

REQUEST FOR QUALIFICATIONS/PROPOSALS
for
ARCHITECT SERVICES



RFQ/P# V26270410RFP

PROPOSAL DEADLINE DATE:
SEPTEMBER 14, 2026 2:00pm

SUBMIT TO:
VISTA UNIFIED SCHOOL DISTRICT
ATTN: MR. KEVIN LESKO,
DIRECTOR OF PURCHASING
1234 ARCADIA AVE
VISTA, CA 92084

1. **GENERAL INFORMATION**

The VISTA UNIFIED SCHOOL DISTRICT (“District”) is requesting Statements of Qualifications/Proposal for architect services.

- A. Each firm shall submit **one original unbound Statement of Qualifications/Proposal and one (1) electronic version on a thumb drive in Adobe Portable Document Format (PDF) format** prominently marked with **“Request for Qualifications/Proposal, Architect services – V26270410RFP”** and the name of the company submitting the SoQ/P.
- B. SoQ/P shall be submitted to the District, as follows:
 1. **Deadline for Submittal of Responses:**
 - i. **No later than 2:00 p.m. on September 14, 2026**
 - ii. *Late Responses will be returned unopened.*
 2. **Method of delivery:**
 - i. **Hand delivery, FedEx, UPS or other mail/shipping service.**
 - ii. *Responses sent by Facsimile (FAX) or email will not be accepted.*
 - iii. *It is the responsibility of the Proposer to ensure that their proposal is received in proper time.*
 - iv. *The Vista Unified School District is not responsible for any costs associated with preparing the proposal or negotiating final agreement. Additionally, this RFQ does not commit the Vista Unified School District to award a contract.*
 3. **Delivery Address:**

**Mr. Kevin Lesko
Director - Purchasing Dept.
Vista Unified School District
1234 Arcadia Avenue
Vista, CA 92084**
- C. Proposers are required to disclose any relationships with the District and execute the non-collusion affidavit included with this RFQ/P.
- D. The original SoQ/P shall be submitted and signed by an authorized individual or officer of the firm submitting the proposal.
- E. Firms interested in submitting proposals will not contact District Governing Board members, the Superintendent, Assistant Superintendents or any other officials or staff of the District. The District may reject proposals if a firm or its representatives make direct contact with the District. Firms should only contact:

Mr. Kevin Lesko - kevinlesko@vistausd.org
Director - Purchasing Dept.
Vista Unified School District
1234 Arcadia Avenue
Vista, CA 92084

- F. All written questions received will be answered in writing and published on the District’s Purchasing Website:
<https://www.vistausd.org/departments/businessservices/fiscal-services/purchasing>.
Oral statements regarding this RFQ/P by any person(s) should be considered unverified information unless confirmed in writing. To ensure a response, questions must be received in writing via email to kevinlesko@vistausd.org before 2:00 pm August 28, 2026.

- G. The Board of Education of the District reserves the right to accept or reject any or all SoQ/P submittals and to negotiate with any or all responsible submitters. Submitters shall be responsible for all expenses that they may incur in preparing proposals.
- H. The District reserves the right to revise the RFQ/P up to and including **September 4, 2026**, for issuance of clarifications and revisions to this RFQ/P. Revisions to the RFQ/P shall be published on the District's Purchasing Website:
<https://www.vistausd.org/departments/businessservices/fiscal-services/purchasing>
The District expressly reserves the right to extend the deadline by which proposals are due.

2. DESCRIPTION OF SERVICES REQUIRED

A. Introduction

The Vista Unified School District ("District") is seeking Statements of Qualifications and Proposals (RFQ/P) from licensed, highly qualified architectural firms to establish a pre-qualified pool.

B. Background on the Project

The District is a large TK-12 unified school District in San Diego County, California. The District serves approximately 17,500 students in the Communities of Vista, Oceanside, San Marcos and unincorporated areas of San Diego County.

The District has 14 elementary sites, 4 middle school sites, 3 comprehensive high school facilities, 2 alternative high schools, 1 early childhood special education center, 1 blended learning/independent study middle/high school, 1 adult school, and 1 adult transition center for a total of 27 school sites.

The District has four primary central office centers known as the Administrative Service Center (Board, Superintendent, Human Resources, Fiscal Services, Business Services, and Instructional Services), the Operational Service Center (Transportation, and Maintenance and Operations), the Vista Innovation Center (Career Technical Education, Extended Learning Services, Preschool, and Professional Development Center), and North Avenue (IT and Child Nutrition Services). The District also has two school sites that are not in use known as the Beaumont and Olive Street locations.

The District desires to have modernization, new construction, and renovation work planned, designed, and constructed as outlined in the Long Range Facilities Master Plan, Revised 2026. The District is in the process of establishing a qualified pool of Architectural firms which will allow the District to assign design services for future projects as needed. This may also include projects as identified in the Long Range Facilities Master Plan. The exact scope of design services will be determined at a time in the future and will be set forth in an agreement between the District and the selected Architect(s).

All work is to be done by securing approvals from all relevant jurisdictional authorities, most notably the **Division of the State Architect (DSA) including DSA closeout and certification**, the **California Department of Education (CDE)**, local fire authorities, and health departments. All work will be coordinated with the District's Facility Team which may also include a third-party Construction Management Firm, a third-party Bond Support Firm, Purchasing Team Members, and other District Employees.

All services must be performed in strict compliance with the California Education Code, California Building Standards Code (Title 24), and California Public Contract Code. Because projects may be funded through local general obligation bonds (e.g., Measure LL), state matching funds, or developer fees, the selected firms must demonstrate a strong working knowledge of **Office of Public School Construction (OPSC)** and **State Allocation Board (SAB)** requirements to ensure maximum funding eligibility.

The District may also contemplate potential selected replacement and/or maintenance projects that may be performed prior to or in conjunction with modernization project work, and for which the Architect may be asked to provide services to assure that such work can be incorporated with modernization project work to assure code compliance.

The District will utilize responses to this request to create a pool of architects for these modernization projects and/or future projects and/or to select one or more architects for other capital and/or maintenance program projects that may include: modernization, expansion, new construction, reconstruction, alteration, rehabilitation, repair, relocation, reconfiguration, upgrades, closeouts, and other projects as may be identified, planned, modified, or prioritized/reprioritized. Projects are to be assigned, and/or determined through an informal competitive process within the awarded pool. The District may also issue future solicitations that may augment or supersede this solicitation.

Being selected to this pool is not a guarantee of any work.

The District's Long Range Facilities Master Plan can be viewed here for reference:

<https://sites.google.com/view/vusdfmp/home>

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**3. ITEMS FOR INCLUSION IN PROPOSAL**

All SoQ/P submittals shall address the following items in the order listed below and shall be identified in the submitted SoQ/P to match the following list:

- A. Description of Firm – This section should provide information regarding the size, location, nature of work performed, years in business, and approach that will be used in meeting the needs of the District.
- B. Description of Projects – This section shall identify similar projects that the firm has completed. Use this section of the Proposal to indicate the areas of expertise you have previously provided and how the firm's expertise will enable the District to benefit from that expertise. The District is requiring the firm (s) to have relevant experience in facility master planning, school design for modernization, new construction, modular buildings, relocatables, and school safety for K-12 schools in California, over the past five years. Referenced projects should be projects managed by the firm responding to the RFQ/P. The proposal shall include the following format:

| PROJECT NAME AND LOCATION | DISTRICT'S NAME, ADDRESS, CONTACT PERSON, EMAIL, AND TELEPHONE | COMPLETION DATE | PROJECT COST (above or below the project estimate) | COMMENTS |
|---------------------------|----------------------------------------------------------------|-----------------|----------------------------------------------------|----------|
|                           |                                                                |                 |                                                    |          |

C. Background of Assigned Personnel – Identify all personnel and provide a brief resume including pertinent experience of personnel who will be participating in this project. Provide total number of professional staff employed by the firm. Identify persons that will be principally responsible for working with the District. Indicate the role and responsibility of each individual.

D. District Values Alignment

1. **Equity & Inclusion:** Vista Unified School District is dedicated to equity and inclusion. Upon review of VUSD Board Policy 415 on Equity, provide examples of your company's policy on equity and inclusion and provide examples of how it has guided your recent work on at least two public school projects (grades T/K-14).
2. **Sustainability:** Vista Unified School District is dedicated to sustainability and advancing work towards a carbon neutral economy including a Board Policy 3510 on Green Schools and 3511 Energy and Water Management. Please provide examples on your company's sustainability policies and adherence to sustainable building practices and provide examples in your recent work on at least two public school projects (grades T/K-14).
3. **Local & Small Business: Utilization of Local Workforce, VUSD Alumni, Minority / Women Owned / Small Business:** Our work seeks to support the improvement of neighborhood schools. In support of equity and inclusion, please describe your company's efforts to support the development of local workforces, alumni, women owned, and small businesses in communities where you have built projects. Provide examples in your recent work on at least two public school projects (grades T/K-14).

E. Means and Methods Experience

1. **Project Labor Agreements** - If a project were to have a PLA requirement, please illustrate your company's strategy to ensure proper bid coverage. Provide examples of recent PLA public school projects (grades T/K-14) of similar size and value, challenges associated with them (such as any additional project cost percent increase and rebidding), and strategies that you used to address those challenges.
2. **Contracting Methodology** - A project may have one or more types of contracting associated. For example, Lease Leaseback, CM Multi-Prime, or Design/Design Build. Provide examples of your recent experience in each project contracting type. Include a simple summary in Strength, Weakness, Opportunity, and Threats (SWOT) format for each construction methodology that you are addressing.
3. **Project Sizes** - As projects may range in complexity and investment from small to large, please indicate your firm's interests (not scored) in small, medium, and large projects. Use the following as a general guideline: Small = 3-10 million dollars, Medium 11-60 million dollars, large >60 million dollars
4. **Project types** - As projects are grouped into categories, indicate your firm's interest (not scored) in specific project categories. For this section use the following project categories as examples to address: (A) Major Modernization, (B) Fire, Life, Safety; and/or (C) Innovative Facilities

F. Fees – Describe the method proposed for charging fees.

- G. Client Reference List – List the client firm/district name, contact person and their position, telephone number, and email address. List the projects for which services were provided.
- H. Other – Each firm is encouraged to provide any additional information or description of resources the firm feels is pertinent to the SoQ/P.

#### 4. **SELECTION PROCESS and PROJECTED DATES**

The process and anticipated schedule that the District will utilize in selecting firms to perform services will be as follows:

| <b><u>Action</u></b>                                                                          | <b><u>Date</u></b> |
|-----------------------------------------------------------------------------------------------|--------------------|
| a. Release of Request for Qualifications/Proposals                                            | August 18, 2026    |
| b. Last Day to Submit Questions for Clarification<br>-must be received at or before 2:00 p.m. | August 28, 2026    |
| c. Addenda Clarifications Issued by District                                                  | September 4, 2026  |
| d. Deadline for Receipt of Responses<br>-must be received at or before 2:00 p.m.              | September 14, 2026 |
| e. Anticipated Board Approval                                                                 | October 2026       |

#### 5. **EVALUATION**

Firms submitting SoQ/P are advised that all SoQ/P will be evaluated to determine the firm that will meet the needs of the District. Evaluation will include, but not be limited to the following criteria:

- A. Understanding the District's goals
- B. Experience and expertise with similar projects in size and scope
- C. Understanding the District and the RFQ/P
- D. Ability to meet time schedules and budgets - Demonstrate ability to design within project budget.
- E. Proposed method for determining fee and demonstrated accuracy of cost estimates.
- F. Completeness of Proposal.
- G. The oral interview and presentation

- H. Satisfaction of previous clients in the firm's capacity and commitment to provide services to clients.
- I. Five years of experience with different delivery methods, (i.e., CM Multi-Prime, Design Bid Build, Lease-Leaseback, etc.)
- J. Post Construction Follow up: What is the Firm's role upon completion of construction? How on previous construction projects have you handled punch list items and ensured that items function properly?
- K. Three years of experience interfacing with representatives of the San Diego Building Trade Council and performing above-mentioned duties (including construction administration) under a Project Labor Agreement (PLA).

The selected Architect shall work under the direction of the Assistant Superintendent-Business Services. The Architect selected may work with the District's Construction Management (CM) firm to provide construction cost savings advice, conduct value engineering and constructability reviews and recommend modifications to the plans for the project, to the District and the CM if necessary and as required. The District requires a full-service architect firm to provide planning, design, construction administration, and closeout services for its projects. Such services will require compliance with all legal and regulatory requirements to which public schools are subject now or in the future. Architect will be required to obtain DSA approval of plans and certification after completion, and other regulatory approvals (e.g. city/county, fire, health, etc.) as required, and assist the District with other required approvals. Architect must work cooperatively and collaboratively with Project teams, including District consultants and other architects. Architect will be required to attend meetings and assist with presentations as needed (e.g., Board, agency, community, design committees, job walks, construction meetings, etc., as required) Architect will provide all needed architectural disciplines, engineers and consultants (e.g. civil, structural, electrical, mechanical, plumbing, landscape, acoustical, food service, and others) as needed to provide a complete approvable and buildable set of plans within its fee structure, unless exceptions are specifically agreed to in any contract entered into with the District.

**The District reserves the right to determine the number of firms that will be invited to interview. Interviews will be between 45 - 60 minutes. Digital presentations will be allowed. Interviews will be discussion-based and will include an opportunity for the firm to present its qualifications and an opportunity for questions by the interviewing panel. Proposed staff who would be managing, and working on the project are required to attend and participate in the interview.**

See Section 1.A. regarding the format for the Submission of proposals. The Proposer is entirely responsible for the means of delivering the proposal to the appropriate office on time. Delays due to internal routing of misdirected proposals or due to verbal directions given by District staff shall be the responsibility of the Proposer. Thus, each proposal must be completed and delivered in sufficient time to avoid disqualification for lateness due to difficulties in delivery.

## **LATE PROPOSALS WILL NOT BE ACCEPTED.**

**Modifications of proposals submitted by a Proposer after the deadline will not be considered unless the District requested the modifications.**

Each Proposal shall be reviewed to verify that the Proposer has met the minimum requirements of the RFQ/P. Proposers must follow the required format specified in this RFQ/P in order to facilitate District review.

The District reserves the right to cancel this RFQ/P at any time without any obligation

whatsoever for proposal preparation, interview, fee negotiation or other costs associated with this RFQ/P or any proposal submitted in response to this RFQ/P.

The District may reject any or all proposals and may waive any minor deviation in any proposal. The District's waiver of any minor defect shall in no way modify the RFQ/P documents or excuse the Proposer from compliance with the other provisions of this RFQ/P.

Proposals become the property of the District and may be returned only at the District's option and at the Proposer's expense. Information, excluding Proposer's financial information, contained therein shall become public documents subject to the Public Records Act.

**REQUIRED SUBMITTAL DOCUMENTS:**

- A. **YOUR RESPONSES to “3. ITEMS FOR INCLUSION IN PROPOSAL”** This section is limited to 40 pages, 8 ½ x 11”, single-sided.

**B. REQUIRED ATTACHMENTS:**

**1. RFP PROPOSAL AND CERTIFICATION FORM**

Proposer shall return a Request for Proposal and Certification Form, fully executed in accordance with the Instruction to Proposers. Proposals for the Service will be accepted as outlined in this RFQ/P. Proposer should include the specific costs for each item set forth in the Scope of Services and fees and rates should include all services. The fees shall include the cost of all labor, materials, equipment, supplies and space necessary.

**2. ARCHITECT FEE/REIMBURSABLE SCHEDULE FORM**

Proposer must list fees and reimbursable rates on this form.

**3. NON-COLLUSION DECLARATION FORM**

Proposer must return a fully executed Non-Collusion affidavit, as required by Public Contract Code section 7106, with the completed proposal.

**4. CONTRACT AND ADDENDA FORM**

Proposer shall acknowledge receipt of the proposed form of the Agreement for Architect Services and any Addenda received.

**C. OPTIONAL PRESENTATION BROCHURE:**

This can contain descriptions, illustrations, photographs, etc., of school district projects. This being optional would not count towards the 40-page limitation.

**OTHER INFORMATION:**

**NOTICE AND DISCLOSURE: NOTICE REGARDING CONTRACTUAL INDEMNIFICATION REQUIREMENTS (PURSUANT TO CALIFORNIA PUBLIC CONTRACT CODE SECTION 20103.6). PLEASE TAKE NOTICE THAT THE SAMPLE AGREEMENT INCLUDED IN THIS RFP INCLUDES SUCH INDEMNIFICATION LANGUAGE.**

**RELATED DOCUMENTS AND INFORMATION:**

Documentation associated with this RFQ/P, including the proposed form of agreement, may be viewed at:

<https://www.vistausd.org/departments/businessservices/fiscal-services/purchasing>

# REQUEST FOR QUALIFICATIONS/PROPOSAL – ARCHITECTURAL SERVICES

## PROPOSAL AND CERTIFICATION

Board of Trustees  
Vista Unified School District  
1234 Arcadia Avenue  
Vista, CA 92084

RE: Request for Qualifications/Proposal – Architect Services V26270410RFP

Dear Members of the Board of Trustees:

The undersigned, doing business under the firm name of

\_\_\_\_\_,  
having carefully examined the Request for Qualifications/Proposal, the Instructions, Specifications, and all of the documents for the proposed School and District Office Projects, proposes to perform the contract, including all of its component parts, and to furnish all services and taxes called for by them for the entire order, at the rates, costs, and prices as set forth in the attached: **ARCHITECTURAL SERVICES FEE / REIMBURSABLE SCHEDULE.**

I certify that all information contained in this Response is true and correct to the best of my knowledge and that I am authorized to submit this Response on behalf of the firm.

SUBMITTED BY:

\_\_\_\_\_  
COMPANY

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY/STATE/ZIP

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PLEASE TYPE OR PRINT NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PHONE

# NON-COLLUSION DECLARATION FORM

State of California                    )  
                                                  ) ss.  
County of San Diego                )

I, \_\_\_\_\_, being duly sworn,

declare that I am \_\_\_\_\_

of \_\_\_\_\_, the party making the foregoing proposal, that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any other Proposer or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the Proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Proposer or any other Proposer, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other Proposer, or to secure any advantage against the public body awarding the contract or anyone interested in the proposed contract; that all statements contained in the proposal are true; and further, that the Proposer has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2026, at \_\_\_\_\_ California.

\_\_\_\_\_  
Signature

[This form must be notarized]

**Vista Unified School District**

**CONTRACT FOR ARCHITECTURAL SERVICES**

**Contract # V [REDACTED] C**

This agreement ("Agreement") is entered into on **Month Day, 20 [REDACTED]**, between the **Vista Unified School District**, of San Diego County, California, hereinafter referred to as the "District," and **[REDACTED]** an architect licensed to practice in the State of California, hereinafter called the "Architect." District and/or Architect may be referred to individually herein as a "Party," or collectively as the "Parties."

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

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

WHEREAS, the District and Architect desire to enter into an agreement for the Architect to provide the District with professional services consisting of architectural and engineering services in connection with the design and construction of the District's project ("Project") further described as follows:

**Professional Architectural Services for the work associated with  
as depicted in Exhibit A, attached hereto and incorporated by reference herein.**

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

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

**Article 1. General Provisions.**

- (a) Employment of Architect. The District hereby employs the Architect pursuant to the fair and competitive procurement procedures described at Government Code section 4525 et seq. to perform the necessary professional services, including but not limited to those hereinafter set forth in connection with the above-described Project. Architect shall name a specific person as Project Architect, subject to approval by District. The Project Architect shall maintain personal oversight of the Project, and act as

principal contact with the District, the contractor, Architect's consultants, engineers and inspectors on the Project. Any change by Architect of the Project Architect shall be subject to approval in writing by District.

- (b) Scope of Services. The District and Architect have endeavored to delineate the scope of the Architect's Services to be provided by Architect in Article 2 below and as set forth in the Agreement herein. Such descriptions are not intended to be comprehensive, it being understood that Architect shall be required, without adjustment or addition to the fixed rates or maximum compensation agreed to herein, 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 Architect's Services set forth in Article 2 and herein in this Agreement. To the extent there are any ambiguities and/or conflicting terms and provisions as between the Architect's Proposal and this Agreement, this Agreement shall control and govern. The Architect's Proposal and included Hourly Rate Sheet are attached hereto and incorporated by reference as **Exhibit A**, respectively.
- (c) Performance Standards. All services performed under this Agreement shall be performed by the Architect and its consultants and personnel: (i) in a manner consistent 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; (ii) all applicable local, state and federal laws; (iii) the terms of this Agreement; and (iv) using their professional skill and judgment (hereinafter "Standard of Care").
- (d) Authority of Architect. Architect's authority to act on behalf of the District is limited to its scope of authority set forth in this Agreement. Notwithstanding anything else stated in this Agreement or any Project Contract Documents, Architect 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, construction manager, consultants or any other third persons or parties. Architect shall be liable to District and third parties for the consequences of the Architect's actions or conduct exceeding the limited scope of the Architect's authority to act on behalf of the District.
- (e) Design Safety. Architect is responsible for the safety of the design of the Project and for the interpretation of and any necessary amplification of the plans and specifications prepared by it or its consultants for the Project. The Architect 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.

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

Article 2. Architect's Services. The Architect hereby accepts said employment and agrees to perform all the necessary professional architectural, engineering and construction administration services in a professional manner, consistent with the standards of the industry, including but not limited to the following:

- (a) Communication with District. Participation in all consultations and conferences with authorized representatives of the District and/or other local, regional, or state agencies concerned with the Project necessary for the development of the drawings, specifications, and documents in accordance with the applicable standards and requirements of law and the District. Such consultations and conferences shall continue through the planning and construction of the Project and the contractor's warranty period. Architect shall only take direction from staff specifically designated by District (the "District Representative"). The District Representative for the Project shall be Ami Shackelford, Assistant Superintendent, Business Services. The District hereby certifies that the District Representative has been duly authorized by the District Board of Education ("Board") to represent the District on Project.
- (b) Hiring of Consultants and Personnel.
  - (i) Architect shall have the option, unless given written objection of the District, to employ at Architect's expense architects, engineers, or other persons, qualified and licensed, to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as he may delegate without relieving Architect from administrative or other responsibility under this Agreement. Architect shall be responsible for the coordination and cooperation of Architect's consultants and personnel. Architect shall notify District of the identity of all consultants prior to their commencement of work.

(ii) All engineers, experts and consultants retained by Architect in performance of this Agreement shall be licensed to practice in their respective professions, where required by law.

(iii) Engineers and consultants hired by Architect shall be required to show evidence of a policy of professional liability or project insurance, if applicable, in such amounts equal to Architect as set forth and required in Article 12. All insurance required herein shall be with an insurance carrier satisfactory to District.

(iv) Architect shall promptly obtain written District approval of assignment and/or reassignment or replacement of Architect engineers or consultants or of other staff changes of key personnel working on the Project. Any changes in Architect's consultants and staff shall be subject to approval in writing by District.

(v) Draftsmen and other clerical personnel shall be retained by Architect at Architect's sole expense.

(c) Initial Planning Phase of Project.

(i) Perform on-site evaluation for all existing sites for the establishment of existing conditions and proposed design criteria for the Project and overall modernization of the schools, including but not limited to the identification of building Americans with Disabilities Act ("ADA") accessibility, related Division of the State Architect ("DSA") fire, life, safety and other requirements, and COVID-19 or other pandemic-related local, state and federal guidelines, District health and safety protocol issues, and any other required guidelines or regulations that will need to be addressed throughout the duration of the Project.

(ii) Meet with required District personnel and/or committees as required to establish design parameters and District standards and priorities related to the Project and overall modernization of the schools.

(iii) Review District's current technology plan and implement this plan into the Project design and construction and overall modernization of the schools to the extent possible, and/or help District establish minimum requirements for the implementation of technology into Project and the schools through various modernization projects.

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

(v) Architect shall notify District in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project budget and timeline.

(vi) Architect shall assist and advise District in securing easements, encroachment permits, coordination with utilities, rights of way, dedications, coordination with adjacent property owners, infrastructure, and road improvements.

(vii) If so required by the District, Architect shall assist in the conducting of the "initial study" and any other documents necessary for compliance with the provisions of the California Environmental Quality Act ("CEQA").

(d) Schematic Plan Phase of Project.

(i) On specific written approval by the District of the plans described in subdivision (c) of this Article, the Architect shall provide a site plan and other Project related information necessary and required for an application by the District to any local, regional, State, or Federal agency for funds to finance the Project.

(ii) In cooperation with District planners and educational committees, and based on the initial Project description and Project Construction Budget, the Architect shall prepare preliminary plans and studies, schematic drawings and site utilization plans, showing the scale and relationship of the components of the Project and the plot plan development at the site and the proposed architectural concept of the buildings, incorporating the educational, program, and functional requirements of the District. At Architect's request, and as necessary, District staff will assist in providing required information about each space and/or site. **For new construction projects**, Architect shall present site planning concepts illustrating site work limits, demolition, constraints and opportunities, as well as utility impacts and optional layouts along with the proposed architectural character of the facility and a concept estimate of construction costs. **For modernization, renovation and/or alteration of existing District facilities**, Architect shall present proposed space layouts, site work limits and any significant proposed changes to the building envelope and a concept estimate of construction costs. Architect shall determine system tie-ins for campus systems, including but not limited to fire alarm, lighting controls, mechanical systems and controls, security, and data.

(iii) Upon District's review and approval of the proposed concept plan provided by Architect, Architect shall prepare schematic drawings and site utilization plans ("Schematic Design"). If applicable, and as so required by District and the District Project team, Architect shall prepare and provide schematic drawings and site utilization plans in a Building Information Modeling ("BIM") compatible electronic format, showing the scale and relationship of the components of the Project and the plot plan development at the site and the proposed architectural concept of the buildings, incorporating the educational program, and functional requirements of District.

If BIM software is required for the Project, the Architect will be responsible for developing a Building Information Modeling (BIM) model of the Project that

should be used as a collaborative design tool with the entire Project team. Architects, engineers and consultants shall use BIM Authoring software. Building information models shall be created that include all geometry, physical characteristics and product data needed to describe the design and construction work. All drawings and schedules required for assessment, review, bidding and construction shall be extractions from this model. In all cases, building and infrastructure systems shall be modeled to a level that allows the team to verify clearances, analyze conflicts/clashes and properly coordinate the work with all other aspects of the project. The Architect shall produce a model archive at the end of each project phase and an electronic version shall be made available to the District.

(iv) At the District's request, Architect shall present the Schematic Design to the District Project team, campus staff and/or the District Board explaining how all of the Project elements that were specifically requested have been incorporated into the Schematic Design and provide information, including visual aids where necessary, depicting the overall Project design upon completion.

(v) Such Schematic Design Deliverables shall meet all applicable laws, rules, regulations and guidelines of the State of California, including, but not limited to, the California Building Standards Code ("CBSC"), the California Education Code, and any requirements of the DSA (including structural safety fire/life safety and access compliance section), the California Department of Education ("CDE") regulations and guidelines (Title 5 California Code of Regulations section 14000 et seq.) and the California Department of General Services, in effect as of the time the Schematic Design Deliverables are prepared and/or revised during the latest phase of the Architect's Services described herein and shall include development of a Storm Water Pollution Prevention Plan ("SWPPP") for the Project. Such drawings and plans shall show in single line drawings all rooms incorporated in each building in the Project, and shall include all revisions required by the District or by any federal, State, local, or regional agency having jurisdiction over the Project. All architectural representation drawings for the Project shall be suitable for reproduction.

Any significant revisions made necessary by changes in such laws, rules, and regulations after this time may be compensated as Additional Services. Architect shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Architect's Services described herein. Architect shall coordinate with District's commissioning agent as required by the CBSC.

(vi) Architect shall prepare a conceptual cost estimate for each concept presented, taking into account all proposed elements of Project scope. Architect shall prepare construction cost estimate reflecting 100% complete Schematic Design documents with a more detailed written statement of estimated construction costs which shall be subject to review by the District Construction

Manager ("CM") and/or Program Manager ("PM") and approval of District and which shall comply with requirements of school construction funding aid agencies identified by District. The purpose of the revised cost estimate is to show probable cost in relation to District's Project Construction Budget. If Architect encounters, discovers and/or perceives site considerations, which render the Project over budget or cost prohibitive, Architect shall disclose such conditions in writing to District immediately. Architect shall prepare a written time schedule for the performance of work on the Project, subject to review by the CM and/or PM, and ultimately subject to approval by District.

(vii) The Architect shall provide eight (8) complete sets of the Schematic Design plans described in this Section (d) for District review and approval. Additionally, at District expense and request, the Architect shall provide copies of such documents as required by any State, federal, local, or regional agencies concerned with the Project, including, but not limited to CDE, DSA, the Department of General Services and any other appropriate federal, State, local, or regional regulatory bodies. Any additional copies required shall be provided at cost to District.

(viii) Architect shall coordinate with District and/or the appropriate members of the District Project team, including but not limited to the CM and/or PM, to schedule a Schematic Design review meeting in accordance with this Agreement and the Project schedule. Thereafter, upon approval of the Schematic Design phase deliverables by District, Architect may proceed to the next phase of design for the Project. If District does not approve the Schematic Design deliverables at the design review meeting, the District Project team and Architect shall establish specific action items for Architect to perform to meet the requirements necessary to approve the Schematic Design deliverables. Only upon written approval of the Schematic Design deliverables shall Architect proceed to the next phase of design for the Project.

(e) Design Development Phase of Project.

(i) On specific written approval by the District of the plans described in subdivision (d) of this Article, the Architect shall prepare Design Development Documents consisting of site and floor plans, elevations and any other drawings and documents sufficient to fix and describe the size and character of the Project's structural, mechanical, plumbing, fire and electrical systems, types and makeup of materials, extents of site work, including all permanent features to be incorporated into the Project, and outline specifications for presentation to the Board for approval. To the extent required for the Project, Architect shall prepare Design Development Documents in a BIM compatible electronic format including all of the above and any other necessary elements to complete this phase of design for the Project.

(ii) The Architect shall provide eight (8) complete sets of the Design Development Documents described in this Section (e) for District review and approval. Additionally, at District expense, the Architect shall provide copies of such documents as required by any State, federal, local, or regional agencies concerned with the Project, including, but not limited to CDE, DSA, the Department of General Services and any other appropriate federal, State, local, or regional regulatory bodies. Any additional copies required may be provided at cost to District.

(iii) Architect shall prepare a construction cost estimate reflecting 100% complete Design Development Documents, including detail consistent with the Design Development Deliverables as set forth herein and containing a breakdown based on types of materials and specifications identified in the documents. The construction cost estimate shall be subject to review by the CM (if assigned) and/or PM and ultimately to District for review and approval.

In the event the construction cost estimate is not within the Project Construction Budget, the Architect shall endeavor to minimize costs by proposing alternative materials, details and architectural features. If, after all possible alternatives to the design have been explored, the Architect determines that there is no acceptable way to reduce the construction cost sufficiently to meet the Project Construction Budget, the Architect shall request an adjustment to the Project Construction Budget. Any increase or change in the Project Construction Budget is at the District's sole and absolute discretion.

(iv) Architect shall provide a timetable of the Project to District. Architect shall provide to District and/or CM, PM a weekly update of the Project schedule progress and related schedule milestones.

(v) The Architect shall assist District in applying for and obtaining required approvals from all applicable governmental agencies and shall furnish and process all architectural and engineering information required to prepare and process applications to applicable utilities and governmental agencies for the securing of priorities, materials, or funds as an aid in the construction of the Project and obtain final Project approval and acceptance by said agencies as required.

(vi) The Architect shall provide a color board and schedule of all materials and selections of texture, finishes, and other matters involving an aesthetic decision in the Project for District's review and approval.

(vii) Architect shall coordinate with District and/or the appropriate members of the District Project team, including but not limited to the CM and/or PM, for a design review meeting at the Design Development phase. If District does not approve the Design Development deliverables at the design review

meeting, the District Project team and Architect shall establish specific action items for Architect to perform to meet the requirements necessary to approve the Design Development deliverables. Only upon written approval of the Design Development deliverables shall Architect proceed to the next phase of design for the Project.

(f) Building Permits and Conformity To Legal Requirements.

(i) The Architect shall identify applicable governmental agencies having jurisdiction over the Project. The Architect shall cause drawings and specifications to conform to applicable requirements of law, local, regional, and State, and to requirements of public authorities and bodies formed under local, regional, State, or federal law, including, but not limited to, DSA, CDE, local or regional planning agencies, Cal Trans, and the U.S. Fish and Wildlife Service, whose approval of the drawings and specifications must be obtained, and shall cause the necessary copies of such drawings and specifications to be filed with these bodies for approval in accordance with paragraph (e)(ii) of this Article.

(ii) Architect will use its best professional efforts to interpret applicable ADA requirements and California accessibility regulations as they apply to the Project and to inform District of any inconsistencies between federal and state accessibility regulations and of requirements which are subject to conflicting interpretations of the law. Interpretation of inconsistencies and areas subject to conflicting interpretations shall be the responsibility of District.

(g) Final Working Drawings and Specifications.

(i) On specific written approval by the District of the plans described in subdivision (e) of this Article, the Architect shall prepare such complete working drawings and specifications as are necessary for obtaining complete bids and for efficient and thorough execution of work. If so required for the Project, Architect shall provide final working drawings and specifications in a BIM compatible electronic format. Such working drawings shall be developed from the Design Development drawings approved by the District. The final working drawings and specifications shall set forth in detail the work to be done, the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, plumbing, fire and electrical system and utility service connection equipment and site work. It shall be District's responsibility to supply Architect with the necessary information to determine the proper location of all improvements on existing sites, including record drawings ("as-built drawings") in the District's possession. Architect will make a good faith effort to verify the accuracy of such information and as-built drawings by means of a thorough interior and exterior visual survey of site conditions. District shall also make a good faith effort to verify the accuracy of the as-built drawings and provide any supplemental information to Architect which may not be shown on the as-built drawings. The District shall furnish, at District's expense, all information, requirements, reports, data, surveys

and instructions required by this agreement. The Architect may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof.

The final working drawings and specifications must be in such form as will enable the Architect and the District to secure the required permits and approvals by public authorities and for the District to obtain by competitive bidding a responsible bid that does not exceed the District's established budget. The final working drawings shall be clear and legible so that uniform copies may be obtained from them. The final specifications shall be typed on letter size paper properly indexed and numbered and shall be capable of being clearly copied and assembled in a professional manner by Architect.

(ii) Architect shall coordinate with District for design review meeting(s) and upon written approval of the final working drawings and specifications phase deliverables by District, Architect shall submit plans to DSA for review and approval. Upon receipt of Project approval from DSA, and as directed by the District, Architect shall proceed to prepare the Construction Document deliverables and move forward with the Bid/Award phase of Project. If District does not approve the final working drawings and specifications phase deliverables at the design review meeting, the District Project team and Architect shall establish specific action items for Architect to perform to meet the requirements necessary to approve the final working drawings and specifications phase deliverables. Only upon written approval of the final working drawings and specifications phase deliverables shall Architect proceed to submit the drawings and specifications to DSA and move to the next phase of design for the Project.

(iii) District shall review, study and check the final working drawings and specifications presented to it by Architect and make any necessary revisions or obtain approval of such final plans by the Board, subject to the approval of DSA. Architect shall, at no additional cost, make all District-requested changes, additions, deletions, and corrections in the final working drawings and specifications so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, inconsistent with earlier District direction, or inconsistent with Architect's professional judgment. The parties hereto agree that the Architect and not the District possesses the requisite expertise to determine the constructability of the final working drawings and specifications. The District's review and approval of the final working drawings shall not be conclusive of the constructability of the plans and shall not in any way limit Architect's liability if any portion of the final working drawings and specifications is defective.

(iv) It is understood by the Architect that should final working drawings and specifications be ordered by the District, the District shall verify the Project Construction Budget, then considered to be the final Project Construction Budget, and the Architect agrees to develop the plans so that the total construction

cost to the District will not exceed the specified sum. Architect shall endeavor in so doing, to keep the actual cost of the work as low as may be consistent with the purpose of the buildings and with proper workmanship and material. To this end, Architect shall prepare a final construction cost estimate reflecting 100% complete Construction Documents for review by the CM (if assigned) and/or the PM, and ultimately for review and approval of District. Should it become evident that the total construction cost will exceed the specified sum, the Architect shall at once present a statement in writing to the District Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based. In the event that such statement is not filed and bids received by the District from contractors for the construction of the work indicate that they cannot be constructed in accordance with the plans and specifications furnished by the Architect for the specified sum, in accordance with Article 2, Section (g), the Architect shall, if requested by the District, and without extra compensation therefor, so revise the plans and specifications for the work that the construction may be completed for the total cost which does not exceed the specified sum or so that certain portions of the Project may be omitted, deferred, or separately bid.

(v) The Architect shall provide eight (8) complete sets of the final working drawings and specifications described in this Section (g), for District review and approval. Additionally, at District expense, the Architect shall provide copies of such documents in quantities and formats as required by any State, federal, local, or regional agencies concerned with the Project, including, but not limited to CDE, DSA, the Department of General Services and any other appropriate federal, State, local, or regional regulatory bodies. Any additional copies required shall be provided at cost to District.

(h) Construction Contract Documents.

(i) The Project Construction Contract Documents, which shall include the final working drawings and specifications, shall have been approved and stamped accordingly by DSA prior to issuance for bid (collectively, "Construction Documents"). If so required by District, at no additional cost to District, Architect shall assist District in the completion of the Construction Documents, including but not limited to Advertisement for Bids, Pre-qualifying general contractors, and/or subcontractors, Information for Bidders, Bid Forms, Bonds, General Conditions, Special Conditions, Contractor Agreement, documents required to comply with Minority, Women and Disabled Veteran Business Enterprise preferences, if required, affirmative action documents, or any documents required in order to obtain bids responsive to the Construction Documents, including the plans and specifications. All such Construction Documents shall be subject to the approval of the District and District's counsel. At the time of delivery of the aforementioned Construction Documents, which shall include the final working drawings and specifications, Architect shall provide District with its final estimate of probable construction cost ("Final Estimate"). A copy of the approved Construction

Documents will be provided to the District in the electronic media format(s) specified by the District.

(ii) 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 the District elects to conduct either constructability reviews or value engineering, the District shall notify the Architect of the same and the Architect shall submit Construction Documents to the District for such constructability reviews and/or value engineering. The District and Architect 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 Architect shall submit revised Construction Documents to the District for approval. Architect shall revise Construction Documents as necessary to obtain the District's reasonable approval thereof.

(i) Bid Phase.

(i) Following District's approval of the Construction Documents and Final Estimate, Architect shall provide to District at District expense, at a minimum of eight (8) sets of Construction Documents, or an adequate number subject to the District's discretion, for bidding purposes. Architect shall assist District notifying potential interested parties to obtain the copies of Construction Documents and in obtaining bids on the Project and awarding the contract, including coordinating the distribution and collection of bid plans, specifications, and addenda as required.

(ii) Architect shall assist District, if so requested, in prequalifying bidders pursuant to established Public Contract Code requirements and, if applicable, District procedures.

(iii) If the lowest responsive bid on the Project exceeds the Final Estimate by ten percent (10%), District may request Architect to amend the final drawings and specifications to rebid the Project so that bids are within ten percent (10%) of the Final Estimate. At the request of District, Architect shall provide working drawings and specifications which include alternate bids as deemed advisable by the District.

(j) Observation of Project. Observation of the work executed from the final working drawings and specifications shall be in person by the Architect provided that the District may in its discretion consent to such observation by a competent representative of the Architect. The Architect's responsibility shall include the preparation of all documents and/or drawings made necessary by errors in the originally approved drawings or specifications and such modifications therein as may be necessary to meet unanticipated conditions encountered during construction.

(k) Construction of Project. The Architect shall provide general administration of the Construction Documents, including, but not limited to the following:

(i) Architect shall conduct a pre-construction meeting/s with all interested parties.

(ii) Regular site visits to observe contractor's work and for general conformance with the plans and specifications and that work is progressing in accordance with the Construction Documents and contractor's schedule. During Project construction, Project Architect and/or designated representative of Architect with the requisite authority to act on behalf of Project Architect shall visit the Project site no less than one time per week to monitor progress of Project construction activities.

(iii) Regular site visits to communicate and monitor the activities of the Project inspector/s employed by District. Architect shall direct the inspector and/or contractor and coordinate with the inspector in the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to underground utility lines. Such drawings shall be forwarded to District upon completion of the Project.

(iv) Cause engineers and other consultants as may be hired by Architect pursuant to subdivision (b) of this Article, to observe the work completed under their engineering disciplines as required and in compliance with the Project schedule, and approve and review all test results for general conformance with the original approved documents for their portion of the Project.

(v) Make regular reports as may be required by the applicable local, regional and state agencies, including but not limited to those reports and forms required by DSA (See Part I, Title 24 of the California Code of Regulations and Education Code section 81141.).

(vi) Provide written reports to the District after each construction meeting to keep District informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the work.

(vii) Make written reports to the District as necessary to inform District of problems arising during construction, changes contemplated as a result of the problem and progress of work.

(viii) Keep records of construction progress and time schedules and advise contractor and District of any deviations from the Project construction schedule which would delay timely completion of Project.

(ix) Check and process all required material and test reports and report to DSA, the contractor and the District any deficiencies in material as reflected by those reports with recommendation for corrections of such deficiencies.

(x) Review in a timely manner schedules and shop drawings, samples, and other submissions of the contractor and subcontractors for compliance with design and specifications.

(xi) Reject work or materials which do not conform to the Construction Documents and notify District of such rejection.

(xii) Consult with District with regard to substitution of materials, equipment, and the laboratory reports thereof prior to the final approvals of such substitutions by the District in writing.

(xiii) Advise District in writing of any material change, or changes, necessary in the plans and specifications of the Project. Architect shall not order contractors to make any changes affecting contract price without approval by the District of a written change order, pursuant to the terms of the Construction Documents. The Architect may order on his or her own responsibility and pending the Board's approval, changes necessary at the time to meet construction emergencies if written approval of the District Representative is first secured.

(xiv) Receive, process, issue, review and/or negotiate all contractor Requests for Information, Submittals, Supplemental Instructions, Proposal Requests, Change Order requests, and replies related to pricing information and other necessary Project deliverables.

(xv) Examine, verify, and approve contractors' applications for payment and issue certificates for payment in amounts approved by inspector.

(xvi) Coordinate final color and product selection with District's original design concept.

(xvii) Assist District Project team in determination of date of Project substantial completion.

(xviii) The Architect shall inspect the Project and provide the District and contractor a written list of all deficiencies, including minor items ("punch-list items"). Architect shall notify contractor in writing that all deficiencies and punch list items must be corrected prior to acceptance of the Project.

(xix) Assemble for and provide to District written warranties, guarantees, owners' manuals, instruction books, diagrams, record drawings ("as-builts"), and any other materials required from the contractors and subcontractors.

(xx) Make any further inspections of Project necessary to issue Architect's Certificate of Completion, any and all required DSA and other agency documents to be submitted to complete the Project, and final certificate for payment.

(xxi) Cause engineers and other consultants, as may be hired by Architect pursuant to subdivision (b) of this Article, to file required documentation with governmental authorities necessary to close-out Project.

(xxii) Process Change Orders, verified reports, testing reports and other required documentation through DSA to obtain certification for the Project.

(xxiii) Provide advice to District on apparent deficiencies in construction following acceptance of work.

(xxiv) Provide advice and support, including any document support, to District as necessary to achieve a complete design in accordance with the terms set forth in this Agreement and timely completion of the Project.

(xxv) No Delay. The Architect 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. Toward this end, Contractor's Request(s) for Information ("RFI") shall be responded to within a maximum of seven (7) Calendar Days ("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 fourteen (14) Days from submittal. Where certain RFIs may require additional time due to their complexities, Architect shall assign an alternate duration for any specific RFIs or Submittals that require additional time at the time they are received by the Architect. When no additional time is needed the Architect shall respond to RFIs within the required response period set forth in this Section. Where certain RFIs, Submittals or other required deliverables are critical to the Project schedule, the Architect will use best efforts to provide a response to such requests as expeditiously as possible and, in some cases, in advance of the required response period set forth in this Section. The Architect will consult and communicate with District, the Project Inspector, the CM and/or PM on a regular basis and as necessary as part of the process in responding to RFIs, Submittals and other deliverables, especially those that impact District operations or overall management of District facilities

(l) In accordance with the approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Construction Documents, not for substitution for or deviation from the requirements of the Construction Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the

Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

(m) Corrections. The Architect shall, at no cost to the District, promptly and satisfactorily correct any and all errors, omissions, deficiencies, ambiguities, conflicts or violations of applicable federal, State or local laws and regulations set forth in the Construction Documents prepared by the Architect or its consultants.

(n) Defective Work. The Architect shall recommend to the District, CM, PM and/or inspector in writing, the rejection of observed defective and/or non-conforming work on the Project.

(o) Additional Services of Architect. At the District's request, Architect may be asked to perform services not otherwise included in this Agreement and/or services not customarily furnished in accordance with generally accepted architectural practice. District may agree to pay Architect for such services, pursuant to Article 4 subdivision (b), if such services cause Architect additional expense and are necessitated due to unusual circumstances and through no fault or neglect on the part of Architect. No additional compensation shall be paid to Architect for performing such services unless District and Architect agree in writing as to the amount of compensation for such services prior to such services being rendered. Such services may include, but shall not be limited to (i) plan preparation and/or administration of work on portions of the Project separately bid; (ii) assistance to District, if requested for the selection of moveable furniture, equipment or articles which are not included in Construction Documents; (iii) services caused by delinquency, default or insolvency of contractor or by major defects in the work of the contractor in the performance of the construction contract; (iv) revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and due to causes beyond the control of Architect; (v) serving as an expert witness on District's behalf; and (vi) supervision of repair of damages to structure.

Article 3. District Responsibilities. The District's responsibilities shall include the following:

(a) Make available to the Architect all necessary data and information concerning the purpose and requirements of the Project, including realistic scheduling and budget limitations.

(b) Depending upon the scope of the Project, furnish Architect with, or direct Architect to procure at District expense, a survey of the Project site prepared by a registered surveyor or civil engineer and any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site and any other such

pertinent information. District shall also provide a soils investigation report and a geological report, if required by law.

(c) Appoint and pay an inspector as provided by State law. Said inspector shall be qualified and approved by DSA and shall be under direction of the Architect and responsible to, and act in accordance with the policies of the District. The administration by Architect and his or her engineers shall be in addition to the continuous personal supervision of the District's inspector.

(d) Assist Architect in the distribution of plans to bidders and conduct the opening of bids on the Project, if applicable.

(e) Conduct chemical, mechanical, or other tests required for proper design of the Project. Furnish such surveys, borings, test pits and other tests as may be necessary to reveal conditions of the site which must be known for the proper development of the required drawings and specifications and to determine soil condition.

(f) Retain a testing service for materials testing and inspection as required by Title 21 of the California Code of Regulations.

(g) Direct pay or reimburse the payment of all fees required by any reviewing or licensing agency.

(h) Designate a representative authorized to act as liaison between Architect and District in the administration of this Agreement and the Construction Documents. Such person or persons shall assist Architect in making inspections and preparing the list of deficiencies required by Section (k) paragraph (xviii) of Article 2 hereof and accompany Architect and contractor on the final inspection.

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

(j) Notify Architect in writing if any deficiencies in material or workmanship become apparent during contractor's warranty period.

#### Article 4. Architect's Fee.

(a) The District shall pay to the Architect for the performance of all services rendered herein the amount of:

\_\_\_\_\_.

which constitutes complete payment for the Architect's services under this Agreement. The costs of the work shall mean the cost to the District of the proposals or bids for the Project accepted by District and any additive change order items agreed to by the District and the contractor(s).

(b) Payment for Additional Services. The Architect shall be paid for additional services not originally contemplated by the parties to this Agreement as follows, provided the additional services have received advance written approval by the District Representative and thereafter subject to the required Board approval:

(i) Lump Sum. Prior to performance of any Additional Services not initially authorized for the Project, Architect and District shall attempt in good faith to negotiate a lump sum amount for such Additional Services. Monthly payments for those services will be based on progress as determined by District in the exercise of its reasonable discretion. If the parties fail to negotiate a lump sum amount prior to the date such Additional Services are first provided, then Architect's compensation for such Additional Services shall be as set forth in this Article 4, Section (b)(ii).

(ii) Hourly Rates. If the parties are unable to negotiate a lump sum price for Additional Services and District instructs Architect to proceed with performance of the Additional Services, then Architect's compensation shall be computed based on actual employee time expended at the Hourly Rates set forth in **Exhibit A** without any markup or multiplier. Rates charged by Architect consultants for Additional Services shall be subject to advance approval by District. Authorized Additional Services charged by consultants at rates that are not so approved in advance by District will be deemed chargeable to District for no more than the lowest Hourly Rate chargeable by Architect for Additional Services under this Agreement.

(c) Reimbursable Expenses. Reimbursable expenses are in addition to compensation for basic and additional services (as set forth in Article 2 and Article 4 (a) and (b) above) and include expenses incurred by the Architect and Architect's employees and consultants in the interest of the Project, as identified in the following clauses.

(i) Expense of reproduction, postage and handling of drawings, specifications and other documents for agency approvals, construction and bidding, in excess of those set forth elsewhere in this contract.

(ii) Expenses for travel to and from the office of the Architect and its consultants to the Project site, the District's Administrative Offices and within the counties of San Diego, Orange and Los Angeles.

(iii) Expense of additional insurance coverage or limits, including professional liability insurance, requested by the District in excess of that stipulated in Article 12 and normally carried by the Architect and Architect's consultants.

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.

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 Architect's office (or at District's request and expense, shall be brought by Architect to the District) for inspection, auditing and/or copying by the District or its authorized representative.

Article 5. Payments to Architect.

(a) Architect's compensation shall be paid by District to Architect monthly in arrears incrementally within the following phases as follows based upon the percentage of work completed:

Percentages of Total Fees

|     |                                                  |   |
|-----|--------------------------------------------------|---|
| 1.. | Initial Planning Phase<br>(Feasibility Study)    | % |
| 2.  | Schematic Design Phase                           | % |
| 3.  | Design Development Phase                         | % |
| 4.  | Final Drawing and Construction<br>Document Phase | % |
| 5.  | DSA Approval                                     | % |
| 6.  | Bid Phase                                        | % |
| 7.  | Construction Phase                               | % |

Architect shall not receive final payment until completion of all Architect's required duties.

(b) In order to receive payment, Architect shall present to District a claim for payment for approval by District's authorized representative designating services performed, method of computation of amount payable, and amount payable. Architect shall submit an invoice on a monthly basis in compliance with the requirements set forth by the District and/or CM for the Project. Invoices submitted for payment shall be accompanied by a detailed summary description of the progress of performance to date, including but not limited to, phase/task/employee, (a) a description of the status of completion of basic services by percent complete; (b) a description of the percent complete of any Additional Services and summary of hours worked; (c) Reimbursable Expenses incurred during the previous 30-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.

(c) Payments made for extra work or special services shall be made in installments, not more often than monthly, proportionate to the degree of completion of

such services or in such other manner as the parties shall specify when such services are agreed upon.

(d) Upon cancellation or termination of this Agreement, Architect shall be compensated as set forth in Article 8 hereof.

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

(f) Payment Disputes.

Notwithstanding any provision of this Agreement to the contrary, if the District shall, in good faith, dispute the amount due the Architect under any billing invoice submitted by the Architect under this Agreement, pursuant to Civil Code § 3320(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 Architect an amount not to exceed one hundred and fifty percent (150%) 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 District to Architect under this Agreement, District shall have the right to do either of the following: (i) make all or part of such disputed payment to Architect without prejudice to District's right to contest the amount so paid; or (ii) withhold all or a portion of such disputed payment. Pursuant to Civil Code § 3320(a), should District withhold all or a portion of any payment invoiced by Architect, District shall so notify Architect in writing of the reasons therefore. From and after Architect's receipt of such notice, District and Architect shall use their good faith efforts to resolve their dispute within 45 Days. If District has given such notice, **Architect shall not be entitled to terminate this Agreement or suspend its services hereunder on account of such nonpayment.** If District chooses to withhold payments under Clause (i) of this Section (f), if it is subsequently determined that District owes an additional payment to Architect, District shall pay such amount to Architect plus a penalty of 1 1/2 percent for the improperly withheld amount, in lieu of any interest otherwise due, per month for every month that payment is not made. 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 (ii) of this Section (f) and it is subsequently determined that District overpaid Architect, Architect shall refund to District the amount of such payment plus 1 1/2 percent of the amount of the overpayment in lieu of any interest otherwise due, per month from the date of such overpayment and for every month until refunded.

Article 6. Instructions to Proceed. The Architect is not to proceed with performance of any services under this Agreement without first securing written authorization from the District to do so.

#### Article 7. Time Schedule.

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

(b) Any delays in Architect's work because of the actions of the District or its employees, those in direct contractual relationship with District, by a governmental agency having jurisdiction over the Project, or by an act of God, pandemic/epidemic, or other unforeseen occurrence, not due to any fault or negligence on the part of Architect, may be added to the time for completion of any obligations of Architect. District shall not be liable for damage to Architect on account of such delays.

(c) Should Architect make an application for an extension of time, Architect shall submit evidence that the insurance policies required by Article 12, Section (a) remain in effect during the requested additional period of time.

#### Article 8. Suspension, Abandonment, Termination.

(a) The District hereby reserves the right to suspend or abandon at any time all or any of the construction work on the Project or to terminate this Agreement at any time. In the event of such suspension, abandonment or termination, the Architect shall be paid pursuant to the schedule of payments set forth in Articles 4 and 5 for services rendered up to the date of such suspension, abandonment, or termination. If the date of suspension, abandonment or termination occurs prior to the date of approval of preliminary studies or prior to the date of approval of the working drawings, such payments shall be the reasonable value of the services rendered up to the date of such suspension, abandonment, or termination less any payments theretofore made, as determined by the District, and the Architect hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein.

(b) If the Architect's services are suspended by the District, the District may require the Architect to resume services within ninety (90) days after written notice from the District. Upon payment of the amount required to be paid under this Article following the termination of this Agreement, the District shall have the right to use any completed contract documents or other work product prepared by Architect under this Agreement. Architect shall make such documents available to the District upon request and without additional compensation.

(c) Termination by District.

(i) For Cause. If District determines that Architect has failed to perform in accordance with the terms and conditions of this Agreement, District may terminate all or part of the Agreement for cause. This termination shall be effective if Architect does not begin to cure its failure to perform within ten (10) Days (or longer, if authorized in writing by District) after receipt of a notice of intention to terminate from District specifying the failure in performance. If a termination for cause does occur, District will have the right to withhold monies otherwise payable to Architect resulting from the Architect's cited failure to perform. If the District incurs additional costs, expenses or other damages due to the negligent failure of Architect to properly perform pursuant to this Agreement, these costs, expenses or other damages shall be deducted from the amounts withheld. Should the amounts withheld exceed the amounts deducted; the balance will be paid to Architect upon Final Completion of the Project. If the costs, expenses or other damages incurred by District exceed the amounts withheld, Architect shall be liable to District for the difference. The provisions of this Article 8(c) are in addition to, and not a limitation upon, any other rights and remedies of District under law or in equity.

(ii) For Convenience. 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 Architect, in which case District will pay Architect as provided in Article 5 for all Basic Services and authorized Additional Services performed, and all authorized Reimbursable Expenses incurred and paid, under and in accordance with this Agreement up to and including the date of termination. Such payment shall be Architect's sole and exclusive compensation and District shall have no liability to Architect for any other compensation or damages, including without limitation, anticipated profit, prospective losses or consequential damages, of any kind.

(iii) Deletion of Services. In the event of termination by District, for cause or convenience, of a portion of the Project, then the Architect'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 Architect's scope of Basic Services.

(d) Termination by Architect.

(i) Termination of the Agreement. Architect may terminate this Agreement:

.1 If District fails to make any *undisputed* payment to Architect when due in accordance with this Agreement and such failure remains uncured for thirty (30) Days after written notice to District of such default and of Architect's intent to terminate; or

.2 If the Project is abandoned by District for more than sixty (60) consecutive Days, Architect may terminate this Agreement upon thirty (30) Days' notice to District, provided 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, Architect's compensation and time for performance shall be equitably adjusted to provide for reasonable expenses incurred by Architect and delays which are directly attributable to the interruption and resumption of service.

(ii) Payment for Services. In the event of a termination of this Agreement by Architect in accordance with Article 8(d), District's obligation shall be to pay Architect an amount for its Basic Services, Additional Services and Reimbursable Expenses calculated in accordance with Article 8(c)(ii) of this Agreement. Such payment shall be Architect's sole and exclusive compensation and District shall have no further liability or obligation to Architect for any other compensation or damages, including, without limitation, anticipated profit, prospective losses or consequential damages, of any kind.

(e) If Project construction is not completed in advance of the suspension, abandonment or termination of this Agreement and delayed completion of Project construction is caused in whole or in part by: (a) the acts, omissions or other conduct of the Architect or its consultants; (b) delayed review and/or approval by DSA or other government authorities; (c) acts of God; (d) an epidemic or pandemic; or (e) other event or occurrence causing a shutdown of the Project by federal, State or local agencies, the date of termination shall be extended commensurate with the number of calendar Days attributed to (a)-(e) above ("the Extended Duration"). During the Extended Duration, the Architect shall continue to provide or perform the Architect's Services without adjustment of the Compensation.

#### Article 9. Ownership of Documents.

(a) Pursuant to Education Code section 17316, all plans, specifications and estimates prepared pursuant to this Agreement shall be and remain the property of the District. Such drawings and specifications supplied as herein required shall be the property of the District whether or not the work for which they were made is executed. The Architect shall furnish to the District such copies of all drawings and specifications as are necessary for study by the District and its representative; shall supply the copies of said drawings and specifications required under Article 2, Section (g) hereof, and shall supply eight (8) additional copies to the District. Such other copies of the drawings and specifications as may be necessary for obtaining bids and for the proper conduct of the work shall be supplied to the District by the Architect at the cost of reproduction.

(b) The District reserves the right to reuse all or part of the aforementioned documents at its sole discretion for the construction of all or part of another Project constructed for District. The District is not bound by this Agreement to employ the services of Architect in the event such documents are reused. Any reuse by the District of documents prepared under this agreement, without employing the services of Architect, shall be at District's own risk. District shall indemnify, hold harmless and defend Architect

and its officers, directors, agents and employees from all claims of any kind arising out of such use, re-use or modification of said documents prepared by Architect.

Article 10. Indemnity.

(a) To the fullest extent permitted by law, Architect agrees to defend, indemnify and hold harmless, District, Program Manager, Board of Education, and each of their respective members, officers, employees, agents and volunteers ["Indemnatee(s)"], through legal counsel reasonably acceptable to District, from any and all losses, liabilities, claims, damages and costs to the extent that the claims against Indemnatee(s) arise out of or are attributable, in whole or in part, to the negligence, recklessness, willful acts, omissions, errors and/or other conduct of Architect or its consultants, or their respective employees, agents, representatives or independent contractors, to the maximum extent permissible under Civil Code section 2782.8. The Architect's obligation to pay the Indemnitees' attorneys' fees and costs shall be limited to the reimbursements for 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 Architect and/or its consultants. The foregoing notwithstanding, the limitation to Architect's reimbursement of attorney fees and costs to the Indemnitees shall not act as a limitation of California Civil Code section 2778, which is incorporated herein by reference in its entirety. The Architect's obligations hereunder shall survive the Architect'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.

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 Indemnatee; provided, however, that nothing contained herein shall be construed as obligating Architect to indemnify any Indemnatee for any loss, liability, claim, damage or cost to the extent resulting from that Indemnatee's negligence or willful misconduct.

(b) To the fullest extent permitted by law, the District agrees to defend, indemnify and hold harmless, the Architect, 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 Board, 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 District to indemnify any Architect for any loss, liability, claim, damage or cost to the extent resulting from that Architect's, or its consultants', 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 Architect's attorneys' fees and costs shall be limited to the reimbursements for attorney fees and costs incurred by the Architect in defending actions to the extent caused by the negligence, recklessness or the willful misconduct of the District.

Article 11. Errors and Omissions. In addition to any other remedy which may be available to District and subject to Article 10, District may require Architect to pay all costs made necessary by any negligence, errors, or omissions of Architect, including but not limited to litigation costs, diminution or loss of State funding, and any cost related to the necessary removal of and/or replacement of materials. Architect shall not receive any fee for any of its work performed in correcting said errors or omissions regardless of whether such errors or omissions result in damages to District.

Article 12. Insurance.

(a) Architect shall maintain in full force and effect at its sole cost and expense from the time this Agreement is entered into until the date of acceptance of the work by District, insurance as set forth in this Article. All insurance provided for under this Article shall be with a carrier satisfactory to District. Prior to commencement of work, the Architect shall furnish to the District a certificate of insurance evidencing the above coverages. The District shall not be obligated to make any payment to Architect until after its receipt and acceptance of said certificate. Failure to maintain insurance coverage required pursuant to this Agreement, shall be deemed a material breach of this Agreement and the District may terminate this Agreement for cause resulting from said breach. Alternatively, District may purchase such coverage (but has no obligation to do so), and without further notice to Architect, District may deduct from sums due to Architect any premium costs advanced by District for such insurance.

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

(ii) Commercial general liability insurance for bodily injury and property damage liability, the limits of which shall not be less than \$2,000,000 per occurrence. Commercial general liability policies obtained and maintained by the Architect shall contain endorsements naming the District and other interested parties designated by the District as additional insured and shall include products completed operation coverage as well as contractual liability coverage for liability assumed by Architect under this Agreement.

(iii) Business automobile liability insurance for bodily injury and property damage. Such insurance shall extend to non-owned, and hired automobiles used in the performance of this agreement. The limits of liability shall not be less than \$1,000,000 per occurrence and shall name the District and other interested parties designated by the District as additional insured.

(iv) Professional liability insurance covering Architect's negligent acts, errors or omissions. The limit of liability shall not be less than \$2,000,000 each claim, \$4,000,000 in the aggregate.

(b) Architect's consultants shall be required by their consultant agreements with Architect to maintain insurance on the same terms and under the same coverage as required by Architect under this Agreement.

(c) The insurance coverage required herein shall be maintained without interruption for a period of three (3) years after the Final Completion of the Project.

Article 13. Records. Architect shall maintain records of direct personnel and reimbursable expenses pertaining to the extra and special services of this Project that are compensable by other than a flat rate. Architect shall maintain all records of accounts between District and contractor on a generally recognized accounting basis. Such records shall be available to the District or its authorized representative for inspection or audit at any reasonable time. Architect shall maintain all records concerning the Project for a period of three years after its completion.

Article 14. Standardized Manufactured Items. Architect shall cooperate and consult with District in use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical / mechanical controls, and electrical equipment and fixtures (including lighting controls, data, security, fire alarm), irrigation, fencing, roofing materials and floor covering. All such manufactured items shall be standardized to the District's criteria to the extent such criteria do not interfere with building and/or Project design.

Article 15. Limitations of Agreement. This Agreement is limited to and includes only the work included in the Project described above and as determined at the time the schematic drawings and site utilization plans are approved. Any subsequent construction at the site of this Project or at any other site in the District will be covered by and be the subject to a separate Agreement for architectural services by and between the District and the Architect chosen therefor by the District.

Article 16. Dispute Resolution.

(a) Resolution of Claims. All claims, disputes or other matters in controversy between the Architect 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 16, in lieu of any and all rights under the law that either Party may have to have its rights adjudged by a trial court or jury. All Claims shall be subject to the Claims Dispute Resolution Process set forth in this Article 10, which shall be the exclusive recourse of Architect and District for determination and resolution of Claims.

(b) Resolution of Other Disputes. Disputes between District and Architect that do not constitute Claims shall be resolved by way of an action filed in the Superior Court of the State of California, County of San Diego, and shall not be subject to the Claims Dispute Resolution Process.

(c) Claims Dispute Resolution Process.

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

(ii) Direct Negotiation. Designated representatives of District and Architect 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 Education's approval of any agreed settlement or resolution. If the Claim involves an assertion of a right or claim by a consultant against Architect that is in turn being asserted by Architect against District, then such consultant shall also have a representative attend such negotiations, with the same authority and knowledge as just described. Upon completion of the meeting, if the Claim is not resolved, the parties may either continue the negotiations or either party may declare negotiations ended. All discussions that occur during such negotiation and all documents prepared solely for the purpose of such negotiations shall be confidential and privileged pursuant to California Evidence Code §§ 1119 and 1152.

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

(iv) Government Code Claim Requirements. Pursuant to Government Code § 930.6, any claim, demand, dispute, disagreement or other matter in controversy asserted by the Architect against the 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 §§ 945.4, 945.6 and 946. Notwithstanding the resolution of disputes pursuant to the arbitration provisions set forth in this Section (iv), any claim, demand, dispute, disagreement or other matter in controversy between the Architect and the District seeking money or damages shall first be presented to the District and acted upon

or deemed rejected by the District in accordance with Government Code § 900, *et seq.*, as an express condition precedent to the Architect's commencement of arbitration proceedings.

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

Article 17. Compliance with the Laws. Architect's work shall comply with and meet applicable requirements of federal, state, and local law, including, but not limited to the Uniform Building Code, the Education Code, Title 19 and Title 24 of the California Code of Regulations, and all requirements prescribed by the California Department of General Services.

Article 18. Independent Contractor. Architect is, for all purposes arising out of this Agreement, an independent contractor, and neither Architect nor its consultants and/or employees shall be deemed an employee of the District for any purpose. It is expressly understood and agreed that Architect shall in no event be entitled to any benefits to which District employees are entitled, including, but not limited to, overtime, retirement benefits, insurance, vacation, worker's compensation benefits, sick or injury leave or other benefits.

Article 19. Successors in Interest and Assigns. This Agreement is binding upon and inures to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement, provided, however that Architect shall not assign or transfer by operation of law or otherwise any or all of his rights, burdens, duties or obligations without the prior written consent of the Board of Education of the District. Any attempted assignment without such consent shall be invalid.

Article 20. Asbestos Certification. Architect shall certify pursuant to 40 CFR section 763.99 (a)(7) that no asbestos containing material was specified as a building material in any construction document for the Project, and will request that contractors provide the District with certification that all materials used in the construction of any school building are free from any asbestos containing building materials ("ACBMs"). This certification shall be part of the final Project submittal.

Article 21. Minority, Women and Disabled Veteran Business Enterprise Certification. If so required for the Project, Architect must complete DVBE compliance within 30 days of signing the Agreement, or this Agreement shall be deemed canceled.

Article 22. Miscellaneous. The following terms and conditions shall be applied to this Agreement:

(a) Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California.

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

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

(d) Non-Waiver. None of the provisions of this Agreement shall be considered waived by either party unless such waiver is specifically specified in writing.

(e) 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:

(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;

(iii) on the date sent if sent by facsimile transmission with verification of delivery by 5 PM at the recipient's location; if verification of delivery is after 5 PM, then delivery shall be deemed effective at 8 AM the following business Day; and

(iv) on the date it is accepted or rejected if sent by certified mail.

(f) Notice Recipients. All notices, demands or requests shall include the Contract Number, Project name, General Ledger No. and date of this Agreement, and shall be addressed to the parties as follows:

If to District:

Dr. Shawn T. Loescher  
Assistant Superintendent, Business Services  
Vista Unified School District  
1234 Arcadia Avenue  
Vista, CA 92084  
[shawnloescher@vistausd.org](mailto:shawnloescher@vistausd.org)

If to Architect:

(g) Conflicts of Interest. Architect agrees not to accept any employment or representation during the term of this Agreement which is or may likely make Architect "financially interested" (as provided in California Government Code sections 1090 and 87100) in any decision made by the District on any matter in connection with which the Architect has been retained pursuant to this Agreement.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

**ARCHITECT**

**DISTRICT**

**Vista Unified School District**

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

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

Dr. Shawn T. Loescher

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

Title: Asst Supt, Business Services

Contract#:



1234 Arcadia Avenue, Vista, CA 92084  
760.726.2170 x92300 (Fax: 760.941.9675)

## EXHIBIT A

### HOURLY RATES

To be completed by Architect.

|                             |    |        |
|-----------------------------|----|--------|
| Principal                   | \$ | / hour |
| Project Architect           | \$ | / hour |
| Staff Architect / Engineer  | \$ | / hour |
| Draftsperson / Cad Operator | \$ | / hour |
| Administrative              | \$ | / hour |



1234 Arcadia Avenue, Vista, CA 92084  
760.726.2170 x92300 (Fax: 760.941.9675)

## **EXHIBIT B**

### **ARCHITECT'S PROPOSAL**



1234 Arcadia Avenue, Vista, CA 92084  
760.726.2170 x92300 (Fax: 760.941.9675)

## **EXHIBIT C**

### **PROJECT DESCRIPTION**