incurred by, and any claims against, District that result from Architect's negligence in the performance of this Agreement as provided by California law. Additionally, Architect shall not be paid a fee for work required due to Architect's negligence or the negligence of Architect's subcontractors, consultants, and/or employees in the performance of services under this Agreement.

## **ARTICLE 15. INSURANCE.**

Architect shall maintain in full force and effect, at its sole cost and expense, from the time this Agreement is entered into until the date of acceptance of the work by District, insurance as set forth in this article. All insurance provided for under this article shall be with a carrier satisfactory to District. Prior to commencement of work, Architect shall furnish to District a certificate of insurance evidencing the required coverage. District shall not be obligated to make any payment to Architect until after its receipt and acceptance of said certificate.

**15.1** Workers' compensation insurance as required by applicable laws, and employer's liability insurance, with a limit of not less than \$1,000,000.

**15.2** Commercial general liability insurance for bodily injury and property damage liability, the limits of which shall not be less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Commercial general liability policies obtained and maintained by Architect shall contain endorsements naming District and other interested parties, who have insurable interests and who are designated by District, as additional insureds and shall include products' completed coverage and operations coverage as well as contractual liability coverage for liability assumed by Architect under this Agreement. Auto liability insurance covering motor vehicles shall be in an amount not less than \$500,000 combines single limit. Policies under this section shall be endorsed to name the District as an additional insured.

**15.3** Architect shall procure and maintain professional liability insurance (errors and omissions insurance) in the amount of \$1,000,000 for protection from claims arising out of the performance of professional services caused by a negligent error, omission or act for which the insured is legally liable. Architect will likewise require the consultants to carry the same insurance package. It will be Architect's responsibility to require the carrier to deliver certificates to the District. The obligation to maintain professional liability insurance coverage shall survive termination of this Agreement. Architect is liable for the entire cost of the insurance required by this Agreement.

All insurance required above shall be purchased from an insurance company licensed and admitted in California. Each policy of insurance shall state that the policy is primary and any insurance carried by District is excess and non-contributory; shall state that not less than thirty (30) days' written notice shall be given to District prior to cancellation, except for Professional Liability policy, and shall waive all rights of subrogation. Architect shall deliver to District certificates of insurance and endorsement as evidence of compliance with the requirements herein.

In the event that Architect subcontracts any portion of Architect's duties, Architect shall require any such subcontractor to purchase and maintain insurance coverage for the types of insurances referenced above, in the amounts which are appropriate with respect to that subcontractor's part of work, which shall in no event be less than five hundred thousand dollars (\$500,000.00) per occurrence.

#### **ARTICLE 16. RECORDS.**

Architect shall maintain records of direct personnel and reimbursable expenses pertaining to the extra and special services of the Project that are compensable by other than a flat rate. Architect shall maintain all records of accounts between District and Architect on a generally recognized accounting basis. Such records shall be available to District or its authorized representative for inspection or audit at any reasonable time. Architect shall maintain all records concerning the Project for a period of three years after its completion.

#### **ARTICLE 17. STANDARDIZED MANUFACTURED ITEMS.**

Architect shall cooperate and consult with District in use and selection of manufactured items on the Project, including, but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials, and floor coverings. All such manufactured items shall be standardized to District's criteria to the extent such criteria do not interfere with Project design.

#### **ARTICLE 18. LIMITATION OF AGREEMENT.**

This Agreement is limited to and includes only the work included in the Project described above and as determined at the time the design development documents prepared pursuant to paragraph 3.1.6 and subparagraphs are approved, unless this Agreement is amended by the parties to include additional work as part of the Project. Any subsequent construction at the site of the Project, or at

any other site in District, will be covered by, and be the subject of, a separate Agreement for architectural services between District and Architect chosen therefor by District.

#### **ARTICLE 19. MEDIATION.**

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the parties hereto. The parties shall select a disinterested third person mediator within a reasonable period of time, mutually agreed to by the parties. The mediation shall be commenced within 30 days of the selection of the mediator. If the parties elect to mediate but fail to select a mediator within a 15-day period, any party may petition the Superior Court of Stanislaus County to appoint the mediator.

#### **ARTICLE 20. COMPLIANCE WITH THE LAWS.**

Architect shall exercise due professional care so that Architect's work shall comply with and meet applicable requirements of federal, state, regional, or local law, including, but not limited to, the Uniform Building Code, the Education Code, Title 19, Title 21 and Title 24 of the California Code of Regulations, and all requirements prescribed by the California Department of General Services.

#### **ARTICLE 21. INDEPENDENT CONTRACTOR.**

Architect is, for all purposes arising out of this Agreement, an independent contractor, and neither Architect nor its subcontractors, consultants, or employees shall be deemed an employee of District for any purpose. It is expressly understood and agreed that Architect shall in no event be entitled to any benefits to which District employees are entitled, including, but not limited to, overtime, retirement benefits, insurance, vacation, worker's compensation benefits, sick or injury leave, or other benefits.

#### **ARTICLE 22. SUCCESSORS IN INTEREST AND ASSIGNS.**

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

#### **ARTICLE 23. ASBESTOS CERTIFICATION.**

Architect shall verify to the best of its information pursuant to 40 Code Federal Regulation, section 763.99(a)(7), that no asbestos-containing material was specified as a building material in any construction document for the Project and will require that contractors provide District with certification that all materials used in the construction of any school building are free from any asbestos containing building materials ("ACBMs"). Architect shall include statements in specifications that materials containing asbestos are not to be included. This certification shall be part of the final Project submittal.

## **ARTICLE 24. FINGERPRINTING CERTIFICATION.**

California Education Code section 45125.2 requires entities providing construction services to the District to ensure the safety of pupils where employees of the entity or subcontractors will have contact with pupils. Therefore, Contractor shall certify that methods are being undertaken to ensure the pupils' safety. Certification must be accomplished by completing the "Declaration Regarding Employee Fingerprinting and Criminal Background Check." A certification form is available from the Facilities and Planning Office at the District.

## **ARTICLE 25. NO RIGHTS IN THIRD PARTIES.**

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

## **ARTICLE 26. MISCELLANEOUS.**

The following terms and conditions shall be applied to this Agreement:

### **26.1 Governing Law.**

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California.

### **26.2 Entire Agreement.**

This Agreement with its exhibits supersedes any and all other prior or contemporaneous oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises, or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.

### **26.3 Severability.**

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

### **26.4 Non-Waiver.**

None of the provisions of this Agreement shall be considered waived by either party unless such waiver is specifically specified in writing.

### **26.5 Business Day.**

"Business day" as used herein means any day the District Office is open to the public.

### **26.6 Supplemental Conditions.**

Any supplemental conditions shall be attached as an exhibit to this Agreement and incorporated by reference.



IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed this 22nd day of December, 2008.

**ARCHITECT**

Michael Rainforth  
Jeffrey Grau Architects  
A Professional Corporation

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

Michael Rainforth  
Principal Architect  
Licence number C8289

**DISTRICT**

Tracy Unified School District

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

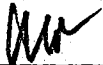
Casey Goodall  
Associate Superintendent, Business Services

**ATTACHMENT A TO AGREEMENT BETWEEN  
TRACY UNIFIED SCHOOL DISTRICT AND  
RAINFORTH GRAU ARCHITECTS**

**PROJECT DESCRIPTION**

This Project will repair, renovate, modernize or reconstruct facilities that no longer fulfil their intended purposes, are unsightly and/or require continuing maintenance that is no longer cost effective or any facility that is expected to no longer fulfill its purpose in the next five years. The scope of work is expected to include general up-grading of classrooms, replacement of aging roofing systems, replacement of old heating and cooling and ventilation systems with energy-efficient systems, replacement and up-grading of electrical systems, improvement of security and technology systems increasing student safety and access to computers and such work discovered to be in the interests of the long term use of these buildings.

To be initialed by the parties:



\_\_\_\_\_  
ARCHITECT

Michael Rainforth  
Principal Architect  
Licence number C8289

\_\_\_\_\_  
DISTRICT

Casey Goodall  
Associate Superintendent, Business Services  
Tracy Unified School District

**ATTACHMENT B TO AGREEMENT BETWEEN  
TRACY UNIFIED SCHOOL DISTRICT AND  
RAINFORTH GRAU ARCHITECTS**

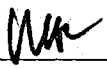
**BUDGET FOR PROJECT**

Project Budget Based on Cost Estimate of \$14,300,000

**PROJECT COSTS:**

Modernization:	\$ 9,010,000
Contingency:	<u>\$ 1,000,000</u>
Construction Total:	\$10,010,000
Soft Costs:	<u>\$ 4,290,000</u>
<b>TOTAL PROJECT COSTS:</b>	<u><b>\$14,300,000</b></u>

To be initialed by the parties:

  
\_\_\_\_\_  
ARCHITECT

Michael Rainforth  
Principal Architect  
Licence number C8289

\_\_\_\_\_  
DISTRICT

Casey Goodall  
Associate Superintendent, Business Services  
Tracy Unified School District

**ATTACHMENT C TO AGREEMENT BETWEEN  
TRACY UNIFIED SCHOOL DISTRICT AND  
RAINFORTH GRAU ARCHITECTS**

**Fee Schedule Based upon the Actual Construction Cost: \$10,010,000**

\$0	Through	\$1,000,000	12.0%
\$1,000,001	Through	\$2,000,000	11.5%
\$2,000,001	Through	\$4,000,000	11.0%
\$4,000,001	Through	\$8,000,000	10.0%
\$8,000,001	Through	\$12,000,000	9.0%
		Total Estimated Fee	\$1,035,900.00

**Fee Allocation/Phase Billing:**

1. Architect compensation shall be paid by the District to the Architect monthly in arrears incrementally within the phases and based upon the percentage of work completed all as described in Article 8 of the Agreement:

To be initialed by the parties:

  
\_\_\_\_\_  
ARCHITECT

\_\_\_\_\_  
DISTRICT

Michael Rainforth  
Principal Architect  
Licence number C8289

Casey Goodall  
Associate Superintendent, Business Services  
Tracy Unified School District

**NORTH**

**CONTRACT FOR ARCHITECTURAL SERVICES  
BETWEEN  
TRACY UNIFIED SCHOOL DISTRICT  
AND  
RAINFORTH GRAU ARCHITECTS  
NORTH ELEMENTARY SCHOOL MODERNIZATION**

THIS AGREEMENT is entered into this 22<sup>nd</sup> day of December, 2008, between the TRACY UNIFIED SCHOOL DISTRICT, of the County of San Joaquin, California, hereinafter referred to as the "District," and Rainforth Grau Architects, a Professional Corporation, hereinafter called the "Architect."

District intends to construct the Project ("Project") as described in Attachment A, which is hereby incorporated by the parties as a term of this Agreement.

Architect represents that Architect is fully licensed, qualified, and willing to perform the services required by this Agreement (with the understanding that if Architect is a corporation or other organization, the Project Architect specified in and pursuant to Article 1, and not Architect itself, is fully licensed to practice as an architect in the State of California).

Accordingly, the parties agree as follows:

**ARTICLE 1. PROJECT BUDGET**

- 1.1 The Project budget is, or will be, established as indicated on Attachment B.
- 1.2 The size of the Project and the type and quality of construction are dependent upon the funds available for the Project. Architect will exercise his best judgment in determining the balance between the size of the Project, the type of construction, and the quality of construction to achieve a satisfactory solution within budget limitations.
- 1.3 Architect is required to exercise its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Project's construction allowance. It is the duty of Architect to design a Project within the budget as indicated on Attachment B. If a construction bid exceeds such standards, Architect will be responsible for making the necessary changes in the approved plans, specifications and bid documents at no additional cost to the District.

**ARTICLE 2. EMPLOYMENT OF ARCHITECT.**

District employs Architect pursuant to Government Code section 53060 to perform the necessary professional services, including, but not limited to, those hereinafter set forth in connection with the Project. Architect shall name a specific person fully licensed to practice as an architect in the State of California to be Project Architect, subject to approval of District. The Project Architect shall maintain personal oversight of the Project and act as principal contact with District, the contractor, Architect's consultants, engineers, and with all inspectors on the Project. Any change by Architect of the Project Architect shall be in writing and subject to approval by District.

Project Architect is Kevin Arwood, Associate Architect/Studio Leader, licence number C26738, and Michael Rainforth Principal-in-Charge, licence number C8289.

### **ARTICLE 3. ARCHITECT'S SERVICES.**

**3.1** Architect accepts employment and agrees to perform all reasonable professional architectural, engineering, consulting, and construction administration services in a professional manner, consistent with the usual and customary standards of the profession at the time those services are performed. The basic services to be performed by Architect are set forth in subparagraphs 3.1.1 through 3.1.12.30 below.

#### **3.1.1 General Responsible Charge.**

Architect agrees to accept "general responsible charge" of the Project as required by Sections 16 and 41 of Division 1 of Title 21 of the California Code of Regulations and State Building Code Part 1, Title 24, Article 6, Section 4-341.

#### **3.1.2 Communication with District.**

Architect shall participate in consultations and conferences with authorized representatives of District and/or other local, regional, or state agencies concerned with the Project necessary for the development of the drawings, specifications, and documents in accordance with the applicable standards and requirements of law and District. Such consultations and conferences shall continue through the planning and construction of the Project and the contractor's warranty period. Architect shall only take direction from staff specifically designated in writing by the District Representative. The District Representative for the Project shall be the District's Director, Facilities and Planning, unless and until the District specifically designates a different District representative. District hereby certifies that the District Representative has been duly authorized by District's Governing Board to represent District on the Project. District may designate new and/or different individuals to act as District Representative from time to time.

#### **3.1.3 Hiring of Consultants and Personnel.**

**3.1.3.1** Architect shall have the option, unless given written objection of District, to employ, at its expense, architects, engineers, or other persons qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Architect may delegate without relieving Architect from administrative responsibility under this Agreement. Architect shall be responsible for the coordination and cooperation of Architect's consultants. Architect shall notify District in writing of the identity of all consultants prior to their commencement of work.

**3.1.3.2** Architect, as part of the basic professional services, shall furnish at his expense the services of civil, structural, mechanical, electrical engineers, food service and landscape architecture properly skilled in the various aspects of the design and construction of facilities required. Consulting services on energy

(including unconventional) systems and requirements, acoustical, technology, traffic and cost estimating services, and other services necessary for the completion of the Project shall be an additional service of the Architect as provided in section 3.2.

**3.1.3.3** All engineers, experts and consultants retained by Architect in performance of this Agreement shall be licensed to practice in their respective professions and licensed by the State of California, where required by law.

**3.1.3.4** Engineers and consultants hired by Architect in the following categories shall be required to show evidence of a policy of professional liability and/or project insurance meeting the same requirements set forth in Article 15 hereof: structural, mechanical, civil, electrical engineers and landscape architects.

**3.1.3.5** Architect shall promptly obtain written District approval of assignment and/or reassignment or replacement of such engineers or consultants or of other staff changes of key personnel working on the Project. Any changes in Architect's consultants and staff shall be subject to approval by District, and such approval shall not be unreasonably withheld.

**3.1.3.6** Draftsperson and other clerical personnel shall be retained by Architect at Architect's sole expense.

**3.1.3.7** California Education Code section 45125.2 requires entities providing construction services to the District, where the employees of the entity or subcontractor (i.e., engineers and/or consultants) will have contact with pupils, to ensure the safety of pupils. Therefore, Architect shall verify that methods are being undertaken to promote pupils' safety. Certification must be accomplished by completing the "Declaration Regarding Employee Fingerprinting and Criminal Background Check." A certification form is available from the District. Any fees generated for the submission of fingerprint cards are an Architect cost and not reimbursable by the District.

#### **3.1.4 Initial Planning Phase of Project.**

**3.1.4.1** Assist District in the preparation of educational programming for the Project to define scope, size, cost, space relationship, and site development. The Architect is also required to determine the scope and estimated cost of the survey work, testing work, and inspection services required for the Project.

**3.1.4.2** Provide advice and assistance to District in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

**3.1.4.3** Architect shall notify District in writing of potential complications, cost overruns, unusual conditions, and general needs that could significantly affect the Project budget and time line.



**3.1.4.4** Architect shall advise District in securing easements, encroachment permits, right of ways, dedications, infrastructures, and road improvements and coordinating with utilities and adjacent property owners. This includes all utilities: water, drainage, sewer, power, cable and any special utilities necessary to achieve the Project.

**3.1.5 Schematic Plan Phase of Project.**

**3.1.5.1** Architect shall review the program approved by the District to ascertain the requirements of the Project and shall review Architect's understanding of such requirements with the District.

**3.1.5.2** Architect shall provide a site plan and other Project-related information necessary and required for an application by District to any federal, state, regional, or local agency for funds to finance the construction Project. Architect shall also, with assistance of District, establish a project schedule.

**3.1.5.3** In cooperation with District planners and educational committees, Architect shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project and the plot plan development at the site, and the proposed architectural concept of the buildings, incorporating the educational program and the functional requirements of District. Such drawings and plans shall meet the requirements of the State Department of Education regulations (Cal. Code Regs., Title 5, § 14000 *et seq.*) and guidelines and shall be prepared in such form as may be submitted to the State Department of Education for approval. Such drawings and plans shall show in single-line drawings all rooms incorporated in each building in the Project, and shall include all revisions required by District or by any federal, state, regional, or local agency having jurisdiction over the Project. All architectural representation drawings for the Project shall be in Computer Aided Draft (CAD) form suitable for reproduction.

**3.1.5.3.1** Architect is to advocate on District's behalf and obtain a favorable regulatory condition for the Project.

**3.1.5.4** If directed by the District Representative at the time of approval of construction schemes, the preliminary and final working drawings and specifications shall be prepared so that portions of the work of the Project may be performed under separate constructions contracts, or so that the construction of certain buildings, facilities, or other portions of the Project may be deferred.

**3.1.5.5** Architect shall establish a preliminary project budget or allowance in the format required by District, or if applicable, by the school construction funding agency identified by District. The purpose of the cost estimate is to show probable cost in relation to District's budget. If Architect perceives site considerations which render the Project expensive or cost prohibitive, Architect

shall disclose such conditions and recommend action required for corrective action in writing to District immediately.

**3.1.5.5.1** Architect shall provide a preliminary written time schedule for the performance of work on the Project.

**3.1.5.6** Architect, at District expense, shall provide sufficient complete sets of the schematic plans described in paragraph 3.1.5.3 for District review and approval. Architect shall also present the schematic plans to the District Board. Additionally, at District's expense, Architect shall provide copies of such documents as required by any federal, state, regional, or local agencies concerned with the Project, including, but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services, and any other appropriate federal, state, regional, or local regulatory bodies. Any additional copies required by District shall be provided at cost to District.

**3.1.6 Design Development Phase of Project.**

**3.1.6.1** On specific written approval by District of the plans described in paragraph 3.1.5.1 through 3.1.5.6 of this article, Architect shall prepare design development documents consisting of site and floor plans, elevations, and any other drawings and documents sufficient to fix and describe the size and character of the Project's structural, mechanical, and electrical systems, types and makeup of materials and outline specifications for presentation to District's Governing Board for approval.

**3.1.6.2** Architect shall provide at District expense sufficient complete sets of the design development documents described in section 3.1.6.1 for District review and approval. During the design development phase, Architect shall be responsible for filing preliminary plans and other documents including, but not limited to, 2A Diagram as required by law with the California Department of Education ("CDE"). Architect shall provide the District's Director, Facilities and Planning with a copy and proof of filing of each document so filed. Additionally, Architect shall provide copies of such documents as required by any federal, state, regional, or local agencies concerned with the Project, including, but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services, local fire marshal and any other appropriate federal, state, local, or regional regulatory bodies. Any additional copies required shall be provided at cost to District.

**3.1.6.3** Architect shall provide District with an updated estimate of probable construction costs, containing detail consistent with the design development documents required by paragraph 3.1.6.1 of this article and containing a breakdown based on types of materials and specifications identified in paragraph 3.1.6.1 of this article.

**3.1.6.4** Architect shall provide a timetable for completion of the Project to District.

**3.1.6.5** Architect shall assist District in applying for and obtaining required approvals from the Division of the State Architect, and/or any other agencies with jurisdiction, and shall furnish and process all architectural and engineering information required to prepare and process applications to applicable utilities for the securing of priorities, materials, as an aid in the construction of the Project and obtain final Project approval and acceptance by said agency as required.

**3.1.6.6** Architect shall provide a color schedule suitable for presentation to an audience of 10-15 of all materials and selections of textures, finishes, and other matters requiring an aesthetic decision at this phase of the Project for District's review and approval.

**3.1.6.7** The Architect shall determine all testing, surveys, explorations required to develop the intended design. The Architect will notify the District what chemical, mechanical, or other tests are required for proper design of the Project.

**3.1.6.8** The Architect shall provide the District with 3A Diagrams.

**3.1.7 Building Permits and Conformity to Legal Requirements.**

**3.1.7.1** Architect shall exercise due professional care to cause drawings and specifications to conform to applicable requirements of law, local, regional, and state, and to requirements of the Division of State Architect (structural safety, fire/life safety, and access compliance section), and the State Department of Education, and/or any other agencies or special districts (i.e., PG&E) with jurisdiction, whose approval of the drawings and specifications must be obtained, and shall cause the necessary copies of such drawings and specifications to be filed with these bodies for approval in accordance with paragraph 3.1.6.2 of this article. Architect shall provide District with a copy of all approvals from said entities.

**3.1.7.2** Architect will exercise usual and customary care to interpret applicable ADA requirements and California law to inform District of any inconsistencies between federal and state accessibility regulations and of requirements which are subject to conflicting interpretations of the law.

**3.1.7.3** Architect shall exercise usual and customary care to coordinate the requirements of various public and private entities as they pertain to the Project to the extent such requirements apply to Projects financed under the Leroy F. Greene School Facilities Act of 1998 as amended (hereinafter the "State Program") or other applicable programs. The aforesaid various entities include state, local and federal governmental entities, utility companies (including but not limited to gas, electric, telephone and water companies or districts), sewer districts, drainage districts and the like. Architect shall determine if any local zoning and building ordinances apply to the Project pursuant to Government Code section 53097 and,

if so, give an opinion as to compliance with such local ordinances. Architect shall assist the District in obtaining written cost commitments and approval of design from all involved public and private entities regarding utility, sewer, drainage, grading, road improvement, telephone, water, local fire marshal, health department, traffic department, city/county public works departments and other like services for the Project prior to approval by DSA and OPSC or other regulatory body of the final plans. All cost commitments, approvals and Agreements successfully complete shall be forwarded to the District Representative.

### **3.1.8 Final Working Drawings and Specifications.**

**3.1.8.1** On specific written approval by District of the plans described in section 3.1.6.1 of this article, Architect shall prepare such complete working drawings and specifications as are necessary for obtaining complete bids and for efficient and thorough execution of work. Such working drawings shall be developed from the preliminary drawings approved by District. The final working drawings and specifications shall set forth in detail the work to be done, materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems and utility service connection equipment and site work. It shall be District's responsibility to supply Architect with the necessary information to determine the proper location of all improvements on existing sites, including record drawings ("as-built drawings") in District's possession. Architect will make a good-faith effort to verify the accuracy of such information and as-built drawings by means of a thorough interior and exterior visual survey and measurements of site conditions. District shall also make a good-faith effort to verify the accuracy of the as-built drawings and provide any supplemental information to Architect, which may not be shown on the as-built drawings.

The final working drawings and specifications must be in such form as will enable Architect and District to secure the required permits and approvals from the Division of State Architect and the Office of Public School Construction or other jurisdictional agencies for District to obtain, by competitive bidding, a responsive and responsible bid. The final working drawings shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Architect.

**3.1.8.2** District, with or without outside professional services, shall review, study, and check the final working drawings and specifications presented to it by Architect and make revisions and provide approvals of such final plans subject to the approval of the Division of the State Architect and regulatory agencies. Architect shall make all District-requested changes, additions, deletions, and corrections in the final working drawings and specifications so long as they are not in conflict with the requirements of agencies, including, but not limited to,

private and public utilities having jurisdiction. Architect shall bring any such conflicts and/or inconsistencies to the attention of District.

**3.1.8.3** It is understood by Architect that should final working drawings and specifications be ordered by District, District shall specify the sum of money set aside to cover the total cost of the construction of the work exclusive of Architect's fees. Should it become evident that the total construction cost will exceed the specified sum, Architect shall at once present a statement in writing to District Representative setting forth this fact and giving a full, professionally-prepared statement of the cost estimates on which the conclusion is based. In the event that bids received by District from contractors for the construction of the work indicate the work cannot be constructed in accordance with the plans and specifications furnished by Architect for the specified sum, in accordance with paragraph 3.1.10 and subparagraphs, Architect shall, if requested by District, and without extra compensation therefor, so revise the plans and specifications for the work that the construction may be completed for the total cost which does not exceed the specified sum or so that certain portions of the Project may be omitted, deferred, or separately bid.

**3.1.8.3.1** At the request of District, Architect shall provide specifications, which include alternate bids as deemed advisable by District.

**3.1.8.4** Architect, at District expense, shall provide sufficient complete sets of the final working drawings and specifications described in paragraph 3.1.8.1, for District review and approval. During the Construction Document Phase, Architect shall be responsible for filing the final plans, specifications, bid documents, and other documents as required by law with CDE, and the Division of the State Architect ("DSA"). Architect shall provide District Representative with a copy and proof of filing of each document so filed. Additionally, at District's expense, Architect shall provide copies of such documents as required by federal, state, regional, county local agencies, and utility districts concerned with the Project.

**3.1.8.5** Thirty days prior to the bid, Architect will verify by field examination that site conditions are reasonably presented on the bid documents.

**3.1.8.6** Architect shall submit within 7 (seven) days of DSA's approval of the final plans all plans, cost estimates and other documents necessary to receive OPSC funding approval in the format that OPSC requires.

**3.1.8.7** The Architect shall provide District with 3A Diagrams in the format designated by the District for the Project.

### **3.1.9 Construction Contract Documents.**

As required by District, Architect shall assist District in the completion of construction documents, including, but not limited to, Advertisement for Bids,

Information for Bidders, Bid Forms (including Alternate Bids as requested by District), Bonds, General Conditions, Special Conditions, Agreement, Veteran Business Enterprise preferences, and/or affirmative action documents, if required, and any other documents reasonably required in order to obtain bids responsive to the specifications. All such documents shall be subject to the approval of District and District's counsel. At the time of delivery of the aforementioned construction documents, which shall include the final working drawings and specifications (collectively, the "Construction Documents"), Architect shall provide District with its final estimate of probable construction cost ("Final Estimate") in accordance with the estimates and procedures set forth in Paragraph 3.1.6.3

### **3.1.10 Bid Phase.**

**3.1.10.1** Upon authorization by the Governing Board of District (the "Board") to bid the Project, District with the Architect's assistance shall establish a date on which the bids will be opened (the "Bid Open Date"). The Bid Open Date shall be at least one week prior to a regularly scheduled meeting of the Board and shall be approved by the District Representative.

**3.1.10.2** Architect and the District Representative shall agree on the date the Notice Inviting Bids is to be first published in a newspaper as required by law. Any inquiries regarding crafts and trades will be referred to Architect for resolution

**3.1.10.3** Architect, after consultation with the District, shall prepare the necessary bidding information and the form of the Contract Documents as provided for in paragraph 3.1.9 hereof. These shall be prepared for review by District's attorney, and shall be available for such legal review at least two weeks prior to need for their utilization. Architect shall make such changes as are recommended by District or District's attorney. Architect shall provide the District Representative with a typed Notice Inviting Bids suitable for publication. Said notice shall be complete and shall incorporate to the best of Architect's ability the most recent changes in any laws pertaining to competitive bidding by school districts. District will publish said notice in a newspaper or newspapers as required by law prior to the Bid Open Date once a week for a minimum of two weeks, commencing at least fifteen (15) days prior to the Bid Open Date.

**3.1.10.4** Architect shall provide a complete Bid Set to the District Representative and other bid documents prepared by Architect at least ten (10) business days prior to the date selected as the first day of publication of the Notice Inviting Bids; provided that the District Representative may waive this time limit. Upon approval of the District Representative, additional Bid Sets will be provided at the cost of the District. Architect shall make his best effort to revise the Bid Set to comply with any changes in the applicable laws.

**3.1.10.5** Architect shall assist District in making the Bid Set available for review by potential bidders. The Bid Set shall clearly specify the terms on which the Bid

Set may be checked out by potential bidders, the amount of money deposits for checking out the Bid Set and the terms on which money deposits for the Bid Set will be forfeited to District. Architect shall aggressively market the Project, in addition to newspaper notice to advise potential bidders, whom Architect knows to be responsive and responsible Contractors, of the Notice Inviting Bids for the District's Project for maximum bidder interest.

**3.1.10.6** Architect shall include the date of any pre-bid meeting in the Notice Inviting Bids and advise whether it is mandatory attendance. The Notice Inviting Bids shall specify whether the prebid meeting is to be held at District's Facilities and Planning Office, the Project site or an alternate site. Architect shall conduct the prebid meeting and shall be responsible for distributing any Addendum clarifications and interpretations created by the pre-bid meeting. Architect shall take minutes of the prebid meeting and deliver said minutes to the District Representative.

**3.1.10.7** District Representative shall conduct the bid opening. Architect shall attend the bid opening and prepare a table or schedule showing:

**3.1.10.7.1** The names of the Contractors who have inspected or received the Bid Set and any Addendum thereto. If a bidder has not inspected or received the Bid Set or any such Addendum, Architect shall so note.

**3.1.10.7.2** Receipt or nonreceipt of the ten percent (10%) Bid Bond.

**3.1.10.7.3** Receipt or nonreceipt of the List of Subcontractors submitted by the bidder.

**3.1.10.7.4** Receipt or nonreceipt of the Non-Collusion Affidavit submitted by the bidder.

**3.1.10.7.5** Receipt or nonreceipt of Disabled Veteran Business Enterprise Certification forms, if required by existing law or directed by District.

**3.1.10.7.6** The amount of the base bid.

**3.1.10.7.7** The amount of each alternative bid.

**3.1.10.7.8** A roster of all persons who attended the bid opening and the capacity in which they attended.

**3.1.10.7.9** Receipt or nonreceipt of fingerprinting certification.

**3.1.10.8** After the bids are opened, Architect shall verify that the bids are in order prior to the District reading the amount of the bids. Any irregularities shall be

recorded by Architect in the minutes of the bid opening. Prior to the next meeting of the Board, Architect shall verify the validity of the General Contractor's bid proposal, License and Bond. After the Board accepts the successful bidder and the contract is signed, the District Representative will be responsible for returning the Bid Bonds to the bidders.

**3.1.10.9** Within such time as the District Representative shall specify, Architect shall call a meeting with the successful bidder, the District Representative, and Architect for the purpose of obtaining Payment and Performance Bonds and executing the Contract Documents. The meeting shall be held at the District's Facilities and Planning Office. Architect shall assemble and have present all documents necessary for distribution and signing at this meeting. Architect shall conduct the meeting. Architect shall be prepared to explain the construction administration procedures at the meeting. Architect shall be prepared to distribute a Notice to Proceed at this meeting. Architect shall supervise the signing of the Contract Documents at this meeting.

**3.1.10.10** "Contract Documents" means the following:

- 3.1.10.10.1** Specifications (execution copies).
- 3.1.10.10.2** Plans (execution copies).
- 3.1.10.10.3** Addenda (execution copies).
- 3.1.10.10.4** Bid Documents (Notice Inviting Bids, Instructions to Bidders, Completed Bid Form, Bid Bond, List of Subcontractors, Non Collusion Affidavit and Fingerprinting Certification).
- 3.1.10.10.5** Construction Contract, including the Agreement, the general conditions, any supplemental conditions, any special conditions, and any Addenda (execution copies) (hereinafter "the Contract").
- 3.1.10.10.6** Fully executed and completed Performance Bond.
- 3.1.10.10.7** Fully executed and completed Payment and Materials Bond.
- 3.1.10.10.8** Insurance Certificates and Policies showing that the Contractor has obtained all the insurance required by the Contract.
- 3.1.10.10.9** And such further documents as Architect and District Representative may recommend and approve.



- 3.1.10.11** District shall provide a notary public at the signing, but Architect shall be responsible, with the District's assistance, for determining that all documents requiring a notary's signature have been notarized before the signatories leave the meeting.
- 3.1.10.12** Architect shall provide five (5) original sets of Contract Documents in bound form to be distributed as follows: two to the District Representative, one to the inspector of record, one to the Contractor and one to the Architect. Architect shall be responsible for confirming that each original set and each copy of the Contract Documents is identical at no cost to District.
- 3.1.10.13** If the lowest responsive and reasonable bid on the Project exceeds the Project budget as established in Attachment B, District may request Architect to amend the final drawings and specifications to rebid the Project so that bids are within budget.

### **3.1.11 Examination of Project.**

Examination of the work executed from the final working drawings and specifications shall be in person by Project Architect provided that District may, in its discretion, consent to such examination by another competent representative of Architect.

### **3.1.12 Construction of Project.**

Architect shall provide general administration of the Construction Documents, including the following:

- 3.1.12.1** Deliver the Notice to Proceed to the Contractor at the Contract signing meeting unless there is good cause not to do so. If necessary, the meeting may be continued until the Contract Documents are in order. The Notice to Proceed should specify the start date, the start time and the completion date.
- 3.1.12.2** Hold a preconstruction meeting as soon as practicable after service of the Notice to Proceed. Architect shall keep minutes of the pre-construction meeting and send a copy of the minutes to the District Representative and the Contractor. The Contract signing meeting and the pre-construction meeting may be held on the same day.
- 3.1.12.3** Take minutes of the pre-construction meeting and prepare an agenda for the pre-construction meeting.
- 3.1.12.4** Site visits, as often as necessary and appropriate to the stage of construction, including a minimum weekly visit at the site unless found unnecessary by the District, but at least to observe contractor's work for general conformance with the plans and specifications and to

confirm work is progressing in accordance with the Construction Documents and contractor's schedule.

- 3.1.12.4.1** Architect shall provide technical direction to the Inspector of Record (IOR) employed by and responsible to the District as required by applicable law. The Architect will periodically receive copies of the daily reports of the IOR and will make comments and take action as necessary.
- 3.1.12.5** Site visits to communicate and observe the activities of the Project Inspector of Record, mutually acceptable to Architect and District, and employed by District. Architect shall direct the Inspector and/or contractor and coordinate in the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.
- 3.1.12.6** Cause engineers and other consultants, as may be hired by Architect pursuant to paragraph 3.1.3 and subparagraphs of this article, to make site visits to observe the work in progress under their engineering disciplines as required, and approve and review all test results for general conformance with the original approved documents for their portion of the Project.
- 3.1.12.7** Make regular reports as may be required by the applicable federal, state, regional, or local agencies.
- 3.1.12.8** Attend all construction meetings, take minutes of this meeting and provide written reports as well as minutes to District after each construction meeting to keep District informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the work, but no less than once per week.
- 3.1.12.9** Make written reports to District as necessary to inform District of problems arising during construction, changes contemplated as a result of each such problem, and progress of work.
- 3.1.12.10** Keep records of construction progress and time schedules and advise contractor and District of any deviations from the time schedule which could delay timely completion of Project.
- 3.1.12.11** Check and process, in a timely manner, all required material and test reports and report to the Division of the State Architect, the contractor, and District any deficiencies in material as reflected by those reports, with recommendation for correction of such deficiencies.

- 3.1.12.12** Review and respond to all schedules, submittals, shop drawings, samples, information requests, and other submissions of the contractor and subcontractors for compliance with design and specifications and General Conditions, in a timely manner so as to not interrupt progress of the work. Architect is to maintain RFI log, RFP log, and submittal log and review them at each site meeting.
- 3.1.12.13** Promptly reject, after discussing with District Representative, work or materials that do not conform to the Construction Documents and notify District of such rejection.
- 3.1.12.14** Consult with District, in a timely manner, with regard to substitution of materials, equipment, and laboratory reports thereof prior to the final approvals of such substitutions by District in writing.
- 3.1.12.15** Architect's responsibility shall include the preparation of all documents and/or drawings made necessary by errors and omissions in the originally approved drawings or specifications and such modifications therein as may be necessary to meet unanticipated conditions encountered during construction, at no additional expense to District. The District's approval, acceptance, use of, or payment for all or any part of the Architect's services hereunder or the Project itself shall in no way diminish or limit the Architect's obligations and liabilities or the District's rights.
- 3.1.12.16** All Project related correspondence either initiated by Architect to Contractor or Contractor to Architect shall be copied to the District.
- 3.1.12.17** Evaluate and notify District, in a timely manner and in writing, of any change requests, material change or changes, requested or necessary, in the plans and specifications of the Project. (Written notification may be by way of providing a copy of any such request.)
- 3.1.12.18** Architect shall prepare Change Orders along with any related plans, specifications, drawings and other documents needed to comply with the Construction Contract.
- 3.1.12.19** Change Orders and related documentation pertaining to Change Orders shall be submitted by Architect to the District Representative in accordance with provided schedule. Change Orders shall specify:
- 3.1.12.19.1** All items agreed to by the Contractor, any additional time allowed, the actual or anticipated date of completion and the agreed cost.
- 3.1.12.19.2** Cost items shall be verified for accuracy and reasonableness.

- 3.1.12.19.3 Time extensions shall be reviewed by the Inspector.
- 3.1.12.19.4 Signature blocks shall be completed.
- 3.1.12.19.5 The Change Order shall be signed by the Contractor.
- 3.1.12.19.6 Architect and any consultants retained by Architect with responsibility for any item in the Change Order shall indicate their approval of the Change Order by signing it. If they disapprove of the Change Order, they should submit a written explanation for their disapproval.
- 3.1.12.20 In addition to the obligations previously set forth in this Agreement, after the Board approves a Change Order, Architect shall, within five (5) business days after Board approval, **submit** the Change Order as approved by the Board to DSA. If, at the time of performance, the requirements of DSA or other agency with jurisdictional authority is inconsistent with submittal as provided herein, Architect is responsible for complying with these requirements unless specifically directed otherwise by the District Representative.
- 3.1.12.21 Examine, verify, and approve the Contractor's notarized applications for payment and issue certificates for payment for work and materials approved by the Inspector which reflect Architect's recommendation, if any, as to any amount which should be retained or deducted from those payments under the terms of the Construction Documents, by operation of law, or for some other reason.
- 3.1.12.22 Coordinate and recommend color selection with District's original design concept for District approval in a timely manner and coordinate product selection in accordance with specification requirements.
- 3.1.12.23 Determine date of completion.
- 3.1.12.24 After being notified the Project is nearing completion, Architect shall inspect the Project and review the punch-list prepared by the contractor, including minor items ("punch-list items"). The Punch List shall list all observed items remaining to be completed or corrected. Architect shall review and revise the list as necessary and shall advise the District Representative in writing of any defects, omissions, errors or changes that need to be made to the Architect's Punch List. Architect shall notify contractor in writing that all deficiencies and punch-list items must be corrected prior to acceptance of the Project and final payment.

**3.1.12.25** Review materials assembled by the Contractor and assemble for and provide to District written warranties, guarantees, owners' manuals, instruction books, diagrams, record drawings ("as-builts"), and any other materials required from the Contractors and subcontractors in accordance with the Construction Documents.

**3.1.12.26 Notice of Completion and Final Payment.**

**3.1.12.26.1** The District Representative shall see that approval of final payment (including payment of the retainage) and approval of the Notice of Completion is placed on the agenda for the Board's regularly scheduled meeting after receipt from Architect of the Certificate for Final Payment and the execution copy of the Notice of Completion.

**3.1.12.26.2** District will file the approved Notice of Completion with the County Recorder within the statutory period from the date of the Board's acceptance of the project. The District will send a filed and stamped copy of the Notice of Completion to the Architect.

**3.1.12.27 Release of Final Payment and Retention**

**3.1.12.27.1** Within 35 days after the Notice of Completion is filed, Architect shall make sure the following has been completed and final payment and payment of the remaining retainage is warranted:

**3.1.12.27.2** The Contractor has provided all guarantees and warranties as required by the Contract.

**3.1.12.27.3** The Contractor has provided all Operation Manuals to the District Representative as required by the Contract.

**3.1.12.27.4** DSA and all other agencies with jurisdictional authority have received all reports and given all approvals required by law for the Project.

**3.1.12.27.5** Architect has submitted verified "record drawings" plans to the District Representative.

**3.1.12.27.6** Architect has verified to the best of Architect's ability all certificates and documents required by law, OPSC, DSA, CDE, this Agreement, and the Contract Documents are on file with the District

Representative. The Architect has verified completion of the punch list items.

**3.1.12.27.7** Architect shall represent in writing that all of the above has been completed and final payment, including payment of the retainage, is due and payable specifying the date when the payment is due. If Architect cannot so certify, he shall submit a detailed explanation to the District Representative explaining what needs to be done and why and, giving his best estimate, as to when final payment may be released. If final payment has been delayed for any reason, Architect shall immediately notify the District Representative in writing when there is no longer any reason to delay final payment.

**3.1.12.27.8** The Contractor has provided all in-service training to District personnel.

**3.1.12.28** Cause engineers and other consultants, as may be hired by Architect pursuant to paragraph 3.1.3 and subparagraphs of this article, to file required documentation with governmental authorities necessary to close out the Project.

**3.1.12.29 District Wants Drawings.**

**3.1.12.29.1** Not later than 30 days after completion of construction, and before receipt of final payment, Architect shall direct record drawings be prepared by the General Contractor, signed by the Inspector of Record (IOR) and the General Contractor and delivered to the District. Record drawings will show, among other things, the location of all concealed pipe, buried conduit runs, and other similar elements within the completed Project. Architect shall personally review the drawings for completeness and correct representation of the information supplied by the Inspector and the contractor and shall obtain the certificate of the Inspector and the contractor that the drawings are correct.

**3.1.12.29.2** On approval by District Representative of the completed record drawings, Architect shall forward to District the complete set of reproducible duplicates of the original drawings corrected to "record" condition. The tracing shall be of such quality that

clear and legible prints may be made without appreciable and objectionable loss of detail.

- 3.1.12.29.3 Prior to the receipt of Architect's final payment, Architect shall forward to District one clear and legible set of reproductions of the computations, the original copy of the specifications, the record drawings, the final verified progress report pursuant to Title 21 of the California Code of Regulations, and Architect's Certificate of Completion.

### **3.1.12.30 Guarantee Period.**

- 3.1.12.30.1 Architect shall provide advice to District on apparent deficiencies in construction during warranty period following acceptance of work.

- 3.1.12.30.2 Architect, as part of his basic professional services, will attempt to resolve to the satisfaction of District apparent deficiencies in construction following the acceptance of the work and prior to the expiration of the one-year General Construction Contract guarantee period of the Project. Architect shall conduct a final one-year quality inspection walk-through with District, IOR and Contractor to ascertain that all warranty items are completed.

## **3.2 Additional Services of Architect.**

At District's request, Architect may be asked to perform services not otherwise included in this Agreement and/or services not customarily furnished in accordance with generally accepted architectural practice. District may agree to pay Architect for such services, pursuant to paragraph 7.4 and subparagraphs hereof, if such services cause Architect additional expense and are necessitated due to unusual circumstances and through no fault or neglect on the part of Architect. No additional compensation shall be paid to Architect for performing such services unless District and Architect agree in writing as to the amount of compensation for such services prior to such services being rendered. Such services may include, but shall not be limited to:

- 3.2.1 Plan preparation and/or administration of work on portions of the Project separately bid.
- 3.2.2 Assistance to District, if requested for the selection of moveable furniture, equipment, or articles which are not included in Construction Documents.
- 3.2.3 Services caused by delinquency, default, or insolvency of contractor or by major defects in the work of the contractor in the performance of the construction

contract, provided that any such services made necessary by the failure of Architect to detect and report such matters earlier shall not be compensated.

- 3.2.4 Revisions in drawings, specifications, or other documents when such revisions are inconsistent with written approvals or instructions previously given and due to causes beyond the control of Architect.
- 3.2.5 Serving as an expert witness on District's behalf.
- 3.2.6 Observation of repair of damages to structure.
- 3.2.7 Additional work required for environmental conditions, i.e., asbestos, unforeseen site conditions.
- 3.2.8 The hiring if required by the District of the following consultants: energy, traffic, cost estimating, acoustical, technology, and traffic. Fees for such services shall be determined on a not to exceed basis and approved by the District in writing.

#### **ARTICLE 4. DISTRICT RESPONSIBILITIES.**

District's responsibilities shall include the following:

- 4.1 Make available to Architect all necessary data and information concerning the purpose and requirements of the Project, including realistic scheduling and budget limitations.
- 4.2 Depending upon the scope of the Project, furnish Architect with a survey of the Project site preparation by a registered surveyor or civil engineer and any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information. District shall also provide a soils investigation report and a geological report, if required by law, and may provide these, or other, reports at the District's option.
- 4.3 Appoint and pay, upon mutual agreement with Architect, an Inspector of Record as provided by state law. Said Inspector shall be qualified and approved by Architect and by the Division of State Architect, shall be under direction of Architect, and shall be responsible to, and act in accordance with the policies of, District. The administration by Architect and its engineers shall be in addition to the continuous personal supervision of the Inspector.
- 4.4 Assist Architect in the distribution of plans to bidders and conduct the opening of bids on the Project, if applicable.
- 4.5 When requested by the Architect, District will pay for chemical, mechanical, or other tests required for proper design of the Project. Furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known for the proper development of the required drawings and specifications and to determine soil condition.
- 4.6 Retain a testing service for materials testing and inspection as required by Title 21 of the California Code of Regulations.



4.7 Directly pay or reimburse the payment without mark-up of all fees required by any reviewing or licensing agency.

4.8 Designate a representative authorized to act as liaison between Architect and District in the administration of this Agreement and the Project. Such person or persons shall assist Architect in making inspections and preparing the list of deficiencies required by paragraph 3.1.12.24 hereof, and accompany Architect and the Contractor on the final inspection.

4.9 Review all documents submitted by Architect, including change orders and other matters requiring District's Governing Board approval or approval of District officials. Advise Architect of decisions pertaining to such documents within a reasonable time after submission.

4.10 Notify Architect if any deficiencies in material or workmanship become apparent during contractor's warranty period.

## **ARTICLE 5. PROJECT CONSTRUCTION COST.**

5.1 Project construction cost as used in this Agreement means the total cost to the District of all work designed or specified by Architect, including work covered by approved change orders and/or alternates, but excluding the following: any payments to Architect or consultants for costs of inspections, surveys, tests and sites, and landscaping not included in Project.

5.2 When labor or material is furnished by the District below its market cost, the Project construction cost shall be based upon current market cost of labor and new material.

5.3 The Project construction cost shall be the acceptable estimate of construction costs to the District as submitted by Architect until such time as bids have been received, whereupon it shall be the construction contract amount.

## **ARTICLE 6. ESTIMATE OF PROJECT CONSTRUCTION COSTS.**

6.1 If a Project budget is set forth in Article 1 or thereafter established by the District, Architect shall review the estimate at each phase of his services. If such estimates are in excess of the Project budget, Architect shall revise the type or quality of construction to come within the budgeted limit.

6.2 Construction cost estimates are to be determined at each phase. Said estimates shall be a detailed breakdown of costs based upon materials and schedule. The Architect shall provide a list of bid alternates for the Project. The total dollar amount of the list must be greater than the difference between estimate and the budget and must include suggestions from all professional consultants. Prior to District letting the Project for bidding, Architect shall prepare for no additional compensation design changes as requested by District to meet budget requirements of the project or to meet education specifications. If Educational Specification requirements have changed since design development approval in writing by District, then such changes shall be considered extra services subject to an agreed fixed amount.

## **ARTICLE 7. ARCHITECT'S COMPENSATION.**

### **7.1 Basic Services.**

Architect is to design the Project within the budget as Attachment B indicates or other allowance established by District, under basic services ("Basic Services"). Basic Services shall be those defined in paragraphs 3.1 through 3.1.12.30 (all 3.1 subparagraphs). Each portion of the Project let separately on a segregated bid basis shall be considered a separate project for purposes of determining the fee. Compensation for the performance of all services rendered herein by Architect shall be in accordance with Attachment C.

### **7.2 Change Orders.**

The total cost of the Project shall be adjusted to reflect District agreed upon Change Orders so that Architect receives extra compensation in accordance with the Agreement when the Change Order results in an increase in total cost (and was not the result of errors and omissions) and a reduction in compensation when Change Orders result in a decrease in the total cost and where either required to meet the budget or were an error and omission of the Architect.

### **7.3 Complete Payment.**

District shall pay to Architect, for the performance of all services rendered herein, the amount specified on Attachment C incorporated herein by reference, which constitutes complete payment for Architect's services under this Agreement.

### **7.4 Payment for Additional Services.**

Architect shall be paid for additional services not originally contemplated by the parties to this Agreement as follows, provided the additional services have received advance written approval by the District

**7.4.1** Five percent of the cost of furnishings, equipment, or other articles incorporated in the Construction Documents by Architect and not included in the cost of the work, as defined in Attachment C.

**7.4.2** For services in addition to the basic services of Architect set forth in Article 3 hereof, a fee to be agreed upon by the parties in writing prior to performance of such services by Architect, which fee may be a flat amount or Architect's standard hourly rates.

**7.4.3** Special consultants, prior approval of which is required, shall be paid a fee to be agreed upon by the parties in writing prior to performance of such services, which fee may be a flat amount or standard hourly rates. Special consultants do not include the engineers and consultants hired pursuant to section 3.1.3 and noted as basic professional services.

## **7.5 Reimbursable Expenses.**

Reimbursable expenses are in addition to compensation for basic and additional services (as set forth in Article 3 and paragraph 7.4 and subparagraphs above) and include actual expenses incurred by Architect and Architect's employees and consultants in the interest of the Project, as identified in the following clauses:

- 7.5.1 Expense of written preauthorized transportation, excluding ordinary mileage normally incurred, in connection with the Project.
- 7.5.2 Expenses in connection with written preauthorized out-of-town travel.
- 7.5.3 Fees paid at cost for securing approval of authorities having jurisdiction over the Project.
- 7.5.4 Expenses of reproductions of drawings and specifications, as authorized herein.
- 7.5.5 Other costs/expenses preauthorized by District.

## **ARTICLE 8. PAYMENTS TO ARCHITECT.**

8.1 Architect's compensation shall be paid by District to Architect monthly, incrementally, based upon the percentage of work completed, and as appropriate, in accordance with normal phasing and funding schedule, or such other schedule as may be established by the District.

8.2 In order to receive payment, Architect shall present to District a claim for payment for approval by District's authorized representative, which claim shall designate services performed, percentage of work completed or actual work completed depending upon fee arrangement, method of computation of amount payable, and amount to be paid.

8.3 Payments made for extra work or special services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the parties shall specify when such services are agreed upon.

8.4 Upon cancellation or termination of this Agreement, Architect shall be compensated as set forth in Article 11 hereof.

8.5 Final payment to Architect shall be made by the District after the Notice of Completion is approved by the Board. However, this payment shall not exclude Architect from continuing to provide services to resolve outstanding punch list items and warranty items.

8.6 Architect's compensation shall be payable as follows:

- 8.6.1 Ten percent (10%) of the total fee shall be due upon approval of the schematic site plan.
- 8.6.2 The amount due shall be increased to twenty-five percent (25%) of the total fee upon approval of the preliminary plans consisting of site plan, floor plans,

architectural cross sections of the buildings and interior and exterior elevations of the buildings.

- 8.6.3 The amount due shall be increased to fifty percent (50%) of the total fee at fifty percent (50%) completion of the bidding documents.
- 8.6.4 The amount due shall be increased to seventy percent (70%) of the total fee upon submission of the bidding documents to the Division of the State Architect for review.
- 8.6.5 The amount shall be increased to seventy-five percent (75%) of the total fee upon approval of the bidding documents by the Division of the State Architect and the District.
- 8.6.6 The amount due shall be increased to eighty percent (80%) of the total fee upon acceptance of the bid.
- 8.6.7 The remaining twenty percent (20%) of the fee shall be prorated based upon the percentage of the construction, which has been completed and shall be billable on a monthly basis. Final payment to the Architect, less any errors, omissions and compensations due the District, shall be made by the District after the Notice of Completion is approved by the Board. However, this payment shall not exclude the Architect from continuing to provide services to resolve outstanding punch list items.
- 8.6.8 When more than one contract is issued the percentage of the fee due shall be calculated on the point of completion of each separate contract.
- 8.6.9 The estimated cost of the project shall be used to calculate the fee until the District accepts the bid for a contract, at which time the actual contract amount shall be used to calculate the fee and the fee shall be adjusted to reflect the actual contract amount and the estimates.
- 8.6.10 Reasonable expenses, without markup for reproduction, postage and handling of drawings and specifications.

## **8.7 Times of Payment.**

Payments under this Agreement shall be as follows:

- 8.7.1 Following the District's written authorization to proceed with the work required under this Agreement, the Architect will submit a monthly billing statement to the District for services rendered.
- 8.7.2 The District will review each of the Architect's statements, and, within thirty (30) days of receipt of the Architect's statement, the District will submit a warrant to the Stanislaus County Office of Education requesting that payment be made to the Architect for the amount of the approved statement.

## **ARTICLE 9. INSTRUCTIONS TO PROCEED.**

Architect is not to proceed with performance of any services under this Agreement without first securing written authorization from District to do so.

## **ARTICLE 10. TIME SCHEDULE.**

**10.1** Architect shall perform all services hereunder as expeditiously as is consistent with professional skill and care and the orderly progress of the work. Upon request of District, Architect shall prepare an estimated time schedule for the performance of Architect's services, to be adjusted as the Project proceeds. Such schedule shall include allowances for periods of time required for District's review and approval of submissions and for approvals of authorities having jurisdiction over Project approval and for funding. The schedule shall not be exceeded by Architect, without the prior written approval of District.

**10.2** Any delays in Architect's work because of the actions of District or its employees, those in direct contractual relationship with District, by a governmental agency having jurisdiction over the Project, or by an act of God or other unforeseen occurrence, not due to any fault or negligence on the part of Architect, shall be added to the time for completion of any obligations of Architect.

**10.3** Should Architect make an application for an extension of time, Architect shall submit evidence that the insurance policies required by Article 15 remain in effect during the requested additional period of time.

## **ARTICLE 11. SUSPENSION, ABANDONMENT, TERMINATION.**

**11.1** District 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, Architect shall be paid pursuant to the schedule of payments set forth in Articles 7 and 8 of the Agreement for services rendered up to the date of such suspension, abandonment, or termination, less any damages suffered by District as a result of the default, if any, by Architect. Architect hereby expressly waives any and all claims for damages or compensation arising under this Contract, except as set forth herein, in the event of such suspension, abandonment, or termination.

**11.2** If Architect's services are suspended by District, District may require Architect to resume services within ninety (90) days after written notice from District.

**11.3** Upon suspension, abandonment, or termination, Architect shall, if requested by District, turn over to District all preliminary studies, sketches, working drawings, specifications, computations, and all other matters to which District would have been entitled at the completion of Architect's services. Upon payment of the amount required to be paid under this article following the termination of this Agreement, District shall have the right to use any completed contract documents or other work product prepared by Architect under this Agreement for the original project for which they were intended and not for other or subsequent reuses on other sites. Architect shall make such documents available to District upon request and without additional compensation.

## **ARTICLE 12. OWNERSHIP AND USE OF DOCUMENTS.**

**12.1** Pursuant to Education Code section 17316, all plans, specifications, and estimates prepared pursuant to this Agreement shall be and remain the property of District. Such drawings and specifications supplied as herein required shall be the property of District whether or not the work for which they were made is executed.

## **ARTICLE 13. INDEMNITY.**

Architect shall indemnify and hold harmless District, District's Governing Board, each member of the Board, and District's officers, and employees from any and all claims, liability, causes of action, damages and expenses of any kind (including reasonable attorney's fees) to the extent of arising out of the intentional or negligent acts, errors, or omissions of Architect, its subcontractors, consultants, or employees in the performance of this Contract. District shall indemnify and hold harmless Architect, its officers, and employees from any and all claims of any kind arising out of the negligent acts, errors, or omissions of the District, its officers, or employees in the performance of this Contract.

## **ARTICLE 14. ERRORS AND OMISSIONS.**

Architect shall be liable for damages and costs incurred by, and any claims against, District that result from Architect's negligence in the performance of this Agreement as provided by California law. Additionally, Architect shall not be paid a fee for work required due to Architect's negligence or the negligence of Architect's subcontractors, consultants, and/or employees in the performance of services under this Agreement.

## **ARTICLE 15. INSURANCE.**

Architect shall maintain in full force and effect, at its sole cost and expense, from the time this Agreement is entered into until the date of acceptance of the work by District, insurance as set forth in this article. All insurance provided for under this article shall be with a carrier satisfactory to District. Prior to commencement of work, Architect shall furnish to District a certificate of insurance evidencing the required coverage. District shall not be obligated to make any payment to Architect until after its receipt and acceptance of said certificate.

**15.1** Workers' compensation insurance as required by applicable laws, and employer's liability insurance, with a limit of not less than \$1,000,000.

**15.2** Commercial general liability insurance for bodily injury and property damage liability, the limits of which shall not be less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Commercial general liability policies obtained and maintained by Architect shall contain endorsements naming District and other interested parties, who have insurable interests and who are designated by District, as additional insureds and shall include products' completed coverage and operations coverage as well as contractual liability coverage for liability assumed by Architect under this Agreement. Auto liability insurance covering motor vehicles shall be in an amount not less than \$500,000 combines single limit. Policies under this section shall be endorsed to name the District as an additional insured.

**15.3** Architect shall procure and maintain professional liability insurance (errors and omissions insurance) in the amount of \$1,000,000 for protection from claims arising out of the performance of professional services caused by a negligent error, omission or act for which the insured is legally liable. Architect will likewise require the consultants to carry the same insurance package. It will be Architect's responsibility to require the carrier to deliver certificates to the District. The obligation to maintain professional liability insurance coverage shall survive termination of this Agreement. Architect is liable for the entire cost of the insurance required by this Agreement.

All insurance required above shall be purchased from an insurance company licensed and admitted in California. Each policy of insurance shall state that the policy is primary and any insurance carried by District is excess and non-contributory; shall state that not less than thirty (30) days' written notice shall be given to District prior to cancellation, except for Professional Liability policy, and shall waive all rights of subrogation. Architect shall deliver to District certificates of insurance and endorsement as evidence of compliance with the requirements herein.

In the event that Architect subcontracts any portion of Architect's duties, Architect shall require any such subcontractor to purchase and maintain insurance coverage for the types of insurances referenced above, in the amounts which are appropriate with respect to that subcontractor's part of work, which shall in no event be less than five hundred thousand dollars (\$500,000.00) per occurrence.

#### **ARTICLE 16. RECORDS.**

Architect shall maintain records of direct personnel and reimbursable expenses pertaining to the extra and special services of the Project that are compensable by other than a flat rate. Architect shall maintain all records of accounts between District and Architect on a generally recognized accounting basis. Such records shall be available to District or its authorized representative for inspection or audit at any reasonable time. Architect shall maintain all records concerning the Project for a period of three years after its completion.

#### **ARTICLE 17. STANDARDIZED MANUFACTURED ITEMS.**

Architect shall cooperate and consult with District in use and selection of manufactured items on the Project, including, but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials, and floor coverings. All such manufactured items shall be standardized to District's criteria to the extent such criteria do not interfere with Project design.

#### **ARTICLE 18. LIMITATION OF AGREEMENT.**

This Agreement is limited to and includes only the work included in the Project described above and as determined at the time the design development documents prepared pursuant to paragraph 3.1.6 and subparagraphs are approved, unless this Agreement is amended by the parties to include additional work as part of the Project. Any subsequent construction at the site of the Project, or at

any other site in District, will be covered by, and be the subject of, a separate Agreement for architectural services between District and Architect chosen therefor by District.

#### **ARTICLE 19. MEDIATION.**

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the parties hereto. The parties shall select a disinterested third person mediator within a reasonable period of time, mutually agreed to by the parties. The mediation shall be commenced within 30 days of the selection of the mediator. If the parties elect to mediate but fail to select a mediator within a 15-day period, any party may petition the Superior Court of Stanislaus County to appoint the mediator.

#### **ARTICLE 20. COMPLIANCE WITH THE LAWS.**

Architect shall exercise due professional care so that Architect's work shall comply with and meet applicable requirements of federal, state, regional, or local law, including, but not limited to, the Uniform Building Code, the Education Code, Title 19, Title 21 and Title 24 of the California Code of Regulations, and all requirements prescribed by the California Department of General Services.

#### **ARTICLE 21. INDEPENDENT CONTRACTOR.**

Architect is, for all purposes arising out of this Agreement, an independent contractor, and neither Architect nor its subcontractors, consultants, or employees shall be deemed an employee of District for any purpose. It is expressly understood and agreed that Architect shall in no event be entitled to any benefits to which District employees are entitled, including, but not limited to, overtime, retirement benefits, insurance, vacation, worker's compensation benefits, sick or injury leave, or other benefits.

#### **ARTICLE 22. SUCCESSORS IN INTEREST AND ASSIGNS.**

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

#### **ARTICLE 23. ASBESTOS CERTIFICATION.**

Architect shall verify to the best of its information pursuant to 40 Code Federal Regulation, section 763.99(a)(7), that no asbestos-containing material was specified as a building material in any construction document for the Project and will require that contractors provide District with certification that all materials used in the construction of any school building are free from any asbestos containing building materials ("ACBMs"). Architect shall include statements in specifications that materials containing asbestos are not to be included. This certification shall be part of the final Project submittal.



## **ARTICLE 24. FINGERPRINTING CERTIFICATION.**

California Education Code section 45125.2 requires entities providing construction services to the District to ensure the safety of pupils where employees of the entity or subcontractors will have contact with pupils. Therefore, Contractor shall certify that methods are being undertaken to ensure the pupils' safety. Certification must be accomplished by completing the "Declaration Regarding Employee Fingerprinting and Criminal Background Check." A certification form is available from the Facilities and Planning Office at the District.

## **ARTICLE 25. NO RIGHTS IN THIRD PARTIES.**

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

## **ARTICLE 26. MISCELLANEOUS.**

The following terms and conditions shall be applied to this Agreement:

### **26.1 Governing Law.**

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California.

### **26.2 Entire Agreement.**

This Agreement with its exhibits supersedes any and all other prior or contemporaneous oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises, or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.

### **26.3 Severability.**

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

### **26.4 Non-Waiver.**

None of the provisions of this Agreement shall be considered waived by either party unless such waiver is specifically specified in writing.

### **26.5 Business Day.**

"Business day" as used herein means any day the District Office is open to the public.

### **26.6 Supplemental Conditions.**

Any supplemental conditions shall be attached as an exhibit to this Agreement and incorporated by reference.

**IN WITNESS WHEREOF**, the parties have caused this instrument to be duly executed this 22nd day of December, 2008.

**ARCHITECT**

Michael Rainforth  
Jeffrey Grau Architects  
A Professional Corporation

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

Michael Rainforth  
Principal Architect  
Licence number C8289

**DISTRICT**

Tracy Unified School District

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

Casey Goodall  
Associate Superintendent, Business Services

**ATTACHMENT A TO AGREEMENT BETWEEN  
TRACY UNIFIED SCHOOL DISTRICT AND  
RAINFORTH GRAU ARCHITECTS**

**PROJECT DESCRIPTION**

This Project will repair, renovate, modernize or reconstruct facilities that no longer fulfil their intended purposes, are unsightly and/or require continuing maintenance that is no longer cost effective or any facility that is expected to no longer fulfill its purpose in the next five years. The scope of work is expected to include general up-grading of classrooms, replacement of aging roofing systems, replacement of old heating and cooling and ventilation systems with energy-efficient systems, replacement and up-grading of electrical systems, improvement of security and technology systems increasing student safety and access to computers and such work discovered to be in the interests of the long term use of these buildings.

To be initialed by the parties:

  
\_\_\_\_\_  
ARCHITECT

Michael Rainforth  
Principal Architect  
Licence number C8289

\_\_\_\_\_  
DISTRICT

Casey Goodall  
Associate Superintendent, Business Services  
Tracy Unified School District

**ATTACHMENT B TO AGREEMENT BETWEEN  
TRACY UNIFIED SCHOOL DISTRICT AND  
RAINFORTH GRAU ARCHITECTS**

**BUDGET FOR PROJECT**

Project Budget Based on Cost Estimate of \$6,610,000

**PROJECT COSTS:**

Modernization:	\$ 4,160,000
Contingency:	<u>\$ 470,000</u>
Construction Total:	\$ 4,630,000
Soft Costs:	<u>\$ 1,980,000</u>
<b>TOTAL PROJECT COSTS:</b>	<u><b>\$ 6,610,000</b></u>

To be initialed by the parties:

  
\_\_\_\_\_  
ARCHITECT

\_\_\_\_\_  
DISTRICT

Michael Rainforth  
Principal Architect  
Licence number C8289

Casey Goodall  
Associate Superintendent, Business Services  
Tracy Unified School District

**ATTACHMENT C TO AGREEMENT BETWEEN  
TRACY UNIFIED SCHOOL DISTRICT AND  
RAINFORTH GRAU ARCHITECTS**

**Fee Schedule Based upon the Actual Construction Cost: \$4,630,000**

\$0	Through	\$1,000,000	12.0%
\$1,000,001	Through	\$2,000,000	11.5%
\$2,000,001	Through	\$4,000,000	11.0%
\$4,000,001	Through	\$8,000,000	10.0%
\$8,000,001	Through	\$12,000,000	9.0%
		Total Estimated Fee	\$518,000.00

**Fee Allocation/Phase Billing:**

1. Architect compensation shall be paid by the District to the Architect monthly in arrears incrementally within the phases and based upon the percentage of work completed all as described in Article 8 of the Agreement:

To be initialed by the parties:

  
\_\_\_\_\_  
ARCHITECT

\_\_\_\_\_  
DISTRICT

Michael Rainforth  
Principal Architect  
Licence number C8289

Casey Goodall  
Associate Superintendent, Business Services  
Tracy Unified School District

# SOUTH/WEST PARK

**CONTRACT FOR ARCHITECTURAL SERVICES  
BETWEEN  
TRACY UNIFIED SCHOOL DISTRICT  
AND  
RAINFORTH GRAU ARCHITECTS  
SOUTH WEST PARK ELEMENTARY SCHOOL MODERNIZATION**

THIS AGREEMENT is entered into this 22<sup>nd</sup> day of December, 2008, between the TRACY UNIFIED SCHOOL DISTRICT, of the County of San Joaquin, California, hereinafter referred to as the "District," and Rainforth Grau Architects, a Professional Corporation, hereinafter called the "Architect."

District intends to construct the Project ("Project") as described in Attachment A, which is hereby incorporated by the parties as a term of this Agreement.

Architect represents that Architect is fully licensed, qualified, and willing to perform the services required by this Agreement (with the understanding that if Architect is a corporation or other organization, the Project Architect specified in and pursuant to Article 1, and not Architect itself, is fully licensed to practice as an architect in the State of California).

Accordingly, the parties agree as follows:

**ARTICLE 1. PROJECT BUDGET**

1.1 The Project budget is, or will be, established as indicated on Attachment B.

1.2 The size of the Project and the type and quality of construction are dependent upon the funds available for the Project. Architect will exercise his best judgment in determining the balance between the size of the Project, the type of construction, and the quality of construction to achieve a satisfactory solution within budget limitations.

1.3 Architect is required to exercise its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Project's construction allowance. It is the duty of Architect to design a Project within the budget as indicated on Attachment B. If a construction bid exceeds such standards, Architect will be responsible for making the necessary changes in the approved plans, specifications and bid documents at no additional cost to the District.

**ARTICLE 2. EMPLOYMENT OF ARCHITECT.**

District employs Architect pursuant to Government Code section 53060 to perform the necessary professional services, including, but not limited to, those hereinafter set forth in connection with the Project. Architect shall name a specific person fully licensed to practice as an architect in the State of California to be Project Architect, subject to approval of District. The Project Architect shall maintain personal oversight of the Project and act as principal contact with District, the contractor, Architect's consultants, engineers, and with all inspectors on the Project. Any change by Architect of the Project Architect shall be in writing and subject to approval by District.

Project Architect is Kevin Arwood, Associate Architect/Studio Leader, licence number C26738, and Michael Rainforth Principal-in-Charge, licence number C8289.

### **ARTICLE 3. ARCHITECT'S SERVICES.**

**3.1** Architect accepts employment and agrees to perform all reasonable professional architectural, engineering, consulting, and construction administration services in a professional manner, consistent with the usual and customary standards of the profession at the time those services are performed. The basic services to be performed by Architect are set forth in subparagraphs 3.1.1 through 3.1.12.30 below.

#### **3.1.1 General Responsible Charge.**

Architect agrees to accept "general responsible charge" of the Project as required by Sections 16 and 41 of Division 1 of Title 21 of the California Code of Regulations and State Building Code Part 1, Title 24, Article 6, Section 4-341.

#### **3.1.2 Communication with District.**

Architect shall participate in consultations and conferences with authorized representatives of District and/or other local, regional, or state agencies concerned with the Project necessary for the development of the drawings, specifications, and documents in accordance with the applicable standards and requirements of law and District. Such consultations and conferences shall continue through the planning and construction of the Project and the contractor's warranty period. Architect shall only take direction from staff specifically designated in writing by the District Representative. The District Representative for the Project shall be the District's Director, Facilities and Planning, unless and until the District specifically designates a different District representative. District hereby certifies that the District Representative has been duly authorized by District's Governing Board to represent District on the Project. District may designate new and/or different individuals to act as District Representative from time to time.

#### **3.1.3 Hiring of Consultants and Personnel.**

**3.1.3.1** Architect shall have the option, unless given written objection of District, to employ, at its expense, architects, engineers, or other persons qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Architect may delegate without relieving Architect from administrative responsibility under this Agreement. Architect shall be responsible for the coordination and cooperation of Architect's consultants. Architect shall notify District in writing of the identity of all consultants prior to their commencement of work.

**3.1.3.2** Architect, as part of the basic professional services, shall furnish at his expense the services of civil, structural, mechanical, electrical engineers, food service and landscape architecture properly skilled in the various aspects of the design and construction of facilities required. Consulting services on energy



(including unconventional) systems and requirements, acoustical, technology, traffic and cost estimating services, and other services necessary for the completion of the Project shall be an additional service of the Architect as provided in section 3.2.

**3.1.3.3** All engineers, experts and consultants retained by Architect in performance of this Agreement shall be licensed to practice in their respective professions and licensed by the State of California, where required by law.

**3.1.3.4** Engineers and consultants hired by Architect in the following categories shall be required to show evidence of a policy of professional liability and/or project insurance meeting the same requirements set forth in Article 15 hereof: structural, mechanical, civil, electrical engineers and landscape architects.

**3.1.3.5** Architect shall promptly obtain written District approval of assignment and/or reassignment or replacement of such engineers or consultants or of other staff changes of key personnel working on the Project. Any changes in Architect's consultants and staff shall be subject to approval by District, and such approval shall not be unreasonably withheld.

**3.1.3.6** Draftsperson and other clerical personnel shall be retained by Architect at Architect's sole expense.

**3.1.3.7** California Education Code section 45125.2 requires entities providing construction services to the District, where the employees of the entity or subcontractor (i.e., engineers and/or consultants) will have contact with pupils, to ensure the safety of pupils. Therefore, Architect shall verify that methods are being undertaken to promote pupils' safety. Certification must be accomplished by completing the "Declaration Regarding Employee Fingerprinting and Criminal Background Check." A certification form is available from the District. Any fees generated for the submission of fingerprint cards are an Architect cost and not reimbursable by the District.

#### **3.1.4 Initial Planning Phase of Project.**

**3.1.4.1** Assist District in the preparation of educational programming for the Project to define scope, size, cost, space relationship, and site development. The Architect is also required to determine the scope and estimated cost of the survey work, testing work, and inspection services required for the Project.

**3.1.4.2** Provide advice and assistance to District in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

**3.1.4.3** Architect shall notify District in writing of potential complications, cost overruns, unusual conditions, and general needs that could significantly affect the Project budget and time line.

**3.1.4.4** Architect shall advise District in securing easements, encroachment permits, right of ways, dedications, infrastructures, and road improvements and coordinating with utilities and adjacent property owners. This includes all utilities: water, drainage, sewer, power, cable and any special utilities necessary to achieve the Project.

### **3.1.5 Schematic Plan Phase of Project.**

**3.1.5.1** Architect shall review the program approved by the District to ascertain the requirements of the Project and shall review Architect's understanding of such requirements with the District.

**3.1.5.2** Architect shall provide a site plan and other Project-related information necessary and required for an application by District to any federal, state, regional, or local agency for funds to finance the construction Project. Architect shall also, with assistance of District, establish a project schedule.

**3.1.5.3** In cooperation with District planners and educational committees, Architect shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project and the plot plan development at the site, and the proposed architectural concept of the buildings, incorporating the educational program and the functional requirements of District. Such drawings and plans shall meet the requirements of the State Department of Education regulations (Cal. Code Regs., Title 5, § 14000 *et seq.*) and guidelines and shall be prepared in such form as may be submitted to the State Department of Education for approval. Such drawings and plans shall show in single-line drawings all rooms incorporated in each building in the Project, and shall include all revisions required by District or by any federal, state, regional, or local agency having jurisdiction over the Project. All architectural representation drawings for the Project shall be in Computer Aided Draft (CAD) form suitable for reproduction.

**3.1.5.3.1** Architect is to advocate on District's behalf and obtain a favorable regulatory condition for the Project.

**3.1.5.4** If directed by the District Representative at the time of approval of construction schemes, the preliminary and final working drawings and specifications shall be prepared so that portions of the work of the Project may be performed under separate constructions contracts, or so that the construction of certain buildings, facilities, or other portions of the Project may be deferred.

**3.1.5.5** Architect shall establish a preliminary project budget or allowance in the format required by District, or if applicable, by the school construction funding agency identified by District. The purpose of the cost estimate is to show probable cost in relation to District's budget. If Architect perceives site considerations which render the Project expensive or cost prohibitive, Architect

shall disclose such conditions and recommend action required for corrective action in writing to District immediately.

**3.1.5.5.1** Architect shall provide a preliminary written time schedule for the performance of work on the Project.

**3.1.5.6** Architect, at District expense, shall provide sufficient complete sets of the schematic plans described in paragraph 3.1.5.3 for District review and approval. Architect shall also present the schematic plans to the District Board. Additionally, at District's expense, Architect shall provide copies of such documents as required by any federal, state, regional, or local agencies concerned with the Project, including, but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services, and any other appropriate federal, state, regional, or local regulatory bodies. Any additional copies required by District shall be provided at cost to District.

### **3.1.6 Design Development Phase of Project.**

**3.1.6.1** On specific written approval by District of the plans described in paragraph 3.1.5.1 through 3.1.5.6 of this article, Architect shall prepare design development documents consisting of site and floor plans, elevations, and any other drawings and documents sufficient to fix and describe the size and character of the Project's structural, mechanical, and electrical systems, types and makeup of materials and outline specifications for presentation to District's Governing Board for approval.

**3.1.6.2** Architect shall provide at District expense sufficient complete sets of the design development documents described in section 3.1.6.1 for District review and approval. During the design development phase, Architect shall be responsible for filing preliminary plans and other documents including, but not limited to, 2A Diagram as required by law with the California Department of Education ("CDE"). Architect shall provide the District's Director, Facilities and Planning with a copy and proof of filing of each document so filed. Additionally, Architect shall provide copies of such documents as required by any federal, state, regional, or local agencies concerned with the Project, including, but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services, local fire marshal and any other appropriate federal, state, local, or regional regulatory bodies. Any additional copies required shall be provided at cost to District.

**3.1.6.3** Architect shall provide District with an updated estimate of probable construction costs, containing detail consistent with the design development documents required by paragraph 3.1.6.1 of this article and containing a breakdown based on types of materials and specifications identified in paragraph 3.1.6.1 of this article.

**3.1.6.4** Architect shall provide a timetable for completion of the Project to District.

**3.1.6.5** Architect shall assist District in applying for and obtaining required approvals from the Division of the State Architect, and/or any other agencies with jurisdiction, and shall furnish and process all architectural and engineering information required to prepare and process applications to applicable utilities for the securing of priorities, materials, as an aid in the construction of the Project and obtain final Project approval and acceptance by said agency as required.

**3.1.6.6** Architect shall provide a color schedule suitable for presentation to an audience of 10-15 of all materials and selections of textures, finishes, and other matters requiring an aesthetic decision at this phase of the Project for District's review and approval.

**3.1.6.7** The Architect shall determine all testing, surveys, explorations required to develop the intended design. The Architect will notify the District what chemical, mechanical, or other tests are required for proper design of the Project.

**3.1.6.8** The Architect shall provide the District with 3A Diagrams.

**3.1.7 Building Permits and Conformity to Legal Requirements.**

**3.1.7.1** Architect shall exercise due professional care to cause drawings and specifications to conform to applicable requirements of law, local, regional, and state, and to requirements of the Division of State Architect (structural safety, fire/life safety, and access compliance section), and the State Department of Education, and/or any other agencies or special districts (i.e., PG&E) with jurisdiction, whose approval of the drawings and specifications must be obtained, and shall cause the necessary copies of such drawings and specifications to be filed with these bodies for approval in accordance with paragraph 3.1.6.2 of this article. Architect shall provide District with a copy of all approvals from said entities.

**3.1.7.2** Architect will exercise usual and customary care to interpret applicable ADA requirements and California law to inform District of any inconsistencies between federal and state accessibility regulations and of requirements which are subject to conflicting interpretations of the law.

**3.1.7.3** Architect shall exercise usual and customary care to coordinate the requirements of various public and private entities as they pertain to the Project to the extent such requirements apply to Projects financed under the Leroy F. Greene School Facilities Act of 1998 as amended (hereinafter the "State Program") or other applicable programs. The aforesaid various entities include state, local and federal governmental entities, utility companies (including but not limited to gas, electric, telephone and water companies or districts), sewer districts, drainage districts and the like. Architect shall determine if any local zoning and building ordinances apply to the Project pursuant to Government Code section 53097 and,

if so, give an opinion as to compliance with such local ordinances. Architect shall assist the District in obtaining written cost commitments and approval of design from all involved public and private entities regarding utility, sewer, drainage, grading, road improvement, telephone, water, local fire marshal, health department, traffic department, city/county public works departments and other like services for the Project prior to approval by DSA and OPSC or other regulatory body of the final plans. All cost commitments, approvals and Agreements successfully complete shall be forwarded to the District Representative.

### **3.1.8 Final Working Drawings and Specifications.**

**3.1.8.1** On specific written approval by District of the plans described in section 3.1.6.1 of this article, Architect shall prepare such complete working drawings and specifications as are necessary for obtaining complete bids and for efficient and thorough execution of work. Such working drawings shall be developed from the preliminary drawings approved by District. The final working drawings and specifications shall set forth in detail the work to be done, materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems and utility service connection equipment and site work. It shall be District's responsibility to supply Architect with the necessary information to determine the proper location of all improvements on existing sites, including record drawings ("as-built drawings") in District's possession. Architect will make a good-faith effort to verify the accuracy of such information and as-built drawings by means of a thorough interior and exterior visual survey and measurements of site conditions. District shall also make a good-faith effort to verify the accuracy of the as-built drawings and provide any supplemental information to Architect, which may not be shown on the as-built drawings.

The final working drawings and specifications must be in such form as will enable Architect and District to secure the required permits and approvals from the Division of State Architect and the Office of Public School Construction or other jurisdictional agencies for District to obtain, by competitive bidding, a responsive and responsible bid. The final working drawings shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Architect.

**3.1.8.2** District, with or without outside professional services, shall review, study, and check the final working drawings and specifications presented to it by Architect and make revisions and provide approvals of such final plans subject to the approval of the Division of the State Architect and regulatory agencies. Architect shall make all District-requested changes, additions, deletions, and corrections in the final working drawings and specifications so long as they are not in conflict with the requirements of agencies, including, but not limited to,

private and public utilities having jurisdiction. Architect shall bring any such conflicts and/or inconsistencies to the attention of District.

**3.1.8.3** It is understood by Architect that should final working drawings and specifications be ordered by District, District shall specify the sum of money set aside to cover the total cost of the construction of the work exclusive of Architect's fees. Should it become evident that the total construction cost will exceed the specified sum, Architect shall at once present a statement in writing to District Representative setting forth this fact and giving a full, professionally-prepared statement of the cost estimates on which the conclusion is based. In the event that bids received by District from contractors for the construction of the work indicate the work cannot be constructed in accordance with the plans and specifications furnished by Architect for the specified sum, in accordance with paragraph 3.1.10 and subparagraphs, Architect shall, if requested by District, and without extra compensation therefor, so revise the plans and specifications for the work that the construction may be completed for the total cost which does not exceed the specified sum or so that certain portions of the Project may be omitted, deferred, or separately bid.

**3.1.8.3.1** At the request of District, Architect shall provide specifications, which include alternate bids as deemed advisable by District.

**3.1.8.4** Architect, at District expense, shall provide sufficient complete sets of the final working drawings and specifications described in paragraph 3.1.8.1, for District review and approval. During the Construction Document Phase, Architect shall be responsible for filing the final plans, specifications, bid documents, and other documents as required by law with CDE, and the Division of the State Architect ("DSA"). Architect shall provide District Representative with a copy and proof of filing of each document so filed. Additionally, at District's expense, Architect shall provide copies of such documents as required by federal, state, regional, county local agencies, and utility districts concerned with the Project.

**3.1.8.5** Thirty days prior to the bid, Architect will verify by field examination that site conditions are reasonably presented on the bid documents.

**3.1.8.6** Architect shall submit within 7 (seven) days of DSA's approval of the final plans all plans, cost estimates and other documents necessary to receive OPSC funding approval in the format that OPSC requires.

**3.1.8.7** The Architect shall provide District with 3A Diagrams in the format designated by the District for the Project.

### **3.1.9 Construction Contract Documents.**

As required by District, Architect shall assist District in the completion of construction documents, including, but not limited to, Advertisement for Bids,

Information for Bidders, Bid Forms (including Alternate Bids as requested by District), Bonds, General Conditions, Special Conditions, Agreement, Veteran Business Enterprise preferences, and/or affirmative action documents, if required, and any other documents reasonably required in order to obtain bids responsive to the specifications. All such documents shall be subject to the approval of District and District's counsel. At the time of delivery of the aforementioned construction documents, which shall include the final working drawings and specifications (collectively, the "Construction Documents"), Architect shall provide District with its final estimate of probable construction cost ("Final Estimate") in accordance with the estimates and procedures set forth in Paragraph 3.1.6.3

### **3.1.10 Bid Phase.**

**3.1.10.1** Upon authorization by the Governing Board of District (the "Board") to bid the Project, District with the Architect's assistance shall establish a date on which the bids will be opened (the "Bid Open Date"). The Bid Open Date shall be at least one week prior to a regularly scheduled meeting of the Board and shall be approved by the District Representative.

**3.1.10.2** Architect and the District Representative shall agree on the date the Notice Inviting Bids is to be first published in a newspaper as required by law. Any inquiries regarding crafts and trades will be referred to Architect for resolution

**3.1.10.3** Architect, after consultation with the District, shall prepare the necessary bidding information and the form of the Contract Documents as provided for in paragraph 3.1.9 hereof. These shall be prepared for review by District's attorney, and shall be available for such legal review at least two weeks prior to need for their utilization. Architect shall make such changes as are recommended by District or District's attorney. Architect shall provide the District Representative with a typed Notice Inviting Bids suitable for publication. Said notice shall be complete and shall incorporate to the best of Architect's ability the most recent changes in any laws pertaining to competitive bidding by school districts. District will publish said notice in a newspaper or newspapers as required by law prior to the Bid Open Date once a week for a minimum of two weeks, commencing at least fifteen (15) days prior to the Bid Open Date.

**3.1.10.4** Architect shall provide a complete Bid Set to the District Representative and other bid documents prepared by Architect at least ten (10) business days prior to the date selected as the first day of publication of the Notice Inviting Bids; provided that the District Representative may waive this time limit. Upon approval of the District Representative, additional Bid Sets will be provided at the cost of the District. Architect shall make his best effort to revise the Bid Set to comply with any changes in the applicable laws.

**3.1.10.5** Architect shall assist District in making the Bid Set available for review by potential bidders. The Bid Set shall clearly specify the terms on which the Bid

Set may be checked out by potential bidders, the amount of money deposits for checking out the Bid Set and the terms on which money deposits for the Bid Set will be forfeited to District. Architect shall aggressively market the Project, in addition to newspaper notice to advise potential bidders, whom Architect knows to be responsive and responsible Contractors, of the Notice Inviting Bids for the District's Project for maximum bidder interest.

**3.1.10.6** Architect shall include the date of any pre-bid meeting in the Notice Inviting Bids and advise whether it is mandatory attendance. The Notice Inviting Bids shall specify whether the prebid meeting is to be held at District's Facilities and Planning Office, the Project site or an alternate site. Architect shall conduct the prebid meeting and shall be responsible for distributing any Addendum clarifications and interpretations created by the pre-bid meeting. Architect shall take minutes of the prebid meeting and deliver said minutes to the District Representative.

**3.1.10.7** District Representative shall conduct the bid opening. Architect shall attend the bid opening and prepare a table or schedule showing:

- 3.1.10.7.1** The names of the Contractors who have inspected or received the Bid Set and any Addendum thereto. If a bidder has not inspected or received the Bid Set or any such Addendum, Architect shall so note.
- 3.1.10.7.2** Receipt or nonreceipt of the ten percent (10%) Bid Bond.
- 3.1.10.7.3** Receipt or nonreceipt of the List of Subcontractors submitted by the bidder.
- 3.1.10.7.4** Receipt or nonreceipt of the Non-Collusion Affidavit submitted by the bidder.
- 3.1.10.7.5** Receipt or nonreceipt of Disabled Veteran Business Enterprise Certification forms, if required by existing law or directed by District.
- 3.1.10.7.6** The amount of the base bid.
- 3.1.10.7.7** The amount of each alternative bid.
- 3.1.10.7.8** A roster of all persons who attended the bid opening and the capacity in which they attended.
- 3.1.10.7.9** Receipt or nonreceipt of fingerprinting certification.

**3.1.10.8** After the bids are opened, Architect shall verify that the bids are in order prior to the District reading the amount of the bids. Any irregularities shall be



recorded by Architect in the minutes of the bid opening. Prior to the next meeting of the Board, Architect shall verify the validity of the General Contractor's bid proposal, License and Bond. After the Board accepts the successful bidder and the contract is signed, the District Representative will be responsible for returning the Bid Bonds to the bidders.

**3.1.10.9** Within such time as the District Representative shall specify, Architect shall call a meeting with the successful bidder, the District Representative, and Architect for the purpose of obtaining Payment and Performance Bonds and executing the Contract Documents. The meeting shall be held at the District's Facilities and Planning Office. Architect shall assemble and have present all documents necessary for distribution and signing at this meeting. Architect shall conduct the meeting. Architect shall be prepared to explain the construction administration procedures at the meeting. Architect shall be prepared to distribute a Notice to Proceed at this meeting. Architect shall supervise the signing of the Contract Documents at this meeting.

**3.1.10.10** "Contract Documents" means the following:

- 3.1.10.10.1** Specifications (execution copies).
- 3.1.10.10.2** Plans (execution copies).
- 3.1.10.10.3** Addenda (execution copies).
- 3.1.10.10.4** Bid Documents (Notice Inviting Bids, Instructions to Bidders, Completed Bid Form, Bid Bond, List of Subcontractors, Non Collusion Affidavit and Fingerprinting Certification).
- 3.1.10.10.5** Construction Contract, including the Agreement, the general conditions, any supplemental conditions, any special conditions, and any Addenda (execution copies) (hereinafter "the Contract").
- 3.1.10.10.6** Fully executed and completed Performance Bond.
- 3.1.10.10.7** Fully executed and completed Payment and Materials Bond.
- 3.1.10.10.8** Insurance Certificates and Policies showing that the Contractor has obtained all the insurance required by the Contract.
- 3.1.10.10.9** And such further documents as Architect and District Representative may recommend and approve.

**3.1.10.11** District shall provide a notary public at the signing, but Architect shall be responsible, with the District's assistance, for determining that all documents requiring a notary's signature have been notarized before the signatories leave the meeting.

**3.1.10.12** Architect shall provide five (5) original sets of Contract Documents in bound form to be distributed as follows: two to the District Representative, one to the inspector of record, one to the Contractor and one to the Architect. Architect shall be responsible for confirming that each original set and each copy of the Contract Documents is identical at no cost to District.

**3.1.10.13** If the lowest responsive and reasonable bid on the Project exceeds the Project budget as established in Attachment B, District may request Architect to amend the final drawings and specifications to rebid the Project so that bids are within budget.

**3.1.11 Examination of Project.**

Examination of the work executed from the final working drawings and specifications shall be in person by Project Architect provided that District may, in its discretion, consent to such examination by another competent representative of Architect.

**3.1.12 Construction of Project.**

Architect shall provide general administration of the Construction Documents, including the following:

**3.1.12.1** Deliver the Notice to Proceed to the Contractor at the Contract signing meeting unless there is good cause not to do so. If necessary, the meeting may be continued until the Contract Documents are in order. The Notice to Proceed should specify the start date, the start time and the completion date.

**3.1.12.2** Hold a preconstruction meeting as soon as practicable after service of the Notice to Proceed. Architect shall keep minutes of the pre-construction meeting and send a copy of the minutes to the District Representative and the Contractor. The Contract signing meeting and the pre-construction meeting may be held on the same day.

**3.1.12.3** Take minutes of the pre-construction meeting and prepare an agenda for the pre-construction meeting.

**3.1.12.4** Site visits, as often as necessary and appropriate to the stage of construction, including a minimum weekly visit at the site unless found unnecessary by the District, but at least to observe contractor's work for general conformance with the plans and specifications and to

confirm work is progressing in accordance with the Construction Documents and contractor's schedule.

- 3.1.12.4.1** Architect shall provide technical direction to the Inspector of Record (IOR) employed by and responsible to the District as required by applicable law. The Architect will periodically receive copies of the daily reports of the IOR and will make comments and take action as necessary.
- 3.1.12.5** Site visits to communicate and observe the activities of the Project Inspector of Record, mutually acceptable to Architect and District, and employed by District. Architect shall direct the Inspector and/or contractor and coordinate in the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.
- 3.1.12.6** Cause engineers and other consultants, as may be hired by Architect pursuant to paragraph 3.1.3 and subparagraphs of this article, to make site visits to observe the work in progress under their engineering disciplines as required, and approve and review all test results for general conformance with the original approved documents for their portion of the Project.
- 3.1.12.7** Make regular reports as may be required by the applicable federal, state, regional, or local agencies.
- 3.1.12.8** Attend all construction meetings, take minutes of this meeting and provide written reports as well as minutes to District after each construction meeting to keep District informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the work, but no less than once per week.
- 3.1.12.9** Make written reports to District as necessary to inform District of problems arising during construction, changes contemplated as a result of each such problem, and progress of work.
- 3.1.12.10** Keep records of construction progress and time schedules and advise contractor and District of any deviations from the time schedule which could delay timely completion of Project.
- 3.1.12.11** Check and process, in a timely manner, all required material and test reports and report to the Division of the State Architect, the contractor, and District any deficiencies in material as reflected by those reports, with recommendation for correction of such deficiencies.

- 3.1.12.12 Review and respond to all schedules, submittals, shop drawings, samples, information requests, and other submissions of the contractor and subcontractors for compliance with design and specifications and General Conditions, in a timely manner so as to not interrupt progress of the work. Architect is to maintain RFI log, RFP log, and submittal log and review them at each site meeting.
- 3.1.12.13 Promptly reject, after discussing with District Representative, work or materials that do not conform to the Construction Documents and notify District of such rejection.
- 3.1.12.14 Consult with District, in a timely manner, with regard to substitution of materials, equipment, and laboratory reports thereof prior to the final approvals of such substitutions by District in writing.
- 3.1.12.15 Architect's responsibility shall include the preparation of all documents and/or drawings made necessary by errors and omissions in the originally approved drawings or specifications and such modifications therein as may be necessary to meet unanticipated conditions encountered during construction, at no additional expense to District. The District's approval, acceptance, use of, or payment for all or any part of the Architect's services hereunder or the Project itself shall in no way diminish or limit the Architect's obligations and liabilities or the District's rights.
- 3.1.12.16 All Project related correspondence either initiated by Architect to Contractor or Contractor to Architect shall be copied to the District.
- 3.1.12.17 Evaluate and notify District, in a timely manner and in writing, of any change requests, material change or changes, requested or necessary, in the plans and specifications of the Project. (Written notification may be by way of providing a copy of any such request.)
- 3.1.12.18 Architect shall prepare Change Orders along with any related plans, specifications, drawings and other documents needed to comply with the Construction Contract.
- 3.1.12.19 Change Orders and related documentation pertaining to Change Orders shall be submitted by Architect to the District Representative in accordance with provided schedule. Change Orders shall specify:
  - 3.1.12.19.1 All items agreed to by the Contractor, any additional time allowed, the actual or anticipated date of completion and the agreed cost.
  - 3.1.12.19.2 Cost items shall be verified for accuracy and reasonableness.

- 3.1.12.19.3 Time extensions shall be reviewed by the Inspector.
  - 3.1.12.19.4 Signature blocks shall be completed.
  - 3.1.12.19.5 The Change Order shall be signed by the Contractor.
  - 3.1.12.19.6 Architect and any consultants retained by Architect with responsibility for any item in the Change Order shall indicate their approval of the Change Order by signing it. If they disapprove of the Change Order, they should submit a written explanation for their disapproval.
- 3.1.12.20 In addition to the obligations previously set forth in this Agreement, after the Board approves a Change Order, Architect shall, within five (5) business days after Board approval, **submit** the Change Order as approved by the Board to DSA. If, at the time of performance, the requirements of DSA or other agency with jurisdictional authority is inconsistent with submittal as provided herein, Architect is responsible for complying with these requirements unless specifically directed otherwise by the District Representative.
- 3.1.12.21 Examine, verify, and approve the Contractor's notarized applications for payment and issue certificates for payment for work and materials approved by the Inspector which reflect Architect's recommendation, if any, as to any amount which should be retained or deducted from those payments under the terms of the Construction Documents, by operation of law, or for some other reason.
- 3.1.12.22 Coordinate and recommend color selection with District's original design concept for District approval in a timely manner and coordinate product selection in accordance with specification requirements.
- 3.1.12.23 Determine date of completion.
- 3.1.12.24 After being notified the Project is nearing completion, Architect shall inspect the Project and review the punch-list prepared by the contractor, including minor items ("punch-list items"). The Punch List shall list all observed items remaining to be completed or corrected. Architect shall review and revise the list as necessary and shall advise the District Representative in writing of any defects, omissions, errors or changes that need to be made to the Architect's Punch List. Architect shall notify contractor in writing that all deficiencies and punch-list items must be corrected prior to acceptance of the Project and final payment.

**3.1.12.25** Review materials assembled by the Contractor and assemble for and provide to District written warranties, guarantees, owners' manuals, instruction books, diagrams, record drawings ("as-builts"), and any other materials required from the Contractors and subcontractors in accordance with the Construction Documents.

**3.1.12.26 Notice of Completion and Final Payment.**

**3.1.12.26.1** The District Representative shall see that approval of final payment (including payment of the retainage) and approval of the Notice of Completion is placed on the agenda for the Board's regularly scheduled meeting after receipt from Architect of the Certificate for Final Payment and the execution copy of the Notice of Completion.

**3.1.12.26.2** District will file the approved Notice of Completion with the County Recorder within the statutory period from the date of the Board's acceptance of the project. The District will send a filed and stamped copy of the Notice of Completion to the Architect.

**3.1.12.27 Release of Final Payment and Retention**

**3.1.12.27.1** Within 35 days after the Notice of Completion is filed, Architect shall make sure the following has been completed and final payment and payment of the remaining retainage is warranted:

**3.1.12.27.2** The Contractor has provided all guarantees and warranties as required by the Contract.

**3.1.12.27.3** The Contractor has provided all Operation Manuals to the District Representative as required by the Contract.

**3.1.12.27.4** DSA and all other agencies with jurisdictional authority have received all reports and given all approvals required by law for the Project.

**3.1.12.27.5** Architect has submitted verified "record drawings" plans to the District Representative.

**3.1.12.27.6** Architect has verified to the best of Architect's ability all certificates and documents required by law, OPSC, DSA, CDE, this Agreement, and the Contract Documents are on file with the District

Representative. The Architect has verified completion of the punch list items.

**3.1.12.27.7** Architect shall represent in writing that all of the above has been completed and final payment, including payment of the retainage, is due and payable specifying the date when the payment is due. If Architect cannot so certify, he shall submit a detailed explanation to the District Representative explaining what needs to be done and why and, giving his best estimate, as to when final payment may be released. If final payment has been delayed for any reason, Architect shall immediately notify the District Representative in writing when there is no longer any reason to delay final payment.

**3.1.12.27.8** The Contractor has provided all in-service training to District personnel.

**3.1.12.28** Cause engineers and other consultants, as may be hired by Architect pursuant to paragraph 3.1.3 and subparagraphs of this article, to file required documentation with governmental authorities necessary to close out the Project.

**3.1.12.29 District Wants Drawings.**

**3.1.12.29.1** Not later than 30 days after completion of construction, and before receipt of final payment, Architect shall direct record drawings be prepared by the General Contractor, signed by the Inspector of Record (IOR) and the General Contractor and delivered to the District. Record drawings will show, among other things, the location of all concealed pipe, buried conduit runs, and other similar elements within the completed Project. Architect shall personally review the drawings for completeness and correct representation of the information supplied by the Inspector and the contractor and shall obtain the certificate of the Inspector and the contractor that the drawings are correct.

**3.1.12.29.2** On approval by District Representative of the completed record drawings, Architect shall forward to District the complete set of reproducible duplicates of the original drawings corrected to "record" condition. The tracing shall be of such quality that

clear and legible prints may be made without appreciable and objectionable loss of detail.

**3.1.12.29.3** Prior to the receipt of Architect's final payment, Architect shall forward to District one clear and legible set of reproductions of the computations, the original copy of the specifications, the record drawings, the final verified progress report pursuant to Title 21 of the California Code of Regulations, and Architect's Certificate of Completion.

**3.1.12.30 Guarantee Period.**

**3.1.12.30.1** Architect shall provide advice to District on apparent deficiencies in construction during warranty period following acceptance of work.

**3.1.12.30.2** Architect, as part of his basic professional services, will attempt to resolve to the satisfaction of District apparent deficiencies in construction following the acceptance of the work and prior to the expiration of the one-year General Construction Contract guarantee period of the Project. Architect shall conduct a final one-year quality inspection walk-through with District, IOR and Contractor to ascertain that all warranty items are completed.

**3.2 Additional Services of Architect.**

At District's request, Architect may be asked to perform services not otherwise included in this Agreement and/or services not customarily furnished in accordance with generally accepted architectural practice. District may agree to pay Architect for such services, pursuant to paragraph 7.4 and subparagraphs hereof, if such services cause Architect additional expense and are necessitated due to unusual circumstances and through no fault or neglect on the part of Architect. No additional compensation shall be paid to Architect for performing such services unless District and Architect agree in writing as to the amount of compensation for such services prior to such services being rendered. Such services may include, but shall not be limited to:

**3.2.1** Plan preparation and/or administration of work on portions of the Project separately bid.

**3.2.2** Assistance to District, if requested for the selection of moveable furniture, equipment, or articles which are not included in Construction Documents.

**3.2.3** Services caused by delinquency, default, or insolvency of contractor or by major defects in the work of the contractor in the performance of the construction



contract, provided that any such services made necessary by the failure of Architect to detect and report such matters earlier shall not be compensated.

- 3.2.4 Revisions in drawings, specifications, or other documents when such revisions are inconsistent with written approvals or instructions previously given and due to causes beyond the control of Architect.
- 3.2.5 Serving as an expert witness on District's behalf.
- 3.2.6 Observation of repair of damages to structure.
- 3.2.7 Additional work required for environmental conditions, i.e., asbestos, unforeseen site conditions.
- 3.2.8 The hiring if required by the District of the following consultants: energy, traffic, cost estimating, acoustical, technology, and traffic. Fees for such services shall be determined on a not to exceed basis and approved by the District in writing.

#### **ARTICLE 4. DISTRICT RESPONSIBILITIES.**

District's responsibilities shall include the following:

- 4.1 Make available to Architect all necessary data and information concerning the purpose and requirements of the Project, including realistic scheduling and budget limitations.
- 4.2 Depending upon the scope of the Project, furnish Architect with a survey of the Project site preparation by a registered surveyor or civil engineer and any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information. District shall also provide a soils investigation report and a geological report, if required by law, and may provide these, or other, reports at the District's option.
- 4.3 Appoint and pay, upon mutual agreement with Architect, an Inspector of Record as provided by state law. Said Inspector shall be qualified and approved by Architect and by the Division of State Architect, shall be under direction of Architect, and shall be responsible to, and act in accordance with the policies of, District. The administration by Architect and its engineers shall be in addition to the continuous personal supervision of the Inspector.
- 4.4 Assist Architect in the distribution of plans to bidders and conduct the opening of bids on the Project, if applicable.
- 4.5 When requested by the Architect, District will pay for chemical, mechanical, or other tests required for proper design of the Project. Furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known for the proper development of the required drawings and specifications and to determine soil condition.
- 4.6 Retain a testing service for materials testing and inspection as required by Title 21 of the California Code of Regulations.

4.7 Directly pay or reimburse the payment without mark-up of all fees required by any reviewing or licensing agency.

4.8 Designate a representative authorized to act as liaison between Architect and District in the administration of this Agreement and the Project. Such person or persons shall assist Architect in making inspections and preparing the list of deficiencies required by paragraph 3.1.12.24 hereof, and accompany Architect and the Contractor on the final inspection.

4.9 Review all documents submitted by Architect, including change orders and other matters requiring District's Governing Board approval or approval of District officials. Advise Architect of decisions pertaining to such documents within a reasonable time after submission.

4.10 Notify Architect if any deficiencies in material or workmanship become apparent during contractor's warranty period.

## **ARTICLE 5. PROJECT CONSTRUCTION COST.**

5.1 Project construction cost as used in this Agreement means the total cost to the District of all work designed or specified by Architect, including work covered by approved change orders and/or alternates, but excluding the following: any payments to Architect or consultants for costs of inspections, surveys, tests and sites, and landscaping not included in Project.

5.2 When labor or material is furnished by the District below its market cost, the Project construction cost shall be based upon current market cost of labor and new material.

5.3 The Project construction cost shall be the acceptable estimate of construction costs to the District as submitted by Architect until such time as bids have been received, whereupon it shall be the construction contract amount.

## **ARTICLE 6. ESTIMATE OF PROJECT CONSTRUCTION COSTS.**

6.1 If a Project budget is set forth in Article 1 or thereafter established by the District, Architect shall review the estimate at each phase of his services. If such estimates are in excess of the Project budget, Architect shall revise the type or quality of construction to come within the budgeted limit.

6.2 Construction cost estimates are to be determined at each phase. Said estimates shall be a detailed breakdown of costs based upon materials and schedule. The Architect shall provide a list of bid alternates for the Project. The total dollar amount of the list must be greater than the difference between estimate and the budget and must include suggestions from all professional consultants. Prior to District letting the Project for bidding, Architect shall prepare for no additional compensation design changes as requested by District to meet budget requirements of the project or to meet education specifications. If Educational Specification requirements have changed since design development approval in writing by District, then such changes shall be considered extra services subject to an agreed fixed amount.

## **ARTICLE 7. ARCHITECT'S COMPENSATION.**

### **7.1 Basic Services.**

Architect is to design the Project within the budget as Attachment B indicates or other allowance established by District, under basic services ("Basic Services"). Basic Services shall be those defined in paragraphs 3.1 through 3.1.12.30 (all 3.1 subparagraphs). Each portion of the Project let separately on a segregated bid basis shall be considered a separate project for purposes of determining the fee. Compensation for the performance of all services rendered herein by Architect shall be in accordance with Attachment C.

### **7.2 Change Orders.**

The total cost of the Project shall be adjusted to reflect District agreed upon Change Orders so that Architect receives extra compensation in accordance with the Agreement when the Change Order results in an increase in total cost (and was not the result of errors and omissions) and a reduction in compensation when Change Orders result in a decrease in the total cost and where either required to meet the budget or were an error and omission of the Architect.

### **7.3 Complete Payment.**

District shall pay to Architect, for the performance of all services rendered herein, the amount specified on Attachment C incorporated herein by reference, which constitutes complete payment for Architect's services under this Agreement.

### **7.4 Payment for Additional Services.**

Architect shall be paid for additional services not originally contemplated by the parties to this Agreement as follows, provided the additional services have received advance written approval by the District

**7.4.1** Five percent of the cost of furnishings, equipment, or other articles incorporated in the Construction Documents by Architect and not included in the cost of the work, as defined in Attachment C.

**7.4.2** For services in addition to the basic services of Architect set forth in Article 3 hereof, a fee to be agreed upon by the parties in writing prior to performance of such services by Architect, which fee may be a flat amount or Architect's standard hourly rates.

**7.4.3** Special consultants, prior approval of which is required, shall be paid a fee to be agreed upon by the parties in writing prior to performance of such services, which fee may be a flat amount or standard hourly rates. Special consultants do not include the engineers and consultants hired pursuant to section 3.1.3 and noted as basic professional services.

## **7.5 Reimbursable Expenses.**

Reimbursable expenses are in addition to compensation for basic and additional services (as set forth in Article 3 and paragraph 7.4 and subparagraphs above) and include actual expenses incurred by Architect and Architect's employees and consultants in the interest of the Project, as identified in the following clauses:

- 7.5.1 Expense of written preauthorized transportation, excluding ordinary mileage normally incurred, in connection with the Project.
- 7.5.2 Expenses in connection with written preauthorized out-of-town travel.
- 7.5.3 Fees paid at cost for securing approval of authorities having jurisdiction over the Project.
- 7.5.4 Expenses of reproductions of drawings and specifications, as authorized herein.
- 7.5.5 Other costs/expenses preauthorized by District.

## **ARTICLE 8. PAYMENTS TO ARCHITECT.**

8.1 Architect's compensation shall be paid by District to Architect monthly, incrementally, based upon the percentage of work completed, and as appropriate, in accordance with normal phasing and funding schedule, or such other schedule as may be established by the District.

8.2 In order to receive payment, Architect shall present to District a claim for payment for approval by District's authorized representative, which claim shall designate services performed, percentage of work completed or actual work completed depending upon fee arrangement, method of computation of amount payable, and amount to be paid.

8.3 Payments made for extra work or special services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the parties shall specify when such services are agreed upon.

8.4 Upon cancellation or termination of this Agreement, Architect shall be compensated as set forth in Article 11 hereof.

8.5 Final payment to Architect shall be made by the District after the Notice of Completion is approved by the Board. However, this payment shall not exclude Architect from continuing to provide services to resolve outstanding punch list items and warranty items.

8.6 Architect's compensation shall be payable as follows:

- 8.6.1 Ten percent (10%) of the total fee shall be due upon approval of the schematic site plan.
- 8.6.2 The amount due shall be increased to twenty-five percent (25%) of the total fee upon approval of the preliminary plans consisting of site plan, floor plans,

architectural cross sections of the buildings and interior and exterior elevations of the buildings.

**8.6.3** The amount due shall be increased to fifty percent (50%) of the total fee at fifty percent (50%) completion of the bidding documents.

**8.6.4** The amount due shall be increased to seventy percent (70%) of the total fee upon submission of the bidding documents to the Division of the State Architect for review.

**8.6.5** The amount shall be increased to seventy-five percent (75%) of the total fee upon approval of the bidding documents by the Division of the State Architect and the District.

**8.6.6** The amount due shall be increased to eighty percent (80%) of the total fee upon acceptance of the bid.

**8.6.7** The remaining twenty percent (20%) of the fee shall be prorated based upon the percentage of the construction, which has been completed and shall be billable on a monthly basis. Final payment to the Architect, less any errors, omissions and compensations due the District, shall be made by the District after the Notice of Completion is approved by the Board. However, this payment shall not exclude the Architect from continuing to provide services to resolve outstanding punch list items.

**8.6.8** When more than one contract is issued the percentage of the fee due shall be calculated on the point of completion of each separate contract.

**8.6.9** The estimated cost of the project shall be used to calculate the fee until the District accepts the bid for a contract, at which time the actual contract amount shall be used to calculate the fee and the fee shall be adjusted to reflect the actual contract amount and the estimates.

**8.6.10** Reasonable expenses, without markup for reproduction, postage and handling of drawings and specifications.

## **8.7 Times of Payment.**

Payments under this Agreement shall be as follows:

**8.7.1** Following the District's written authorization to proceed with the work required under this Agreement, the Architect will submit a monthly billing statement to the District for services rendered.

**8.7.2** The District will review each of the Architect's statements, and, within thirty (30) days of receipt of the Architect's statement, the District will submit a warrant to the Stanislaus County Office of Education requesting that payment be made to the Architect for the amount of the approved statement.

## **ARTICLE 9. INSTRUCTIONS TO PROCEED.**

Architect is not to proceed with performance of any services under this Agreement without first securing written authorization from District to do so.

## **ARTICLE 10. TIME SCHEDULE.**

**10.1** Architect shall perform all services hereunder as expeditiously as is consistent with professional skill and care and the orderly progress of the work. Upon request of District, Architect shall prepare an estimated time schedule for the performance of Architect's services, to be adjusted as the Project proceeds. Such schedule shall include allowances for periods of time required for District's review and approval of submissions and for approvals of authorities having jurisdiction over Project approval and for funding. The schedule shall not be exceeded by Architect, without the prior written approval of District.

**10.2** Any delays in Architect's work because of the actions of District or its employees, those in direct contractual relationship with District, by a governmental agency having jurisdiction over the Project, or by an act of God or other unforeseen occurrence, not due to any fault or negligence on the part of Architect, shall be added to the time for completion of any obligations of Architect.

**10.3** Should Architect make an application for an extension of time, Architect shall submit evidence that the insurance policies required by Article 15 remain in effect during the requested additional period of time.

## **ARTICLE 11. SUSPENSION, ABANDONMENT, TERMINATION.**

**11.1** District 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, Architect shall be paid pursuant to the schedule of payments set forth in Articles 7 and 8 of the Agreement for services rendered up to the date of such suspension, abandonment, or termination, less any damages suffered by District as a result of the default, if any, by Architect. Architect hereby expressly waives any and all claims for damages or compensation arising under this Contract, except as set forth herein, in the event of such suspension, abandonment, or termination.

**11.2** If Architect's services are suspended by District, District may require Architect to resume services within ninety (90) days after written notice from District.

**11.3** Upon suspension, abandonment, or termination, Architect shall, if requested by District, turn over to District all preliminary studies, sketches, working drawings, specifications, computations, and all other matters to which District would have been entitled at the completion of Architect's services. Upon payment of the amount required to be paid under this article following the termination of this Agreement, District shall have the right to use any completed contract documents or other work product prepared by Architect under this Agreement for the original project for which they were intended and not for other or subsequent reuses on other sites. Architect shall make such documents available to District upon request and without additional compensation.

## **ARTICLE 12. OWNERSHIP AND USE OF DOCUMENTS.**

**12.1** Pursuant to Education Code section 17316, all plans, specifications, and estimates prepared pursuant to this Agreement shall be and remain the property of District. Such drawings and specifications supplied as herein required shall be the property of District whether or not the work for which they were made is executed.

## **ARTICLE 13. INDEMNITY.**

Architect shall indemnify and hold harmless District, District's Governing Board, each member of the Board, and District's officers, and employees from any and all claims, liability, causes of action, damages and expenses of any kind (including reasonable attorney's fees) to the extent of arising out of the intentional or negligent acts, errors, or omissions of Architect, its subcontractors, consultants, or employees in the performance of this Contract. District shall indemnify and hold harmless Architect, its officers, and employees from any and all claims of any kind arising out of the negligent acts, errors, or omissions of the District, its officers, or employees in the performance of this Contract.

## **ARTICLE 14. ERRORS AND OMISSIONS.**

Architect shall be liable for damages and costs incurred by, and any claims against, District that result from Architect's negligence in the performance of this Agreement as provided by California law. Additionally, Architect shall not be paid a fee for work required due to Architect's negligence or the negligence of Architect's subcontractors, consultants, and/or employees in the performance of services under this Agreement.

## **ARTICLE 15. INSURANCE.**

Architect shall maintain in full force and effect, at its sole cost and expense, from the time this Agreement is entered into until the date of acceptance of the work by District, insurance as set forth in this article. All insurance provided for under this article shall be with a carrier satisfactory to District. Prior to commencement of work, Architect shall furnish to District a certificate of insurance evidencing the required coverage. District shall not be obligated to make any payment to Architect until after its receipt and acceptance of said certificate.

**15.1** Workers' compensation insurance as required by applicable laws, and employer's liability insurance, with a limit of not less than \$1,000,000.

**15.2** Commercial general liability insurance for bodily injury and property damage liability, the limits of which shall not be less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Commercial general liability policies obtained and maintained by Architect shall contain endorsements naming District and other interested parties, who have insurable interests and who are designated by District, as additional insureds and shall include products' completed coverage and operations coverage as well as contractual liability coverage for liability assumed by Architect under this Agreement. Auto liability insurance covering motor vehicles shall be in an amount not less than \$500,000 combines single limit. Policies under this section shall be endorsed to name the District as an additional insured.

**15.3** Architect shall procure and maintain professional liability insurance (errors and omissions insurance) in the amount of \$1,000,000 for protection from claims arising out of the performance of professional services caused by a negligent error, omission or act for which the insured is legally liable. Architect will likewise require the consultants to carry the same insurance package. It will be Architect's responsibility to require the carrier to deliver certificates to the District. The obligation to maintain professional liability insurance coverage shall survive termination of this Agreement. Architect is liable for the entire cost of the insurance required by this Agreement.

All insurance required above shall be purchased from an insurance company licensed and admitted in California. Each policy of insurance shall state that the policy is primary and any insurance carried by District is excess and non-contributory; shall state that not less than thirty (30) days' written notice shall be given to District prior to cancellation, except for Professional Liability policy, and shall waive all rights of subrogation. Architect shall deliver to District certificates of insurance and endorsement as evidence of compliance with the requirements herein.

In the event that Architect subcontracts any portion of Architect's duties, Architect shall require any such subcontractor to purchase and maintain insurance coverage for the types of insurances referenced above, in the amounts which are appropriate with respect to that subcontractor's part of work, which shall in no event be less than five hundred thousand dollars (\$500,000.00) per occurrence.

#### **ARTICLE 16. RECORDS.**

Architect shall maintain records of direct personnel and reimbursable expenses pertaining to the extra and special services of the Project that are compensable by other than a flat rate. Architect shall maintain all records of accounts between District and Architect on a generally recognized accounting basis. Such records shall be available to District or its authorized representative for inspection or audit at any reasonable time. Architect shall maintain all records concerning the Project for a period of three years after its completion.

#### **ARTICLE 17. STANDARDIZED MANUFACTURED ITEMS.**

Architect shall cooperate and consult with District in use and selection of manufactured items on the Project, including, but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials, and floor coverings. All such manufactured items shall be standardized to District's criteria to the extent such criteria do not interfere with Project design.

#### **ARTICLE 18. LIMITATION OF AGREEMENT.**

This Agreement is limited to and includes only the work included in the Project described above and as determined at the time the design development documents prepared pursuant to paragraph 3.1.6 and subparagraphs are approved, unless this Agreement is amended by the parties to include additional work as part of the Project. Any subsequent construction at the site of the Project, or at



any other site in District, will be covered by, and be the subject of, a separate Agreement for architectural services between District and Architect chosen therefor by District.

#### **ARTICLE 19. MEDIATION.**

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the parties hereto. The parties shall select a disinterested third person mediator within a reasonable period of time, mutually agreed to by the parties. The mediation shall be commenced within 30 days of the selection of the mediator. If the parties elect to mediate but fail to select a mediator within a 15-day period, any party may petition the Superior Court of Stanislaus County to appoint the mediator.

#### **ARTICLE 20. COMPLIANCE WITH THE LAWS.**

Architect shall exercise due professional care so that Architect's work shall comply with and meet applicable requirements of federal, state, regional, or local law, including, but not limited to, the Uniform Building Code, the Education Code, Title 19, Title 21 and Title 24 of the California Code of Regulations, and all requirements prescribed by the California Department of General Services.

#### **ARTICLE 21. INDEPENDENT CONTRACTOR.**

Architect is, for all purposes arising out of this Agreement, an independent contractor, and neither Architect nor its subcontractors, consultants, or employees shall be deemed an employee of District for any purpose. It is expressly understood and agreed that Architect shall in no event be entitled to any benefits to which District employees are entitled, including, but not limited to, overtime, retirement benefits, insurance, vacation, worker's compensation benefits, sick or injury leave, or other benefits.

#### **ARTICLE 22. SUCCESSORS IN INTEREST AND ASSIGNS.**

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

#### **ARTICLE 23. ASBESTOS CERTIFICATION.**

Architect shall verify to the best of its information pursuant to 40 Code Federal Regulation, section 763.99(a)(7), that no asbestos-containing material was specified as a building material in any construction document for the Project and will require that contractors provide District with certification that all materials used in the construction of any school building are free from any asbestos containing building materials ("ACBMs"). Architect shall include statements in specifications that materials containing asbestos are not to be included. This certification shall be part of the final Project submittal.

## **ARTICLE 24. FINGERPRINTING CERTIFICATION.**

California Education Code section 45125.2 requires entities providing construction services to the District to ensure the safety of pupils where employees of the entity or subcontractors will have contact with pupils. Therefore, Contractor shall certify that methods are being undertaken to ensure the pupils' safety. Certification must be accomplished by completing the "Declaration Regarding Employee Fingerprinting and Criminal Background Check." A certification form is available from the Facilities and Planning Office at the District.

## **ARTICLE 25. NO RIGHTS IN THIRD PARTIES.**

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

## **ARTICLE 26. MISCELLANEOUS.**

The following terms and conditions shall be applied to this Agreement:

### **26.1 Governing Law.**

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California.

### **26.2 Entire Agreement.**

This Agreement with its exhibits supersedes any and all other prior or contemporaneous oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises, or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.

### **26.3 Severability.**

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

### **26.4 Non-Waiver.**

None of the provisions of this Agreement shall be considered waived by either party unless such waiver is specifically specified in writing.

### **26.5 Business Day.**

"Business day" as used herein means any day the District Office is open to the public.

### **26.6 Supplemental Conditions.**

Any supplemental conditions shall be attached as an exhibit to this Agreement and incorporated by reference.

**IN WITNESS WHEREOF**, the parties have caused this instrument to be duly executed this 22nd day of December, 2008.

**ARCHITECT**

Michael Rainforth-  
Jeffrey Grau-Architects  
A Professional Corporation

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

Michael Rainforth  
Principal Architect  
Licence number C8289

**DISTRICT**

Tracy Unified School District

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

Casey Goodall  
Associate Superintendent, Business Services

**ATTACHMENT A TO AGREEMENT BETWEEN  
TRACY UNIFIED SCHOOL DISTRICT AND  
RAINFORTH GRAU ARCHITECTS**

**PROJECT DESCRIPTION**

This Project will repair, renovate, modernize or reconstruct facilities that no longer fulfil their intended purposes, are unsightly and/or require continuing maintenance that is no longer cost effective or any facility that is expected to no longer fulfill its purpose in the next five years. The scope of work is expected to include general up-grading of classrooms, replacement of aging roofing systems, replacement of old heating and cooling and ventilation systems with energy-efficient systems, replacement and up-grading of electrical systems, improvement of security and technology systems increasing student safety and access to computers and such work discovered to be in the interests of the long term use of these buildings.

To be initialed by the parties:



\_\_\_\_\_  
ARCHITECT

\_\_\_\_\_  
DISTRICT

Michael Rainforth  
Principal Architect  
Licence number C8289

Casey Goodall  
Associate Superintendent, Business Services  
Tracy Unified School District

**ATTACHMENT B TO AGREEMENT BETWEEN  
TRACY UNIFIED SCHOOL DISTRICT AND  
RAINFORTH GRAU ARCHITECTS**

**BUDGET FOR PROJECT**

Project Budget Based on Cost Estimate of \$6,160,000

**PROJECT COSTS:**

Modernization:	\$ 5,650,000
Contingency:	<u>\$ 630,000</u>
Construction Total:	\$ 6,280,000
Soft Costs:	<u>\$ 2,690,000</u>
<b>TOTAL PROJECT COSTS:</b>	<u><b>\$ 8,970,000</b></u>

To be initialed by the parties:

  
\_\_\_\_\_  
ARCHITECT

\_\_\_\_\_  
DISTRICT

Michael Rainforth  
Principal Architect  
Licence number C8289

Casey Goodall  
Associate Superintendent, Business Services  
Tracy Unified School District

**ATTACHMENT C TO AGREEMENT BETWEEN  
TRACY UNIFIED SCHOOL DISTRICT AND  
RAINFORTH GRAU ARCHITECTS**

**Fee Schedule Based upon the Actual Construction Cost: \$6,280,000**

\$0	Through	\$1,000,000	12.0%
\$1,000,001	Through	\$2,000,000	11.5%
\$2,000,001	Through	\$4,000,000	11.0%
\$4,000,001	Through	\$8,000,000	10.0%
\$8,000,001	Through	\$12,000,000	9.0%
Total Estimated Fee			\$683,000.00

**Fee Allocation/Phase Billing:**

1. Architect compensation shall be paid by the District to the Architect monthly in arrears incrementally within the phases and based upon the percentage of work completed all as described in Article 8 of the Agreement:

To be initialed by the parties:

  
\_\_\_\_\_  
ARCHITECT

Michael Rainforth  
Principal Architect  
Licence number C8289

\_\_\_\_\_  
DISTRICT

Casey Goodall  
Associate Superintendent, Business Services  
Tracy Unified School District