

**Oakland Unified School District  
Department of Facilities Planning and Management  
955 High Street Oakland CA 94601**

**REQUEST FOR QUALIFICATIONS (RFQ)**

**Design Consultant Services  
for Turf Sports Field Replacement Projects at Various School Sites  
Project Number # 25009**

March 3, 2025 (Issued)

**Responses must be received March 14, 2025, no later than 2:00 p.m.**

The Oakland Unified School District ("District") is inviting submittals from experienced firms, partnerships, corporations, associations, individuals, or professional organizations ("Consultants") to submit a Statement of Qualifications ("SOQ") for pre-qualification to provide design consultant services for various school sites ("Project"). The projects will include, but is not limited to, turf sports field replacement, along with related features and accessibility requirements. Pre-qualified firm(s) will enter into Board of Education ("BOE") approved master agreement(s) with the District.

Interested firms are invited to submit a Statement of Qualifications ("SOQ") as described herein in PDF format with a cover letter addressed to:

Oakland Unified School District  
Kenya Chatman, Executive Director of Facilities  
Department of Facilities Planning and Management  
955 High Street, Oakland, CA 94601

Oral, telegraphic, facsimile, email, or telephone SOQ submittals will not be accepted. SOQ submittals received after this date and time will not be accepted. The District reserves the right to waive any informalities or irregularities in the SOQ Submittals. The District also reserves the right to reject any and all SOQ submittals and to negotiate contract terms with one or more Respondents.

**The District will only accept a hard copy submittal along with a PDF version on a flash drive. Proposals received by the District no later than 2:00 PM (Pacific Time) on March 14, 2025 will be submitted (attention to Juanita Hunter)**

**LOCAL, SMALL LOCAL AND SMALL LOCAL RESIDENT BUSINESS ENTERPRISE PROGRAM**

**Submit a detailed narrative and strategy describing how the firm or team intends to meet or exceed the District's LBU requirements (Exhibit C - "Local Business Utilization Affirmation Worksheet").**

The Local Business Utilization Policy requires that there is a mandatory fifty percent (50%) LBU participation with a 25% or less Local Business (LBE) participation and a 25% or more Small Local or Small Local Resident Business (SLBE/SLRBE) participation for all capital program/construction-related contracts and professional services agreements.

On April 28, 2021, the Board of Education amended the Local Business Policy which had named the City of Oakland as the singular agency to certify local businesses to include five additional local business certifications. For businesses located in Oakland, Local Business and Small Local Business certifications may also be accepted from the Port of Oakland, Alameda County Transportation Commission, Alameda County Department of General Services, US Department of Transportation California Unified Certification Program, and the California Public Utilities Commission. The District will follow the City of Oakland Small Business size standards in recognizing Small Local and Small Local Resident Businesses.

For reference, the full version of OUSD’s latest Local, Small Local and Small Local Resident Business Enterprise Program can be found at the following link:

<https://www.ousd.org/facilities-planning-management/opportunities/lbu-policy>

**FULL OPPORTUNITY**

The District hereby affirmatively ensures that Disadvantaged Business Enterprises (“DBE”), Small Local Business Enterprise (“SLBE”), Small Emerging Local Business Enterprise (“SELBE”) and Disabled Veterans Business Enterprise (“DVBE”) firms shall be afforded full opportunity to submit qualifications in response to this notice and will not be discriminated against on the basis of race, color, national origin, ancestry, disability, gender, transgender status, political affiliation, or religion in any consideration leading to the award of contract. No qualified disabled person shall, on the basis of disability, be excluded from participating in, be denied the benefits of, or otherwise be subjected to discrimination in any consideration leading to the award.

**SCHEDULE OF ACTIVITIES**

Listed below is the “Schedule of Activities” which outlines pertinent dates of which firms responding to this solicitation should make themselves aware.

<b>DATE</b>	<b>ACTIVITY</b>
<b>March 3, 2025</b>	<b>RFQ Issued.</b>
March 6, 2025	Written requests for interpretation, corrections or modifications are due by 4:00 p.m. (Pacific Time)
March 10, 2025	District will provide written responses to requests for clarification.
<b>March 14, 2025</b>	<b>Proposals Due by 2:00 p.m. (Pacific Time)</b>
<b>April 23, 2025</b>	<b>Board Meeting – tentative approval of Contract</b>
April 24, 2025	Tentative Notice to Proceed issued to Consultant

## **REQUEST FOR QUALIFICATIONS AND PROPOSALS**

The Oakland Unified School District (OUSD) seeks proposals from qualified and experienced firms with deep knowledge in turf designs. Designers to provide professional design and consulting services for a field design and turf replacement project(s). The successful proposer will have extensive experience in designing complex athletic field projects, including turf installation and replacement, and a documented track record of success in delivering high-quality, durable, and sustainable field designs

Pre-qualified firm(s) will enter into Board of Education ("BOE") approved master agreement(s) with the District. Once BOE approved, firms would be requested to submit fee proposals for specific projects through the District's informal procurement process as amendments to the master agreement(s).

As the Project(s) will require reviews and approvals by DSA, pre-qualified firm(s) shall have a California licensed architect or engineer be the "Design Professional in General Responsible Charge."

### **A. BASIC SERVICES**

The Consultant agrees to provide the Services described below:

1. The Consultant shall be responsible for the professional quality and technical accuracy of all design, drawings and specifications/reports) and other services furnished by the Consultant under the Agreement as well as design and existing conditions coordination. The Consultant shall, without additional compensation, correct or revise any errors or omissions in its documents and other services.
2. The Consultant will use all due care and diligence to confirm that its documents and all other information provided by or on behalf of the District discloses and publishes any potentially relevant information that could, in any way, have an impact on a Contractor's cost of performance. The Consultant shall advise the District of the most effective methods of identifying and securing such information as part of each stage of design and construction. The Consultant shall track for District's benefit all such suggested and disclosed information.
3. **District Standards.** Consultant shall incorporate into its work and work of all Consultants the District Standards for facilities and construction of such time as they are adopted. Current District Standards have been uploaded to the shared folder with reference documents.
4. **Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided under this Agreement, upon the District's request, the Consultant, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Consultant's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation ("Mandatory Assistance").

## **B. STATEMENT OF WORK**

**The District anticipates that the typical project scope of work will include but not be limited to the following:**

### **Project Start-up / Program Validation / Concept Design**

1. Attend a project kick-off meeting with the District and confirm project intent, scope, budget and schedule.
2. Participate in setting up project coordination utilizing the District's electronic document management system, Kahua.
3. Consultant shall include topographic and utility surveys in their scope of services.
4. Review all data provided by the District including, but not limited to, site maps, design and/or as-built drawings, and historical data.
5. Conduct site visits to verify and document existing conditions.
6. Prepare and establish the electronic base for developing the proposed improvements.
7. Attend and facilitate a project meeting with the District to review the initial field designs and construction cost budgets. The agenda for the meeting would be to review collected utility information, and their relationship to the proposed field designs.
8. Refine the concept designs for the project site based on the input received at the meeting with the District.
9. Develop two (2) dimensional colored design options for the project site.
10. Attend up to six (6) community meetings per site to present and discuss the project.
11. Prior to proceeding to Design Development, meet with District staff and submit electronic copies of the Final Conceptual Designs and aligned Construction Cost Budgets for District review and approval.

### **Design Development Phase**

Documentation at Design Development shall be at an approximate 50% Construction Documentation level. Submittal to the District shall consist of, but not limited to, the following:

1. Demolition Plan
  2. Grading Layout
  3. Drainage and Utilities Layout
  4. Material Selections and Layout
  5. Planting Selections and Irrigation Layout
  6. Preliminary Construction Details
  7. Preliminary Construction Cost Estimate
- Prior to proceeding to Construction Documentation, meet with District staff and submit electronic copies of the Final Design Development Documents and aligned Construction Cost Budget for District review and approval.

### **Construction Documentation Phase**

Prior to the Construction Document/DSA Submittal Set, the CD package shall be developed to a 95% level. The 95% CD set submitted to the District shall consist of, but not limited to, the following:

1. Cover Sheet with Project and Code Information
2. Existing Conditions and Demolition Plan
3. Accessibility Plan
4. Erosion and Sedimentation Control Plan

5. Grading Plan
6. Drainage and Utility Plan
7. Layout Plan
8. Material Selections Plan
9. Construction Details
10. Technical Specifications (in CSI format)
11. Statement of Probable Construction Costs

The following services shall be included during the Construction Document Phase:

1. Provide Final Internal Redline and Review Quality Control.
2. Prior to the Construction Document/DSA Submittal Set, attend one meeting with District to review the 95% CD package and 95% Construction Cost Estimate. Receive comments and written authorization from the District to finalize set.
3. Coordinate the District's front end documents with the technical sections.
4. Prepare and submit CD/DSA plan check package and applications to DSA.
5. Prepare revisions to drawings and specifications in response to DSA plan check comments. Coordinate and attend back check appointment(s) at DSA to secure project approval. Deliver approved DSA package to the District for construction procurement purposes.

### **Bidding Assistance**

The Design Consultant shall assist the District with the following:

1. Contact potential bidders on behalf of the District.
2. Attend a pre-bid conference and site walk with prospective bidders.
3. Assist the District in responding to bidder questions with the preparation of Addendum(s).
4. Assist the District in evaluating the Bids.

### **Construction Administration**

The following services shall be included during the Construction Document Phase:

1. Attend one pre-construction coordination meeting.
2. Review shop drawings and submittals for conformance to design intent.
3. Review substitution requests and provide recommendations to the District.
4. Attend weekly construction meetings. Produce meeting minutes for distribution.
5. Respond to requests for information (RFIs).
6. Assist the District in reviewing Proposed Change Orders and Change Orders.
7. Monitor Logs for status of RFIs, PCOs, Bulletins and Submittals in the District's electronic document management system and taking appropriate action(s).
8. Review, Recommend and Approve Pay Requests.
9. Attend one Punch List site walk when Contractor is substantially complete and generate Punch List documentation for distribution.

### **Project Closeout**

The following services shall be included during the Project Closeout Phase:

1. Review warranties and M&O documentation.
2. Review As-Built documents prepared by the Contractor.
3. Prepare DSA Closeout Documentation and submit to the District's Closeout Specialist.

4. Attend one site visit ten months into the twelve month project guarantee period to review project conditions. Identify potential warranty issues and submit written report to District.

### **C. LIMITATIONS**

1. This RFQ is not an offer by the District to contract with any party responding to this RFQ. The District reserves the right to add additional prequalified Respondents for consideration after distribution of this RFQ if it is found to be in the best interest of the District. All decisions concerning the selection will be made in the best interests of the District. The awarding of the contract\_pursuant to this RFQ, if at all, is at the sole discretion of the District.
2. The District makes no representation that participation in the RFQ process will lead to an award of contract or any consideration whatsoever. The District shall in no event be responsible for the cost of preparing any RFQ Packet in response to this RFQ. RFQ Submittals and any other supporting materials submitted to the District in response to this RFQ will not be returned and will become the property of the District unless portions of the materials are designated as proprietary at the time of submittal, and are specifically requested to be returned. Vague designations and/or blanket statements regarding entire pages or documents are insufficient and will not bind the District to protect the designated matter from disclosure. Pursuant to *Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, RFQ Submittals shall be held confidential by the District and shall not be subject to disclosure under the California Public Records Act until after either: (1) the District and the successful Respondent have completed negotiations and entered into an Agreement, or (2) the District has rejected all Proposals. Furthermore, the District will have no liability to the Respondent or other party as a result of any public disclosure of any RFQ Packet.

### **D. RESTRICTIONS ON LOBBYING AND CONTACTS**

From the period beginning on the date of the issuance of this RFQ and ending on the date of the award of the contract, no person, or entity submitting in response to this RFQ, nor any officer, employee, representative, agent, or consultant representing such a person or entity shall contact through any means or engage in any discussion regarding this RFQ, the evaluation or selection process/or the award of the contract with any member of the District, Governing Board, selection members, or any member of the Citizens' Oversight Committee. Any such contact shall be grounds for the disqualification of the Respondent submitting a RFQ Packet.

### **E. STATEMENT OF QUALIFICATIONS**

#### **1. General Information / Instructions - Statement of Qualifications**

- 1.1. The District is inviting Statements of Qualifications for the "Project" which shall require coordination, administration, consulting and advice, and related services.
- 1.2. The District seeks to identify firms with a record of excellence in efficient planning and project delivery. The firms must have extensive experience related to educational facilities and sports fields, DSA policies and procedures, and the latest applicable codes and regulations.

- 1.1.** The Statement of Qualifications must contain all requested information about the firm and must be on no larger than 8 1/2 x 11 paper and no more than fifteen (15) printed pages in length. The 15-page limit (as if printed single sided) shall cover Sections 2.1 thru 2.5 below. Statement of Qualifications should be complete and prepared to provide an insightful, straightforward, and concise overview of the capabilities of firm. Additional information about the firm and/or personnel may be placed in an Appendix which would not count against the 15-page limit.

## **2. Content – Statement of Qualifications**

- 2.1. Letter of Interest** - A dated Letter of Interest must be submitted, including the legal name of the firm(s), address, telephone, email address(es) and fax numbers, and the name, title, and signature of the person(s) authorized to submit the Statement of Qualifications on behalf of the firm. The Letter of Interest should provide a brief statement of firm's experience indicating the unique background and qualities of the firm, its personnel, and its sub-consultants, and what will make the firm a good fit for work in the District. The letter shall also include the following statements:

"[RESPONDENT'S NAME] received a copy of the District's Agreement attached as **EXHIBIT A** to the RFQ. [RESPONDENT'S NAME] has reviewed the indemnity provisions in **EXHIBIT A** and insurance requirements contained in the Agreement. If given the opportunity to contract with the District, [RESPONDENT'S NAME] has no objections to the use of the Agreement."

Respondent shall review **EXHIBIT B** "Fingerprinting Notice and Acknowledgement for Contracts other than Construction" as the firm is to execute as part of the Agreement with the District (Education Code Section 45125.1).

Respondent shall certify that no official or employee of the District, nor any business entity in which an official of the District has an interest, has been employed or retained to solicit or assist in the procuring of the resulting contract(s), nor that any such person will be employed in the performance of any/all contract(s) without immediate divulgence of this fact to the District.

### **2.2 Firm Information**

- 2.3.1** Provide a brief history of firm, team firms, and, if a joint venture, of each participating firm. Identify legal form, ownership, and senior officials of company(ies). Describe number of years in business and types of business conducted. Describe staffing capacity and resources to perform the scope of work.
- 2.3.2** Describe firm's approach and how it will work with District administration officials, community partners and district facilities staff.
- 2.3.3** Describe firm's experience developing projects within a political environment including facilitation of community involvement.

**2.3.4** Discuss the firm's/team's ability to meet schedules for comparable projects, firm's schedule management procedures, and how the firm has successfully handled potential agency approval delays.

**2.3.5** Identify turf sports field projects at K-12 school sites performed by firm in the past three (3) years. Limit response to no more than the twenty (20) most recent projects.

Please provide examples of projects where your firm has worked with Shaw Sports Turf and FieldTurf as manufacturers, including details of the specific turf systems used (e.g., Shaw Sports Turf's Legion System or FieldTurf's Classic HD). Additionally, describe your experience working with certified installers from these manufacturers for these turf systems, ensuring proper installation and long-term performance.

Please include the following information for each project:

- 2.3.5.1** Name of project and district,
- 2.3.5.2** Scope of projects, description of services provided,
- 2.3.5.3** Contact person, email address and telephone number at district,
- 2.3.5.4** Firm person in charge of each project,
- 2.3.5.5** Construction dollar value of each project,

**2.4** **Litigation.** Provide information on litigation arising from firm's projects, if any, in the past five (5) years. State the issues in the litigation, the status of litigation, names of parties, and outcome.

**2.5 Professional Fees**

Firms shall provide a detailed fee schedule.

**2.5.1** Provide a detailed schedule of the Consultant's and Sub-consultant's hourly billing rates and a breakdown of associated costs for all tasks proposed (including contingency costs per task). Also note the time period that the fee schedule would apply and shall include the period covering the project duration.

The District reserves the right to negotiate different rates submitted with the RFQ prior to the execution of the agreement.

**2.6 Additional Data** - Provide additional information about the firm as it may relate to the Statement of Qualifications. Any data that may assist the District in understanding firm's qualifications and expertise. This additional data shall be in an Appendix and will not be counted in the fifteen page limit.

**3. Insurance** (Mandatory Requirements). Attach a letter from your insurance company or a certificate of liability insurance ("ACORD") indicating your firm's ability to provide insurance as required in the attached agreement, including but not limited to the following:

**3.1** A.M. Best financial strength rating (FSR) of A- or better.

**3.2** Commercial General Liability Insurance: Commercial general Liability Insurance shall be at least as broad as Insurance Services office General Liability Coverage



(Occurrence Form CG 0001), with coverage limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage/ Two Million Dollars (\$2,000,000) aggregate.

- 3.3** Automobile Liability Insurance: Automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto), with coverage limits of at least One Million Dollars (\$1,000,000) for bodily injury and property damage each accident limit and Two Million Dollars (\$2,000,000) in the aggregate.
- 3.4** Workers' Compensation and Employer's Liability Insurance: The selected Design Consultant shall insure (or be a qualified self-insured) under the applicable laws relating to workers' compensation insurance, all of their employees working on the Project, in accordance with the "Workers Compensation and Insurance Act," Division IV of the California Labor Code. The selected Design Consultant shall provide employer's liability insurance in the amount of at least One Million Dollars (\$1,000,000) per accident for bodily injury and disease.
- 3.5** Errors and Omissions Insurance: errors and omissions insurance on an claims made basis with a limit of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate with a deductible in an amount not to exceed the sum of Ten Thousand Dollars (\$10,000.00).
- 3.6** All insurance will be in a form and with insurance companies acceptable to the District.
- 3.7** Policy Endorsement that names Oakland Unified School District as an Additional Insured
- 3.8** Insurance carriers shall be qualified to do business in California and maintain an agent for process within the State.

**F. DISTRICT'S EVALUATION / SELECTION PROCESS – STATEMENT OF QUALIFICATIONS**

- 1.** The District may, at its discretion, interview some or all of those firms submitting a Statement of Qualifications.
- 2.** The District may check references, and may perform investigations of firm that extend beyond the information in the proposals. The District may conduct interviews of firms. Any firm(s) selected for interviews must make available for interview the key personnel it intends to assign to the District's Project(s).
- 3.** Submittals will be opened privately to assure confidentiality and avoid disclosure of the contents to competing respondents prior to and during the review, evaluation and negotiation processes. However, to the extent that the submittals are public records under California law, the submittals may be released to the public if requested by members of the public.
- 4.** Submittals will be reviewed for responsiveness and evaluated pursuant to established objective criteria, with particular attention to, without limitation, each respondent's qualifications, demonstrated competence in like construction, and the Firm's ability to integrate its personnel with the District's staff and consultants.
- 5.** After the submittals are evaluated and/or ranked, the District, at its sole discretion, may elect to interview the top Firm(s). The District may elect to interview one or more Firms. Interviews are tentatively scheduled as indicated above. Adequate

time will be allowed for presentation of qualifications followed by questions and answers.

**G. FINAL DETERMINATION AND AWARD**

- 1.** The District reserves the right to contract with any entity responding to this RFQ, to reject any proposal as non-responsive, and not to contract with any firm for the services described herein. The District reserves the right to seek proposals from or to contract with any firm not participating in this process. The District reserves the right to reject any or all submissions, to request further information, to negotiate with any firm, to extend the submission deadline, or to amend or cancel in part or in its entirety this RFQ. This RFQ does not commit the District to award a contract or to reimburse any firm for costs incurred in submitting a proposal.
- 2.** The awarding of contract(s) is at the sole discretion of the District. The District may, at its option, determine to award contracts only for portions of the scope of work. In such case, the successful proposing firm will be given the option not to agree to enter into the Agreement and the District will retain the right to negotiate with any other proposing firm selected as a finalist. If no finalist is willing to enter into a contract for the reduced scope of work, the District will retain the right to enter into negotiations with any other Respondent responding to this RFQ.
- 3.** The RFQ packet, and any other supporting materials submitted to the District in response to this RFQ will not be returned and will become the property of the District unless portions of the materials are designated as proprietary at the time of submittal, and are specifically requested to be returned. This RFQ does not commit the District to negotiate an agreement with any proposing firm or individual. All materials submitted in response to this RFQ shall become the property of the District and shall be considered a part of public record.

**END OF RFQ**

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## **EXHIBIT A**

### **DESIGN CONSULTANT SERVICES MASTER AGREEMENT FOR VARIOUS SCHOOL PROJECTS**

This Design Consultant Services Agreement (“Agreement”) is entered into this [[Insert Date]], (“Effective Date”) by and between **OAKLAND UNIFIED SCHOOL DISTRICT** (“District”) and [[ARCHITECT NAME]] (“Design Consultant” or “Architect”). District and/or Design Consultant may be referred to individually herein as a “Party,” or collectively as the “Parties.”

#### **RECITALS**

A. The District is a California school district duly organized and validly existing under the laws of the state of California.

B. The Design Consultant is a professional services firm duly organized under the laws of the state of California. The Design Consultant represents it has the background, knowledge, licensing, experience and skill necessary to provide the services set forth in this Agreement.

C. The District and Design Consultant desire to enter into an agreement for the Design Consultant to provide the District with professional services on selected projects (each hereinafter referred to as a “Project”) as requested and authorized by specific authorization prepared and submitted by the Design Consultant for approval by the District, each hereinafter referred to as the “Project Authorization.”

D. It is the intention of the Parties that the Design Consultant provide the District, pursuant to each executed Project Authorization, architectural and engineering services under the management and oversight of the District’s staff for the Project.

E. As required by applicable law, personnel of the Design Consultant and its Subconsultants shall be duly licensed as architects and/or registered as engineers under the laws of the state of California and are otherwise qualified and capable of providing and performing the Basic Services and its other obligations under this Agreement in accordance with the terms hereof.

**NOW, THEREFORE**, it is mutually agreed by and between the undersigned Parties as follows:

#### **ARTICLE 1. GENERAL PROVISIONS**

##### **1.1. SCOPE OF SERVICES**

- A. The District shall authorize the Design Consultant to proceed on each Project with a written Project Authorization which:
1. Provides a description of the type, size and scope of the Project;
  2. States the Project Budget;
  3. Specifies the Basic Services and/or Additional Services required of the Design Consultant;
  4. Identifies the services and responsibilities of the District or others for the Project;
  5. States method and/or amount of compensation to be paid to the Design Consultant for its services;
  6. Identifies the key Personnel to be used for the project;
  7. Identifies the specific Subconsultants to be used for the project;
  8. States the Preliminary Project Schedule;
  9. Indicates additional or special provisions related to the Project and/or modifications to this Agreement that may pertain to the Project.
- B. A Project Authorization, when signed by the District and the Design Consultant, shall become an effective and integral part of this Agreement with each and all of the provisions of one such document applying to the other as to the applicable Project, except as specifically modified or set forth to the contrary in the Project Authorization.

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C. The District and Design Consultant have endeavored to delineate the scope of the Basic Services to be provided by Design Consultant in Article 2, below. Such descriptions are not intended to be comprehensive, it being understood that Design Consultant shall be required, without adjustment or addition to the fixed rates or maximum compensation agreed to herein, to provide any services, whether or not listed in Article 2 that are within the scope of its field of professional practice and that are reasonably inferable as being necessary, or that would be customarily furnished by other providers of professional services of the type and nature provided for in this Agreement, to accomplish the Basic Services set forth in Article 2. Should the District proceed to perform the Project in multiple phases, such Scope of Services, as further described herein, shall be applicable to all phases of the Project. To the extent there are any ambiguities and/or conflicting terms and provisions as between the Design Consultant's Proposal and this Agreement, this Agreement shall control and govern.

**1.2. PERFORMANCE STANDARDS**

All services performed under this Agreement shall be performed by the Design Consultant and its Subconsultants in a manner consistent with the standard of care under California law applicable to those who provide similar services for projects of the type, scope and complexity of the Project subject to this Agreement in the locality of the Project; the Applicable Laws; the terms of this Agreement; and using their professional skill and judgment (hereinafter "Standard of Care"). Design Consultant shall strictly comply with all the terms of this Agreement.

**1.3. AUTHORITY OF THE DESIGN CONSULTANT**

Design Consultant's authority to act on behalf of District is limited to its scope of authority set forth in this Agreement. Notwithstanding anything else stated in this Agreement or any Contract Documents, Design Consultant does not have the express or implied authority to obligate District to any expenditure of money or extension of contractual time periods, including, without limitation, any adjustment to the price or time of performance of any contract between District and its Contractors, Separate Contractors, Specialty Consultants, Program Manager or other third persons or parties. The Design Consultant shall be liable to the District and third parties for the consequences of the Design Consultant's actions or conduct exceeding the limited scope of the Design Consultant's authority to act on behalf of the District.

**1.4. KEY PERSONNEL**

**1.4.1. Of Essence.** The services to be provided by Design Consultant under this Agreement shall be performed or directed by the Key Personnel, as identified in the Project Authorization.

**1.4.2. Commitment, Cooperation.** Recognizing the necessity of a close working relationship with the District, the Design Consultant's principals and employees shall furnish the skill, efforts and judgment of its organization in the performance of their duties and responsibilities under this Agreement, subject at all times to District's discretion, and provide their knowledge, ideas, experience and abilities relating to the efficient design and construction of the Project and to cooperate fully with all members of the Project Team.

**1.4.3. Additions, Removals, Replacements.**

**1. Additions.** It is contemplated that from time to time individuals will be added to the list of Key Personnel as necessary and appropriate to the stages of planning, programming, designing and constructing of the Project. Design Consultant shall anticipate the need for such additions by submitting to the District no later than seven (7) Days prior to the need therefore, a proposed amendment to the list of Key Personnel setting forth the Design Consultant's proposed additions and the reasons for such additions. The District shall promptly review the proposed additions and either approve or disapprove thereof in writing, along with a statement of the reasons for any disapproval. Design Consultant shall not employ any individual to perform the functions as Key Personnel without the advance approval of the District, which approval may be granted or withheld in their sole discretion.

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2. **Removals.** Design Consultant shall not, for so long as any person serving as Key Personnel is employed by Design Consultant, remove, substitute or reduce the level of effort of such person without the District's prior written approval, which may be granted or withheld in its sole discretion. If District is dissatisfied with the services rendered by any Key Personnel, Design Consultant shall promptly recommend a substitute person.
  3. **Replacements.** If any Key Personnel ceases employment with Design Consultant or is requested to be removed pursuant to Paragraph 1.4.3.2 above, then Design Consultant shall promptly notify District of a proposed substitute person of at least equal qualifications to perform the same functions to be approved by District, which approval may be granted or withheld in its sole discretion. Design Consultant shall bear, at its own expense and without reimbursement by District, all costs associated with replacing, for any reason, any Key Personnel.

**1.4.4. Engagement by District.** In the event Design Consultant ceases its business operations altogether or this Agreement is terminated by District for cause, District shall have the right, but not the obligation, without liability or obligation to Design Consultant or any other person or entity, to directly engage the services of any of the Key Personnel in accordance with the provisions of this Paragraph 1.4.4. In the event that Design Consultant learns that any of the Key Personnel will be leaving the employ of Design Consultant, Design Consultant shall promptly notify District. District shall then have the rights described in this Paragraph 1.4.4 to engage directly the services of such persons.

**1.4.5. Project Representative.** The Design Consultant's designated project representative has the authority to act on behalf of the Design Consultant in respect to all matters that are the subject of this Agreement, including, without limitation, the power and authority to enter into agreements or modifications to agreements that contractually bind Design Consultant. Authority to enter into agreements or modifications to agreements that contractually bind and/or change the terms and conditions of the contract with the District shall remain with the District's Facilities Director or his/her designee.

**1.4.6. Design Consultant's Employees.** All persons employed by Design Consultant shall be the employees of Design Consultant and not of District. Design Consultant shall be solely responsible for any workers' compensation obligations, withholding taxes, unemployment insurance and any other employer obligations with respect to all employees working for Design Consultant.

## **1.5. SUBCONSULTANTS**

For Subconsultants other than those designated and included in the Agreement, Design Consultant may, with prior approval by District, enter into written contracts with Subconsultants to perform portions of the services provided for in this Agreement. Design Consultant's request for hiring of a Sub consultant shall be submitted in a writing that describes the scope of services to be contracted, the name of the proposed Sub consultant and the estimated total cost and/or hourly rates for the Sub consultant's services. The District shall have reasonable discretion in approving any Sub consultant and such approval must be in writing to be effective. The District shall use its best efforts to approve or disapprove of proposed Subconsultants within seven (7) Days of Design Consultant's request. Design Consultant shall remain responsible to the District for the quality and performance of all Subconsultants' services. Design Consultant may, upon advance written notice to the District, terminate and replace the services of any Sub consultant, subject in all cases to the prior written approval of the District, not to be unreasonably withheld. Every subcontract or agreement of any kind entered into between Design Consultant and Sub consultant (or between any Sub consultant and other independent contractor Subconsultants) shall contain appropriate language whereby Sub consultant, without creating any contractual obligation on the part of the District to the Sub consultant or anyone working under contract to Sub consultant, accepts and agrees to be bound by all of the obligations of this Agreement, including, without limitation, those obligations pertaining to indemnification,

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insurance, accounting records, audit and ownership of documents, and agrees to include in its contracts with its Subconsultants a contingent assignment of those contracts to the District or its designee, effective only upon written acceptance by the District or its designee.

## **1.6. OWNERSHIP OF DESIGN DOCUMENTS**

**1.6.1. Property of the District.** All materials, including CAD and BIM files, images, presentations, reports, media, documents, specifications, records, calculations and digital and analog files and materials employed in the creation of same (collectively, "Design Documents") prepared by the Design Consultant and its Sub-consultants, the designs depicted in them, and any presentation materials, shall become, upon their creation and services paid, the property of the District whether the Project for which they are made is executed or not. Without limitation to the foregoing, the District shall hold, and Design Consultant shall be deemed to have been irrevocably assigned to the District in perpetuity with no reserved or retained rights in any other persons or entities, all copyrights or other intellectual property rights relating to the Design Documents. The District hereby grants to Design Consultant and its Subconsultants a license, revocable at will of the District, to use and copy such documents during the term of this Agreement for the sole purpose of performing the services required under this Agreement. With the exception of standard and generic details in the Drawings, the Design Documents shall not be used as a whole, or in substantial part, by the Design Consultant on other projects without prior agreement.

**1.6.2. Use of Design Documents.** The District may use the Design Documents, without the Design Consultant's consent, in connection with the Project, including, without limitation, future additions, alterations, connections, repairs, information, reference, use or occupancy of a Project. The District may reuse the Design Documents for other Projects at no additional cost, provided however, that the District shall hold harmless and indemnify the Design Consultant against any losses arising from the District's use of the Design Documents for any other purpose, including use of the Design Documents on other projects, and District shall defend Design Consultant from and against any claims arising from any unauthorized use.

**1.6.3. Bidding.** The Design Consultant, upon request, shall provide copies of the Design Documents in the number required by the District for bidding and construction purposes in connection with the Project as part of its Basic Services. The District reserves the right to select the type of document reproduction and to establish where the reproduction will be accomplished.

**1.6.4. Termination.** In the event of termination of this Agreement by either Party for any reason, the District reserves the right to receive, and the Design Consultant shall promptly provide to the District upon payment of all undisputed monies due, all Drawings, Specifications, models, and other Design Documents prepared under this Agreement prior to the date of termination by the Design Consultant and its Subconsultants for this Project. The foregoing shall include without limitation, all drafts and all electronic files of the Design Documents. Unless otherwise agreed to by the District, the Design Consultant shall deliver all such Design Documents to the District within fifteen (15) Days of the date of the exercise of the termination rights under this Agreement. Design Consultant shall be permitted, at its sole cost and expense to retain copies, including reproducible copies, of the Design Documents for information and reference purposes only. Any dispute regarding the amount of any payment to be made by the District under this Agreement shall be resolved per Article 6.3 of the Agreement.

## **1.7. COMPLIANCE WITH APPLICABLE LAWS**

Design Consultant shall, at all times in its performance of its obligations under this Agreement, be responsible to comply with the Standard of Care in the application of Applicable Laws, including, without limitation, those rules or regulations enacted or issued by the District.

## **1.8. TIME OF ESSENCE**

All time limits set forth in this Agreement pertaining to the performance of any obligation or act are of

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the essence to this Agreement.

## **ARTICLE 2. BASIC SERVICES**

The Design Consultant's professional services relative to a Project, as specifically identified and authorized on a Project Authorization, shall be performed within certain Phases of Work. The Phases, generally described below, outline the possible services contained within the Phases. These general Phase descriptions are intended to be solely for the convenience of reference and not as a determinative of the services to be actually performed or authorized for a specific project.

The Basic Services shall include but may not be limited to Basic Planning Services, Schematic Design, Design Development, Construction Documents, Construction Administration and the Project Closeout Phases. Such services may include but may not be limited to the following disciplines: Land Survey, Civil, Architectural, Structural, Mechanical including HVAC, Plumbing, Fire Protection, Electrical, Acoustical, Audio Visual and Hardware. The required deliverables may include but may not be limited to Drawings, Specifications, Basis of Design Report and Cost Estimating Report. Design Consultant shall perform the following Basic Services as set forth below for a Project. Should the District proceed to perform the Project in multiple phases, Design Consultant may be required to provide Basic Services, as specified in this Article 2, for each of the identified phases, as is necessary to complete the Project.

### **2.1. GENERAL**

**2.1.1. Project Construction Budgets.** It is the obligation of the Design Consultant to design the Project in a manner that will enable each Project to be constructed for a Construction Cost that does not exceed the Project Construction Budget for the Project. Should the District proceed to perform a Project in multiple phases, Design Consultant may be required to provide a Project Construction Budget for each phase of the Project. No adjustments shall be made to a Project Construction Budget except for: (i) significant fluctuations in general levels of prices in the construction industry as reflected by the ENR Index after the Project Budget is prepared; or (ii) material changes requested in writing by the District to a Project's Schedule or scope; or (iii) other adjustments increasing the Project Construction Budget that the District determines, in its sole discretion, are appropriate or necessary. Design Consultant shall notify the District promptly upon becoming aware of any circumstance that Design Consultant knows or should have known in the exercise of the Standard of Care required by this Agreement, may require an adjustment in a Project Construction Budget. Failure by Design Consultant to provide such timely written notice may result in its waiving the right to an adjustment of a Project Construction Budget on account of such circumstance. Wherever it is stated in this Agreement that the District has the right to direct that Design Consultant, at its own expense, furnish design services to reduce the scope of the Project while maintaining the District Design Standards, to meet the requirements of the agreed-upon Project Construction Budget, such right shall not be interpreted as creating an obligation on the part of the District to extend such opportunity for redesign to Design Consultant nor as a waiver of, or limitation on, the District's right, in lieu of requesting the performance of such redesign services, to exercise its other rights provided for at law or under this Agreement, including, without limitation, the right to terminate this Agreement or a Project Assignment for cause or for convenience. The District's **Project Construction Budget** shall be set forth in each project assignment.

In preparing estimates of the Cost of Work, the Design Consultant shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the District's Project Construction Budget. The Design Consultant's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques.

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- 2.1.2. Review of Work Product.** Design Consultant shall use its skills and experience to review the work product and information furnished by the District and Design and Construction Project Team members and advise the District of known errors or omissions and to report its findings to the District, with an appropriate recommendation; provided, however, that failure by Design Consultant to give such notice shall not relieve the District and Design and Construction Project Team members of their liability or responsibility, therefore. Notwithstanding the foregoing, the Design Consultant shall have no liability to the District or any other party arising out of the Design Consultant's failure to identify errors or omission in the information furnished to the Design Consultant.
- 2.1.3. Selection of Specialty Consultants.** Design Consultant shall advise the District on the appropriate time for retention of Specialty Consultants whose services are necessary for the Project, being certain to allow sufficient time in advance for prequalification and selection of Specialty Consultants in accordance with Applicable Laws and the guidelines, practices and procedures of the District, and Design Consultant and, at points in time appropriate to the stage and status of the Project, and shall assist the District with the following: (i) preparation of prequalification criteria; (ii) preparation of requests for qualifications; (iii) conduct of pre-qualification award conferences and responses to questions by proposers; (iv) evaluation of proposers; (v) establishment of a list of pre-qualified professionals; and (vi) preparation of a definitive scope of services.
- 2.1.4. Project Schedules and General Deliverables.** Design Consultant shall, promptly after execution of this Agreement, prepare and continuously update a Project Schedule for this Project, and for the Project overall, which integrates the activities of the District, Design Consultant, and other Project Team members, depicting the detailed activities necessary to complete the design and construct each applicable Project, and the Project overall. Each such Project Schedule shall, without limitation: (i) coordinate and integrate the planning, programming and design activities in appropriate detail to the District's satisfaction; (ii) show estimated commencement, duration, responsible parties and sequence for planning, programming, design and bidding, and displacement of operations activities; (iii) be prepared and presented in a critical path for (CPM) format or using Microsoft Project, showing the interdependencies of the activities and a clearly highlighted critical path; and (iv) deadlines and estimates of time for a review and receipt of all approvals, decisions and other information to be provided by the District. Design Consultant shall, no less frequently than monthly, update and expand the level of detail as the Project progresses, indicating current status of scheduled activities, projections of potential completion of major tasks, if significant variance from planned activities occurs, Design Consultant shall recommend recovery plans to the District and, upon obtaining the District's approval thereto, modify the Project Schedule to incorporate such recovery plans. Should the District proceed to perform the Project in multiple phases, Design Consultant may be required to provide a Project Schedule for each phase of the Project, as further described in this Section 2.1.4. The Project Schedule shall include the following deadlines, which shall not be thereafter adjusted except as permitted by Article 3 of this Agreement with the understanding the District and other necessary parties shall maintain schedule and deadlines per agreement:

Design Consultant shall include a general schedule of the Project progress with key milestones as part of the Project Authorization. The Project Schedule will be updated with increased detail at each phase of construction, critical milestones or when scope changes occur that impact the schedule. Each such Project Schedule shall, without limitation: (i) coordinate and integrate the planning, programming and design activities in appropriate detail to the District's satisfaction; (ii) show estimated commencement, duration, responsible parties and sequence for planning, programming, design and bidding, and displacement of operations activities; (iii) be prepared and presented in a critical path (CPM) format or using software acceptable to the District showing the interdependencies of the activities and a clearly highlighted critical path; and (iv) deadlines and estimates of time for a review and receipt of all approvals, decisions and other information to be provided by District.



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- 2.1.5. Communications.** The Design Consultant shall comply with all written procedures issued by the District for conduct of communications among the Design and Construction Project Team members to deal with administrative matters relating to the planning, programming, design and construction of the Project.
- 2.1.6. Meetings.** Design Consultant shall attend regularly scheduled meetings with the District, and/or other Project Team members and shall respond promptly with respect to matters assigned to Design Consultant for action or resolution. Design Consultant to produce and distribute meeting minutes of each meeting and shall promptly review and provide any requests for corrections to meeting minutes no later than five (5) Days after receipt. All such meetings shall be deemed to be part of Basic Services.
1. **Meeting Agendas:** For any meeting that Design Consultant organizes, schedules and/or intends to conduct with the District, other Project Team members and/or any other persons connected with a Project or the District, the Design Consultant shall provide a meeting agenda two (2) days prior to the meeting.
- 2.1.7. Summarizations.** Except as otherwise directed by the District, Design Consultant shall receive, review and take appropriate action with respect to all information, reports, notices, requests and other materials provided or available to Design Consultant by or from Subconsultants and when requested shall prepare summaries of such materials for presentation to the District, together with the materials summarized and Design Consultant's recommendations and advice with respect to the matters to which such materials relate.
- 2.1.8. Overlapping, Duplicative Services.** Design Consultant shall promptly advise the District if there appears to be an overlap or duplication of services being provided by or among Project Team members, along with Design Consultant's recommendations for eliminating such duplication or overlapping of services.
- 2.1.9. Sustainable Designs and Energy Standards.** Design Consultant shall prepare its designs in accordance with the Sustainable Building Principles, Standards and Processes. Those Sustainable Design and Energy Standards services associated with projects that are determined to be eligible for Collaborative for High Performance Schools ("CHPS") Verification shall be undertaken only as authorized in accordance with the provisions of Article 3, Additional Services. The Design Consultant acknowledges that it is the District's goal to achieve a high level of energy efficiency and sustainability to be defined for each project. The Design Consultant shall work with the District to balance functional, sustainable and financial design parameters toward meeting the District's goal.
- 2.1.10. District Committees.** Design Consultant shall, when requested by the District: (i) attend meetings of District Committees; (ii) assist District in preparing design presentations to and responding to questioning by District Committees; and (iii) provide necessary follow-up so that recommendations or directions of District Committees related to design matters are appropriately addressed.
- 2.1.11. Compliance with California Code of Regulations.** Design Consultant shall, in connection with its services performed during all Phases of Basic Services and, if applicable, any Additional Services, be responsible to comply with the Standard of Care in the application of the California Code of Regulations, including, without limitation Title 24, California Code of Regulations, relating to design and construction generally and construction of public schools specifically and shall fully cooperate with the Project Inspector assigned to the Project pursuant to said provisions of the California Code of Regulations and other Applicable Laws.
- 2.1.12. Design Safety.** Design Consultant is responsible for the safety of the design of the Project and

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for the interpretation of and any necessary amplification of the Drawings and Specifications prepared by it or its Subconsultants for the Project. The Design Consultant shall neither have control over or charge of, nor be responsible for, the construction means, methods techniques, sequences or procedure, or for safety in, on or about the site, or safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**2.1.13. Prevailing Wages.** Design Consultant and its Subconsultants shall, to the extent applicable to work or services performed under this Agreement, comply with the provisions of the California Labor Code (including, without limitation, California Labor Code sections 1720, 1735, 1775, 1777.5 and 1776.6) applicable to persons performing services or work for "construction," including but not limited to inspection and land surveying work, as defined in California Labor Code section 1720. Pursuant to California Labor Code section 1773, the Department of Industrial Relations has determined the general prevailing rates of wages per diem, and for holiday and overtime work, in the locality in which this Agreement is to be performed, for persons performing such work or services and said rates are on file with the District at its principal office and available to any interested party upon request.

## **2.2. SCHEMATIC DESIGN PHASE**

**2.2.1. Project Program.** The Design Consultant shall, in conjunction with the District and any of the District's other Specialty Consultants in the areas of planning and programming, familiarize itself with the District's plans and goals for any Project assigned and make any recommendations for revisions that, based on Design Consultant's professional judgment, will produce the Project that is designed in a manner that is in conformance with the requirements of the Project Construction Budget and Project Schedule. The Project Construction Budget and Project schedule will be adjusted as necessary to accommodate the changes upon mutual agreement.

**2.2.2. Alternate Approaches.** The Design Consultant shall review and recommend to the District alternative approaches to the design of each Project assigned and recommend alternative contracting modes for the District to evaluate which is best suited to the Project, the Project Schedule, Applicable Laws and Project Construction Budget for the Project assigned. The selection of a lease-leaseback, multi-prime, or design-bid-build method shall not affect the compensation due to the Design Consultant for the Project.

**2.2.3. Schematic Documents.** The Design Consultant shall prepare for review and approval by the District, Schematic Design Documents for each Project including site plans, floor plans, elevations, sections, 3-dimensional perspective views, and other sketches or graphic materials needed to describe the Project in three dimensions. Schematic Design Documents shall be consistent with the Project Construction Budget and Project Schedule for the Project and shall be submitted upon one hundred (100%) percent completion for final revisions and review and approval by the District.

### **2.2.3.1. Schematic Design Phase Deliverables.**

- 1. Site Documentation:** scaled preliminary Civil grading plan(s) including cut/fill calculations, and topographic contours; Landscape Architecture plan(s) including proposed plant species and materials; plans. Architectural site plan(s) illustrating major built site features.
- 2. Architectural Building Plans:** scaled floor plan(s) of all buildings including room names, general dimensions, and net square footage
- 3. Interior Design:** preliminary finish plans and materials palettes; reflected ceiling plans including anticipated finishes and materials; three-dimensional perspective views of selected spaces indicating materials and lighting; furniture and equipment plans; interior elevations of selected spaces.
- 4. Engineering and Systems Disciplines:** Mechanical systems diagrams; Electrical

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systems diagrams; Structural floor plan(s) and design diagrams including locations and rough sizing of columns, braced frames, trusses and other distinct structural elements; Acoustic design narrative; Audio/Visual design narrative; Data systems design narrative; Kitchen design plan(s) including equipment layouts and preliminary equipment list(s); Architectural design narrative.

5. **Cost Estimate:** preliminary cost estimate, including mark-ups for contractor fees, O&P, insurance, bonds, contingencies, escalation and the like, coordinated and reconciled with the District.

**2.2.4. Estimated Project Construction Cost.** The Design Consultant shall submit a preliminary written Estimated Project Construction Cost for the Project based on the Schematic Phase Design Documents submitted to the District for review and approval. The estimate shall address separately site work with utilities and building structures. The site work utilities estimate shall be itemized into major cost components. The building structure estimate shall be based on square foot cost reflective of the type of structure and systems involved. If the preliminary Estimated Project Construction Cost for the Project exceeds the Project Construction Budget for such Project, the District may, at its sole discretion and without limitation to any of the District's other rights or remedies for default that may exist at law or under this Agreement, either: (i) give written approval of an adjustment in the Project Construction Budget, or (ii) require the Design Consultant, at its own cost and without additional compensation or reimbursement by the District, to revise the Schematic Design Documents in cooperation with the District so as to revise the Estimated Project Construction Cost to an amount that is within the Project Construction Budget.

### 2.3. DESIGN DEVELOPMENT PHASE

**2.3.1. Design Development Documents.** Upon the District's written authorization to proceed and based on Schematic Design Documents approved in writing by the District, the Design Consultant shall prepare, for review and approval by the District, Design Development Documents for the Project consisting of Models, Drawings, outline Specifications and narratives as needed to establish and describe the function, size and character of the Project, elaborating and further developing the previously approved Schematic Design Documents. The Design Development Documents shall be submitted upon fifty (50%) percent completion for review and again upon one hundred (100%) percent completion for final revisions and review and approval by the District. The Design Consultant shall incorporate into the Design Development Documents architectural, civil, landscape, structural, mechanical, plumbing, electrical, audio/visual, security, communication and information technology, fire and life safety, and access control systems, materials, and such other elements and other systems appropriate to the Project. The Design Development Phase Documents shall be consistent with and conform to any existing or approved District Standards during the term of the Project and shall be consistent with the Project Construction Budget and the Project Schedule. Should the District proceed to perform the Project in multiple phases, Design Consultant may be required to provide Design Development Documents, and all related deliverables as further described herein, for each phase of the Project.

#### 2.3.1.1. Design Development Phase Deliverables.

1. **Site Documentation.** Scaled Civil rough and fine grading plan(s) including cut/fill calculations and topographic contours, vehicle and pedestrian circulation and parking; Landscape Architecture plan(s) including proposed plant species and materials, hardscape; plans; irrigation plans; site utility plans; Architectural site plan(s) illustrating major built site features and buildings.
2. **Architectural Building Plans.** Overall, partial, and enlarged floor plan(s), reflected ceiling plan(s).
3. **Building Envelope.** Building sections; typical wall sections and related details; exterior elevations.
4. **Interior Design.** Finish floor plans; interior partition plans and key details; interior

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elevations; sections and elevations.

5. **Vertical Circulation.** Enlarged floor plans and sections for stairs and elevators.
6. **Engineering and Systems Disciplines:** Mechanical systems plans; Plumbing systems plans; Electrical systems plans; Structural floor plan(s) and calculations; Acoustic design narrative; Audio/Visual design narrative; Data systems design narrative; Kitchen design plan(s) including equipment layouts and preliminary equipment list(s); Architectural design narrative; Security and Access Control systems narrative and plans.
7. **Cost Estimates:** updated cost estimates organized by specification section/trade/discipline, including mark-ups for contractor fees, O&P, insurance, bonds, contingencies, escalation and the like, coordinated and reconciled the District.

**2.3.2. Systems Criteria.** The Design Consultant shall submit documentation supporting the design criteria for the structural elements (including structural loading); HVAC, plumbing, electrical, lighting and communication systems; and other specialized building systems.

**2.3.3. Certification Re Financial Relationships Disclosure.** In accordance with Public Contract Code § 3000, *et seq.*, Design Consultant and/or any of its Subconsultants including, without limitation, engineers or roofing consultants, who provide professional services related to the roofing portion of the Project shall prior to engaging in such professional services, complete, sign and deliver to the District the Certification Re Financial Relationships Disclosure, attached as **Exhibit "B"** to this Agreement. Any person who knowingly provides false information or fails to disclose a financial relationship shall be subject to civil liability and penalties as set forth in Public Contract Code 3006.

**2.3.4. Estimated Project Construction Cost.** The Design Consultant shall submit a written Estimated Project Construction Cost for each Project based on the Design Development Phase Documents submitted to the District for review and approval. Including, if so required, a separate Estimated Project Construction Cost for each phase of the Project. If the Estimated Project Construction Cost for the Project exceeds the Project Construction Budget for such Project, the District may, at its discretion and without limitation to any of the District's other rights or remedies for default that may exist at law or under this Agreement, either: (i) give written approval of an increase in that Project Construction Budget, or (ii) require the Design Consultant, at its own cost, and without additional compensation or reimbursement by the District, to revise the Design Development Phase documents in cooperation with the District so as to reduce the Estimated Project Construction Cost to an amount that is within the Project Construction Budget, in which case the District agrees to accept the Design Consultant's reasonable revisions in the Project to lower the Estimated Project Construction Cost so long as the proposed revisions do not, in the District's sole and reasonable judgment, materially compromise the objectives of the Project.

## **2.4. CONSTRUCTION DOCUMENTS PHASE**

**2.4.1. Construction Documents.** Upon the District's written authorization to proceed and based on Design Development Documents reviewed and approved in writing by the District, the Design Consultant shall prepare Construction Documents for the Project consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project suitable for review and approval by all authorities having jurisdiction, bidding, and construction. Should the District proceed to perform the Project in multiple phases, Design Consultant may be required to provide Construction Documents, and all related deliverables as further described herein, for each phase of the Project. The Construction Documents shall describe the quality, configuration, size, location and relationships of all components to be incorporated into the Project. The Construction Documents shall be consistent with the Project Construction Budget and Project Schedule for the Project. Upon fifty (50%) percent, and ninety-five (95%) percent completion of the Construction Documents, Design Consultant shall provide, in addition to the Construction Documents, a statement of the basis of the design, which includes

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the following: (i) an outline of Applicable Laws that apply to the Project; (ii) an outline of the criteria used as a basis of the design, including criteria for sustainability, civil, landscaping, architectural, structural, mechanical, plumbing and fire protection and electrical.

**2.4.1.1. Construction Documents Phase Deliverables.**

1. **Site Documentation.** Civil plans, Landscape Architecture and irrigation plans; site utility plans; Architectural site plans; signage and wayfinding plans and details; fire and emergency access plans.
2. **Architectural Building Plans.** Overall, partial, and enlarged floor plans, code analysis plans; reflected ceiling plans; all related and required Architectural details.
3. **Building Envelope.** Building sections; wall sections and related details; exterior elevations; roof plans and details.
4. **Interior Design.** Finish floor plans; interior partition plans and typical details, including Acoustic requirements; interior elevations; typical interior details; typical and specific millwork plans, sections and elevations; FF&E plans and specifications.
5. **Vertical Circulation.** Enlarged floor plans, sections, and details for stairs and elevators.
6. **Engineering and Systems Disciplines:** Mechanical systems plans and details; Plumbing systems plans and details; Electrical systems plans and details; Lighting system and controls plans and details; Structural floor plans, details, and calculations; Acoustic design integrated into Architectural plans; Audio/Visual system plans and details; Data systems plans and details; Kitchen design plans including equipment layouts and equipment lists with associated details; Security and Access Control systems plans and details; Fire alarm systems plans and specifications; Fire sprinkler system plans, details and specifications
7. **Standard Building Elements:** Door schedules; hardware schedules; window schedules
8. **Cost Estimates:** Updated cost estimates organized by CSI specification section/trade/discipline, including mark-ups for contractor fees, O&P, insurance, bonds, contingencies, escalation and the like, coordinated and reconciled with the District.
9. **Project Manual:** CSI-format specifications including Division 1, integrated with District front-end project manual documents.

**2.4.2. Review.** The Design Consultant shall submit Construction Documents to the District for review and approval by the District upon fifty (50%) percent completion, ninety-five (95%) percent completion and one hundred (100%) percent completion. Such submittal shall be in electronic format and shall include, the Construction Documents, a summary of the calculations for the structural, HVAC, electrical, plumbing, communications and other specialized building system calculations. Unless directed otherwise in writing by the District, the Construction Document Phase shall not be considered 100% complete until all approvals by Review Agencies have been received by the Design Consultant.

**2.4.3. Content, Coordination, Completeness.** The Design Consultant shall be responsible for the content of all Construction Documents prepared by it and its Subconsultants. Consistent with the Standard of Care, all final Construction Documents prepared and signed by the Design Consultant or its Subconsultants shall be complete, coordinated and contain directions as will (i) enable a competent contractor to carry them out; (ii) require a minimum of corrections by Review Agencies; and (iii) be sufficiently complete and free of conflicts so as to be capable of definitive pricing by Contractor with a minimum of further clarifications or detailing by Design Consultant or its Subconsultants.

**2.4.4. Corrections.** Construction Document submittals shall either incorporate any corrections required by the District or Review Agencies or be accompanied by a written statement as to why such changes were not incorporated. The District may, in its sole and reasonable discretion, reject or challenge the Design Consultant's explanation and require the Design Consultant to make the changes or corrections and/or provide additional supporting documentation regarding the Design Consultant's determination not to incorporate the

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changes to the Construction Documents as previously requested by the District or Review Agencies. Except with respect to a change in Program or a change in law, where such change could not have been reasonably foreseen by Design Consultant, such corrections shall not constitute grounds for adjustment of any Project Construction Budget or Project Schedule.

**2.4.5. Constructability and Design Review; Value Engineering.** The District reserves the right to conduct, or cause to be conducted, constructability reviews and/or value engineering of the Construction Documents. If applicable, such constructability reviews and/or value engineering to meet the District's established budget may be required at each phase of the Project. If the District elects to conduct either constructability reviews or value engineering, the District shall notify the Design Consultant of the same and the Design Consultant shall submit Construction Documents to the District for such constructability reviews and/or value engineering. The District and Design Consultant will confer and consult with each other to arrive at mutual understandings and agreements as to which of the constructability review and/or value engineering comments are to be incorporated into the Construction Documents. The Construction Documents shall incorporate mutually agreed upon comments and the Design Consultant shall submit revised Construction Documents to the District for approval. Design Consultant shall revise Construction Documents as necessary to obtain the District's reasonable approval thereof.

**2.4.6. Final Approval.** When all District and Review Agency required corrections have been incorporated by the Design Consultant, the corrected, one hundred (100%) percent complete Construction Documents approved by the Review Agency will be deemed to be final and ready for competitive pricing. The Design Consultant shall provide to the District three (3) full sized printed sets (or other mutually agreed upon quantity) of approved (stamped/signed) prints. The Drawings and Specifications shall also be submitted by the Design Consultant to the District in an electronic form acceptable to the District.

**2.4.7. Estimated Project Construction Costs.**

1. Upon fifty (50%) percent, ninety-five (95%) percent DSA Submittal set and final one hundred (100%) percent completion of the Construction Documents, the Design Consultant shall prepare and submit for the District's review and approval, the Design Consultant's then-current Estimated Project Construction Cost for the Project, including, if so required, a separate Estimated Project Construction Cost, as detailed herein, for each phase of the Project.
2. If the Estimated Project Construction Cost of the Project upon fifty (50%) percent completion of Construction Documents for such Project exceeds the Project Construction Budget for such Project, either the District may, in its sole discretion and without limitation to any of the District's other rights or remedies for default that may exist at law or under this Agreement, either: (i) give written approval of an adjustment in the Project Construction Budget, or (ii) require the Design Consultant, at its own cost and without any additional compensation or reimbursement by the District, to revise the Construction Documents in cooperation with the District so as to reduce the Estimated Project Construction Cost to within the Project Construction Budget, in which case the District agrees to accept the Design Consultant's reasonable revisions in the Project to lower the Estimated Project Construction Costs, so long as the proposed revisions do not, in the District's sole and reasonable judgment, materially compromise the aesthetic, structural or functional elements of the Project.

If the Estimated Project Construction Cost for the ninety-five (95%) percent Construction Documents for the Project exceeds the Project Construction Budget for such Project, the District may, in their sole discretion and without limitation to any of the District's other rights or remedies for default that may exist at law or under this Agreement, either: (i) give

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written approval of an adjustment in the Project Construction Budget, (ii) authorize the solicitation of bids, (iii) require the Design Consultant, at its own cost and without additional compensation or reimbursement by the District, to revise the Construction Documents in cooperation with the District so as to reduce the Estimated Project Construction Cost to within the Project Construction Budget, in which case the District agrees to accept the Design Consultant's reasonable revisions in the Project to lower the Estimated Project Construction Costs, so long as the proposed revisions are consistent with Building Program for that Project and do not, in the District's sole and reasonable judgment, materially compromise the aesthetic, structural or functional elements of the Project or the overall Project.

**2.4.8. Permits, Governmental Approvals.** The Design Consultant shall assist the District in obtaining all necessary approvals or permits for the Construction Documents from governmental agencies with jurisdiction therefor as necessary for the bidding and construction of the Work including without limitation, approvals by DSA. Without adjustment of the Compensation, Design Consultant shall revise Working Drawings as required by DSA or other governmental agencies with jurisdiction over the Project to obtain their respective approval(s) or permit issuance. Design Consultant shall notify the District in writing upon receipt of such approvals or permits specifying in detail the scope of Work covered thereby and recommend to the District whether and when all approvals and permits that Design Consultant is aware are required by Applicable Laws have been obtained such that the District may proceed to let contracts for the Work. Design Consultant shall notify the District ninety (90) Days prior to the date that any approval or permit by a Government Authority may expire.

## **2.5. BIDDING PHASE**

**2.5.1. Prequalification.** If prequalification of bidders for construction of the Project is required by the District, the Design Consultant shall assist in preparation of the prequalification documents. If requested, the Design Consultant shall participate with the District in evaluation of prequalification submittals by proposed bidders.

**2.5.2. Bidder Inquiries; Bid Addenda, Site Visits.** The Design Consultant shall review bidder inquiries, participate in discussions relating to responses to bidders' inquiries, participate in development of necessary modifications to the Design Documents to respond to bidder inquiries and assist in development and issuance of addenda during the bidding process. The Design Consultant and its Subconsultants, as appropriate, shall attend all scheduled pre-bid conferences and Site visits. The District shall be responsible for the scheduling of all pre-bid conferences and Site visits as well as the recordation, preparation and distribution of minutes.

**2.5.3. Bid Evaluations.** The Design Consultant shall assist the District in the review and evaluation of bids.

**2.5.4. Project Construction Budget Overrun.** If the lowest price received from a responsible and responsive bidder (as the terms "responsible" and "responsive" bidder are interpreted under Applicable Laws) for the Project exceeds the Project Construction Budget for such Project by more than ten (10%) percent for Projects costing less than seven million dollars (\$7,000,000), or by more than five (5%) percent for Projects costing seven million dollars (\$7,000,000) or more, the District may, at its sole discretion and without limitation to any of the District's other rights or remedies for default that may exist at law or under this Agreement, do any of the following: (i) give written approval of an increase in the Project Construction Budget, (ii) authorize rebidding within a reasonable period of time, (iii) require the Design Consultant to modify the Construction Documents in order to reduce the Estimated Project Construction Cost to a level that falls within the Project Construction Budget, or (iv) abandon the Project. If the District requires the Design Consultant to revise the approved Construction Documents pursuant to Clause (iii) above, revisions proposed by the Design Consultant shall be consistent

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with the District's objectives for such Project, and shall not, as determined by the District in the District's sole and reasonable judgment, materially compromise the aesthetic, structural or functional elements of the Project. Compensation to the Design Consultant, if any, for such revisions shall be determined as follows: The District shall obtain an independent estimate of the Construction Cost. If such independent estimate is within the Project Construction Budget, and if the lowest responsible and responsive bid price nevertheless exceeds the Project Construction Budget, then Design Consultant shall be entitled to receive compensation for executing such revisions in an amount not exceeding 100% of the total Additional Services. If the District's independent estimate exceeds the Project Construction Budget prior to bid, and if the lowest responsible and responsive bid price exceeds the Project Construction Budget and if the District elects to require the Design Consultant to revise the Construction Documents, the Design Consultant shall perform any such revisions at its own expense and without additional compensation or reimbursement by the District.

- 2.5.5. Basic Services Fee.** If the lowest bid or proposal meets or exceeds one hundred and five (105%) percent of the amount designated as the Project Construction Budget at the time of bid, the "Computed Cost" for Design Consultant's Fee for Basic Services shall be based on such Project Construction Budget amount, plus any additive alternates not taken, plus any change orders for additional scope of work, unless Design Consultant can demonstrate good cause to the District.
- 2.5.6.** Should the District proceed to perform the Project in multiple phases, Design Consultant may be required to provide all services related to the Bidding Phase as set forth in this Section 2.5, and any and all related deliverables as further described herein, for each phase of the Project.

## **2.6. CONSTRUCTION PHASE**

- 2.6.1. Duration.** For the Project that is let to a Contractor the Construction Phase will commence on the date the Construction Contract is signed by the District and will terminate upon Final Completion of the Work covered by such Construction Contract.
- 2.6.2. Administration.** The Design Consultant's responsibilities shall include, without limitation, as outlined in Section 2.6.8 below, interpretation of the design requirements of the Contract Documents; periodic Site observations; review of Submittals; responding to requests for information or clarification by Contractors and Separate Contractors; preparation of documents for Change Orders; general consultation on design matters; and administration of the Construction Contract as provided in the General Conditions. Design Consultant shall maintain, and furnish to the District upon request, written digital logs documenting the status of project correspondence related to the above-described responsibilities.
- 2.6.3. Notices.** Design Consultant shall provide such notices as may be required by Applicable Laws to Governmental Authorities and are customarily provided by Design Consultants on behalf of clients, including, without limitation DSA, that Work is being, or is about to be, carried on at the Site and any required information concerning the identity of the Contractor and other required information concerning performance of the Work.
- 2.6.4. Attendance at Meetings.** The Design Consultant shall attend all necessary pre-construction and regular construction meetings with the Contractor. Attendees shall be the Project Design Consultant, its Subconsultants, Contractor, the District, and others as deemed necessary by the Design Consultant. The regular construction meetings shall, unless otherwise directed by the District, occur weekly. The Design Consultant shall prepare and distribute construction meeting notes.
- 2.6.5. Communications.** The District will furnish the Design Consultant with copies of written communications from the District to a Contractor. With respect to matters relating to design that may be addressed in such communications, unless the Design Consultant, within ten (10)



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Days of receipt of a written communication to the Contractor provides written notification to the District that the Design Consultant disagrees with the content of the written communication, specifying the reason for the disagreement, the Design Consultant shall be deemed to agree with the content of such communication. The Design Consultant shall advise and consult with the District and shall keep them informed of the observed progress of the Work. Design Consultant shall render written or graphic interpretations and decisions that are consistent with the intent of, and reasonably inferable from, the Contract Documents; review and recommend any action to be taken regarding Submittals; and evaluate and advise the District on the equivalence of proposed substitutions for materials, products, or services specified by brand or trade names in the Contract Documents and recommend either approval or rejection of the substitutions as being equal in quality, utility and appearance.

**2.6.6. No Delay.** The Design Consultant shall not delay its interpretations, decisions, reviews or other functions pursuant to this Agreement or otherwise cause or contribute to a disruption of construction

or a delay to the Project, consistent with the applicable Standard of Care. Toward this end, Contractor's Request(s) for Information (RFI) shall be responded to within a maximum of ten (10) Days from receipt of the RFI, and Contractor's submittals of shop drawings and product data shall be reviewed and returned within a maximum of twenty-one (21) Days from submittal. In accordance with the approved submittal schedule, the Design Consultant shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but for the purpose of checking for general conformance with information given and the design concept expressed in the Contract Documents. Design Consultant shall only be responsible for a review that complies with the applicable Standard of Care, and an approval by the Design Consultant shall not relieve the Contractor from its responsibility to comply with the Contract Documents. The Design Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Consultant, of any construction means, methods, techniques, sequences, or procedures. The Design Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**2.6.7. Corrections.** The Design Consultant shall, at no cost to the District, promptly and satisfactorily correct any and all errors, omissions, deficiencies, ambiguities, conflicts or violations of Applicable Laws in the Construction Documents prepared by the Design Consultant or its Subconsultants.

**2.6.8. Site Observations.** Subject to the limitations of Paragraph 2.6.13 below, the Design Consultant, and its Subconsultants as appropriate to the stage of the Work of the Project, shall not less frequently than weekly: (i) observe construction at the Site as it progresses; (ii) conduct Site observations in connection with occupancy and completion; and (iii) check fabricated materials and equipment located on or outside the Site when such checks are specified in the Contract Documents. All such observations shall be conducted in accordance with the Standard of Care. Such observations shall address matters relating to: the general progress, character, and complexity of the Work; design issues or questions of concern to the Design Consultant or its Subconsultants, or as noted in any inspection reports furnished to the Design Consultant; the observed quality of Contractor's performance during previous visits; the review of construction of crucial components of the Work; and the results of specified or directed tests significant to the acceptability of crucial components of the Work. Such observations shall be performed by Design Consultant and its Subconsultants when reasonably requested by the District or as appropriate to the stage of the Project. Without limitation to the foregoing, observations shall be for the purpose of ascertaining the general progress of the Work and that the character, scope, quality and detail of construction (including workmanship and materials) generally comply with the Contract Documents, approved Submittals and clarifications. Observations shall be separate from any inspections which may be provided by others and such inspections by others shall not relieve the Design Consultant of its responsibilities under this Agreement.

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- Any Sub consultant who has prepared designs or specifications shall be responsible to observe in accordance with the provisions of this Agreement those portions of the Work that he/she has so designed or specified. However, neither the Design Consultant nor any Sub consultant shall be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design Consultant shall be responsible for its negligent acts or omissions but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.
- 2.6.9. Defective Work.** The Design Consultant shall recommend to the District and the Project Inspector, in writing, the rejection of observed Defective Work.
- 2.6.10. Testing, Inspection.** The Design Consultant shall recommend in writing special inspection or testing of the Work in accordance with the provisions of the Contract Documents if, in the Design Consultant's professional judgment, such inspection or testing is necessary or advisable for the implementation of the Contract Documents or required by Applicable Laws, regardless of the status of the Work. The Design Consultant shall review inspection reports, laboratory reports and test data to determine conformity of such data with the design requirements expressed in or implied by the Contract Documents and approved Submittals. The Design Consultant shall recommend to the District, in writing, actions that need to be taken, as determined by Design Consultant from Site visits, inspections, observations, reports, laboratory reports and test data, or from Contractor proposals, schedules or other relevant documents.
- 2.6.11. Substantial, Final Completion.** The Design Consultant shall accompany and assist the District to evaluate Substantial Completion, Final Completion, and preparation of a "punch list" of minor items of work to be completed or corrected for Final Completion. The Design Consultant shall review the punch list, advise the District and Project Inspector whether items listed thereon have been completed in accordance with the requirements of the Contract Documents and issue such recommendations of Substantial Completion and Final Completion as may be requested by the District. The Design Consultant shall review for conformance with the Contract Documents all Record Documents and other items required by the Contract Documents to be delivered by Contractor as a condition of the final payment to such Contractor. In addition to the foregoing, Design Consultant shall, based on its evaluations of the Work, notify the District and Project Inspector when the Work is completed to the point that, in the opinion of the Design Consultant, a notice of completion required by Section 4-339, Part 1, Title 24 of the California Code of Regulations may be filed.
- 2.6.12. Interpretations.** The Design Consultant shall, upon request by the District, issue interpretations and clarifications of the requirements of the design requirements of the Contract Documents. Such clarifications and interpretations shall be transmitted to the District in writing.
- 2.6.13. Construction Means, Methods, Safety.** The Design Consultant in the course of performing its other obligations under this Agreement shall report to the District any observed material or substantive conditions that render any portion of the Work unsafe; provided, however, that the foregoing obligation shall not relieve Contractors of their sole responsibility for construction means, methods, techniques, sequences, procedures or safety precautions and programs in connection with the Work nor create an affirmative obligation on the part of the Design Consultant to discover safety issues.
- 2.6.14. Change Orders.** The Design Consultant shall prepare Drawings and Specifications as specifically requested by the District in connection with the issuance of Field Instructions and Construction Change Documents and secure approvals thereof by the applicable Governmental Authorities, including, but not limited to, DSA, in accordance with Applicable Laws prior to the commencement of the Work thereof. When requested or when necessary to maintain progress of the construction, Design Consultant shall prepare, submit and obtain

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approval by DSA of Construction Change Documents, followed promptly by submittal of a formal Change Order. Design Consultant shall be entitled to compensation for the preparation of Drawings and Specifications in connection with the issuance of Field Instructions and Change Orders to the extent allowed by Article 3 of this Agreement. The Design Consultant shall not be entitled to compensation for the preparation of Drawings and Specifications necessitated by errors, omissions, deficiencies, ambiguities, conflicts or violations of Applicable Laws caused or created by the Design Consultant or its Subconsultants.

#### **2.6.15. Record Documents.**

1. The Design Consultant shall review As-Builts prepared and certified by the Contractor and reviewed by the Project Inspector in a format acceptable to the District. Design Consultant is entitled to, consistent with the Standard of Care, reasonably rely upon the accuracy of the As-Builts prepared and certified by the Contractor and shall review the same in accordance with the Standard of Care. If significant discrepancies are noted by the Design Consultant in the course of its review, the Design Consultant shall return the As-Built to the Contractor, and, following corrections by the Contractor, return the As-Built to the Design Consultant and the District for further review.
2. Within six (6) weeks after receipt of Contractor's complete and corrected As-Built, the Design Consultant shall, at no additional cost, draft and furnish to the District Record Documents showing the as-built condition of all portions of the Work (including without limitation the location of electrical, HVAC, plumbing and other lines that may be diagrammatically represented in the Contract Documents), and one (1) annotated hardcopy of the Specifications and one (1) flash (thumb) drive in software format acceptable to the District. The revisions and changes reflected in the As-Built shall be coordinated and accurately annotated and cross-referenced by the Design Consultant from the Contractor prepared As-Built. Each page of the Drawings and the coverage page of the annotated Specification shall prominently bear the words "Record Documents."
3. Record Drawings shall be submitted by the Architect to the District in both hard copy and an electronic form acceptable to the District.

**2.6.16. Title 24 Reports.** Design Consultant and its Subconsultants who are in charge of general observation of the Work shall, in accordance with the provisions of Part 1, Title 24 of the California Code of Regulations, prepare and file periodic verified reports on forms prescribed by DSA affirming that of his/her own personal knowledge (as defined in Ed. Code, § 81141, *Reports required of architects, engineers and/or inspectors; information required*) the Work performed during the period of time covered by the report has been performed and materials have been used and installed in every material respect in compliance with the Drawings and Specifications approved by the DSA for the Project, together with such other detailed statements of fact as DSA may require.

**2.6.17.** Should the District proceed to perform the Project in multiple phases, Design Consultant may be required to provide all services related to the Construction Phase as set forth in this Section 2.6, and any and all related deliverables as further described herein, for each phase of the Project.

### **2.7. PROJECT CLOSE-OUT PHASE**

**2.7.1. Close-Out Documents.** The Design Consultant shall compile and assemble the Contractor's Close-Out Documents for delivery to the District, including without limitation, As-Built Drawings, Operations and Maintenance manuals, key schedules, warranties, and all Record Documents required at Close-Out as referenced in Article 2.6.15 herein. The Consultant shall prepare and submit for processing such documentation as required by governmental agencies, including

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DSA, in connection with completion of the Work of the Project.

**2.7.2. Warranty Observation.** The Design Consultant shall conduct a review of the Work one month prior to the warranty expiration for the purpose of observing the condition in the Work. Design Consultant shall make written recommendations to the District for the correction of any Defective Work discovered in the course of the Design Consultant's review within fifteen (15) Days after the date of such review. The Design Consultant shall be accompanied by the District during its review of the Work. The number of work hours to complete such review and preparation of written recommendations shall not exceed fifty (50) hours for any single Project, excluding review and preparation necessitated in whole or in part by errors and omissions in the services performed by the Design Consultant or its Subconsultants. Hours in excess thereof shall be compensated as Additional Service only if approved in advance in writing by the District.

## **2.8. INDEPENDENT REVIEWS**

**2.8.1.** This Project is subject to independent design reviews conducted by the District and at the District's expense. The Design Consultant shall participate in these design reviews including without limitation: Constructability Review and/or Value Engineering of the Design Documents.

**2.8.2.** The Design Consultant shall have an obligation to incorporate into the Design Documents any and all Value Engineering and Constructability Review comments into the Project Design Documents that are approved and accepted by the District, unless doing so would result in a violation of Applicable Laws or the Standard of Care. Except as set forth in Article 3, such changes shall be made with no additional compensation or reimbursement. Should the Design Consultant deem changes would be a violation of Applicable Laws, they shall immediately notify the District in writing citing the code section number and violation. The District shall have the right, but not the obligation, to have an independent cost estimate conducted by an estimator designated by the District and at the District's expense. The Design Consultant shall be available to answer the estimator's questions regarding the design and to attend meetings with the estimator as reasonably necessary to reconcile the Design Consultant's estimate with the independent estimate.

## **2.9. PROJECT SCHEDULE**

**2.9.1.** The Design Consultant shall meet the requirements of the Project Schedule, including without limitation the dates for completion of each Phase of the Design Consultant's Basic Services for the Project.

**2.9.2.** The Design Consultant shall be entitled to an adjustment to the Project Schedule for unavoidable Delays that are: (i) beyond the Design Consultant's control or its responsibility under this Agreement and/or (ii) not caused by the fault, negligence or violation of a provision of this Agreement by Design Consultant or its Subconsultants; provided, however, that as a condition precedent to its right to an adjustment of a Project Schedule, Design Consultant shall have given written notice to the District of the circumstances of such delay within fourteen (14) Days after such circumstances were first observed by Design Consultant or its Subconsultants. Failure to provide such written notice may result in a waiver by Design Consultant of any right to an adjustment to that Project Schedule on account of such circumstances.

## **ARTICLE 3. ADDITIONAL SERVICES**

### **3.1. LIST OF ADDITIONAL SERVICES**

Unless otherwise agreed by District, the following constitutes the list of Additional Services for which Design Consultant is entitled to Additional Services compensation pursuant to Section 5.1.2 of this Agreement. The

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Additional Services described in this Article 3 are not included in the scope of Design Consultant's Basic Services for the Project. Design Consultant shall notify the District prior to providing any such Additional Services and in no event not later than fifteen (15) Days after it learns of any circumstance (including, without limitation, any direction or request by the District) that Design Consultant believes may give rise to performance of Additional Services. The District may in its sole discretion direct the Design Consultant to proceed or not proceed with all or any portion of Additional Services described in Design Consultant's written notice.

- 3.1.1.** Except as set forth in Articles 1 or 2 as part of Basic Services, providing planning surveys, Site evaluations, or environmental studies.
- 3.1.2.** Providing services beyond those provided for in Articles 1 or 2 of this Agreement to investigate existing conditions or facilities, to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the District.
- 3.1.3.** Providing planning, programming and/or educational specification services.
- 3.1.4.** Providing financial feasibility studies or other special studies.
- 3.1.5.** Preparing revisions to the documents during the Schematic Design, Design Development or Construction Documents Phases, when these revisions are: (i) necessary to implement changes, additions, or deletions to a Project that are requested and approved by the District in writing; (ii) the result of issuance by the District of written directives or instructions that conflict with prior written directives or instructions by the District; (iii) necessitated by the enactment or revision of codes, laws or regulations where such enactment or revision could not have been reasonably foreseen by Design Consultant; or (iv) due to the District's failure to render decisions in a timely manner; provided, however, that under no circumstances shall the Design Consultant be paid Additional Services compensation to the extent due to: (a) its or its Subconsultant's errors, omissions, conflicts, ambiguities or violation of applicable laws; or (b) modifications to the Drawings, Specifications or other Design Documents prepared by Design Consultant or its Subconsultants in accordance with Paragraphs 2.2.4, 2.3.4, 2.4.7 or 2.5.4 to bring the Construction Cost within the Project Construction Budget.
- 3.1.6.** Providing services related to future facilities, systems and equipment that are not intended to be constructed during the Construction Phase.
- 3.1.7.** Providing detailed quantity surveys or inventories of material, equipment and labor.
- 3.1.8.** Making investigations or taking inventories of materials or equipment or making valuations and detailed appraisals of existing facilities.
- 3.1.9.** Providing analyses of owning and operating costs (except as needed to prepare energy calculations, which are deemed part of Basic Services).
- 3.1.10.** Providing perspective drawings, models and mock-ups, including slides thereof.
- 3.1.11.** Providing services as necessary to correct Defective Work not caused or created by any errors, omissions, conflicts, ambiguities, or violations of Applicable Laws in the Design Documents prepared by Design Consultant or its Subconsultants.
- 3.1.12.** Providing extensive assistance in the selection or utilization of any equipment or system; preparing operation and maintenance manuals; and training personnel for operation and maintenance.
- 3.1.13.** Providing services for the Project after Final Completion of such Project, except as such services that relate to the Warranty Observation Phase described in Section 2.7.2 of this Agreement.

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- 3.1.14. Providing services in connection with a pending public hearing, mediation, arbitration proceeding, or legal proceeding, except where: (i) the Design Consultant is Party thereto; or (ii) the Design Consultant is a Party to any related proceeding in which Design Consultant is alleged to be responsible for a Loss that is the subject of such pending public hearing, mediation, arbitration proceeding or legal proceeding; or (iii) the Design Consultant is a percipient witness (in which case the Design Consultant shall be entitled to witness fees and costs as allowed by law); or (iv) it is alleged by one or more parties to the pending public hearing, mediation, arbitration proceeding, or legal proceeding that the negligent, reckless or willful acts, omissions or other conduct of Design Consultant or its employees, agents, Subconsultants or representatives have caused or contributed to the claims, damages, and/or demands asserted in the pending public hearing, mediation, arbitration proceeding, for legal proceeding, then such services shall be provided to the District at no cost.
  - 3.1.15. Providing Expert Witness services in connection with a pending public hearing, mediation, arbitration or legal proceeding where Design Consultant is not a named Party.
  - 3.1.16. Providing services made necessary by the termination of a Contractor, but only to the extent such services exceed the level of service that would have been provided in the absence of such termination.
  - 3.1.17. Providing services to make revisions in approved Schematic Design, Design Development or Construction Documents due to inaccuracy in any surveys, test data or other information provided by the District pursuant to Section 4.2 of this Agreement.
  - 3.1.18. Performance of any design service expressly excluded from a Project Authorization.
  - 3.1.19. Services for the Warranty Observation Phase in excess of those provided for in Section 2.7.2, above. Master Planning services regarding the District Projects defined in this Agreement.
  - 3.1.20. Preparation of design and documentation for alternate bid or proposal requests proposed by the District.
  - 3.1.21. Providing the services of special inspectors unless included in a Project Authorization.
  - 3.1.22. Providing contract administration services after the construction contract time has been exceeded through no fault of the Architect.

## 3.2. DISPUTES

- 3.2.1. **Notice and Waiver of Compensation by Design Consultant.** Except as provided in Paragraph 3.2.2 below, Design Consultant's failure to notify the District in writing and secure the District's approval of said Additional Services prior to performing Additional Services shall be deemed a waiver of Design Consultant's right to compensation for such Additional Services performed without written authorization, unless otherwise agreed upon in writing by the District.
- 3.2.2. **Disputed Additional Services.** If a dispute arises as to whether any service constitutes an Additional Service or a Basic Service, the Design Consultant will nevertheless promptly perform such services, if requested to do so in writing by the District, in which case neither the District's request, Design Consultant's performance nor the acceptance of such disputed services by the District will constitute or be deemed to be a waiver on the part of the District or the Design Consultant of its rights with respect to the appropriate classification of the services rendered. District shall continue to pay Design Consultant for all undisputed services during the pendency of any dispute.

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## DISTRICT RIGHTS AND RESPONSIBILITIES

### 4.1. ADMINISTRATION

- 4.1.1. Responses.** The District shall promptly respond to Design Consultant's submittals and requests for decisions, approvals or information; provided, however, that no failure by District to respond shall entitle Design Consultant to an adjustment of a Project Schedule unless District has failed to respond within seven (7) Days to a written notice by Design Consultant to the District expressly stating that a response is overdue and specifically informing the District that a response is necessary in order to avoid a delay to a Project Schedule.
- 4.1.2. Specialty Consultants.** The District shall furnish the services of Specialty Consultants for design reviews and other services which the Design Consultant is not required to provide pursuant to Article 2 of this Agreement.
- 4.1.3. Revisions by the District.** The District reserves the right exercised in its sole discretion to revise the Project Budget, Project Construction Budget and Project Schedule. Design Consultant's sole and exclusive right to additional compensation and/or extension of time for such revisions shall be as set forth in this Agreement.

### 4.2. SURVEYS AND REPORTS

- 4.2.1. General.** The District shall furnish such structural, mechanical, electrical, chemical, hazardous materials, soils and other tests, inspections and reports as required by Applicable Laws or by the Contract Documents and which are not required to be furnished by the Design Consultant under this Agreement or by the Contractor under the Contract Documents.
- 4.2.2. Surveys, Legal Restrictions.** If required for the performance of the Design Consultant's services, the District shall furnish a land survey of the Site, giving (as applicable) grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Site; locations, dimensions and floor elevations pertaining to existing buildings, other improvements and trees; and information in the District's possession concerning available service and utility lines, both public and private.
- 4.2.3. Geotechnical.** The District shall furnish geotechnical data and reports, or employ Specialty Consultants to provide such data or reports, when reasonably deemed necessary by the Design Consultant, including test logs, soil classifications, soil bearing values and other data and information necessary to define subsoil conditions.
- 4.2.4. District Expense.** The services, information, surveys and reports required by this Article 4 shall be furnished at the District's expense.
- 4.2.5. Reliance on Documents Provided by the District.** Design Consultant shall be entitled to rely upon the accuracy and sufficiency of the documents provided by the District in performing its obligations under this Agreement. In the event that the information contained in such documents is found to be inaccurate, incomplete or insufficient, or in the event that other surveys, data, reports or information, known or unknown, although available to the District, were not provided, even if such information if disclosed, would have been material to Design Consultant's performance of this Agreement, the District shall have no liability to Design Consultant, other than for payment for authorized Additional Services necessary to correct Design Documents. Design Consultant shall not be entitled to damages for breach of contract.
- 4.2.6. District Consultants.** Except for the Design Consultants retained by the Design Professional, the District shall furnish all legal, accounting, insurance and other consulting services as may be necessary to meet the District's needs for the Project.

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**ARTICLE 5.  
COMPENSATION**

**5.1. COMPENSATION.**

**5.1.1.** For designated services, compensation shall be determined in advance by the Design Consultant and the District, and set forth in an executed Project Authorization.

**5.1.2.** For Additional Services, unless otherwise agreed upon by the Parties, Design Consultant shall bill based upon the rates as stated on the Design Consultant's Hourly Rate schedule which shall be attached to the Project Authorization. The rates shall remain the same for the duration of each project. Design Consultant shall, if requested by the District prepare a proposal for any additional services and/or adhere to any not-to-exceed limit reasonably requested by the District.

**5.2. CONSTRUCTION PHASE CHANGES.** The Compensation for the Basic Services for the Project is not subject to adjustment unless there are Changes authorized by the District during the Construction Phase of the Project which are not the result of errors, omissions or other defects in the Design Documents or failures of the Design Consultant or its Subconsultants to timely and completely perform the Basic Services. If services of the Design Consultant or its Subconsultants are required in connection with Changes during the Construction Phase of the Project which do not result from errors, omissions or other defects in the Design Documents or failures of the Design Consultant or its Subconsultants to timely and completely perform the Basic Services, the Compensation will be equitably adjusted by an amount equal to the lesser of eight (8%) percent of the Construction Costs of such Changes or the time of the Design Consultant and/or its Subconsultants reasonably necessary to provide design and related support services for such Changes multiplied by the applicable hourly rate(s) set forth in the Rate Schedule included in the Project Authorization. If a Change during the Construction Phase of the Project is the result of errors, omissions or other defects in the Design Documents or failures of the Design Consultant or its Subconsultants to timely and completely perform the Basic Services, services required of the Design Consultant or its Subconsultants in connection with such Change shall not result in adjustment of the Compensation.

**5.3. REIMBURSABLE EXPENSES.** The Compensation for Design Consultant's Basic Services for the Project includes all costs and expenses of a non-capital nature reasonably and necessarily incurred by Design Consultant to perform the Basic Services including without limitation expenses for postage, delivery, office supplies, reproduction of plans and prints, photographic film and development and travel to and from the offices of the Design Consultant and its Subconsultants to the Site, the District's Administrative offices and within the counties noted above. Unless expressly authorized in advance by the District, no payment will be made by the District for expenses or costs of any kind, type or nature.

**5.4. RECORDS.** Accurate and detailed records of Reimbursable Expenses pertaining to the Project shall be maintained in an orderly manner on the basis of generally accepted accounting practices and shall be available at Design Consultant's office and at the District's request, shall be brought by Design Consultant for inspection, auditing and/or copying by the District and its representatives pursuant to Article 7 of this Agreement.

**ARTICLE 6.  
PAYMENTS**

**6.1. APPLICATIONS FOR PAYMENT**

**6.1.1. Monthly Applications.** Design Consultant shall submit an invoice, monthly to the District, accompanied by such documentation as required by this Agreement, setting forth in detail the: (i) invoices, shall be based upon the percentage of work performed in the previous month and shall not exceed the total portion of the Compensation apportioned set forth in paragraph 5.1, above; (ii) Progress payments for Basic Services shall be based on the percentage of Basic



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Services performed in the previous month and shall not exceed the allocated percentage for each phase of the Basic Services set forth in paragraph 6.2.1, below; (iii) compensation for authorized Additional Services rendered; and (iv) authorized Reimbursable Expenses incurred and paid during the previous month.

**6.1.2. Accompanying Documentation.** Invoices submitted for payment shall be accompanied by a detailed summary description of the progress of performance to date, (a) a description of the status of completion of Basic Services by percent complete; (b) a description of the percent complete of any Additional Services and summary of hours worked; (c) Reimbursable Expenses incurred during the previous 60-Day period of time accompanied with backup documentation, invoices, receipts and other documentation reasonably requested, by the District to verify the amounts of Reimbursable Expenses for which reimbursement is sought for the Invoice submitted for payment.

**6.2. PAYMENTS**

Payments of undisputed sums due shall be made by District monthly within thirty (30) Days after receipt by the District of a proper and timely Invoice.

**6.3. PAYMENT DISPUTES**

Notwithstanding any provision of this Agreement to the contrary, if the District shall, in good faith, dispute the amount due the Design Consultant under any billing invoice submitted by the Design Consultant under this Agreement, pursuant to Civil Code, section 3320 subdivision (a), (*Contracts for public works of improvement; progress and final retention payments to prime design professionals; dispute; penalty; nature and application*), the District may withhold from payment to the Design Consultant an amount not to exceed one hundred and fifty (150%) percent of the disputed amount.

In the event of any good faith dispute as to whether a particular payment or a portion of a particular payment is owed or not owed by the District to Design Consultant under this Agreement, the District shall have the right to do either of the following: (i) make all or part of such disputed payment to Design Consultant without prejudice to the District's right to contest the amount so paid; or (ii) withhold from payment to the Design Consultant an amount not to exceed one hundred and fifty (150%) percent of the disputed amount. Pursuant to Civil Code section 3320 subdivision (a), should the District withhold all or a portion of any payment invoiced by Design Consultant, the District shall so notify Design Consultant in writing of the reasons, therefore. From and after Design Consultant's receipt of such notice, the District and Design Consultant shall use their good faith efforts to resolve their dispute within sixty (60) Days, provided however, that if the dispute is not resolved, the District may continue to hold amounts in dispute and Design Consultant shall not be entitled to terminate this Agreement or suspend its services hereunder on account of such nonpayment. In any action for the collection of amounts withheld in violation of this section, the prevailing Party is entitled to his or her reasonable attorney's fees and costs. If District chooses to proceed under Clause (i) of this Section 6.3 and it is subsequently determined that District overpaid Design Consultant, Design Consultant shall refund to District the amount of such payment.

**ARTICLE 7.  
DESIGN CONSULTANT'S RECORDS AND FILES**

**7.1. RECORDS**

**7.1.1. Maintenance of Project Books and Records.** Design Consultant and its Subconsultants shall maintain complete and accurate books and records with respect to services, costs, expenses, receipts and other information required by the District to verify the scope or charges for any services provided under this Agreement. Design Consultant and its Subconsultants shall maintain such records in sufficient detail to permit the District, the District's independent auditors, or a designee of any of them, to thoroughly evaluate and verify the nature, scope, value and charges for services performed under this Agreement. All such books and records shall be maintained in accordance with generally accepted accounting principles and shall be

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clearly identified and readily accessible. Such records shall be kept separate from other documents and records unrelated to the Project for a period of four (4) years after the later of termination of this Agreement or Final Completion of the Project.

- 7.1.2. Audit of Records.** The District, District's independent auditors, or their designees shall have the right to examine and to audit books, records, documents, and other evidence sufficient to reflect properly all costs and expenses claimed to have been incurred in Design Consultant's and its Subconsultants' performance of this Agreement, including, without limitation, verification of the amounts and tasks performed for all time expended that is charged to the District on an hourly basis. Such right to audit shall include inspection at all reasonable times at the Design Consultant's offices or facilities. In addition, Design Consultant shall, at no cost or expense to the District, furnish facilities and cooperate fully with the audit. Upon request, Design Consultant shall provide reproducible copies of books, records and other documents in the possession of Design Consultant and its Subconsultants that are applicable to this Agreement for reproduction by the District, or their designee.
- 7.1.3. Audit Reimbursement.** To the extent that an audit by the District, District's independent auditors, or their designees disclose excess charges inaccurately or improperly attributed to this Project by the Design Consultant and such audit is subsequently determined to be correct, Design Consultant agrees to remit the amount of the overpayment to the District, together with interest thereon at a rate that is the lesser of ten (10%) percent per annum or the maximum rate allowable by law, within thirty (30) Days after demand. If such audit discloses an overcharge of five (5%) percent or more of the total amount invoiced to the District for any year audited, and such audit is subsequently determined to be correct, Design Consultant shall pay the actual cost of such audit, which cost, in the case of audits conducted by the District using in house staff, shall be computed on the basis of two (2) times the direct payroll of the audit staff completing the audit and audit report.
- 7.1.4. Privileged Communications.** Design Consultant acknowledges that in the course of its services under this Agreement it will be necessary for Design Consultant or its Subconsultants to communicate with the District's attorneys, including special legal counsel, or receive or perform work at the request of District's counsel, and that such work product and communications shall be protected by the attorney-client and attorney work product privileges and shall be maintained in confidence by Design Consultant and its Subconsultants, except as authorized in writing by District's counsel, or designee.
- 7.1.5. Subconsultants.** Design Consultant shall include the provisions of this Section 7.1 in all contracts it enters into with Subconsultants.

## ARTICLE 8. TERM; TERMINATION OF AGREEMENT

### 8.1. TERM.

The Term of this Agreement shall commence upon the District and the Design Consultant each executing a counterpart copy hereof, delivery of an executed counterpart copy hereof to the other and ratification of this agreement by the District's Board of Trustees ("Term"). This Agreement shall be in effect unless terminated prior thereto under the provisions of this Article 8. In the event that Project construction is not completed or the District shall not have issued Final Payment to the Contractor as of the Termination Date through no fault or neglect of Design Consultant, or its Subconsultants, the Termination Date shall be extended and Basic Services provided by Design Consultant following the Termination Date shall be in accordance with the Rate Schedule attached to the Project Authorization. If Project construction is not completed by the Termination Date and delayed completion of Project construction is caused in whole or in part by: (a) the acts, omissions or other conduct of the Design Consultant or any Sub consultant; (b) delayed review and/or approval by DSA or other government authorities; or (c) acts of God, the Termination Date shall be extended commensurate with the number

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of calendar Days attributed to (a), (b), and/or (c) above (“the Extended Duration”). During the Extended Duration, the Design Consultant shall continue to provide or perform the Basic Services without adjustment of the Compensation.

## **8.2. TERMINATION BY THE DISTRICT**

**8.2.1. For Cause.** If the District determines that Design Consultant has failed to perform in accordance with the terms and conditions of this Agreement, the District may terminate all or part of the Agreement (or of any Project) for cause. This termination shall be effective if Design Consultant does not begin to cure its failure to perform within ten (10) Days (or longer, if authorized in writing by District) after receipt of a notice of intention to terminate from the District specifying the failure in performance. If a termination for cause does occur, the District will have the right to withhold monies otherwise payable to Design Consultant to the extent caused by the Design Consultant’s cited failure to perform. If the District incurs additional costs, expenses or other damages due to the negligent failure of Design Consultant to properly perform pursuant to this Agreement, these costs, expenses or other damages shall be deducted from the amounts withheld. Should the amounts withheld exceed the amounts deducted; the balance will be paid to Design Consultant upon Final Completion of the Project. If the costs, expenses or other damages incurred by the District exceed the amounts withheld, Design Consultant shall be liable to the District for the difference. The provisions of this Paragraph 8.2.1 are in addition to, and not a limitation upon, any other rights and remedies of the District under law or in equity.

**8.2.2. For Convenience.** The District may terminate or suspend performance of all or part of this Agreement (or of any Project) for convenience and without cause at any time upon ten (10) Days’ written notice to Design Consultant, in which case the District will pay Design Consultant as provided in Article 5 for all Basic Services and authorized Additional Services performed, and all authorized Reimbursable Expenses incurred and paid (excepting any disputed amounts), under and in accordance with this Agreement up to and including the date of termination. Such payment shall be Design Consultant’s sole and exclusive compensation and the District shall have no liability to Design Consultant for any other compensation or damages, including without limitation, anticipated profit, prospective losses or consequential damages, of any kind.

**8.2.3. Deletion of Services.** In the event of termination by the District, for cause or convenience, of a portion of the Project, then the Design Consultant’s fixed or maximum compensation for Basic Services for the portions of Project or services not so terminated shall be equitably adjusted to reflect the resulting reduction in Design Consultant’s scope of Basic Services.

## **8.3. TERMINATION BY DESIGN CONSULTANT**

**8.3.1. Termination of the Agreement.** Design Consultant may terminate this Agreement:

1. If the District fails to make any undisputed payment to Design Consultant when due in accordance with this Agreement and such failure remains uncured for thirty (30) Days after written notice to the District of such default and of Design Consultant's intent to terminate; or
2. If the Project is abandoned by the District for more than sixty (60) consecutive Days, Design Consultant may terminate this Agreement upon thirty (30) Days’ notice to the District, provided the District does not reactivate the Project within such thirty (30) Day period. If the Project is reactivated and this Agreement is still in full force and effect, Design Consultant's compensation and time for performance shall be equitably adjusted to provide for reasonable expenses incurred by Design Consultant and delays which are directly attributable to the interruption and resumption of service.

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**8.3.2. Payment for Services.** In the event of a termination of this Agreement by Design Consultant in accordance with this Section 8.3, the District's obligation shall be to pay Design Consultant an amount for its Basic Services, Additional Services, and Reimbursable Expenses calculated in accordance with Paragraph 8.2.2 of this Agreement. Such payment shall be Design Consultant's sole and exclusive compensation and the District shall have no further liability or obligation to Design Consultant for any other compensation or damages, including, without limitation, anticipated profit, prospective losses or consequential damages, of any kind.

**ARTICLE 9.  
INDEMNIFICATION AND INSURANCE**

**9.1. INDEMNIFICATION**

To the fullest extent permitted by law, Design Consultant agrees to defend, indemnify and hold harmless, the District, its Board of Trustees, and each of their respective members, officers, employees, agents, and volunteers ["Indemnitee(s)"], through legal counsel reasonably acceptable to the District, from any and all losses, liabilities, claims, damages and costs to the extent that the claims against Indemnitee(s) arise out of or are attributable, in whole or in part, to the negligence, recklessness, or willful acts or omissions of Design Consultant or its Subconsultants, or their respective employees, agents, representatives or independent contractors. The Design Consultant's obligation to pay the Indemnitees' reasonable attorneys' fees and costs shall be limited to the reimbursements for reasonable attorney fees and costs incurred by Indemnitees in defending actions after a final determination of and to the extent the claims arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the Design Consultant and/or its Subconsultants. The foregoing notwithstanding, the limitation to Design Consultant's reimbursement of reasonable attorney fees and costs to the Indemnitees shall be governed by California Civil Code section 2778 or section 2782.8, which are incorporated herein by reference in their entirety. Further, the limitation to Design Consultant's reimbursement of reasonable attorney fees and costs to the Indemnitees shall not act as a limitation of the Design Consultant's obligation to provide services pursuant to Paragraph 3.1.15, above. The Design Consultant's obligations hereunder shall survive the Design Consultant's completion of services and obligations hereunder or the earlier termination of the Agreement until any such claim, demand, loss, responsibility or liability covered by the provisions hereof is barred by the applicable Statute of Limitations.

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The Indemnitees shall be entitled to the defense and indemnification provided for hereunder except to the extent the loss, liability, claim, damage or cost is in part caused or contributed to by the acts or omissions of an Indemnitee; provided, however, that nothing contained herein shall be construed as obligating Design Consultant to indemnify any Indemnitee for any loss, liability, claim, damage or cost to the extent resulting from that Indemnitee's negligence or willful misconduct.

To the fullest extent permitted by law, the District agrees to defend, indemnify and hold harmless, the Design Consultant, from any and all losses, liabilities, claims, damages and costs arising out of or attributable, in whole or in part, to the negligent or willful acts, omissions, errors and/or other conduct of the District, and those of the District's Trustees, officers, employees, agents and volunteers arising from the Project that is subject to this Agreement; provided, however, that nothing contained herein shall be construed as obligating the District to indemnify any Design Consultant for any loss, liability, claim, damage, or cost to the extent resulting from that Design Consultant's, or its Subconsultants', or their respective employees,' agents,' representatives' or independent contractors,' negligence or willful misconduct, omissions, errors and/or other conduct. The District's obligation to pay Design Consultant's attorneys' fees and costs shall be limited to the reimbursements for attorney fees and costs incurred by the Design Consultant in defending actions to the extent caused by the negligence, recklessness or the willful misconduct of the District.

## 9.2. INSURANCE

**9.2.1. Basic Insurance Requirements.** Prior to commencing Work, Design Consultant and each of its Subconsultants shall procure and maintain insurance at Design Consultant's and its Subconsultant's, as applicable, own cost and expense against claims for injuries to persons or damages to property which may arise from or in connection with the performance of services by Design Consultant, its agents, representatives, employees, or Subconsultants. Contractor engaged for a Project referenced in this Agreement shall be responsible for obtaining and maintaining Builder's Risk insurance to remain in place throughout the construction phase.

1. Without in any way affecting the indemnity provided in or by Section 9.1, Design Consultant shall secure before commencement of the Work the types and amounts of insurance specified in this Section 9.2.
2. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A- VII unless otherwise approved by the District.
3. Each insurance coverage required by this Section 9.2 shall be endorsed to state that coverage shall not be canceled except after thirty (30) Days prior written notice has been given to the District in accordance with the notice provisions of this Agreement.

**9.2.2. Minimum Limits of Insurance.** Design Consultant and each of its Subconsultants (unless the District shall agree in writing for a different Limit of Insurance for certain Subconsultants) shall obtain insurance of the types and in the amounts described below:

1. Commercial General Liability Insurance (CGL) with a limit of not less than \$1,000,000 each occurrence/\$2,000,000 in the annual aggregate.
2. Any Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident.
3. Professional Liability (Errors and Omissions) Insurance with a limit not less than \$2,000,000 per claim/\$4,000,000 in the annual aggregate.
4. Workers' Compensation Insurance as required by the state of California.
5. Employer's Liability Insurance in the amount of \$1,000,000 per accident for bodily

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injury or disease.

**9.2.2.1. Minimum Scope of Insurance.**

1. CGL insurance shall be written on Insurance Services Office form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and explosion, collapse and underground hazards.
2. Business Automobile Insurance shall cover liability arising out of any automobiles (including owned (if any), hired and non-owned automobiles). Coverage shall be written on Insurance Services Office form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. Unless waived by the District in writing, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.
3. If the Professional Liability Insurance policy is written on a claims made basis, it shall be maintained continuously for a period of no less than three (3) years after Final Completion of the Project, and two (2) additional years if such coverage is available to Design Consultant. The "retro date" must be shown and must be before the date of execution of this Agreement by the District and Design Consultant.

**9.2.3. Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions in excess of One Hundred Thousand dollars/no cents (\$100,000.00) must be declared to and approved by the District, which approval may be granted or withheld in the sole discretion to District. In the event that the District does not approve of such deductible or self-insured retentions, then at the option of the District, exercised in its sole discretion, either: (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects District, its officers, officials, employees or volunteers; or (ii) Design Consultant shall provide a financial guarantee satisfactory to the District guaranteeing payment of any losses and related investigation, claim administration and defense expenses.

**9.2.4. Other Insurance Provisions.** The Commercial General Liability and Automobile Liability policies required by this Agreement are to contain, or be endorsed to contain, provisions equivalent to the following:

1. The District, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to: (i) liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the insured; (ii) liability arising out of work or operations performed by or on behalf of Design Consultant and its Subconsultants including materials, parts or equipment furnished in connection with such services, work or operations; and (iii) liability for occurrences, acts or events covered by the Design Consultant's CGL policy, using the Insurance Services Office additional insured endorsement form CG 20 10 or a substitute providing equivalent coverage. District and other additional insureds mentioned in this Paragraph 9.2.4.1 shall not, by reason of their inclusion as additional insured, become liable for any payment of premiums to carriers for such coverage.
2. For any claims related to this Project, insurance coverage shall be primary as it respects to the District, its officers, officials, employees and volunteers. Any insurance or self- insurance maintained by the District, its officers, officials, employees or volunteers shall be in excess of insurance required by this Agreement and shall not contribute with it.

**9.2.5. Waiver of Subrogation.** For Commercial General Liability, Workers' Compensation, and

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Employer's Liability insurance the insurer shall agree to waive all rights of subrogation against the District, its officers, officials, employees, and volunteers for and losses arising from activities and operations of an insured in the performance of services under this Agreement.

- 9.2.6. Lapse in Coverage.** If Design Consultant or any Sub consultant, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. The District, at its sole option, may terminate this Agreement and obtain damages from Design Consultant resulting from said breach. Alternatively, the District may purchase such coverage (but has no obligation to do so), and without further notice to Design Consultant, the District may deduct from sums due to Design Consultant any premium costs advanced by the District for such insurance.
- 9.2.7. Verification of Insurance.** Design Consultant shall furnish the District with original certificates and amendatory endorsements effecting coverage required by this Section 9.2. The certificates for each policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements shall be on the District's forms or forms reasonably approved by the District or reasonably commercially available. All certificates and endorsements are to be received and approved by the District before work under this Agreement commences. The District reserves the right to require complete copies of all required insurance policies at any time, including endorsements affecting the coverage required by these specifications. The District shall have the right to retain a copy of such policy provided that reasonable steps will be taken by the District to restrict review of such policies to representatives of the District.
- 9.2.8. Duration of Coverage.** The insurance coverage required herein shall be maintained without interruption, for a period of three (3) years after Final Completion of the Work of the Project.
- 9.2.9. Subconsultants.** Subconsultants shall be required by their sub consulting agreements to maintain insurance on the same terms and under the same coverage as required of Design Consultant under this Agreement.

## ARTICLE 10.

### DISPUTE RESOLUTION

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

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### 10.3. CLAIMS DISPUTE RESOLUTION PROCESS

- 10.3.1. Continuation of Design Consultant Services.** Except in the event of the District's failure to make undisputed payment of the Compensation due Design Consultant for the Project, notwithstanding any disputes between the District and Design Consultant hereunder or in connection with the Project, Design Consultant and the District shall each continue to perform their respective obligations hereunder; including the obligation of the Design Consultant to continue to provide and perform services hereunder pending a subsequent resolution of such disputes.
- 10.3.2. Direct Negotiation.** Designated representatives of the District and Design Consultant shall meet as soon as possible (but not later than ten (10) Days after receipt of a written Claim) in a good faith effort to negotiate a resolution to the Claim. Each Party shall be represented in such negotiations by an authorized representative with full knowledge of the details of the Claim or defenses being asserted by such Party, and with full authority to resolve such Claim then and there, subject only to the District's right and obligation to obtain Board of Trustees' approval of any agreed settlement or resolution. If the Claim involves an assertion of a right or claim by a Sub consultant against Design Consultant that is in turn being asserted by Design Consultant against the District, then such Subconsultant shall also have a representative attend such negotiations, with the same authority and knowledge as just described. Upon completion of the meeting, if the Claim is not resolved, the Parties may either continue the negotiations or either Party may declare negotiations ended. All discussions that occur during such negotiation and all documents prepared solely for the purpose of such negotiations shall be confidential and privileged pursuant to California Evidence Code sections 1119 and 1152.
- 10.3.3. Mandatory Mediation.** If the Claim remains unresolved after direct negotiations, all claims, disputes and other matters in controversy between the Design Consultant and the District arising out of or pertaining to this Agreement shall be submitted for resolution by non-binding mediation. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the District or the Design Consultant commencing arbitration proceedings pursuant to Paragraph 10.3.4 below.
- 10.3.4. Government Code Claim Requirements.** Pursuant to Government Code section 930.6, any claim, demand, dispute, disagreement or other matter in controversy asserted by the Design Consultant against the District for money or damages, including, without limitation, a Demand for Arbitration, shall be deemed a "suit for money or damages" and shall be subject to the provisions of Government Code sections 945.4, 945.6 and 946. Notwithstanding the resolution of disputes pursuant to the arbitration provisions set forth in this Paragraph 10.3.4, any claim, demand, dispute, disagreement or other matter in controversy between the Design Consultant and the District shall first be presented to the District and acted upon or deemed rejected by the District in accordance with Government Code section 900, et seq., as an express jurisdictional condition precedent to the Design Consultant's commencement of arbitration proceedings or litigation in any other forum.
- 10.3.5. Arbitration.** All claims, disputes or other matters in controversy between Design Consultant and the District arising out of or pertaining to this Agreement which are not fully resolved through the mandatory mediation set forth in Paragraph 10.3.3 above shall be settled and resolved by binding arbitration conducted under the auspices of the AAA Construction Industry Arbitration Rules in effect at the time of the filing of a Demand for Arbitration, as modified herein. The award rendered by the Arbitrator(s) shall be final and binding upon the District and the Contractor and shall be supported by law and substantial evidence pursuant to California Code of Civil Procedure section 1296. Any written arbitration award that does not include findings of fact and conclusions of law in conformity with California Code of Civil Procedure section 1296 and Rule R-47 of the AAA Construction Industry Arbitration Rules shall be invalid and unenforceable. The District and Contractor hereby expressly agree that the Court shall, subject



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to California Code of Civil Procedure sections 1286.4 and 1296, vacate the award if, after review of the award, the Court determines either that the award is not supported by substantial evidence or that it is based on an error of law. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure section 1283.05, shall be applicable, and the same shall be deemed incorporated herein by this reference. If any claim or dispute is asserted by the Contractor, the Construction Manager or the District relating to the Project and arising in whole or in part out of this Agreement, the services provided by or through the Design Consultant hereunder or the Instruments of Service prepared by or through the Design Consultant, Design Consultant and District agree that any arbitration proceedings initiated between Design Consultant and District hereunder shall be consolidated with any arbitration proceedings initiated in connection with such other claim or dispute with the Design Consultant, or the Contractor, the Construction Manager. Any arbitration hereunder shall be conducted in the AAA Regional Office closest to the Site.

## **ARTICLE 11. MISCELLANEOUS**

### **11.1. NON-DISCRIMINATION IN SERVICES**

**11.1.1.** Design Consultant shall not discriminate in the provision of services hereunder because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability in accordance with the requirements of Applicable Laws. For the purpose of this Section 11.1, discrimination in the provision of services may include, but is not limited to the following:

1. Denying any person any service or benefit or the availability of a facility.
2. Providing any service or benefit to any person which is not equivalent, or in a non-equivalent manner or at a non-equivalent time, from that provided to others.
3. Subjecting any person to segregation or separate treatment in any manner related to the receipt of any service.
4. Restricting any person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit.
5. Treating any person differently from others in determining admission, enrollment, eligibility, membership, or any other requirement or condition which persons must meet in order to be provided any service or benefit.

**11.1.2.** Design Consultant shall ensure that intended beneficiaries of this Agreement are provided services without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability.

**11.1.3.** Design Consultant shall establish and maintain written procedures under which any person, applying for or receiving services hereunder, may seek resolution from Design Consultant of a complaint with respect to any alleged discrimination in the provisions of services by Design Consultant's personnel. At any time, any person applies for services under this Agreement, he or she shall be advised by Design Consultant of these procedures. A copy of such procedures shall be posted by Design Consultant in a conspicuous place, available and open to the public, in each of Design Consultant's facilities where services are provided hereunder.

**11.2. NOTICE FORM AND DELIVERY** All notices, demands, or requests to be given under this Agreement shall be given in writing and conclusively shall be deemed received when received in any of the following ways:

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(i) on the date delivered if delivered personally;

(ii) on the third (3rd) business Day after the deposit thereof in the United States mail, first class postage prepaid, and addressed as hereinafter provided; on the date it is accepted or rejected if sent by certified mail.

(iii) by email if agreed upon by the Parties in writing.

**11.3. Notice Recipients.** All notices, demands or requests shall include the Contract Number, Project name, and date of this Agreement, and shall be addressed to the Parties as follows:

If to District:

Oakland Unified School District  
955 High Street, Oakland, CA 94601

If to Design Consultant:

[[to be inserted]]

**11.4. GOVERNING LAW; INTERPRETATION.** This Agreement shall be governed and interpreted in accordance with the laws of the state of California in accordance with its fair meaning and not strictly for or against the District or Design Consultant.

**11.5. NUISANCE.** Design Consultant shall not maintain, commit or permit the maintenance or commission by its personnel of any nuisance in connection with the performance of services under this Agreement.

**11.6. HAZARDOUS SUBSTANCES.** If Design Consultant becomes aware that a Hazardous Substance is on Site, or on a campus related to the Project that has not been previously identified as requiring remediation or other action, the Design Consultant shall immediately notify the District in writing describing in detail the conditions encountered. Design Consultant's obligation hereunder shall be limited to reporting Hazardous Substances of which Design Consultant or its Subconsultants acquire actual knowledge. Design Consultant shall not have an affirmative duty to identify or locate any Hazardous Substance.

**11.7. WAIVER.** Provisions of this Agreement may be waived by the District only in writing and signed by the Superintendent or designee stating expressly that it is intended as a waiver of specified provisions of this Agreement. A waiver by either Party to this Agreement of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein whether of the same or a different character.

**11.8. NO THIRD PARTY RIGHTS.** Except for the indemnity and insurance requirements of Article 9 herein, nothing contained in this Agreement is intended to make any person or entity who is not a signatory to this Agreement a third party beneficiary of any right, obligation or cause of action created by this Agreement, by operation of law, or conduct of the Parties.

**11.9. CUMULATIVE RIGHTS; NO WAIVER.** Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by the District or Design Consultant hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default by the other.

**11.10. ENTIRE AGREEMENT.** This Agreement represents the entire Agreement with the District and Design Consultant for furnishing of services to the Project and supersedes all prior negotiations, representations or agreements, either written or oral, and may be amended only by written instrument

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signed by both the District and Design Consultant, and formally approved or ratified by the Board of Trustees.

- 11.11. SEVERABILITY.** In case any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of all remaining provisions shall not be affected.
- 11.12. SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon the District and Design Consultant and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any monies due or to become due hereunder, nor any claim hereunder, may be assigned by Design Consultant without the prior written consent and approval of District, which may be granted or withheld in District's sole discretion.
- 11.13. CONFIDENTIALITY.** Design Consultant shall treat all confidential information and data identified as confidential and furnished to it by the District or any other Project Team member or otherwise obtained or prepared by Design Consultant concerning the Project as strictly confidential and shall not disclose any of the same to any other person or entity unless required to do so in connection with Design Consultant's performance of this Agreement or any governmental filings or applications. The foregoing obligations shall not prevent Design Consultant from disclosing only those portions of confidential information that are required to be disclosed by law, government regulation, rule, ethical obligation, subpoena or court order, provided that Design Consultant provides reasonable prior notice to the District of such required disclosure and takes reasonable lawful measures to avoid or minimize such disclosure, including providing reasonable assistance to District with respect to any appropriate action that District may decide to take. Design Consultant shall not engage in or permit any public references or statements to the Project, the District or Design Consultant's services hereunder, including, without limitation, referring to the same in advertising or promotional brochures or materials or granting interviews to broadcast, print or other media, without the prior written consent of the District, which may be granted or withheld in the sole discretion of the District. The provisions of this Article 11.13 shall survive any termination of this Agreement.
- 11.14. INDEPENDENT CONTRACTOR.** Design Consultant is and shall at all times remain as to the District a wholly independent contractor. Neither the District nor any of its agents shall have control over the conduct of Design Consultant or any of Design Consultant's officers, agents or employees, except as herein set forth. Design Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the District.
- 11.15. FAIR EMPLOYMENT PRACTICES/EQUAL OPPORTUNITY ACTS.** In the performance of this Agreement, Design Consultant shall comply with all applicable provisions of the California Fair Employment Practices Act (Government Code, §§ 12940-48) and the applicable equal employment provisions of the Civil Rights Act of 1964 (42 U.S. C. 200e -217), whichever is more restrictive.
- 11.16. PERMITS AND LICENSES.** Design Consultant, at its sole expense, shall obtain and maintain during the term of this Agreement, all required business and professional permits, licenses and certificates necessary for Design Consultant to perform its services.
- 11.17. CONFLICTS OF INTEREST.** Design Consultant agrees not to accept any employment or representation during the term of this Agreement which is or may likely make Design Consultant "financially interested" (as provided in Gov. Code, §§ 1090 and 87100) in any decision made by the District on any matter in connection with which Design Consultant has been retained pursuant to this Agreement.
- 11.18. MARGINAL HEADINGS; CAPTIONS. MARGINAL HEADINGS; CAPTIONS.** The titles of the various Paragraphs of this Agreement are for convenience of reference only and are not intended to and shall in no way enlarge or diminish the rights or obligations of Design Consultant and the District hereunder.
- 11.19. EXHIBITS.** The following Exhibits are attached hereto and incorporated herein by this

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reference Exhibit "A" - Sample Project Authorization  
Exhibit "B" - Certification Re Financial Relationship Disclosure (Design  
Consultant) Exhibit "C" - Iran Contracting Certification

## 11.20. DEFINITIONS

- 11.20.1. Acceptance.** The point that the Work is accepted by the Board of Trustees. Acceptance shall not constitute evidence or confirmation of Substantial Completion or Final Completion if in fact the Work is not Substantially Complete or Finally Complete on the date of such Acceptance.
- 11.20.2. Addendum, Addenda.** Written or graphic information (including, without limitation, Drawings or Specifications) prepared and issued prior to the receipt of the Contractor's Bid for the Project, which modify or interpret the Bid Documents by additions, deletions, clarifications or corrections.
- 11.20.3. Applicable Laws.** All applicable federal, state and municipal laws, statutes, building codes, ordinances and regulations of Governmental Authorities having jurisdiction over the Project, Work, Site, the District, Design Consultant, including, without limitation, Environmental Laws, and all ordinances, rules and regulations enacted by the District.
- 11.20.4. As-Built.** The documents prepared by Contractor, and subject to review and reasonable verification and approval by Design Consultant, showing the condition of the Work of the Project as actually built, including, without limitation, the locations of mechanical, electrical, plumbing, HVAC or similar portions of the Work that are shown diagrammatically in the Contract Documents.
- 11.20.5. Bid Documents.** The collection of documents prepared and issued for the purpose of soliciting Bids or proposals for construction of Work.
- 11.20.6. Change Order.** A written instrument signed in accordance with the requirements of the General Conditions of a construction contract, describing an adjustment in the Contract Sum or Contract Time, or both. The term "Change Order" encompasses both mutually executed and unilaterally issued Change Orders.
- 11.20.7. Construction Contract.** A written contract executed between the District and Contractor for construction of a portion or all of the Work of the Project or a collection of Projects.
- 11.20.8. Construction Costs.** The total costs to construct those elements of the Project designed or specified by Design Consultant. Construction Costs do not include any of the following: (i) the cost of professional services to be rendered by Design Consultant, Subconsultants, Specialty Consultants, Construction Manager; (ii) land acquisition costs; (iii) finance costs; (iv) District's administrative costs; and (v) legal fees and costs.
- 11.20.9. Contract Documents.** Without limitation, the collection of documents that are to be the Contract Documents governing a Contractor's performance of the Work of the Project.
- 11.20.10. Contract Time.** The total number of Days set forth in a Construction Contract within which Substantial and/or Final Completion of the Work of the Project must be achieved by Contractor, including approved extensions of time permitted under the terms of the Contract Documents.
- 11.20.11. Contractor.** An individual or firm under contract with the District to serve as the general contractor for construction of all or a portion of the Work of the Project; may also be referred to as "Separate Contractor" where multiple trade contracts will be utilized for the completion

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of the Project.

- 11.20.12. Day.** Whether capitalized or not, unless otherwise specifically provided, means calendar Day, including weekends and legal holidays.
- 11.20.13. Defective Work.** Work by a Contractor that is unsatisfactory, faulty, omitted, incomplete, deficient or does not conform to Applicable Laws, the Contract Documents, the directives of the District, Design Consultant or the Project Inspector or the requirements of any inspection, reference standard, test, code or approval specified in the Contract Documents.
- 11.20.14. Delay.** Whether capitalized or not, includes any circumstances involving disruption, hindrance or interference in the performance of the Work of the Project.
- 11.20.15. Design and Construction Project Team.** The following Project Team members: District, Project Inspectors, Contractors, Subcontractors, Design Consultants, Subconsultants, Specialty Consultants and Separate Contractors.
- 11.20.16. Design Costs.** The costs to the District for conceptual, schematic, design development, construction documents and construction administration services required for completed design, engineering, administration and management by Design Consultant and Specialty Consultants.
- 11.20.17. Design Documents.** All plans, drawings, tracings, specifications, programs, reports, calculations, models and other material containing designs, specifications or engineering information prepared by Design Consultant and Specialty Consultants including, without limitation, computer aided design materials, electronic data files, files and paper copies.
- 11.20.18. Drawings.** The graphic and pictorial portions of the Contract Documents prepared by Design Consultant and other Specialty Consultants showing the design, location and dimensions of the Work, including plans, elevations, details, schedules and diagrams. The term “Drawings” may be used interchangeably with “Plans.”
- 11.20.19. Environmental Laws.** Without limitation, any applicable federal, state or local laws, ordinances or regulations relating to the environment, health and safety, Hazardous Substances (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof) or to industrial hygiene or the environmental conditions on, under or about the Site, including, without limitation, soil, groundwater and indoor and ambient air conditions, including, without limitation, the following: Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601-9675), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901-6992k), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251-1307), the Clean Air Act, as amended (42 U.S.C. §§ 7401-7671 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601-2692), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), 15 U.S.C. §§ 2681-2692 and also 42 U.S.C. §§ 4851-4856, the Lead Based Paint Poisoning Prevention Act, 42 U.S.C. §§ 4821-4846, the Indoor Radon Abatement Act, 15 U.S.C. §§ 2661-2671, and the Safe Drinking Water Act Amendments of 1996, Pub L. No. 104-182, 110 Stat. 1613 (1996) and all similar federal, state, and local statutes and regulations.
- 11.20.20. ENR Index.** The construction cost index as published in the Engineering News-Record by the McGraw-Hill Publishing Company or its successors.
- 11.20.21. Estimate of Project Construction Costs.** Design Consultant’s written estimate of the Construction Costs for the Project.

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- 11.20.22. Field Order.** A written instrument signed in accordance with the requirements of the General Conditions that directs a Contractor's performance of Work in one of the following categories: (i) over which there is a dispute as to whether the Work is or is not extra work; or (ii) involving extra work which is to be performed without adjustment to the Contract Sum or Contract Time or before agreement on all terms of a Change Order.
- 11.20.23. Final Completion, Finally Complete.** The terms "Final Completion" and "Finally Complete" refer, with respect to the Work of the Project or a portion of the Work designated by the District, to the point at which: (i) the entirety of such Work is fully completed, including all minor corrective, or "punch list," items; (ii) all documents required to be submitted by Contractor as a condition of Substantial or Final Completion of such Work have been submitted, (including, without limitation, warranties, guarantees and other Record Documents); (iii) the entirety of such Work and related areas of the Site have been thoroughly cleared of all construction debris and cleaned in accordance with the requirements of the Contract Documents, including, but not necessarily limited to, the following: removal of temporary protections; removal of marks, stains, fingerprints and other soil and dirt from painted, decorated and natural-finished woodwork and other Work; removal of spots, plaster, soil and paint from ceramic tile, marble and other finished materials; all surfaces, fixtures, cabinet work and equipment are wiped and washed clean and in an undamaged, new condition; all aluminum and other metal surfaces are cleaned in accordance with recommendations of the manufacturer; and all stone, tile and resilient floors are cleaned thoroughly in accordance with manufacturer's recommendations and buff dried by machine to bring the surfaces to sheen; and (iv) all conditions set forth in the Contract Documents for Substantial and Final Completion of such Work have been, and continue to be, fully satisfied.
- 11.20.24. Hazardous Substance.** The term "Hazardous Substance" refers to, without limitation, the following: (i) any chemical, material or other substance defined as or included within the definition of "hazardous substances," "hazardous wastes," "extremely hazardous substances," "toxic substances," "toxic material," "restricted hazardous waste," "special waste" or words of similar import under any Environmental Law, including, without limitation, the following: petroleum (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs") and PCB-containing materials, whether or not occurring naturally; or (ii) any substance that because of its quantity, concentration or physical or chemical characteristics poses a significant present or potential hazard to human health and safety or to the environment, and which has been determined by any Governmental Authority to be a hazardous waste or hazardous substance.
- 11.20.25. Project Inspector.** A Division of State Architect certified inspector for the Project pursuant to the Field Act (Ed. Code, § 81130.3, et seq.) and California Code of Regulations.
- 11.20.26. Key Personnel.** Those individuals listed in the Project Authorization, and any additions or replacements thereto whose personal performance of services is considered of the essence to the Project.
- 11.20.27. Plans.** The graphic and pictorial portions of the Contract Documents prepared by Design Consultant and its Specialty Consultants showing the design, location and dimensions of the Work, including drawings, elevations, details, schedules and diagrams. The term "Plans" may be used interchangeably with "Drawings."
- 11.20.28. Project Budget.** The District's written statement of funds available to pay for Project Costs, as developed by District.
- 11.20.29. Project Construction Budget.** That portion of a Project Budget that sets forth the District's budget for Construction Costs.

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- 11.20.30. Project Costs.** The total of all Design Costs, Construction Costs, Specialty Consultants Costs, and other Project-related costs (such as, but not limited to, personnel relocation and temporary facilities costs, fixtures, furniture and equipment (if required)). Project Costs do not include: (i) land acquisition costs; (ii) finance costs; (iii) District administrative costs; or (iv) legal fees and court costs.
- 11.20.31. Project Schedule.** A detailed schedule prepared by Design Consultant pursuant to Paragraph 2.1.4 of this Agreement depicting in detail the Design Consultant's proposed schedule for performance of its Basic Services.
- 11.20.32. Schedule of Values.** A detailed, itemized breakdown of the Construction Contract Sum, which provides for a fair and reasonable allocation of the dollar values to each of the various parts of the Work of the Project.
- 11.20.33. Sub consultant.** A person or firm that has a contract with Design Consultant to perform a portion of the services covered by this Agreement.
- 11.20.34. Submittal.** Shop drawings, detailed designs, samples, exemplars, product data, fabrication and installation drawings, lists, graphs, operating instructions, and other similar documents required to be submitted by a Contractor under the Contract Documents.
- 11.20.35. Substantial Completion, Substantially Complete.** The terms "Substantial Completion" and "Substantially Complete" refer to the point at which the Work of the Project, or any portion thereof designated by the District, is: (i) sufficiently and entirely complete in accordance with Contract Documents so that such Work can be fully enjoyed and beneficially occupied and utilized for its intended purpose (except for minor items which do not impair the ability to so occupy and use such Work); (ii) receipt by the District of all permits and certificates (such as, but not necessarily limited to, a certificate of occupancy) required to occupy and use the Project; and (iii) all systems included in the Work of the Project are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted and instruction of District's personnel in the operation of the systems has been completed.
- 11.20.36. Sustainable Building Guidelines.** Guidelines for sustainable building principles, standards and processes, and related design procedures, criteria and standards developed for the District as set forth in the Program Design Standards.
- 11.20.37. Work.** All labor, materials, equipment, services, permits, licenses and taxes and all other things necessary for a Contractor to perform its obligations under the Contract Documents, including, without limitation, any changes, additions or deletions requested by District, in accordance with the Contract Documents and all Applicable Laws. The Work may constitute the whole or a part of the Project or the Project.

**11.21. APPLICATION OF DEFINITIONS**

Definitions of terms that are phrased in the singular shall be deemed to include the plural, and vice versa, where appropriate to the context or circumstances.

[SIGNATURES ON FOLLOWING PAGE]

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**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Agreement, on the Day and year first above written.

**OAKLAND UNIFIED SCHOOL DISTRICT**

**[[INSERT ARCHITECT INFORMATION]]**

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SPECIMEN



**Exhibit "A"**

**SAMPLE PROJECT AUTHORIZATION**

**PROJECT ASSIGNMENT  
(EXHIBIT A TO AGREEMENT FOR ARCHITECTURAL SERVICES)**

This Project Assignment is executed between Oakland Unified School District ("District") and \_\_\_\_\_ ("Architect") pursuant to the Master Agreement for Architectural Services ("Agreement") between the Architect and the District dated \_\_\_\_\_, 20\_\_\_. By this reference, the Agreement is incorporated herein as if set forth in full.

**1. Description of Work To Be Performed By Design Consultant**

[[Insert detailed description of Construction Project, and/or other services to be provided by Architect]]

**2. Project Budget** (District's written statement of funds available to pay for all Project Costs)  
\_\_\_\_\_ Dollars (\$\_\_\_\_\_)

**3. Basic Services.** The Architect will provide the following Basic Services noted below for the above-described Project.

**Basic Services Phases**

- Schematic Design
- Design Development
  - Preliminary Plans Value Engineering
  - Preliminary Plans Phase Constructability Review
- Construction Documents
  - Construction Drawings Value Engineering
  - Construction Drawings Constructability Review
- Bidding
- Construction
- Post-Construction

**Design Consultants Included in Basic Services**

- Structural
- Civil
  - On-Site
  - Off-Site
- Mechanical
- Plumbing
- Electrical
- Telecommunications/Data
- Landscaping
- Other: \_\_\_\_\_

**Basic Services Submittal Schedule:**

	<b>START DATE</b>	<b>FINISH DATE</b>
<b>Schematic Design Phase</b>		
<b>Initial Design Development Phase</b>		

<b>Final Design Development Phase</b>		
<b>Preliminary Plans Value Engineering; Constructability Review</b>	Value Engineering: _____  Constructability Review: _____	Value Engineering: _____  Constructability Review: _____
<b>Initial Construction Documents Phase</b>		
<b>Final Construction Documents Phase</b>		
<b>Construction Drawings Value Engineering; Constructability Review</b>	Value Engineering: _____  Constructability Review: _____	Value Engineering: _____  Constructability Review: _____
<b>Bidding</b>		
<b>Construction</b>		
<b>Post-Construction</b>		

**4. Architect Compensation:**

**A. Payment Method:**

**Method A: Percentage of Computed Cost for New Construction and Additions**

Architect shall provide all the services identified as Basic Services as indicated above using the following fee schedule. To determine the Architect's Fee using this method, the computed cost of the project shall be multiplied by the applicable percentages below. The term "computed cost" is equal to the bid amount or Guaranteed Maximum Price plus any additive alternates not taken plus any change orders for additional scope of work.

- a. Nine (9%) percent of the first five hundred thousand dollars (\$500,000) of computed cost;
- b. Eight and one-half (8 ½ %) percent of the next five hundred thousand dollars (\$500,000) of computed cost;
- c. Eight (8%) percent of the next One Million Dollars (\$1,000,000) of computed cost;
- d. Seven (7%) percent of the next Four Million Dollars (\$4,000,000) of computed cost;
- e. Six (6%) percent of the next Four Million Dollars (\$4,000,000) of computed cost;
- f. Five (5%) percent of the computed cost in excess of (\$10,000,000).

**Factory Built Portables.** Four (4%) percent of the first Thirty-Five thousand Dollars \$35,000) of the cost of factory built portables (Building cost only, all non-building costs and building costs beyond Thirty-Five Thousand Dollars shall be calculated per items a-f above).

**(Reuse of Plans)** Compensation for Re-use of Plans for new construction and addition projects shall be reduced from the full fee calculation to reflect savings due to re-use of existing documents as follows:

- a. 35% fee reduction for buildings only during Schematic Design Phase.
- b. 35% fee reduction for buildings only during Design Development Phase.
- c. 35% fee reduction for buildings only during Construction Document Phase.
- d. All other fees for buildings (DSA approval, Bidding and Construction Administration) shall be full fee.
- e. All fees related to the site development work shall be full fee.
- f. Design and engineering modifications due to program changes as required by the District, or code changes enacted subsequent to original plan approval, shall be billed as additional services or Re-use Fee reduction shall be adjusted to a mutually agreeable percentage to account for such changes.

Timeline of Payments under Method A

<u>Schematic Design (100% Completion):</u>	10% of Architect Fee
<u>Design Development (100% Completion):</u>	15% of Architect Fee
<u>Construction Documents (90% Completion):</u>	40% of Architect Fee, to be paid monthly based on actual level of completion.
<u>DSA Approval of Construction Drawings:</u>	5% of estimated Architect Fee
<u>Procurement Phase:</u>	5% of estimated Architect Fee as set forth on Attachment "A", when procurement is completed
<u>Construction Administration:</u>	25% of estimated Architect Fee, to be paid as follows:  Procurement complete: 5% Construction 25% complete: 4% Construction 50% complete: 4% Construction 75% complete: 5% Construction 100% complete: 5% Submittal of final records: 2%

**Method B: Percentage of Computed Cost for Modernization, Renovation & Rehabilitation:**

- a. Twelve (12%) percent of the first five hundred thousand dollars (\$500,000) of computed cost;
- b. Eleven and one-half (11 ½ %) percent of the next five hundred thousand dollars (\$500,000) of computed cost;
- c. Eleven (11%) percent of the next One Million Dollars (\$1,000,000) of computed cost;
- d. Ten (10%) percent of the next Four Million Dollars (\$4,000,000) of computed cost;
- e. Nine (9%) percent of the next Four Million Dollars (\$4,000,000) of computed cost;
- f. Eight (8%) percent of the computed cost in excess of (\$10,000,000).

Billing shall proceed on the same timeline as payments for Method A.

**Method C Stipulated Sum:** The Parties agree to a Stipulated Sum for all basic services and design consultants included in basic services. Billing shall proceed on the same timeline as payments for Method A *[or include other payment timeline]*.

**Method D - Hourly Billing Rates:** Compensation for services rendered by principals and employees shall be based upon the rates as stated on the Design Consultant's Hourly Rate schedule which shall be attached hereto. The rates shall remain the same for the duration of each project. The total cost for the work shall not exceed *[insert not to exceed figure if desired]*.

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**C. Additional Provisions**

1. Architect shall receive one hundred and ten (110%) percent of all Reimbursable Expenses, expressly authorized in advance by the District in writing, except as specifically excluded, incurred by the Architect, the Architect's employees, and consultants in the interest of the Project.
2. If specialty consultants are required who are not included as part of Basic Services, then the District shall reimburse the Architect one hundred and ten (110%) percent of their actual cost.
3. If any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions.
4. Architect shall receive reimbursement at cost for:
  - a. Reproduction of drawings and specifications in excess of the copies provided by this Agreement.
  - b. Architect shall receive reimbursement at cost for fees advanced for securing approval of authorities having jurisdiction over the Project.

Dated: \_\_\_\_\_

**Oakland Unified School District**

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

Title: \_\_\_\_\_

**ARCHITECT**

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

Title: \_\_\_\_\_

EXHIBIT A - ATTACHMENT B

CERTIFICATION REGARDING FINANCIAL  
RELATIONSHIP DISCLOSURE  
(Public Contract Code section 3006 subdivision (b))

I, \_\_\_\_\_, \_\_\_\_\_, certify that I have not  
420-5/6857187.1 (Name of Employer) offered, given, or agreed to give, received, accepted, or agreed to  
accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the  
roof project contract. As used in this certification, "person" means any natural person, business, partnership,  
corporation, union, committee, club, or other organization, entity, or group of individuals.

Furthermore, I, \_\_\_\_\_, \_\_\_\_\_, certify that I do not  
(Name) (Name of Employer)  
have, and throughout the duration of the contract, I will not have, any financial relationship in connection  
with the performance of this contract with any architect, engineer, roofing consultant, materials  
manufacturer, distributor, or vendor that is not disclosed below.

I, \_\_\_\_\_, \_\_\_\_\_, have the following  
(Name) (Name of Employer)  
financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or  
vendor, or other person in connection with the following roof project contract:

- \_\_\_\_\_  
Name and Address of Building, Contract Date and Number
- \_\_\_\_\_  
Name and Address of Building, Contract Date and Number
- \_\_\_\_\_  
Name and Address of Building, Contract Date and Number

I certify that to the best of my knowledge, the contents of this disclosure are true, or are believed to be true.

\_\_\_\_\_  
Signature Date \_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name of Employer

**EXHIBIT A – ATTACHMENT C  
IRAN CONTRACTING CERTIFICATION**

As required by California Public Contract Code section 2204, the Bidder certifies subject to penalty for perjury that the option checked below relating to the Bidder's status in regard to the Iran Contracting Act of 2010 (Pub. Contract Code, § 2200 et seq.) is true and correct:

- The Bidder is not:
  - (i) identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code section 2203; or
  - (ii) a financial institution that extends, for forty-five (45) days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.
- The District has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, Agency will be unable to obtain the goods and/or services to be provided pursuant to the Contract.
- The amount of the Contract payable to the Contractor for the Project does not exceed \$1,000,000.

I certify (or declare) under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Name Title

\_\_\_\_\_  
Name of Firm

**EXHIBIT B**

**FINGERPRINTING NOTICE AND ACKNOWLEDGEMENT**

**FINGERPRINTING NOTICE AND ACKNOWLEDGEMENT**  
**FOR CONTRACTS OTHER THAN CONSTRUCTION CONTRACTS**

(Education Code Section 45125.1)

Other than business entities performing construction, reconstruction, rehabilitation, or repair who have complied with Education Code section 45125.2, business entities entering into contracts with the District must comply with Education Code sections 45125.1. Such entities are responsible for ensuring full compliance with the law and should therefore review all applicable statutes and regulations. The following information is provided simply to assist such entities with compliance with the law:

1. You (as a business entity) shall ensure that each of your employees who interacts with pupils outside of the immediate supervision and control of the pupil's parent or guardian or a school employee has a valid criminal records summary as described in Education Code section 44237. (Education Code §45125.1(a).) You shall do the same for any other employees as directed by the District. (Education Code §45125.1(c).) When you perform the criminal background check, you shall immediately provide any subsequent arrest and conviction information it receives to the District pursuant to the subsequent arrest service. (Education Code §45125.1(a).)
2. You shall not permit an employee to interact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Education Code section 45122.1. (Education Code §45125.1(e).) See the lists of violent and serious felonies in *Attachment A* to this Notice.
3. Prior to performing any work or services under your contract with the District, and prior to being present on District property or being within the vicinity of District pupils, you shall certify in writing to the District under the penalty of perjury that neither the employer nor any of its employees who are required to submit fingerprints, and who may interact with pupils, have been convicted of a felony as defined in Education Code section 45122.1, and that you are in full compliance with Education Code section 45125.1. (Education Code §45125.1(f).) For this certification, you shall use the form in *Attachment B* to this Notice.
4. If you are providing the above services in an emergency or exceptional situation, you are not required to comply with Education Code section 45125.1, above. An "emergency or exceptional" situation is one in which pupil health or safety is endangered or when repairs are needed to make a facility safe and habitable. The District shall determine whether an emergency or exceptional situation exists. (Education Code §45125.1(b).)
5. If you are an individual operating as a sole proprietor of a business entity, you are considered an employee of that entity for purposes of Education Code section



45125.1, and the District shall prepare and submit your fingerprints to the Department of Justice as described in Education Code section 45125.1(a). (Education Code §45125.1(h).)

I, as \_\_\_\_\_ *[insert "owner" or officer title]* of \_\_\_\_\_ *[insert name of business entity]*, have read the foregoing and agree that \_\_\_\_\_ *[insert name of business entity]* will comply with the requirements of Education Code §45125.1 as applicable, including submission of the certificate mentioned above.

Dated: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

## **EXHIBIT B - ATTACHMENT A**

### **Violent and Serious Felonies**

Under Education Code sections 45122.1 and 45125.1, no employee of a contractor or subcontractor who has been convicted of or has criminal proceedings pending for a violent or serious felony may come into contact with any student. A violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code. Those felonies are presently defined as:

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
- (5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.
- (6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.
- (9) Any robbery.
- (10) Arson, in violation of subdivision (a) or (b) of Section 451.
- (11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.
- (12) Attempted murder.
- (13) A violation of Section 18745, 18750, or 18755.
- (14) Kidnapping.
- (15) Assault with the intent to commit a specified felony, in violation of

Section 220.

- (16) Continuous sexual abuse of a child, in violation of Section 288.5.
- (17) Carjacking, as defined in subdivision (a) of Section 215.
- (18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.
- (19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.
- (22) Any violation of Section 12022.53.
- (23) A violation of subdivision (b) or (c) of Section 11418.

A serious felony is any felony listed in subdivision (c) Section 1192.7 of the Penal Code. Those felonies are presently defined as:

- (1) Murder or voluntary manslaughter; (2) Mayhem; (3) Rape; (4) Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) Lewd or lascivious act on a child under the age of 14 years; (7) Any felony punishable by death or imprisonment in the state prison for life; (8) Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) Attempted murder; (10) Assault with intent to commit rape, or robbery; (11) Assault with a deadly weapon or instrument on a peace officer; (12) Assault by a life prisoner on a non-inmate; (13) Assault with a deadly weapon by an inmate; (14) Arson; (15) Exploding a destructive device or any explosive with intent to injure; (16) Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17) Exploding a destructive device or any explosive with intent to murder; (18) Any burglary of the first degree; (19) Robbery or bank robbery; (20) Kidnapping; (21) Holding of a hostage by a person confined in a state prison; (22) Attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) Any felony in which the defendant personally used a dangerous or deadly weapon; (24) Selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug,

as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) Grand theft involving a firearm; (27) carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machine gun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100; (37) intimidation of victims or witnesses, in violation of Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt to commit a crime listed in this subdivision other than an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; and (42) any conspiracy to commit an offense described in this subdivision.

**EXHIBIT B - ATTACHMENT B**

**Form for Certification of Lack of Felony Convictions**

*Note: This form must be submitted by the owner, or an officer, of the contracting entity before it may commence any work or services, and before it may be present on District property or be within the vicinity of District pupils.*

Entity Name: \_\_\_\_\_  
Date of Entity's Contract with District: \_\_\_\_\_  
Scope of Entity's Contract with District: \_\_\_\_\_

I, \_\_\_\_\_ [insert name] , am the \_\_\_\_\_ [insert "owner" or officer title] for \_\_\_\_\_ [insert name of business entity] ("Entity"), which entered a contract on \_\_\_\_\_, 20\_\_, with the District for \_\_\_\_\_.

I certify that (1) neither the Entity, nor any of its employees who are required to submit fingerprints and who may interact with pupils, have been convicted of a felony as defined in Education Code section 45122.1; and (2) the Entity is in full compliance with Education Code section 45125.1, including but not limited to each employee who will interact with a pupil outside of the immediate supervision and control of the pupil's parent or guardian having a valid criminal background check as described in Education Code section 44237.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date: \_\_\_\_\_, 20\_\_

Signature: \_\_\_\_\_  
Typed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Entity: \_\_\_\_\_

**EXHIBIT C**

**LOCAL BUSINESS UTILIZATION AFFIRMATION WORKSHEET**

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## LOCAL BUSINESS UTILIZATION AFFIRMATION WORKSHEET

Firm or Team: \_\_\_\_\_

The Firm or Team affirms that it will achieve OUSD's minimum Local Business Utilization (LBU) requirements. Included in our proposal is a detailed narrative and strategy describing how the Firm or Team intends to meet or exceed the District's LBU requirements.

The narrative shall describe previously implemented methods used for successful local business utilization and shall be inclusive of at least three (3) project relevant California K-12 examples.

The narrative shall include our LBU strategy, but not limited, to the following:

- Identified Joint-Venture partnership agreements at the prime and sub level
- An outline of small and local firms with planned partnership(s)
- Areas and/or scopes that have been identified as carve out opportunities for small, local partners
- Other identified opportunities for local and small local utilization

The submitted narrative and strategy will be scored and awarded up to 5 additional points by the District's LBU Consultant.

Minimum Local Business Participation per District Policy can be found in the following link:

<https://www.ousd.org/facilities-planning-management/opportunities/lbu-policy>

Signature: \_\_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ / 2025