

MASTER AGREEMENT FOR ARCHITECTURAL SERVICES

BETWEEN

ARCHITECT _____

AND

EAST SIDE UNION HIGH SCHOOL DISTRICT

_____, 20____

Originals: Architect SGI Program Office District

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MASTER AGREEMENT FOR ARCHITECTURAL SERVICES

Vendor No.: _____
Purchase Order No.: _____

PREAMBLE

This Master Agreement for Architectural Services (“**Agreement**”) is entered on _____, for work by and between _____ (“**Architect**”), whose address is _____ and the East Side Union High School District, a California public school district (“**District**”) whose address is 830 N. Capitol Avenue, San Jose, California 95133. Collectively the Architect and the District may be referred to as Parties.

RECITALS

- A.** **District** proposes to undertake the construction of new facilities and/or improvement projects which require the services of a duly qualified and licensed architect.
- B.** **Architect** is appropriately licensed to practice architecture in the State of California and is qualified to perform the services as required by this Agreement.
- C.** The Parties intend that the Architect provide its services pursuant to this Agreement, which will enable the Project to be designed and constructed without burdening District or its campus staff.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the promise and covenants herein and other valuable consideration receipt of which is acknowledged by the Parties it is mutually agreed as follows:

SECTION 1

GENERAL PROVISIONS

1.1 DEFINITIONS

- 1.1.1** **Addendum:** “Addendum” shall mean written or graphic information (including, and without limitation, Drawings, or Specifications) prepared and issued prior to the date of receipt of bids, which modifies or interprets the Bidding Documents by additions, deletions, clarifications, or corrections.

- 1.1.2 Additional Services:** “Additional Services” shall mean those services in addition to the Basic Services that are provided by the Architect and authorized in writing by the District and/or assigned District’s Construction Manager.
- 1.1.3 Agreed Design Cost Estimate:** “Agreed Design Cost Estimate” is an estimate of all work to be done as shown on the Schematic Design from the Design Development Phase.
- 1.1.4 Agreed Preliminary Estimate of Construction Costs:** “Agreed Preliminary Estimate of Construction Costs” shall consist of the Estimate of Construction Costs with revisions, if any, as indicated by the preliminary studies, schematic drawings, and site utilization plans.
- 1.1.5 Architect:** “Architect” shall mean the name of the architect listed in the first paragraph of this Agreement, including all Architect’s Consultants.
- 1.1.6 Architect’s Basic Services:** “Architect’s Basic Services” shall consist of the design services, including landscape and irrigation design, architectural, civil, structural, mechanical, and electrical engineering services, as required to complete the Project.
- 1.1.7 Architect’s Consultants:** “Architect’s Consultants” shall mean persons properly skilled and licensed in various aspects of design and construction employed at Architect’s sole expense.
- 1.1.8 As-Built Documents:** “As-Built Documents” shall mean the collection of documents assembled and prepared by the Contractor showing the condition of the Work as it was actually built.
- 1.1.9 As-Built/Record Drawings:** “As-Built/Record Drawings” shall mean the final set of drawings prepared by the Architect that incorporates all changes from all Record Drawings, sketches, details, and clarifications.
- 1.1.10 Bid:** “Bid” shall mean the written proposal submitted to District by a contractor in accordance with the Bidding Documents for the construction of the project.
- 1.1.11 Bid Set:** “Bid Set” shall mean the plans, drawings, and specifications at the end of the Construction Document Phase that DSA has approved and that the District can use to go out to bid for construction of the Project.
- 1.1.12 Bidder:** “Bidder” shall mean the person or entity submitting a Bid.
- 1.1.13 Budgeted Construction Cost:** “Budgeted Construction Cost” shall mean the District’s estimated total cost for construction excluding the Architect’s fee and excluding the cost of services and materials furnished by the District.

- 1.1.14 Contract Documents:** “Contract Documents” shall mean those documents that are required for the actual construction of the Project, including but not limited to the agreement between the District and Contractor; complete working drawings and specifications setting forth in detail the work necessary for constructing the Project to be done and the materials, workmanship, finishes and equipment required for architectural, structural, mechanical, electrical systems and utility service-connected equipment and site work, including but not limited to the “Construction Documents” as used in this Agreement and in the *Work Authorization* (Exhibit “A”).
- 1.1.15 Contractor:** “Contractor” shall mean the general contractor or specialty contractor ultimately selected to perform work on the Project or any replacement.
- 1.1.16 District’s Construction Manager:** “District’s Construction Manager” shall mean the individual or company who Architect is notified by District has been tasked to manage the entire project including design, construction and post construction phases for the purpose of achieving project objectives including the management of quality, cost, time and scope and shall represent the District in these matters.
- 1.1.17 District’s Representative:** The District shall name a representative in writing who may be from District administration, facilities, or education services who shall represent it in all matters pertaining to the services to be rendered under this Agreement. The District’s Representative shall cooperate with the Architect in all matters relative to this Agreement in order to permit the performance of the work without undue delay.
- 1.1.18 District:** “District” shall mean East Side Union High School District.
- 1.1.19 DSA:** “DSA” shall mean the Division of the State Architect.
- 1.1.20 Estimated Project Construction Cost:** “Estimated Project Construction Cost” shall mean the estimate, including the “Major Categories of Work” of the projected construction cost representative of the documents and specifications prepared under the direction of the Architect with respect to each phase document development.
- 1.1.21 Inspector of Record:** “Inspector of Record” or “IOR” shall mean a certified Inspector and specialty inspector, approved by the Office of Regulation Services of the Division of State Architect for the Department of General Services of the State of California, to inspect work pursuant to the Field Act (California Education Code section 17280 *et seq.*) and applicable provisions of the California Code of Regulations. The IOR is tasked to act in an on-site capacity and to conduct field inspections of the project during construction.
- 1.1.22 Master Agreement for Architectural Services:** “Master Agreement for Architectural Services” consists of this document and all identified exhibits to it.
- 1.1.23 Principal(s):** “Principal(s)” shall mean individual(s) who are substantive participating owners of the architectural or engineering firm and are authorized to act on behalf of the

firm as signatories to the Agreement for this Project.

- 1.1.24 Project:** “Project” shall mean the work of improvement or new construction as described in the Work Authorization. (Exhibit “A”)
- 1.1.25 Project Budget:** “Project Budget” shall mean the latest Estimated Project Construction Cost, including hard and soft cost as approved by the District at any applicable phase of design development.
- 1.1.26 Project Schedule:** “Project Schedule” shall mean the entire series of events necessary to design and construct the Project and encompasses the Architects, the Contractors and other Architect’s Consultants’ work.
- 1.1.27 Revised Agreed Cost Estimate:** “Revised Agreed Cost Estimate” includes an estimate of the cost of all work shown on the final working drawings and specifications from the Construction Document Phase.
- 1.1.28 Services:** “Services” shall mean all labor, materials, supervision, services, tasks, and work that the Architect is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Project.

SECTION 2

RETENTION OF ARCHITECT

2.1 RETENTION

- 2.1.1** The District retains the Architect to perform, and the Architect agrees to provide to and perform for the District, for consideration and upon the terms and conditions set forth below, architectural and engineering services specified in this Agreement and related incidental services. The Architect agrees to perform such services as expeditiously as possible and consistent with professional skill and care and the orderly progress of the Project. The Architect shall perform all services required under this Agreement in a manner consistent with the level of care and skill ordinarily exercised by Architects professionally qualified to provide the services required by the District.

SECTION 3

DESCRIPTION OF PROJECT

3.1 DESCRIPTION OF PROJECT

- 3.1.1 The project concerning such architectural services shall be provided as required in the Work Authorization (Exhibit "A") ("Project")

SECTION 4

ARCHITECT'S BASIC SERVICE

4.1 GENERAL PROVISIONS

- 4.1.1 The Architect shall perform the Services described in this Section, and as identified in the Work Authorization (Exhibit "A" hereto). Performance of these services is included in the basic fee payable by the District to the Architect. Services of the Architect shall include assisting in applying for and obtaining, when requested by the District and or District's Construction Manager, all required approvals from appropriate authorities and agencies. The Architect shall be responsible for all submittals required by the Division of the State Architect ("DSA"), Office of Public School Construction ("OPSC"), and California Department of Education ("CDE") in connection therewith. The Architect shall prepare the Estimated Project Construction Cost; provide consulting and engineering services; provide responses to the District and/or assigned District's Construction Manager; give direction and provide comments with respect to the Project.
- 4.1.2 The Architect shall participate in all required consultations and conferences with District, District's Construction Managers or District Representative and/or other public agencies having jurisdiction over the Project.
- 4.1.3 The Architect shall supply the District with a copy of its work plan developed for its own internal project planning, tracking and coordination. The work plan shall indicate how the Architect plans to provide the scope of services and achieve the results described here, and any additional negotiated scope of work items. District receives the work plan for information only and has no responsibility for approving it.
- 4.1.4 As a part of the basic services, the Architect shall employ at its sole expense consultants and personnel ("Architect's Consultants") properly skilled in the various aspects required for the design and construction of a Project. If the Architect's Consultants are engaged in engineering or other aspects of the work, the District shall be advised in writing of their selection prior to performing any work. The Architect's Consultants shall be employed to provide assistance during all aspects of the Project and will include, in addition to design services: review of schedules, shop drawings, samples, submittals, requests for information ("RFI"), requests for clarification ("RFC") attending regular site meetings (if required) and Project close-out. The Architect's Consultants shall also conduct periodic observations of the site to determine conformance to the Project design and specifications and shall participate in the final inspections and development of any "punch list items." The Architect's Consultants shall confer and cooperate with all education planners employed by the District within the scope of work covered by this Agreement.

- 4.1.5** The Architect and Architect's Consultants shall confer and cooperate with District's Construction Managers. The use of District's Construction Managers by District, in no way absolves the Architect's and/or Architect's Consultants' responsibility for providing the professional services as outlined in this Agreement.
- 4.1.6** Prior to the execution of this Agreement, the Architect shall submit for written approval to the District the names of consultant firms proposed for the Project and shall identify the key personnel of the consultant's firm. The District shall have the discretion to accept or reject any firm or person proposed. If a firm or person is rejected, the Architect shall propose an alternate firm or person that is acceptable to the District.
- 4.1.7** The Architect shall maintain an adequate staff including a Project manager, acceptable to the District. The Architect shall retain, at the expense of the Architect and subject to approval by the District, a California licensed architect, landscape architect, and engineers for the structural, electrical, mechanical, and civil portions including off-site improvements of the Project, this also includes any necessary specialty consultant(s) required for the execution of the Project.
- 4.1.8** The Architect shall attend meetings with the District and/or District's Construction Manager regarding the Project, as defined in the Work Authorization (Exhibit "A").
- 4.1.9** The Architect shall consult the District on all matters relative to this Agreement.
- 4.1.10** The Architect shall review existing District data, reports, plans, and other information regarding the site, and perform field investigations as necessary to become familiar with the site. To the extent necessary for Architect to perform its services, the Architect shall make an independent assessment of the accuracy of the information provided by the District concerning reasonably verifiable existing conditions (including but not limited to existing utilities and structures) and the adequacy of available design information/technical reports. The Architect shall rely on the results of its own independent investigations and not on information provided by District. The Architect shall conduct such further investigations of existing conditions as are necessary for Architect to perform the Services and shall advise District of any further design or other services necessary to complete the Project.
- 4.1.11** Upon request and at no additional cost to the District, the Architect shall revise the Construction Documents as requested by District to address any and all change orders and other necessary modifications which were caused by negligent acts, errors, or omissions of Architect or of Architect's Consultants.
- 4.1.12** The Architect and/or Architect's Consultants shall attend design progress meetings as well as any other design related conferences deemed necessary by District and/or District's Construction Manager. Architect will record discussions in these meetings and provide a draft copy of the minutes to the District within (5) five business days. The

District will review and provide comments to the Architect (if necessary). The Architect shall then incorporate the District's review comments, sign, publish, and distribute the final minutes of the design progress meeting.

4.1.13 The Architect shall provide the District with a written monthly status report (MSR) with its monthly invoice. The MSR shall briefly: review project status, budget, and schedule, work performed and contract deliverables. It shall also describe any areas where performance varies from plan, any actual or anticipated problems and Architect's recommendations for preventative or corrective actions. If directed by the District, the Architect shall meet with District or District Representative monthly, or more often as needed, to discuss the MSR and to plan actions. The Architect shall prepare and submit to District, minutes of these meeting, summarizing agreed on decisions and action.

4.1.14 Independent Reviews:

- .1 The Project is subject to independent reviews conducted by a District Consultant. The Architect shall cooperate with all such reviews by District Consultant.
- .2 The Architect shall as a part of its Services, prepare written responses to written review comments and shall make changes to the Contract Documents in response to those comments. If the Architect does not deem that a comment requires a change, the Architect shall so state in a written response to the comment providing reasons why no such change shall be implemented. If the District nevertheless directs the Architect to implement the requested change, the Architect will do so, unless doing so would result in a violation of applicable federal or state laws. Should the Architect fail to implement changes as a result of independent review comments and/or as directed by the District, any financial cost for not doing so shall be borne by the Architect.

.3 The District shall have the right, but not the obligation, to have an independent cost estimate(s) conducted by an estimator designated by the District or the District Consultant and at the expense of the District. The Architect shall as part of its Services be available to answer the estimator's questions regarding the design and attend meetings with the estimator to reconcile the Architect's and the independent estimator's estimate.

4.2 SCHEMATIC DESIGN DOCUMENTS

4.2.1 Schematic Design Documents: Upon receipt of a written authorization "phase letter" from the District, the Architect shall prepare all necessary Schematic Design Documents in accordance with the requirements and deliverables as are described in the Work Authorization (Exhibit "A").

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

cost of the Project.

- .2 The Architect shall in a timely manner, provide architectural drawings, narrative descriptions, and other pertinent data to the District. The Architect shall review all documents with the governmental authorities having jurisdiction over the Project.
- .3 As a part of the schematic design process, the Architect shall prepare the Schematic Design Documents based on the Budgeted Construction Cost accepted by the Architect. **The Architect is responsible for providing a design which can be built for less than the Budgeted Construction Cost.**

4.2.2 As a part of the **Schematic Design process**, the Architect shall furnish the following:

- .1 Two (2) copies: Schematic design progress drawings/sketches for peer review

4.2.3 As a part of the 50% **schematic submittal**, the Architect shall furnish the following:

- .1 Two (2) copies: Schematic design drawings
- .2 Two (2) copies: Electronic files on CD-ROM of schematic presentation.

4.2.4 As a part of the **100% schematic submittal**, the Architect shall furnish the following:

- .1 Three (3) copies: Updated schematic design drawings
- .2 Three (3) copies: Updated cost estimate entitled: ***Estimated Project Construction Cost at 100% Schematic Design Submittal.***

4.2.5 The Architect shall complete work and services required under the Schematic Design Phase of this Agreement. The Architect shall obtain the District's written approval of the Schematic Design Documents, including the drawings, system checklist, a prepared Estimated Project Construction Cost, the tabulation of areas and Project Schedule. The Architect shall not proceed to the Design Development Phase until it has received District's written instructions to proceed.

4.3 DESIGN DEVELOPMENT DOCUMENTS

4.3.1 Design Development Documents: Upon receipt of a written authorization "phase letter" from the District to proceed, the Architect using approved Schematic Design Documents shall prepare the Design Development Documents. Submittal requirements and deliverables are described in the *Work Authorization (Exhibit "A")*.

4.3.2 The Design Development Documents shall continue from the Schematic Design Documents to develop the Project in greater detail confirming or adjusting, as required,

all aspects of the Schematic Design Documents and other documents to fix and illustrate the size, character, and quality of the entire Project as to structural, mechanical, electrical systems, and materials. The exterior design, type of structural system, mechanical system, and electrical systems shall be delineated and defined in the Design Development Phase drawings and specifications.

4.3.3 The Architect shall assist the District in applying for and obtaining the required approvals from applicable government agencies, including but not limited to participating in meetings, conferences and communications with representatives of such agencies. Unless otherwise directed in writing by the District, as part of its services, the Architect shall prepare all necessary forms as applicable, in a form acceptable to the CDE, and the Department of General Services and any other responsible governmental agency, respectively as they may apply. The Architect shall provide a copy of all such documents to the District. This section shall mean to include all forms and information required of the Architect and their consultant(s) to provide.

4.3.4 As appropriate, the Architect shall provide to District for its approval a color and materials board, samples of textures and finishes of all materials proposed in the Project.

4.3.5 The Architect shall assist the District with written recommendations for scheduling and phasing of construction. The Architect shall include in these recommendations a list of all permits or similar approvals or fees required by authorities with jurisdiction over the Project, the dates on which applications should be made or fees paid and approvals secured, and shall assist District in filling out applications and supporting documents as necessary, to avoid delay or disruption to the Project.

4.3.6 As a part of the **50% Design Development submittal**, the Architect shall furnish the following:

- .1 Two (2) copies: Design Development phase drawings and specifications
- .2 Two (2) copies: Cost estimate entitled: *Estimated Project Construction Cost at 50% Design Development Phase*.

4.3.7 As a part of the **100% Design Development submittal**, the Architect shall furnish the following:

- .1 Three (3) copies: Design Development phase drawings and specifications
- .2 Two (2) copies: Electronic files of Design Development drawings and specifications on CD-ROM
- .3 Three (3) copies: Updated cost estimate entitled: *Estimated Project Construction Cost at 100% Design Development Phase*.

4.3.8 The Architect shall complete work and services required under the Design Development Phase of this Agreement. The Architect shall obtain the District's written approval of the Design Development Documents, including the drawings, system checklist, a prepared Estimated Project Construction Cost, the tabulation of areas. The Architect shall not proceed to the Construction Document Phase until it has received District's written instructions to proceed.

4.4 CONSTRUCTION DOCUMENT PHASE

4.4.1 Construction Documents: Upon receipt of a written authorization "phase letter" from the District to proceed, the Architect using approved Design Development Documents shall prepare working drawings, setting forth in detail and prescribing the work to be done, the materials, workmanship, and finishes required for the entire Project. The Construction Documents must include, as well as show, all existing and future utilities "roughed-in" in their proper location, specifications, bid alternates, special conditions and any updated basis of design. Submittal requirements and deliverables are described in Work Authorization (Exhibit "A").

4.4.2 The Construction Documents shall set forth in detail aspects of design, function and construction to be used for estimating the cost of the Project, securing bids for constructing the Project and directing the Contractor in the construction of the Project. Architect agrees that the plans and specifications and estimates of costs it produces shall be full, complete, and accurate, giving such directions that will enable any competent mechanic or builder to carry out.

4.4.3 The specifications and drawings approved by District and shall be in such form as will enable: (1) Architect to secure the required government agency approvals including, but not limited to, the DSA (structural safety, fire safety, and handicapped accessibility), the CDE, and local planning agencies; (2) District to secure required approvals and permits for construction of the Project; and, (3) District to obtain by competitive bidding a responsible bid that does not exceed the Revised Agreed Cost Estimate.

4.4.4 Bid alternates shall be developed as an integral part of the Construction Documents from the start of the Construction Document Phase.

4.4.5 At 50% Construction Document Phase the Architect shall provide a construction-phasing schedule for the construction work, which will minimize disruption to District operation and adjacent /concurrent construction projects.

4.4.6 At 100% Construction Document Phase the Architect shall perform a constructability review.

4.4.7 If so directed by District at the time of approval of the Design Development Documents, final working drawings and specifications shall be prepared so that portions of the work may be performed under separate contracts or so that the construction of certain

buildings, structures, facilities, or other parts of the Project may be deferred.

4.4.8 As a part of the **50% Construction Document submittal**, the Architect shall furnish the following:

- .1 Two (2) copies: Construction Document plans
- .2 Two (2) copies: Cost estimate entitled: *Estimated Project Construction Cost at 50% Construction Document Phase.*

4.4.9 As a part of the **90% Construction Document submittal**, the Architect shall furnish the following:

- .1 Three (3) copies: Construction Document plans and specifications
- .2 Three (3) copies: Structural calculations, and energy calculations
- .3 Three (3) copies: Updated cost estimate entitled: *Estimated Project Construction Cost at 90% Construction Document Phase.*

4.4.10 The following shall be provided and variously distributed for code and constructability reviews as directed by the District, and or District's Construction Manager:

- .1 Five (5) copies: Construction Documents (drawings and specifications)
- .2 Five (5) copies: Structural calculations and energy calculations.

4.4.11 As a part of the **100% Construction Document submittal**, the Architect shall furnish the following:

- .1 Three (3) copies: Updated Construction Document (drawings and specifications)
- .2 Two (2) copies: Electronic files of Construction Drawing plans and specifications on CD-ROM
- .3 Three (3) copies: Structural calculations and energy calculations
- .4 Three (3) copies: Updated cost estimate entitled: *Estimated Project Construction Cost at 100% Construction Document Phase.*

4.4.12 Architect shall complete work and services including but not limited to all work necessary to obtain DSA approvals (plan check) required under the Construction Document Phase. Completion of Construction Document plans and specifications for initial submittal for plan check approvals shall be in accordance with Work Authorization (Exhibit "A"). The Architect shall not proceed to submit plans to DSA until it has

received District's written instructions to proceed. Plan check approval drawings shall be stamped with a California Architect or Engineer's registration seal, signed and dated by the Architect of record and consultant responsible for the design.

4.5 BIDDING PHASE

- 4.5.1 Bidding:** Upon the District's request the Architect shall assist with the Contract Documents for bidding.
- 4.5.2** The Architect shall assist with all Services required to enable the District to receive bids for a Project which includes: instructions to bidders, advertisement for bids, Construction Documents, general and supplementary conditions, bonds, bid proposals, and bid tabulation forms, and assistance in the pre-bid conference.
- 4.5.3** The Architect shall prepare addenda and clarification documents, interpret Contract Documents for bidders, provide an evaluation of equals and assist the District, as requested, in responding to architectural and engineering questions asked during the bidding phase.
- 4.5.4** The Architect shall provide working drawings and specifications which include alternate bids as deemed advisable by District to bring the Project within the Budgeted Construction Cost.
- 4.5.5** If, after receipt of competitive bids based on Construction Documents, the lowest acceptable bid or the total of all bids exceeds the Budgeted Construction Cost at the time of the bid opening by more than ten percent (10%), the District may, at its discretion, (i) give written approval of an increase in the Budgeted Construction Cost (no additional fees will be due to the Architect from such increase made at this time), or (ii) authorize re-bidding the Project within a reasonable time, or (iii) direct the Architect to revise the Construction Documents without additional charge as necessary to bring the revised Estimated Project Construction Cost/Construction Document Phase with the Budgeted Construction Cost.
- 4.5.6** Upon the District's request the Architect shall furnish the District and or District's designee with a written evaluation of the bids.

4.6 CONSTRUCTION PHASE

- 4.6.1 Construction – Administration of the Construction Contract:** The Construction Phase shall commence with the award of the contract for construction and shall end when the Board of Trustees accepts the Project and files a notice of completion ("Notice of Completion"); provided that such acceptance and Notice of Completion shall not constitute an admission by the District that the Project has been completed in accordance with the Contract Documents or in conformance with this Agreement. During the construction phase, the Architect shall perform the services set forth below.

- 4.6.2** The Architect shall provide general construction administration services of the Contract Documents for all work based on the Bid Set, prepared by the Architect. The Architect shall visit the Project to review the work at times he or she deems necessary to determine the general quality of the Contractor's performance as the work progresses, and shall visit the Project promptly as requested to do so by the District and/or District's Construction Manager. Construction administration by the Architect shall be in addition to the continuous inspection of the IOR.
- 4.6.3** Before commencing with the work herein, the Architect shall provide the name of its Project Manager or Contract Administrator if different than the previously indicated Project Manager. Neither the Project Manager nor Contract Administrator shall be removed or reassigned without prior written approval of the District, and/or District's Construction Manager, unless the Project Manager or Contract Administrator proves unsatisfactory to the District, or District's Construction Manager, in which case written notification will be sent to the Architect.
- 4.6.4** The Architect shall endeavor to secure compliance by the Contractor and the subcontractors with the Contract Document requirements, but the Architect does not guarantee performance of their Contract Documents.
- 4.6.5** The Architect shall advise and consult the District's Construction Manager, in all matters identified in the Contract Documents, and shall quickly relay all instructions to the Contractor relative to the construction of the Project. The Architect shall provide technical advice to the District, its Consultant and the IOR.
- 4.6.6** The Architect shall provide follow-up to the Contractor's RFI within two (2) business days of submission; a copy of all such communications shall be provided to District and District's Consultant. All submittal submission follow-up are as per the District's front end documents, with which Architect shall review and become familiar to carry out its responsibilities and obligations hereunder. In the event of errors and omissions in the Contract Documents the Architect shall promptly prepare revised documents to correct the error or address the omission.
- 4.6.7** The Architect and/or Architect's Consultants shall provide technical direction to the IOR and shall be available on site to the Contractor and subcontractors as reasonably required to provide interpretation of the Contract Documents.
- 4.6.8** The Architect shall cooperate with the District and District's Construction Manager during the Construction Phase of the Project.
- 4.6.9** The Architect shall receive and regularly and timely review the IOR's reports, as well as prepare and submit reports to the DSA as required by law.
- 4.6.10** The Architect will attempt to expedite the progress of the construction work by means of

written communication and reference to agreed and accepted schedules. The District understands, however, that Architect is not responsible for Project delays caused by Contractors or its subcontractors.

- 4.6.11** The Architect and Architect's Consultants shall submit verified progress reports, as required, to the District via the District's Construction Manager and to the DSA.
- 4.6.12** The Architect shall make written reports to the District and to the District's Construction Manager stating any problems arising during construction, and the changes contemplated in the work as a result of the problem, and the progress of the work.
- 4.6.13** The Architect shall check and process all required material and test reports and report to the DSA, the Contractor, the District and to the District's Construction Manager any deficiencies in material as reflected by those reports, and recommendations for correction of those deficiencies.
- 4.6.14** In cooperation with the District, the Architect shall prepare and submit to the District and to the District's Construction Manager or to the District Representative for review and approval or disapproval, selections of colors, textures, finishes, and other matters involving an aesthetic decision, for all required items included in the Project.
- 4.6.15** The Architect shall review shop drawings, materials lists, and equipment lists for conformance with Contract Documents, reject those which do not comply, or indicate no exception to those which do comply. No major changes in or deviations from the requirements of the Contract Documents will be permitted at any time without prior written approval from the District. The Architect shall return all reviewed shop drawings to the District's Construction Manager and shall advise the District's Construction Manager of the results of the review.
- 4.6.16** The Architect shall investigate and recommend for acceptance or rejection any substitution of materials and products where requested or required by the terms of the specifications and shall record all substitutions of items in the final as-built specifications provided for in paragraph 4.7.1 of this Section.
- 4.6.17** The Architect shall discuss with the Contractor, the District and the District's Construction Manager any proposed changes required during construction, when the changes alter the function, quality, appearance, or cost of the finished item of work. The Architect shall check all items of cost caused by such changes. The Architect shall not permit the Contractor to commence work on any changes without first obtaining the written approval of the District.
- 4.6.18** The Architect shall consult with the IOR and/or the Contractor in the compilation of information necessary for the preparation of the As-Built/Record Drawings required by paragraph 4.7.1 of this Section.

- 4.6.19** The Architect shall furnish as many prints, specifications, other necessary documents, and prepare reports to the DSA and any other government entities having jurisdiction as required.
- 4.6.20** The Architect shall review the Contractor's monthly request for payment, and when satisfied as to the amount due, sign the submitted pay request.
- 4.6.21** The Architect shall furnish all details or incidental services necessary for the proper execution of the work, to include all supplemental drawings required to describe the work. The Architect shall complete these details and deliver them to the Contractor to prevent delay to the Contractor's operations. Tracings of all supplemental drawings shall be furnished to District's Construction Manager and shall bear the approvals required, if any, by the DSA and other public agencies having jurisdiction if, during the construction, any dispute arises regarding the meaning of the drawings and/or specifications, the Architect shall render a prompt interpretation.
- 4.6.22** In cooperation with the District, the District's Construction Manager and the District Representative, the Architect shall make a pre-final review at such time as the Project is substantially completed. On the basis of the pre-final review, the Architect, in cooperation with the District's Construction Manager, shall prepare and forward to the Contractor and to District a list of all deficiencies, including a list of those of a minor nature, commonly called a "Punch list," and notify the Contractor in a written notice accompanying the list that all of the deficiencies must be corrected prior to acceptance of the Project.
- 4.6.23** In conjunction with the District, the District's Construction Manager and the Contractor, the Architect shall make a final reviews and, when satisfied, inform the District and the District's Program Manager upon completion of the Project and prior to payment of 90 percent (90%) of the contract amount to the Contractor that, based on his own personal knowledge all provisions of the Contract Documents and specifications have been complied with and no changes in the work have been made except as authorized in writing by the District and as approved by the DSA.
- 4.6.24** During the period of construction, the Architect shall cause consulting engineers to make or cause to be made all reviews necessary to secure the completion of the Project. Upon completion of the Project, the Architect shall cause each consulting engineer to issue or cause to be issued a letter stating that the work falling under his/her administration has been performed in accordance with drawings and specifications and contract requirements. All letters are to be forwarded to the District and to the District's Construction Manager for Project archiving.
- 4.6.25** The Architect shall perform within professional standards to secure compliance by the Contractor with the Contract Document requirements, but is not responsible for the acts or omissions of the Contractor or any subcontractors, or Contractor's agents or employees, or persons performing work on the Project that are not due to the Architect's

negligence.

4.6.26 The Architect, as well as the District, shall have authority to reject work which does not conform to the Contract Documents. The Architect shall promptly inform the District whenever, in the Architect's opinion, it may be necessary to take action to avoid the improper performance of the Contract Document.

4.6.27 The Architect shall:

- .1** Attend the Project pre-construction meeting
- .2** Attend all regularly scheduled construction meetings
- .3** Review and provide comment if any, of the meeting minutes prepared by the District's Construction Manager
- .4** Prepare all documentation for the final change order (with back-up) for written approval by the Board of Trustees

4.6.28 The Architect shall not issue orders to the Contractor that might commit the Board of Trustees to extra expenses, or otherwise amend the Contract Documents, without first obtaining the written approval of the District.

4.6.29 The Architect shall, at intervals required by the DSA, complete and submit form DSA-6A/E (Verified Report), showing that the construction work has been performed and that the materials used and installed are in accordance with the approved drawings and specifications.

4.6.30 Upon completion of construction work, the Architect shall be responsible for accomplishment of the following tasks:

- .1** The Architect shall secure in proper form and transmit to District and to the District's Construction Manager all guarantees, instruction books, diagrams, operation manuals, and changes required of the Contractor. The Architect's mechanical engineering consultants shall review the operation and maintenance manual on all mechanical systems, to be provided by the Contractor for completeness and shall submit said manuals to the District's Construction Manager not less than sixty (60) days prior to the scheduled date for beneficial occupancy.
- .2** The Architect shall prepare and submit the final Verified Progress Report (Title 24 California Code of Regulations, Section 4-336) to DSA and obtain the final acceptance of the Project.
- .3** The Architect shall review all construction change orders with the District and its

District Consultant to obtain approval.

- .4 The Architect shall prepare the documentation for the final construction change order to be approved by the Board of Trustees.
- .5 The Architect shall submit all final construction change orders to DSA and obtain their approval.
- .6 The Architect shall submit all other required close-out documentation to the DSA and/or any other agency having jurisdiction over the Project.

4.7 AS-BUILT/RECORD DRAWINGS

4.7.1 As-Built Drawings and Record Document Phase:

Upon the filing of the Notice of Completion, and no later than thirty (30) days after completion of construction, and before the receipt of final payment, the Architect shall obtain the completed record set of field-marked documents from the Contractor. Architect shall be responsible for appending markings and attachments from the Contractor's record set, including delineations of RFI responses and change order drawings into the Architect's CAD drawings. Each drawing sheet shall be prominently entitled "As-Built/Record Drawings" and dated.

- .1 Once reviewed by the District, the District Representative or the District's Construction Manager, the Architect shall forward to the District's Construction Manager the complete set of original drawings corrected to As-Built/Record Drawings condition or a complete set of reproducible duplicate drawings. The drawings shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.
- .2 Prior to the receipt of his final payment, Architect shall forward to the District and to the District's Construction Manager, one (1) clear and legible set of reproductions of the computations, the original copy of the specifications, the As-Built/Record Drawings, the final verified progress report pursuant to Title 21 of the California Code of Regulations, and the Architect's Certificate of Completion.

4.7.2 Upon approval of the District, the Architect shall furnish the District with the following:

- .1 Two (2) copies: As-Built/Record Drawings (prints)
- .2 Two (2) copies: Electronic files of Construction Documents on CD-ROM

4.8 WARRANTY PHASE

4.8.1 Warranty Observation Phase: During all one-year periods of guarantee of the work provided for in the contracts with the Contractor(s), the Architect shall act as District's advisor for the purpose of securing correction of any and all defects and deficiencies covered by guarantees. Architect shall assist District by providing interpretation of the drawings and specifications where requested.

4.8.2 Eleven (11) months following substantial completion and prior to the expiration of any guarantees, Architect and Architect's Consultants shall visit the Project with District and:

- .1 Review all work and identify observable defects and deficiencies;
- .2 Evaluate the performance, durability, and appearance of installed products, materials, and systems as they relate to suitability for the use intended and to District's construction budget; and
- .3 Submit a written report to District concerning the foregoing.

4.9 CERTIFICATION BY ARCHITECT

Architect certifies that the Architect is properly licensed under the laws and regulations of the State of California to provide the professional Services that it has herein agreed to perform.

Architect certifies that it is aware of the provisions of the California Labor Code that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with those provisions before commencing the performance of the services of this Agreement.

Architect certifies that it is aware of the provisions of California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since the Architect is performing services as part of an applicable "public works" or "maintenance" project, and since the total compensation is One Thousand Dollars (\$1,000) or more, the Architect agrees to fully comply with and to require its consultant(s) to fully comply with all applicable prevailing wage requirements of the California Labor Code.

4.10 EXTRA SERVICES

4.10.1 Architect Extra Services: Extra services require pre-authorization in writing by the District. When extra services are authorized they shall be provided by the Architect and shall be paid by the District as provided in Section 5.2, Compensation for Extra Services.

4.10.2 The following services are not covered by Section 4.1 Architect's Basic Services, of this Agreement and are to be considered Extra Services:

- .1 Revisions and changes to approved documents and the preparation of alternative or deductive change orders requested by District which are not for the purpose of reducing the cost to within ten percent of the Revised Agreed Cost Estimate as provided in Section 8.1.4.
- .2 Services for repairs of damages to the Project unless caused, in whole or in part, by Architect's negligence or intentional acts.
- .3 The selection by Architect, at the District's request, of movable furniture, equipment, or articles which are not included in the Contract Document(s).
- .4 Additional services caused by the delinquency or insolvency of the Contractor.
- .5 Preparing measured drawings of existing structures if authorized by the District.
- .6 When directed by District in writing, (i) the employment of special consultants, (ii) the preparation of special delineations and models, and (iii) overtime work by Architect's employees.

4.10.3 For the purpose of computing the Architect's final compensation:

- .1 **Change Orders:**
The fee shall not be decreased because of change orders which provide for a decrease in the construction contract price and which are not the results of an omission, conflicts, or other discrepancies in the contract drawings or specifications, except for those deductive change orders required under Section 4.5.5.
- .2 **Omissions:**
The fee shall not be increased because of change orders which provide for an increase in construction contract price which are the result of errors, omissions, conflicts, or other discrepancies in the Construction Documents or specifications adjudged by District to be the fault of Architect.

SECTION 5

ARCHITECT'S COMPENSATION & PAYMENT SCHEDULE

5.1 COMPENSATION

5.1.1 The District shall compensate the Architect _____ Dollars

(\$ _____) for services (“Basic Fee”) rendered pursuant to this Agreement and Work Authorization (Exhibit “A”):

5.1.2 For the Design Phase services performed, as described in Section 4, fees shall be paid as follows:

.1 Schematic Design Phase:

Fifteen percent (15%) of the Basic Fee based upon the Architect’s approved proposal, unless otherwise indicated in the Work Authorization (Exhibit “A”). Interim payments during the Schematic Design Phase may be paid at the District’s discretion upon District’s approval of evidence of service rendered at Schematic Drawings/Design documents at 50% completion and Schematic Drawings at 100% completion. Approval letter from District (or its designated representative) and a signed and completed Schematic Phase Deliverables checklist (see Work Authorization (Exhibit “A”)) signed by Architect showing all deliverables have been completed must be attached to the final invoice at 100% Schematic Submittal. See Phase Approval Letter (Exhibit “B”).

.2 Design Development Phase:

Fifteen percent (15%) of the Basic Fee based upon the Architect’s approved proposal, unless otherwise indicated in the Work Authorization. Interim payments during the Design Development Phase may be paid at the District’s discretion upon District’s approval of evidence of service rendered at Design Development drawings at 50% completion, and Design Development drawings at 100% completion. Approval letter from District (or its designated representative) and a signed and completed Design Development Phase Deliverables checklist (see Work Authorization (Exhibit “A”)) signed by Architect showing all deliverables have been completed must be attached to the final invoice at 100% Design Development drawings. See Phase Approval Letter (Exhibit B).

5.1.3 For Construction Document services performed as described in Section 4.4, fee shall be paid as follows:

.1 Construction Document Phase:

Thirty five percent (35%) of the Basic Fee based upon the District’s notice to proceed with Construction Documents, unless otherwise indicated in the Work Authorization (Exhibit “A”). Interim payments during the Construction Document Phase may be paid at the District’s discretion upon District approval of evidence of service rendered that is 50% Construction Documents completed, 90% Construction Documents completed, and 100% Construction Documents completed. DSA plan check must be completed prior to final payment for Construction Documents Phase. Approval letter from District (or its designated representative) and a signed and completed Design Development Phase Deliverables checklist (see Work Authorization (Exhibit “A”)) signed by

Architect showing all deliverables have been completed must be attached to the final invoice at 100% Construction Documents Phase completion. See Phase Approval Letter (Exhibit "B").

.2 Bidding Phase:

Upon the District's award of the Construction Contract, three percent (3%) of the Basic Fee based upon the District's notice to proceed, unless otherwise indicated in the Work Authorization (Exhibit "A").

.3 Construction Administration Phase:

Twenty-two percent (22%) of the Basic Fee based upon the Architect's approved proposal, unless otherwise indicated in the Work Authorization (Exhibit "A"). Fees to be paid in monthly installments, in proportion to the certified completion of construction, rounded to the nearest whole percent, as determined by the District.

.4 As-Built/Record Drawing Phase:

Following the submittal of District approved As-Built/Record Drawings and Specifications, the Architect must submit all required DSA-6A/E project closeout documentation to DSA. Four percent (4%) of the Basic Fee shall be paid upon Architect's submittal to DSA of the completed and accurate DSA-6A/E. Three percent (3%) of the Basis Fee shall be paid upon Architect's submission to District (or District's designated representative) of satisfactory evidence that Architect has submitted all required documentation for Project closeout to DSA. The final three percent (3%) of the Basic Fee, unless otherwise indicated in the Work Authorization (Exhibit "A"), will not be released until the District has received the project certification letter from DSA stating the following:

- .i** The project is in compliance with all California State regulations without exception as to the safety of design and construction of public schools and for the accommodation of persons with disabilities.

5.2 COMPENSATION FOR EXTRA SERVICES

5.2.1 Payment for Architect's extra services, as described in Section 4.10, shall be authorized and determined in the following manner:

- .1** At its discretion, the District may elect to negotiate a fixed fee for extra services; or
- .2** For work performed by Principals and employees of the Architect, the Architect shall receive an amount not to exceed established hourly rates (as indicated in the Work Authorization (Exhibit "A")), for actual time expended to provide the authorized extra services. The Architect shall provide a rate sheet at the onset of

the project listing rates applicable to this Project within the limits listed above or,

- .3 For work performed by firms or individuals not employees of the Architect (and which Architect is not qualified to perform), but engaged by the Architect to assist in providing the authorized extra service, the Architect shall receive one and one tenth (1.10) times the amount to be paid by the Architect to the consultants for said services.

5.3 COMPENSATION FOR REIMBURSABLE SERVICES

5.3.1 The District will reimburse Architect for certain project related expenditures only upon certification and reasonable proof that the expenses were actually incurred or the services satisfactorily completed after authorization. The District will not be obligated to pay for any service performed by Architect without prior written authorization by District, the District Representative or the District's Construction Manager. Claims for reimbursable expenses shall reflect actual expenditures made by the Architect, employees, or Architect's Consultants working on the Project and be documented by appropriate billing and supporting receipts. Compensation for reimbursable services shall be limited to actual expenses.

- .1 **Travel and Mileage:** Trips from the Architect's office to the District Project site or to the District office are not reimbursable. Lodging and food are also not reimbursable.
- .2 When pre-authorized by the District, other travel expenses in connection with the Project shall be reimbursable. Travel reimbursement shall be limited to the amount that would be authorized by the District.
- .3 **Reprographic Services during Design:** Reproduction of drawings, specifications, calculations, cost estimates, program analysis, photos, rendering, plots or similar reproductive instrument required as described in Schematic Phase, Design Develop Phase, Construction Document Phase shall be provided as a part of the work and are reimbursable.
- .4 Additional print sets requested by the District beyond the quantities listed are reimbursable. Reproduction for internal use by the Architect and Architect's Consultants are not reimbursable.
- .5 **Postage and Communication:** Postage, package deliveries (UPS or similar carriers) and courier services are reimbursable. Both local and long distance telephone calls (i.e., outside the 408, 510, 415, 650, 707, and 916 area codes) are not reimbursable.
- .6 **Reprographics for Plan Check Review:** Reproduction of documents for submittals to review agencies (DSA, plan checking firm, State Fire Marshal, etc.)

is required as a part of basic services and are not reimbursable.

- .7 **Reproductions during Construction:** Reproduction and express delivery and, clarifications to Contractor's inquiries, and similar actions to facilitate timely responses during the construction phase shall not be reimbursable.

5.4 COVENANT AGAINST CONTINGENT FEES

Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Architect, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Architect, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to terminate this Agreement without liability, or in its discretion, to deduct from the contract price or consideration or otherwise recover the full amount of such fee, commission, percentage fee, gift, or contingency.

5.5 PAYMENT SCHEDULE

Payment under this Agreement shall be made in arrears of the completion of work, upon submittal of an accurate invoice, a sample of which shall be provided to the District prior to commencing any services, as follows:

- .1 **Design Development Services:**
Following the District's written approval of each phase, or agreed upon portion thereof, payment for Schematic and Design Development phases shall be made upon presentation of an invoice, not exceeding the amounts specified in Section 5.1.2, Compensation, Basic Services, and in accordance with Schedule of Architect's Fees Work Authorization (Exhibit "A").
- .2 **Construction Development Services:**
Payment to the Architect, after review and approval by the District and any other approving agency, for each phase of Construction Development Services shall be made upon presentation of an invoice for the percentage of the fee due. The payment shall be made in accordance with the Schedule of fees for the Architect's Basic Services.
- .3 During the construction period, payment of the Basic Fee shall be monthly in proportion to the certified percentage of construction completion as provided in Section 5.1.3.3 (Compensation, Construction Administration Phase), with final payment following receipt of approved record drawings, Section 5.1.3.4 (Compensation, Record Drawing Phase).

- .4 Payments for Architect extra services, (Section 5.2), and for Reimbursable Expenses, (Section 5.3), if any, shall be made monthly, unless otherwise specified within the respective extra service authorization, upon presentation of the Architect's invoice and approval by the District.
- .5 No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages, or other sums withheld from payments to Contractors, provided the reason for such withholding is not attributable to the fault of the Architect.
- .6 At the conclusion of work on the Project the Architect shall prepare a final invoice for the remaining amount (if any) due. This invoice shall be prominently noted *FINAL INVOICE*. The Architect shall provide a final invoice within thirty (30) days of District's request. Upon receipt and approval of final invoice, the District shall pay within 35 days.

SECTION 6

INDEMNITY; ARCHITECT'S LIABILITY

6.1 INDEMNITY; ARCHITECT'S LIABILITY

- 6.1.1** To the furthest extent permitted by California law, Architect shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or in equity ("Claim"), to property or persons, including personal injury and/or death, that arise out of, pertain to, or relate to the negligence, recklessness, errors or omissions, or willful misconduct of Architect, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performances of the Services, the Project, or this Agreement, including without limitation the payment of all consequential damages.
- 6.1.2** Architect shall pay and satisfy any judgment, award or decree that may be rendered against the indemnified parties in any Claim. Architect shall also reimburse District for the cost of any settlement paid by District arising out of any Claim. Architect shall reimburse the indemnified parties for any and all legal expenses and costs, including expert witness fees and consultant fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided to the extent caused by the above agreement to indemnify. Architect's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the indemnified parties, or to the amount of insurance obtained or available under Section 14 herein. District shall have the right to accept or reject any legal representation that Architect proposes to defend the indemnified parties.

SECTION 7

DUTIES AND LIABILITIES OF DISTRICT

7.1 DUTIES

- 7.1.1** Resources to be supplied by the District: The following resources, surveys, and reports shall be made available to the Architect as required, at the District's expense.
- 7.1.2** **District's Representative:** The District shall name a District's Representative who shall represent it in all matters pertaining to the services to be rendered under this Agreement. The District's Representative shall cooperate with the Architect in all matters relative to this Agreement in order to permit the performance of the work without undue delay.
- 7.1.3** **Statement of Building Program:** The District shall provide full information as to the requirements for and the education program to be conducted in the Project, including budget limitations and scheduling.
- 7.1.4** **Surveys and Tests:**
- .1** **Site Survey:** The District shall furnish a legal description and a certified land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Site.
 - .2** **Soils:** The District shall furnish the services of geotechnical engineers or consultants when such services are reasonably required and deemed necessary by Architect or as required by local or state codes. Such services shall include test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, including necessary operations of determining subsoil, air and water conditions, with reports and appropriate professional recommendations.
 - .3** **Geologic Hazards Investigation Survey:** The District shall have performed any geological hazards or investigation survey required by State authorities having jurisdiction and make copies available to Architect for distribution as necessary.
 - .4** **Testing:** The District shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.
 - .5** **Reliance:** The services, information, surveys and reports required by this section shall be furnished at District's expense. Architect shall be entitled to rely upon

their accuracy and completeness, except that Architect must question in writing to District any information which appears incomplete or incorrect based upon Architect's experience, site observations and knowledge of the Project.

- .6 Checking and Permit Fees:** The District shall pay or cause to be paid all fees required in connection with the Project to government agencies having jurisdiction.
- .7 Legal, Accounting:** The District shall furnish its own legal, accounting, insurance and auditing services, as District may desire.
- .8 Notice of Defects:** If the District observes or otherwise becomes aware of any fault or defect in the Project, or nonconformance with the Contract Documents, District shall verbally or in writing advise the Architect. However, District's failure to give such notice shall not eliminate the obligations of Architect regarding the administration of the construction of the Project or other obligations under the Contract Documents; nor require the District to make inspections.
- .9 Advertising:** The District shall pay the cost of any advertisements for bids that may be required by District.
- .10 District Inspector:** The District shall furnish and provide an inspector, or inspectors, as required during the entire course of construction of the Project. Each inspector shall be qualified and approved by DSA, responsible to and under the direction of Architect and shall also be responsible to and act in accordance with the policies of, District. The cost of employment of such inspector will be borne by the District and paid directly to the inspector.
- .11 Hazardous Material Consultant:** The District shall furnish the services of a hazardous material consultant or other consultants when such services are requested in writing by Architect and deemed necessary by the District or are requested by the District. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to said matters which are to be incorporated into bid documents prepared by Architect. If the hazardous materials consultant is furnished by the District and not a consultant of the Architect, the specifications shall include a note to the effect that they are included in the Architect's bid documents for the District's convenience and have not been prepared or reviewed by the Architect. The note shall also direct questions about the specifications to its preparer.
- .12 District Staff Inspections:** Requests for changes or substitutions shall be directed to the District Representative. Orders to the Contractor shall be issued through Architect, District Representative, and/or District's Construction

Manager.

- .13 **Pre-Final Review:** At the discretion of the District, the District may assist the Architect in making the pre-final reviews and in preparation of the list of deficiencies which is required by Section 4.6.22.
- .14 **Final Inspection:** At the discretion of the District, when notified by the Architect that the "punch list" items have been corrected, the District may accompany the Architect and the Contractor on the final inspection.
- .15 **Notice of Completion:** When all items are completed to the satisfaction of the District and the Architect, and upon recommendation of Architect, District staff shall recommend that the District's Board of Trustees adopt Notice of Completion.

7.2 LIABILITY OF DISTRICT

- 7.2.1 Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed in connection with this Agreement.
- 7.2.2. District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Architect, or by its employees, even though such equipment be furnished or loaned to Architect by District.

SECTION 8

PROJECT CONSTRUCTION COST ESTIMATES

8.1 ESTIMATES

- 8.1.1 **Budgeted Construction Cost:** The Budgeted Construction Cost of this Project is referenced in the *Work Authorization (Exhibit "A")* and represents the District's estimated total cost for construction. The Budgeted Construction Cost excludes the Architect's fee and the cost of services and materials furnished by the District including but not limited to soil tests, inspections, material tests, permits and checking fees, advertising, and equipment. This figure is for information purposes only as a reasonable guide to establishing the preliminary estimates in Sections 8.1.2, 8.1.3 and 8.1.4 below:
- 8.1.2 **Agreed Preliminary Estimate of Construction Costs:** The Agreed Preliminary

Estimate of Construction Costs shall be subject to District approval and shall consist of the Estimate of Construction Cost with revisions, if any, as indicated by the preliminary studies, schematic drawings, and site utilization plans completed pursuant to Section 4.2.

- 8.1.3 Agreed Design Cost Estimate:** The Agreed Design Cost Estimate shall include an estimate of all work to be done as shown on the Schematic Design from the Design Development Phase, as completed pursuant to Section 4.3, and shall be established by agreement of the Parties.
- 8.1.4 Revised Agreed Cost Estimate:** The Revised Agreed Cost Estimate shall include an estimate of the cost of all work shown on the final working drawings and specifications from the Construction Document Phase, as completed pursuant to Section 4.4, and shall be established by agreement of the Parties. It shall be based upon prevailing construction and market conditions for the purpose, among others, of ascertaining that the cost of the proposed construction falls within the limitations established by District. Until the actual cost of the Project or unit of work is determined by receipt by District of competitive bids based upon the working drawings and specifications, the Revised Agreed Cost Estimate shall be the agreed construction cost of the Project.

SECTION 9

PROJECT SCHEDULE

9.1 SCHEDULE

- 9.1.1 Time for Completion:** Time is of the essence and failure of Architect to perform services on time as specified in this Agreement is a material breach of this Agreement. It shall not be a material breach if a delay is beyond the Architect's and/or Architect's Consultant(s)' reasonable control. The completion times set forth below are binding, unless extended in writing by District or the District Representative.
- 9.1.2 Schematic Design:** All obligations set forth in Section 4.2 shall be completed after the execution of this Agreement by both Parties as described in the Work Authorization (Exhibit "A").
- 9.1.3 Design Development Phase:** All obligations set forth in Section 4.3 shall be completed after the date on which the District approves the documents described in the Work Authorization (Exhibit "A").
- 9.1.4 Construction Documents:** All obligations set forth in Section 4.4 shall be completed after the date on which District approves the documents described in the Work Authorization (Exhibit "A").
- 9.1.5 Delays:** Except as otherwise provided in Section 5.2, any time during which Architect is

delayed by acts of negligence of District or its employees or those in a direct contractual relationship with District or by Force Majeure which delays were not or could not have been reasonably foreseen and provided for, and which are not due to any fault or negligence on the part of the Architect, is included in the amount of Architect compensation in Section 5.1 District shall not be liable for the damages to the Architect on account of such delays.

9.1.6 Notice of Delay: The Architect shall, immediately upon ascertainment, notify the District of any delay in: (i) the preparation and/or production of any of Architect's documents hereunder, (ii) Architect's services, or (iii) connection with any matter attended to by the Architect or with which Architect is familiar (whether or not as the result of an act or omission of another) which would affect or delay the Project or the Project Schedule. Architect shall consult and advise the District in connection with any such delay in its effect on the Project Schedule and shall take such action on District's behalf as District may request in accordance with the terms and conditions of this Agreement.

9.1.7 Specific Response Time: The District may, in its sole discretion, establish a reasonable response time standard for Architect's performance of services: e.g., review and approval of shop drawings, preparation of change orders and field orders, interpretation of Contract Documents, or review of requests to substitute materials. These specific response times shall be considered to be reasonable and Architect will not exceed them unless, at the time of the action which necessitates a response, Architect indicates that a longer response time is necessary and gives a written explanation of the reasons why an extended response time will be needed. Any extension of the response time must be approved by District. Insufficiency of personnel shall not be an adequate excuse for delay by Architect or Architect's Consultants.

SECTION 10

SUSPENSION OR ABANDONMENT OF PROJECT AND TERMINATION OF AGREEMENT

10.1 SUSPENSION

10.1.1 Limitations of Agreement: This Agreement is limited to and includes only the work included in the Project described in the attached Work Authorization (Exhibit "A") 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 of a separate Work Authorization (Exhibit "A") for architectural services by and between District and the Architect chosen therefore by District.

10.1.2 Termination of Architect's Services: The District may suspend or may terminate

Architect's services under this Agreement by written notice to Architect because of failure of Architect to perform or to complete services within the time limits established in Section 4 and Section 9, or otherwise to comply with the terms of this Agreement or for any other reason deemed sufficient by District in its absolute discretion, including termination for convenience. Upon termination, Architect shall deliver to District all preliminary studies, sketches, working drawings, specifications, computations, and all other matters to which District would have been entitled at the completion of Architect's services.

- 10.1.3 Abandonment of a Portion of Project:** The District has the absolute discretion to suspend or abandon all or any portion of the Project contemplated under this Agreement, and may do so upon written notice to the Architect. That abandonment or suspension shall not void or invalidate this Agreement, and the payment provisions under Section 10.1.4, shall be used to determine Architect's compensation. If the entire Project is abandoned, the parties shall be relieved of the remaining executory obligations of the Agreement, but shall not be relieved of any obligations arising prior to said abandonment. Upon receipt of notice of abandonment of the entire project, Architect shall deliver to the District the documents and other matters described in Section 9.1.2.
- 10.1.4 Compensation Due:** In the event of termination by District of the Architect's services, or suspension or abandonment of this Project, there shall be due and payable within thirty (30) days after delivery of the documents described in *Work Authorization (Exhibit "A")*, a sum of money equal to the amounts described in 10.1.5, 10.1.6 and 10.1.7 of this Section, as applicable, less compensation to District for damages suffered by District as a result of the Architect's failure, if any, to comply with the terms of this Agreement.
- 10.1.5 Prior to Approval of Schematic Design Phase:** After the date of execution of the Agreement and before completion and approval of the Schematic Design Phase as described Section 4.2, the total amount to be paid Architect shall be negotiated by the District and Architect on the basis of services provided, but this amount shall not exceed eighteen percent (18%) of the Basic Fee, computed upon the basis of the Project Construction Cost Estimates set forth in Section 8.1.
- 10.1.6 Following Approval of Schematic Design Phase:** Within any of the phases described in Section 4.1 and Section 5.4, the total amount to be paid Architect shall be that percentage of the increment of payment allotted to the phase which is equal to the percentage of the required services under the phase which Architect performed prior to suspension or termination.
- 10.1.7 Additional Services:** In addition to the payment described above, Architect shall be paid the amount due for any extra services authorized pursuant to Section 4.10.
- 10.1.8 Resumed Projects:** If the Project is suspended in whole or in part for more than four (4) months and if the Project is resumed, the schedule shall be adjusted and the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the

resumption of the Architect's services.

- 10.1.9 Design Transfer Agreement:** The District may transfer Design Services to another Architect under this Agreement by written notice to the Architect, and without additional cost or compensation to the District.

SECTION 11

STANDARDIZED MANUFACTURED ITEMS

11.1 STANDARDS

- 11.1.1** Architect shall consult and cooperate with District's staff in the use and selection of manufactured items to be used in the Project. Manufactured items, including, but not limited to, paint, finish hardware, plumbing fixtures and equipment, roofing materials, and floor covering shall be standardized to District's criteria so long as those criteria do not seriously interfere with building design and/or governing codes.

SECTION 12

OWNERSHIP OF DOCUMENTS PREPARED FOR THIS PROJECT

12.1 OWNERSHIP

- 12.1.1 License.** Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for the District to use, at its discretion, all plans, specifications, original, or reproducible transparencies of working drawings and master plans, preliminary sketches, architectural presentation drawings, structural computations, all estimates and all other documents prepared by Architect pursuant to this Agreement.

The Architect retains all rights to all copyrights, designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that the Architect or Architect's Consultants prepares or causes to be prepared pursuant to this Agreement.

The Architect shall perform the Services and prepare all documents under this Agreement with the assistance of Computer Aided Design Drafting (CADD) (e.g., AutoCAD) Technology. The Architect shall deliver to the District, on request, compact disc format and the name of the supplier of the software/hardware necessary to use the design file. As to any drawings that Architect provides in a CADD file format, the District acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that the District should rely on hard copies of all documents.

In order to document exactly what CADD information was given to the District, Architect and District shall each sign a "hard" copy of reproducible documents that depict the information at the time Architect produces the CADD information. District agrees to release Architect from all liability, damages, and/or claims that arise due to any changes made to this information by anyone other than the Architect or Architect's Consultant(s) subsequent to it being given to the District.

- 12.1.2** **Termination:** Following the termination of Architect's services, for any reason, or abandonment of all or a portion of the Project, District may utilize the completed drawings, specifications, estimates, and other completed construction documents prepared under this Agreement by Architect as it sees fit. Architect shall deliver to District the following documents upon the District's written request:

One set of the Contract Documents, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.

One set of fixed image CADD files in DXF format or any other District specified format of the drawings that are part of the Contract Documents.

One set of non-fixed image CADD drawing files in DXF and/or DWG format of the site plan, floor plans (architectural, plumbing, structural mechanical and electrical), roof plan, sections and exterior elevations of the Project.

All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data and reports prepared by the Architect under this Agreement.

- 12.1.3** After completion of the Project, Architect shall not permit reproductions to be made of any District owned documents without the approval of District and shall refer all requests by other persons to District.
- 12.1.4** The Architect shall not use the drawings or plans produced for District on any other project without District's prior written consent. Architect shall defend and indemnify District from any claim that such documents infringe the copyright or trade secrets of another.

SECTION 13

REUSE OF DOCUMENTS PREPARED FOR THIS PROJECT

13.1 DOCUMENTS

- 13.1.1** The District as the sole owner of all documents prepared for this Project, reserves the right to reuse all or part of those documents at its sole discretion for the construction of

all or part of another project constructed for District. District is not bound by this Agreement to employ the services of Architect who prepared these documents in the event the documents are reused.

- 13.1.2** In the event District elects to reuse fully or partially completed documents prepared for this Project on another project, without employing the services of Architect who prepared those documents, District agrees to indemnify, defend, and hold this Architect harmless from and against any and all claims, liability, suits, demands, losses, costs and expenses, including but not limited to, reasonable attorneys' fees, on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of that change or use except to the extent the Architect is found to be liable in a forum of competent jurisdiction. In the event the District uses any fully or completed documents without the Architect's full involvement, the District shall remove all title blocks and other information that might identify the Architect and Architect's Consultants.

SECTION 14

INSURANCE

14.1 INSURANCE

- 14.1.1 Commercial General Liability and Property Damage Insurance:** Architect shall maintain commercial general liability insurance with liability limits of not less than Two Million Dollars (\$2,000,000) for death, bodily injury, personal injury, and property damage liability, combined single limit, insuring comprehensive general liability of Architect, its agents, employees, its authorized representatives, and Architect's Consultants arising out of and in connection with the performance of Services by Architect on the Project, including the operation of motor vehicles.
- 14.1.2 Professional Liability Insurance:** The Architect shall obtain and, continuously until the termination of any statute of limitations applicable to claims which might arise on account of the design and construction of the Project, maintain in full force and effect a claims-made policy covering negligence, malpractice, errors and omissions in the performance by Architect of its services hereunder, in an amount not less than Two Million Dollars (\$2,000,000).
- 14.1.3 Worker's Compensation:** The Architect shall maintain Worker's Compensation insurance with policy limits equal to the required statutory limits covering all employees of Architect.
- 14.1.4 Employer's Liability:** Architect shall obtain and shall maintain employer's liability insurance of at least Two Million Dollars (\$2,000,000) per accident for bodily injury or disease.

14.1.5 Valuable Document Insurance: The Architect shall carry adequate insurance on all drawings and specifications as may be required to protect District in the amount of its full equity in those drawings and specifications, and shall file with District a certificate of that insurance. The cost of that insurance shall be paid by Architect, and District shall be named as an additional insured.

14.1.6 Other Insurance Provisions: The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The District, the District Representative, consultants, trustees, officers, officials, employees, agents, and volunteers (“Additional Insureds”) are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Architect; instruments of service and completed operations of the Architect; premises owned, occupied or used by the Architect; or automobiles owned, leased, hired or borrowed by the Architect. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.
2. For any claims related to the Project, the Architect’s insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Architect’s insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.
4. The Architect’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

14.1.7 General Insurance Matters: All of Architect's insurance required under this Agreement shall:

- .1 Be issued by insurance companies admitted to do business in the State of California, with a financial rating of at least an A: VII as rated in the most recent edition of Best's Insurance Reports. Architect shall notify District in writing if any of its insurer(s) have an A.M. Best rating of less than A: VII. At the option of the District, either 1) the District can accept the lower rating; or 2) the Architect shall be required to procure insurance from another insurer.
- .2 Contain an endorsement or certificate executed by the insurance company, requiring thirty (30) days written notice by certified mail, return receipt requested has been given to the District from the insurance company to both parties before cancellation or termination. Architect shall promptly notify District of any

material change in the coverage, scope, or amount of any policy.

- .3 All such insurance shall be primary insurance and any insurance of District shall be excess coverage for benefit of District only and non-contributory.
- .4 Prior to commencing any work required under this Agreement Architect shall furnish District with certificates of insurance showing maintenance of the required insurance coverage. Original endorsements affecting general liability and automobile liability coverage shall be provided. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Each policy endorsement, copy, or a certificate of the policy executed by the insurance company, and evidence of payment of premiums for each policy carried by Architect shall be deposited with District within twenty-one (21) days of execution of this Agreement and prior to the commencement of services, and on renewal of the policy, not less than twenty (20) days before the expiration of the term of the policy. If Architect fails to provide the required insurance, District may in its sole and absolute discretion obtain such insurance at Architect's expense and withhold the cost of any such insurance plus a 10% administrative fee from any amounts due and owing to Architect under this Agreement.

SECTION 15

DISPUTES

15.1 DISPUTES

- 15.1.1 If any dispute arises between Architect and District, Architect shall, unless District instructs otherwise, continue performance of all obligations under this Agreement without cessation or delay pending resolution of the dispute, regardless of the size or nature of the dispute. Likewise, District shall continue to make payments for undisputed amounts during such continued performance. Architect waives all rights to seek an injunction, temporary restraining order and any other relief which would stop or delay the progress of the work. All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. If this method proves unsuccessful, then all claims, disputes or controversies as stated above may be decided through arbitration, if agreed to by all Parties.

SECTION 16

NOTICES

16.1 NOTICES

16.1.1 All notices or demands are effective when delivered or mailed, certified or registered mail, to the addresses given herein. A personally delivered notice is effective on delivery; a mailed notice is effective three days (3) after notice has been deposited in United States mailboxes postpaid, and addressed as indicated herein. The address herein may be changed by written notice given by such party in the manner provided above. The following are addresses for delivery of notices pursuant to this Agreement.

TO DISTRICT:

TO ARCHITECT:

East Side Union High School District
830 N. Capitol Avenue
San José, California 95133
Attention: Director Facilities
Fax: (408) 347-5115

SECTION 17

SUCCESSORS AND ASSIGNMENTS

17.1 SUCCESSORS

17.1.1 In as much as this Agreement is intended to secure the specialized Services of the Architect, Architect may not assign, transfer, delegate or sublet any interest therein without the prior written consent of District (which District may grant, deny or condition in its sole and absolute discretion) and any such assignment, transfer, delegation or sublease without the District's prior written consent shall be considered null and void. Likewise, District may not assign, transfer, delegate or sublet any interest therein without the prior written consent of Architect and any such assignment, transfer, delegation or sublease without Architect's prior written consent shall be considered null and void.

SECTION 18

GOVERNING LAW

18.1 LAW AND VENUE

18.1.1 This Agreement has been executed and delivered in the State of California and the validity, enforceability, and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.

18.1.2 The county in which the District administration office is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

SECTION 19

EMPLOYMENT STATUS

19.1 EMPLOYMENT STATUS

- 19.1.1** Architect shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the Architect performs the services which are the subject matter of this Agreement; provided always, however, that the services to be provided by Architect shall be provided in a manner consistent with all applicable standards and regulations governing such services.
- 19.1.2** Architect understands and agrees that the Architect's personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee.
- 19.1.3** Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Architect is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Architect which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 19.1.4** Should a relevant taxing authority determine a liability for past services performed by Architect for District, upon notification of such fact by District, Architect shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Architect under this Agreement (again, offsetting any amounts already paid by Architect which can be applied as a credit against such liability).
- 19.1.5** A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Architect shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Architect is an employee for any other purpose, then Architect agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Architect was not an employee.

- 19.1.6** Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

SECTION 20

MISCELLANEOUS PROVISIONS

20.1 MISCELLANEOUS

- 20.1.1 Asbestos:** The Architect agrees that the Project specifications will provide that no asbestos or asbestos-containing materials will be used or substituted in conjunction with the Project.
- 20.1.2 Asbestos Certification:** The Architect agrees that upon completion of all work under the Project, the Architect will certify to the District that to the best of Architect's knowledge, no asbestos or asbestos-containing materials were used in the Project.
- 20.1.3 Nondiscrimination:** No discrimination shall be made by Architect in the employment of persons to work under this Agreement because of race, national origin, gender, age, ancestry, religion, physical disability, marital status, sexual orientation, or political affiliation of such person. Architect shall comply with all applicable regulations and laws governing nondiscrimination in employment.
- 20.1.4 Use of Name:** The Architect shall not use any name, trademark or service mark of the District without first having received District's written consent to such use.
- 20.1.5 Compliance with the Laws:** The Architect agrees to comply with all applicable laws and regulations.
- 20.1.6 Fingerprinting:** Pursuant to Education Code section 45125.2, District has determined on the basis of the scope of services in this Agreement for this Project, that Architect, Architect's Consultants, and their employees will have only limited contact with pupils at most. Architect shall promptly notify District in writing of any facts or circumstances which might reasonably lead District to determine that contact will be more than limited as defined by Education Code section 45125.1(d). District reserves the right to require Architect, Architect's Consultants, and their employees to comply with Education Code section 45125.2 in the event District at any time reasonably determines that Architect, Architect's Consultants, and their employees will have more than limited contact with pupils at the Project site.
- 20.1.7 Cost Disclosure - Documents and Written Reports:** Architect shall be responsible for compliance with California Government Code section 7550, if the total cost of the contract is over five thousand dollars (\$5,000).

- 20.1.8 Disabled Veteran Business Enterprise Participation:** Pursuant to Education Code section 17076.11, the District has a participation goal for disabled veteran business enterprises (DVBE's) of at least three (3) percent, per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act ("Act"). This Project may use funds allocated under the Act. Therefore, to the extent feasible and pertaining to future hiring, the Architect, before it executes the Agreement, shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBE's in conjunction with the contract, and documentation demonstrating the Architect's good faith efforts to meet these goals.
- 20.1.9 Amendment Waiver:** None of the terms and conditions of this Agreement may be changed, waived or cancelled orally or otherwise except in writing signed by the parties hereto, specifying such change, waiver or cancellation. A waiver of any breach of this Agreement shall not be deemed a waiver of any preceding or subsequent breach, whether similar or dissimilar.
- 20.1.10 Severability:** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- 20.1.11 Entire Agreement:** This Agreement including Exhibits hereto, contains the entire understanding of the Parties, and supersedes all other written or oral agreements. Architect shall be entitled to no other benefits other than those specified herein. No changes, amendments or alternations shall be effective unless in writing and signed by both Parties. Architect specifically acknowledges that in entering into this Agreement, Architect relied solely upon the provisions contained in this Agreement and no others.
- 20.1.12 Audit/Inspection of Records.** Architect shall maintain all documents and records prepared by or furnished to Architect during the course of performing the Services for at least three (3) years following completion of the Services. Such records include, but are not limited to, correspondence, internal memoranda, calculations, books and accounts, accounting records documenting its work under its Agreement, and invoices, payrolls, timecards, records and all other data related to matters covered by this Agreement. Architect shall permit District to audit, examine and make copies, excerpts and transcripts from such records at mutually convenient times upon three (3) business days' notice. The State of California or any federal agency having an interest in the subject of Agreement shall have the same rights conferred to District by this section. Such rights shall be specifically enforceable.

20.1.13

Other Provisions: The Architect shall be responsible for the cost of construction change orders caused directly by the Architect’s willful misconduct or negligent acts, errors or omissions. Without limiting Architect’s liability for indirect cost impacts, the direct costs for which the Architect shall be liable shall equal the difference between the cost of the change order and the reasonable cost of the work had that work been a part of the originally prepared construction documents. These amounts shall be paid by Architect to District or the District may withhold those costs from amounts owing to Architect.

Neither the District’s review, approval of, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Architect shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Architect’s failure to perform any of the services furnished under this Agreement to the standard of care of the Architect for its services, which shall be, at a minimum, the standard of care of architects performing similar work for California school districts in or around the same geographic area of the District.

Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

ARCHITECT

EAST SIDE UNION HIGH SCHOOL DISTRICT

By: _____

By: _____

Date: _____

Date: _____