



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item# 11.1a

Meeting Date: October 6, 2011

Subject: Grants, Entitlements, and Other Income Agreements
Ratification of Other Agreements
Approval of Bid Awards
Approval of Declared Surplus Materials and Equipment
Change Notices
Notices of Completion

- Information Item Only
- Approval on Consent Agenda
- Conference (for discussion only)
- Conference/First Reading (Action Anticipated: _____)
- Conference/Action
- Action
- Public Hearing

Division: Administrative Services

Recommendation: Recommend approval of items submitted.

Background/Rationale:

Financial Considerations: See attached.

Documents Attached:

1. Grants, Entitlements, and Other Income Agreements
2. Other Agreements
3. Recommended Bid Awards – Supplies/Equipment
4. Approval of Declared Surplus Materials and Equipment
5. Recommended Bid Awards – Facilities Projects
6. Notices of Completion – Facilities Projects

Estimated Time:	N/A
Submitted by:	Daniel M. Sanchez, Manager II, Purchasing Services Kimberly Teague, Contract Specialist
Approved by:	Patricia A. Hagemeyer, Chief Business Officer

GRANTS, ENTITLEMENTS AND OTHER INCOME AGREEMENTS - REVENUE

<u>Contractor</u>	<u>Description</u>	<u>Amount</u>
<u>CHILD DEVELOPMENT</u>		
A12-00010.1 California Department of Education	7/1/11 – 6/30/12: General Child Care and Development Program Contract Increase for 2011/12 (Amendment No. 1) This full-day program serves school-age and infant/toddlers. General child care and development programs are state and federally funded programs that use centers and family child care home networks operated or administered by either public or private agencies and local educational agencies. Programs provide an educational component that is developmentally, culturally, and linguistically appropriate for the children served. The programs also provide meals and snacks to children, parent education, referrals to health and social services for families, and staff development opportunities. The district is reimbursed \$34.38 per child, per day.	+\$55,322 New Contract Total = \$1,117,141
A12-0011.1 California Department of Education	7/1/11 – 6/30/12: State Preschool Program Contract Increase for 2011/12 (Amendment No. 1). Part- and full-day preschool programs are comprehensive, developmental programs for three to five-year-old children from low-income families. Programs emphasize parent education and encourage parent involvement. Activities are developmentally, culturally, and linguistically appropriate for the children served. Programs also provide meals or snacks to children, referrals to health and social services for families, and staff development opportunities. The district is reimbursed \$34.38 per child, per day.	+\$149,238 New Contract Total = \$5,220,295
<u>INTEGRATED SUPPORT SERVICES</u>		
A12-00040 The California Endowment	9/1/11 – 8/31/12: Chronic Absence Project Grant to create a healthy environment by identifying students who are chronically absent, developing strategies to focus health and health-related resources and identifying potential systemic changes within the Sacramento City Unified School District.	\$40,300
<u>SPECIAL EDUCATION</u>		
A12-00039 California Department of Education	7/1/11 – 9/30/12: Professional Development Grant for teachers of students ages six through twenty-one years who are identified on an Individualized Education Program. Funding for training days and associated costs, including registration, substitute staff, materials, and presenter fees.	\$20,062

EXPENDITURE AND OTHER AGREEMENTS

<u>Contractor</u>	<u>Description</u>	<u>Amount</u>
<u>HUMAN RESOURCES</u>		
A06-00555.4 Regents of the University of California	9/7/11 – 6/30/12: Visiting Educator Agreement for Katie Durham on temporary assignment as Small Learning Communities Grant Coordinator for the History Project on the UC Davis campus. This fourth amendment extends the assignment through June 30, 2012 and outlines the salary and benefits being paid by UC Davis (.5 FTE of salary and 67% of benefits); and California State University, Sacramento (.25 FTE of salary and 33% of benefits).	\$83,860.96 Reimbursement Agreements

Strategic Plan: Aligns with Pillar I, Career and College Ready Students, by creating professional development opportunities that are practical and have high impact on student learning. Also aligns with Pillar III, Organization Transformation, by recruiting, training, retraining, and supporting a motivated, capable and diverse workforce.

CAPITAL ASSET MANAGEMENT SERVICES

SA12-00187 HMC Architects	9/15/11 – Completion of Services: Agreement for Architectural Services required for the modernization of the administration and multi-purpose rooms at John Morse Therapeutic Center.	\$180,944.50 Bond Funds
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Strategic Plan: Aligns with Pillar II, Family and Community Engagement, by ensuring that every school will become an integral hub of community life to provide open space and access to resources.

YOUTH DEVELOPMENT

SA12-00191 THINK Together	8/15/11 – 6/30/12: Develop, maintain and sustain programs that offer support services at H.W. Harkness and Woodbine Elementary Schools; and Kit Carson Middle School during the critical after school hours, to improve the quality of life for families, enhance literacy opportunities, and improve academic performance and attendance for the students.	\$286,981 After School Education and Safety Funds
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Strategic Plan: Supports Pillar I, Career and College Ready Students, by providing academic enrichment for students. Supports Pillar II, Family & Community Engagement, by engaging parents and collaborating with community organizations to support students in out-of-school learning time.

RECOMMENDED BID AWARDS – Supplies/Equipment

Bid No. 110805	Nutrition Services – Paper and Tray Products
Recommendation:	See Below

Amount: Awarded to seven (7) vendors in the amounts listed below:

Funding Source: Nutrition Services

This bid award is for Nutrition Services Paper and Tray Products. This is a one (1) year bid with the possibility of two (2), one (1) year extensions. Purchasing Services recommends the listed vendors based on established bid criteria as the lowest responsive bidders meeting specifications.

BIDDER	BIDDER LOCATION	AMOUNT
Sysco Sacramento, Inc. (Trays)	Pleasant Grove CA	\$187,775.00
Monahan Paper (Foil, Trays, Wrap)	Oakland CA	\$ 98,922.50
P&R Paper Product (Trays, Containers)	Redlands CA	\$ 80,318.85
Bunzl Industries (Pan liners, Scour pads)	Tracy CA	\$ 24,005.15
Central Sanitary Supply (Containers)	Modesto CA	\$ 13,447.00
American-Tex Chem Corp. (Sporks)	San Bernardino CA	\$ 11,700.00
Cleansource (Gloves)	San Jose CA	\$ 499.80

Line items 16, 17, 19 & 20 of warehouse delivery items are not awarded due to incomplete specifications.

APPROVAL OF DECLARED SURPLUS MATERIALS AND EQUIPMENT

ITEM	SITE/DEPARTMENT	TOTAL VALUE	DISPOSAL METHOD
Computer Equipment	Cesar E. Chavez Elementary Child Development, Serna Center Crocker/Riverside Elementary Edward Kemble Elementary	None	Recycle
Audio/Visual Equipment	Crocker/Riverside Elementary	None	Recycle

RECOMMENDED BID AWARDS – FACILITIES PROJECTS

No. PC11-700-0004-0144 Lease-Leaseback Agreement for
Alice Birney/Hubert Bancroft Portable Moves

Results and recommendations will be available at Board meeting

NOTICES OF COMPLETION – FACILITIES PROJECTS

Contract work is complete and Notices of Completion may be executed.

Contractor	Project	Completion Date
David Engineering Construction	PC11-700-0151 Leonardo da Vinci Parking Lot	September 15, 2011

UCD # UCD12-01228

REIMBURSEMENT AGREEMENT

(Katie Durham)

THIS REIMBURSEMENT AGREEMENT is made and entered into as of the date last signed below by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA on behalf of the History Project on University's Davis campus (University) and SACRAMENTO CITY UNIFIED SCHOOL DISTRICT (District) on behalf of Katie Durham (Employee).

The parties agree as follows:

1. Services by District. District shall provide Employee to serve as Small Learning Communities (SLC) Grant Coordinator. A detailed description of the work to be performed is set forth in "Scope of Work", attached hereto and made a part hereof as "Exhibit A".
2. Time/Date/Location. The above-described services shall be provided between September 7, 2011 and June 30, 2012 at the University of California, Davis in Davis, CA and additional locations as may be necessary from time-to-time.
3. Reimbursement by University. In consideration of the services described in section 1 and upon invoice from District, University shall reimburse District the amount of \$56,186.85 as described in "Exhibit B" attached hereto and made a part hereof.
4. Independent Contractor Status. The Employee who provides the services described in Section 1 to University is not an agent or employee of University and will not be covered by University's workers' compensation insurance or unemployment insurance nor shall Employee be entitled to any other University benefit. Employee shall remain an employee of District during the term of this agreement.
5. Termination. This agreement may be terminated by either party upon thirty (30) working days' written notice to the other party. If this agreement is terminated at any time during its term, District shall be reimbursed for all completed services rendered up to and including its last day of service. University reserves the right to determine what shall be deemed completed services.
6. Alteration, Amendment. No alteration of the terms of this agreement shall be valid or binding upon either party unless made in writing and signed by both parties. This agreement may be amended at any time by written agreement of the parties.
7. Indemnification. The parties shall defend, indemnify, and hold each other harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising from the performance of this agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its officers, agents, or employees.

8. Insurance. District warrants that it shall maintain during the term hereof policies of insurance containing the coverages and minimum limits described in the following subsections. Such coverages shall provide for thirty (30) days advance written notice to University of any policy modification, change, or cancellation. The coverages described in subsections 8.1. and 8.2. must name "The Regents of the University of California" as an additional insured and shall apply in proportion to and to the extent of the negligent acts or omissions of the non-University party or any person or persons under the non-University parties' direct supervision and control. District shall provide University with a certificate of insurance evidencing the insurance requirements.

8.1. General Liability: Comprehensive or commercial form general liability insurance. If this insurance is written on a claims made form, it shall continue for three (3) years following termination of the agreement. The insurance shall provide for a retroactive date of placement prior to or coinciding with the effective date of the agreement.

a. each occurrence	\$1,000,000
b. products/completed operations aggregate	\$2,000,000
c. personal and advertising injury	\$1,000,000
d. general aggregate	\$2,000,000

8.2. Business Automobile Liability: Business automobile insurance for owned, scheduled, non-owned, or hired automobiles with a combined single limit of not less than \$1,000,000.

8.3. Workers' Compensation: Workers' compensation insurance as required by California law.

9. Notification. Any notice required or permitted hereunder shall be sent to the parties via U.S. mail, postage prepaid, or by personal service or as may otherwise be permitted by law, addressed as set forth in this section. Either party may change its address by written notice to the other during the term.

UNIVERSITY

Business Contracts & Analysis
University of California
One Shields Ave
Davis, CA 95616

DISTRICT

Kim Teague
Sacramento City Unified School District
Administrative Services/Contracts
5735 47th Avenue
Sacramento CA 95824

10. Applicable Law. This agreement shall be construed pursuant to California law.

11. Use of University's Name. District shall not use the name of University in any form or manner in advertisements, reports, or other information released to the public without the prior written approval of University.

Exhibit A

Scope of Work – Small Learning Communities Grant Coordinator



Background:

Sacramento City Unified School District (SCUSD) has contracted with several of Region 3's California Subject Matter Projects (CSMP, administered by the University of California Office of the President) to fulfill the professional development goals of the District's federal Small Learning Communities (SLC) grant. Working with the four academic departments (math, science, English, and history/social science) in the District's five comprehensive high schools, the CSMPs will provide teacher training aimed at increasing student engagement, achievement, and literacy skills.

The District's history/social science will benefit from the experience of both the History Project (HP) at UC Davis and the California Reading and Literature Project (CRLP). Both projects have extensive experience in providing professional development for teachers in developing student literacy through academic content. Our combined efforts will increase SCUSD teachers' capacity to implement high quality instruction.

In order to fulfill our agreement with Sacramento City Unified School District while collaborating to develop a shared approach reflective of both CRLP and HP expertise, a talented teacher leader and HP fellow will play a central role in coordinating and planning our work in the District. This Coordinator will work closely with leaders of the CRLP and the HP. She will report to and receive general supervision from the HP Director, but will work with a great deal of independence.

Role of the Small Learning Communities (SLC) Grant Coordinator:

- Work collaboratively with leaders in both the HP and CRLP to plan and implement teacher training that combines approaches from the two Projects into a cohesive training.
- Design instruction to develop teachers' instructional skills and expand teachers' ability to build students' academic literacy while teaching standards-based content.
- Coordinate a series of monthly meetings with four high school history departments and a one-week institute for the District in the summer of 2012.

- Communicate with the academic facilitator on each campus to distribute agendas, confirm rooms, follow up on assignments, and coordinate with other reform efforts.
- Maintain accurate records of our work at each site including attendance data, agendas, and reflective notes.
- Edit materials to inform statewide HP and CRLP leaders about our collaborative efforts and enable replication statewide.
- Provide the District and the evaluator monthly reports; respond to requests for additional data needed for formal and informal evaluation efforts.

Hours:

The coordinator's current contract with the District calls for 184 days work from September 7, 2011 through June 30, 2012. The coordinator can expect to work an equivalent number of hours, but they will be spread out according to the needs of the grant and include time to plan, coordinate, and conduct the 5-day institute in summer '12 (dates TBD) and craft preliminary plans of Year 4 of the grant.

Cost (payable to Sacramento City Unified School District as a Contract Buy-Out):

Salary	\$30,297.29
Benefits	\$24,089.36
Indirect – 3.31%	\$1,800.20
Total	\$56,186.85

REIMBURSEMENT AGREEMENT

Between
Sacramento City Unified School District
and
University Enterprises, Inc.
On behalf of the California Reading and Literature Project
of California State University, Sacramento

This Reimbursement Agreement is made and entered into as of the date last signed below by and between the SACRAMENTO CITY UNIFIED SCHOOL DISTRICT (District) and UNIVERSITY ENTERPRISES, INC. (UEI), on behalf of the California Reading and Literature Project of California State University, Sacramento.

The parties agree as follows:

1. Release by District. In consideration of the reimbursement paid by UEI pursuant to this agreement, District shall release its employee Katie Durham for twenty-five percent (25%) of her District ~~full-time~~ employment time between September 7, 2011 and June 30, 2012, to serve as coordinator-facilitator for the Smaller Learning Communities (SLC) grant for the 2011-2012 school year. Katie Durham will provide services described in Attachment A, which is incorporated herein by reference. * .75 FTE
2. Reimbursement by UEI. In consideration of the release described in section 1 and upon invoice from District, UEI shall reimburse District an amount equal to twenty-five percent (25%) of the actual annual ~~full-time~~ salary and thirty-three point three three percent (33.33%) benefits (prorated) and indirect costs which District pays on behalf of Katie Durham for her services during the 2011-2012 school year, in an amount not to exceed thirty thousand dollars (\$30,000.00). * .75 FTE
3. Invoicing. District shall invoice UEI monthly in arrears.
4. Termination. This agreement may be terminated by either party upon thirty (30) days' written notice to the other. If this agreement is terminated at any time during its term, District shall be reimbursed for all completed services rendered up to and including its last day of service.
5. Independent Contractor Status. The agent of District who provides the services to UEI as described in section 1 shall not be an agent or employee of UEI and will not be covered by UEI's workers' compensation insurance or unemployment insurance nor shall such agent be entitled to any other UEI benefit.
6. Copyright. District and UEI agree that any copyrightable work(s) developed under this agreement constitutes work(s) made for hire under the United States copyright laws and that all right, title, and interests therein, including copyright, shall vest in UEI. In the

event that any such work is determined by court of competent jurisdiction not to be a work made for hire under the United States copyright laws, or for any other reason does not constitute a work made for hire, UEI by this agreement hereby assigns all right, title, and interest, including copyright, in said work(S) to District, in perpetuity.

7. Indemnification. The parties agree to defend, indemnify and hold one another harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising from the performance of this agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its officers, agents, or employees.
8. Notification. Any notice or permitted hereunder shall be sent to the parties via U.S. mail, postage prepaid, or personal service or as may otherwise be permitted by law, at the following addresses:

DISTRICT

Kim Teague
Sacramento City Unified School District
Contracts Office
5735 47th Avenue
Sacramento, CA 95824

UEI

Research/Contract Administration
University Enterprises, Inc.
6000 J Street, Bookstore Bldg. 3400
Sacramento, CA 95819-6111

Either party may change its address by written notice to the other during the term.

9. Applicable Law. This agreement shall be construed pursuant to California Law.
10. Integration; Amendment. This agreement contains all the terms agreed upon by both parties and may not be amended except in writing signed by both parties.

SACRAMENTO CITY UNIFIED
SCHOOL DISTRICT

UNIVERSITY ENTERPRISES, INC.

By _____
Patricia A. Hagemeyer
Chief Business Officer

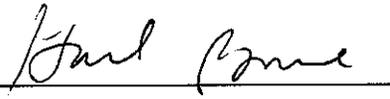
By 
Monica F. Kauppinen
Director of Contract and Grant
Administration

Date: _____

Date: 8/10/11

APPROVED:

By 
John Shefelbine
Co-Director, California Reading &
Literature Project, Sacramento

By 
Gail Bruce
Co-Director, California Reading &
Literature Project, Sacramento

Attachment A
Scope of Work for Katie Durham

The California Reading and Literature Project (CRLP) at Sacramento State University proposes to buy out twenty-five percent (25%) of the ~~full-time equivalent~~ (FTE) contract of Katie Durham from the Sacramento City Unified School District (SCUSD) for the 2011-12 school year. This 25% loan is for a special assignment as coordinator/facilitator for the Smaller Learning Communities (SLC) Grant. A description of the scope of this work follows.

*.75 FTE

Sacramento City Unified School District has contracted with several of Region 3's California Subject Matter Projects to fulfill the professional development goals of SCUSD's federal Smaller Learning Communities (SLC) Cohort 8 grant. The History Project (HP) at UC Davis and the California Reading and Literature Project (CRLP) at Sacramento State University are working together to focus on content area literacy. In order to fulfill our agreement with Sacramento City Unified School District while collaborating to develop a shared approach reflective of both CRLP and HP, Katie Durham will play a central role.

Role of the Smaller Learning Communities (SLC) Grant Coordinator/Facilitator:

- Work collaboratively with leaders in both the HP and CRLP to plan and implement teacher training that combines approaches from the two Projects into a cohesive training.
- Design instruction to develop teachers' instructional practices and expand teachers' ability to build students' academic literacy while teaching standards-based content.
- Coordinate and facilitate a series of meetings with five high school social studies departments.
- Communicate with the academic facilitator on each campus to distribute agendas, confirm rooms, follow up on assignments, and coordinate with other reform efforts.
- Maintain accurate records of our work at each site including attendance data, agendas, and reflective notes.
- Edit materials to inform statewide HP and CRLP leaders about our collaborative efforts and enable replication statewide.
- Provide the District, the grant evaluator, and the grant analyst at Sacramento State monthly and quarterly reports and respond to requests for additional data needed for formal and informal evaluation efforts.

Hours:

The coordinator's current contract with the District calls for 184 days work from September 7, 2011 through June 30, 2012. The coordinator/facilitator will work an equivalent number of hours; however, the required number of prorated hours will be met according to the needs of the grant.



AGREEMENT

FOR

ARCHITECTURAL SERVICES

For

**John Morse Therapeutic Center
Modernization Project
1901 60th Avenue
Sacramento, CA 95822**

September 15, 2011

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AGREEMENT
FOR
ARCHITECTURAL SERVICES

This Agreement for Architectural Services (“Agreement”) is made and entered into by and between the Sacramento City Unified School District, a school district duly organized and existing under the laws of the State of California (the “District”), and HMC Architects (the “Architect”), with respect to the following recitals:

- A. District proposes to undertake the construction of improvement projects which require the services of a duly qualified and licensed architect.
- B. Architect represents that Architect is licensed to provide architectural/engineering services in the State of California and is specially qualified to provide the services required by the District, specifically the design and construction oversight of public school(s).
- C. The parties have negotiated the terms pursuant to which Architect will provide such services and reduce such terms to writing by this Agreement.

In consideration of the covenants and conditions contained in this Agreement, the parties agree as follows:

Article 1

DEFINITIONS

- 1.1 **Additional Services.** “Additional Services” shall mean those services in addition to the Basic Services that are provided by Architect and authorized in writing by the District, and as further defined in Article 6 herein.
- 1.2 **Agreement.** “Agreement” shall mean this Agreement for Architectural Services.
- 1.3 **Architect.** “Architect” shall mean HMC Architects, and its officers, shareholders, owners, partners, employees, agents and authorized representatives.
- 1.4 **Basic Services.** Architect’s Basic Services consist of the design services, including landscaping architectural services and landscape irrigation design, civil, structural, mechanical, and electrical engineering services, normally required to complete the Project, as further defined in Article 5.
- 1.5 **Contract Documents.** “Contract Documents” shall mean those documents which are required for the actual construction of the Project, including but not limited to the Agreement between Owner and Contractor, complete working drawings and specifications setting forth in detail sufficient for construction the work to be done and the materials, workmanship, finishes and

equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work.

1.6 **Contractor.** "Contractor" shall mean one or more contractors ultimately selected to perform work on the Project or any replacement.

1.7 **District.** "District" shall mean Sacramento City Unified School District, and its governing board members, employees, agents and authorized representatives.

1.8 **Project.** "Project" shall mean the work of improvement described in Article 3 and the construction thereof, including the Architect's services thereon, as described in this Agreement.

1.9 **Project Construction Cost.** "Project Construction Cost" shall mean the estimate of total construction costs to the District as initially submitted by the Architect pursuant to this Agreement and accepted by the District, as subsequently revised by changes to the Project Construction Cost under Article 5 of this Agreement, and as subsequently revised at the time the District enters a construction contract to equal the construction contract amount.

1.10 **Wrongful Acts or Omissions.** "Wrongful Acts or Omissions" shall mean Architect's acts or omissions in breach of this Agreement, the applicable standard of care, or law.

Article 2

RETENTION OF ARCHITECT; STANDARD OF CARE

District retains Architect to perform, and Architect agrees to provide to District, for the consideration and upon the terms and conditions set forth below, the architectural and engineering services specified in this Agreement and related incidental services. The Architect agrees to perform such services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. All services performed by the Architect under this Agreement shall be performed in compliance with the Agreement and in a manner consistent with the level of care and skill ordinarily exercised by architects in the same discipline, on similar projects in California with similar complexity and with similar agreements, who are specially qualified to provide the services required by the District; and all such services shall be conducted in conformance to, and compliance with, all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the Americans with Disabilities Act ("ADA").

Article 3

DESCRIPTION OF PROJECT

The Project concerning which such architectural services shall be provided is described as:

Modernization of the Administration and Multipurpose Rooms at the John Morse Therapeutic Center per attached Proposal (Exhibit A) and attached Work Plan (Exhibit B)

The project is not intended to be split into multiple prime contracts.

Article 4

COMPENSATION

4.1 Basic Services

For the Basic Services provided pursuant to this Agreement, Architect shall be compensated according to its hourly rate schedule (Section 4.8, below). Architect's total compensation for its Basic Services shall not exceed One Hundred Sixty Four Thousand, Four Hundred Ninety Five Dollars \$164,495, which is Architect's estimate of the maximum total cost of its Basic Services on the Project, based on attached Work Plan and associated cost estimates. However, Architect will not be compensated for any Basic Services required as a result of Wrongful Acts or Omissions. Architect acknowledges that the not-to-exceed price for Basic Services, above, includes contingency compensation in the event that more time and costs than originally anticipated may be necessary to complete the Basic Services.

4.2 Additional Services

Architect may invoice separately for Additional Services if provided by Architect pursuant to Article 6. However, Architect will not be compensated for any Additional Services required as a result of Wrongful Acts or Omissions.

4.3 Reimbursable Expenses

4.3.1 Reimbursable Expenses are those actual out-of-pocket expenses directly incurred as a result of Architect's performance of Basic or Additional Services under this Agreement. Architect may not charge a mark-up on Reimbursable Expenses. Reimbursable Expenses are limited to these expenses related to the Project: Fax, reproduction expense (excluding such expense for reproductions for office use by Architect and its consultants), postage, messenger, transportation, living expenses in connection with out-of-town travel, long distance communications, expense of renderings, models and mock-ups requested by District, expense of publishing pursuant to Section 5.6.5, expense of data processing and photographic production techniques when used in connection with Additional Services, and, if authorized in advance by the District, expense of overtime work requiring higher than regular rates. Reimbursable Expenses do not include mileage or other transportation costs for trips less than 75 miles from Architect's place of business, indirect costs, such as general overhead (for example, home office overhead [including technology hardware and software] or insurance premiums), for which Architect must pay out of its compensation for services under Section 4.1, above; nor do they include expenses incurred in connection with Basic or Additional Services that result from Wrongful Acts or Omissions.

4.3.2 Architect shall be reimbursed by District for its Reimbursable Expenses on the Project. Reimbursable Expenses (cumulative total) in excess of ten percent (10%) of Architect's fee for Basic Services require district's pre-approval.

4.4 For services satisfactorily performed, payment for Basic Services, Additional Services and Reimbursable Expenses shall be made on a monthly basis after receipt and approval by the District of the Architect's properly documented and submitted invoices. To be "properly

documented and submitted," an invoice shall be timely, be accompanied by all necessary documentation, list all activities performed, and for each activity performed list the person performing it and the person's rate of compensation. Architect's invoice shall be submitted within ten (10) days of the end of the monthly billing period. Invoices, receipts and other documentation to establish the validity of all Reimbursable Expenses shall be a prerequisite to District payment of such expenses. If District disputes a portion of a properly submitted invoice, it shall notify Architect of the dispute and, upon Architect's request, arrange for a meeting to confer about, and potentially resolve, the dispute. Prior to this meeting, Architect shall provide all documentation requested to support disputed portions of properly submitted invoice. Regardless of any such dispute about an invoice or payment, Architect shall continue to provide all services required by this Agreement and law until the end of the Project, even if District and Architect cannot resolve all such disputes. Payments of undisputed portions of a properly submitted invoice shall be made within 60 days of receipt of the invoice; Architect otherwise waives all rights and remedies under law related to receipt of payment.

4.5 The Architect's compensation shall be paid notwithstanding a Contractor-caused delay in completion of the project or reduction of final construction cost by reason of penalties, liquidated damages, or other amounts withheld from the Contractor. However, District may withhold from payments to Architect to the extent that (i) Basic and Additional Services remain to be performed, including but not limited to those required for project closeout and payments to Contractor, and (ii) Wrongful Acts or Omissions caused District to incur damages, losses, liabilities or costs, including but not limited to withholding any amounts for which Architect is responsible under Section 5.7.20. If the total amount invoiced by Architect reaches the not-to-exceed Basic Services amount before Architect's Basic Services under this Agreement are complete, Architect must complete the Basic Services without submitting additional invoices, or receiving additional payment, for Basic Services. Architect's final payment will be released upon certification of DSA project close-out.

4.6 Should District cancel the Project pursuant to section 12.1 of this Agreement at any time during the performance of this Agreement, Architect shall, upon notice of such cancellation, immediately cease all work under this Agreement. In such event, Architect's total fee for all services performed shall be computed as set forth in Section 12.1.

4.7 District has the right to audit Architect's records and files regarding any of the work performed by Architect for District on this Project during or after the Project. Architect shall keep complete records showing all hours worked and all costs and charges applicable to its work under this Agreement. Architect will be responsible for Architect's consultants keeping similar records. District shall be given reasonable access to those records for audit purposes within ten (10) days of receipt of District's request. Architect shall keep and maintain records and files for ten (10) years.

4.8 Architect's hourly rate schedule for its services is attached as Exhibit A.

4.9 Architect shall not accept compensation or other benefits from other persons related to the Project, including payments from manufacturers of construction materials that are specified in the design.

Article 5

BASIC SERVICES TO BE RENDERED BY ARCHITECT

5.1 General

5.1.1 Architect's Basic Services consist of the design services, including landscaping architectural services and landscape irrigation design, civil, structural, mechanical, and electrical engineering services, normally required to complete the Project. The Basic Services also include the services described in this Article 5, below, including but not limited to bid package preparation, bid handling, preparation and processing of change orders, requests for information, and other contract administration duties. The District shall have the right to add or delete from the Architect's scope of services as it may determine is necessary for the best interests of the Project and/or the District. Architect shall expeditiously and diligently perform all of its work and obligations under this Agreement. Architect may not cease, delay or reduce, or threaten to cease, delay or reduce, its performance based on a payment dispute with District under Section 4.4, above. The Architect acknowledges that its priority is to complete the Project and the Architect's services, and that any payment disputes with the District under Section 4.4, if not resolved during the Project, must wait for resolution after the Project.

5.1.2 The Architect shall review the estimate described more fully hereinafter at each phase of Architect's services, also as defined hereinafter. If such estimates are in excess of the project budget, the Architect shall revise the type or quality of construction to come within the budgeted limit.

5.1.3 Whenever the Architect's services include the presentation to the District of Project Construction Cost, the Architect shall include a reasonable amount for contingency costs arising from, among other things, higher bids than anticipated, future increase in construction costs, and change orders.

5.1.4 The Architect shall notify the District if there are any indicated adjustments in previously provided Project Construction Cost arising from market fluctuations or approved changes in scope or requirements based upon a mutually agreed upon index.

5.1.5 At the District's request, the Architect and Architect's consultants shall cooperate with District and the District's consultants in verifying that Architect's plans, specifications, studies, drawings, estimates or other documents relating to the Project are constructible and otherwise comply with the Contract Documents. If there are project meetings during the design and construction phases, Architect shall attend those meetings.

5.1.6 The Architect shall investigate existing conditions of facilities and thoroughly account for and list in the construction documents any pertinent conditions of such facilities, all in a manner that satisfies the standard of care and level of performance required by this Agreement. Architect's investigation required by this provision shall be limited to non-destructive evaluation.

5.1.7 Architect shall provide a list of employees who will be dedicated to delivering the project on time and within budget. All personnel provided by Architect shall be

qualified to perform the services for which they are provided. Architect shall obtain District's approval of each employee of Architect who provides services under this Agreement, and approval of each change of employees who are providing such services. District may, upon 24 hours written notice, cause Architect to remove a person from the Project if he/she has failed to perform to District's satisfaction. Should additional employees be required to timely perform all of the services required under this Agreement and/or to avoid delay, Architect shall provide them immediately.

5.1.8 Architect is an agent of District and shall reasonably represent the District at all times in relation to the Project.

5.1.9 Architect shall be fully licensed as required by law at all times when providing services under this Agreement.

5.2 Consultants

5.2.1 Architect's Consultants. The Architect shall employ or retain at Architect's own expense, engineers and other consultants necessary to Architect's performance of this Agreement and licensed to practice in their respective professions in the State of California. Engineers and consultants employed by Architect for this Project shall be approved by District prior to their commencement of 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, and requests for information. The Architect's Consultants shall also conduct periodic inspections of the site to determine conformance with the Project design and specifications and shall participate in the final inspections and development of any "punch list" items. Architect must disclose to District all such consultants retained, and the compensation paid to them.

5.2.2 District's Consultants. Architect shall confer and cooperate with consultants retained by District as may be requested by District or as reasonably necessary. District may retain a construction manager to assist District in performance of District's duties for the Project.

5.2.3 The Architect shall procure a certified survey of the site if required, including grades and lines of streets, alleys, pavements, adjoining properties and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the building site, locations, dimensions and floor elevations of existing buildings, other improvements and trees; and full information as to available utility services and lines, both public and private above and below grade, including inverts and depths. All the information on the survey customarily referenced to a project benchmark shall be referenced to a Project benchmark. The cost of any such survey shall be borne by the District, and the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Architect any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the survey.

5.2.4 Architect shall procure chemical, mechanical or other tests required for proper design, tests for hazardous materials and borings or test pits necessary for determining subsoil conditions. The cost of any such tests shall be borne by the District, and the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it

by Architect any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the testing.

5.2.5 Architect shall assist the District and its consultants to apply for funding for the Project from the State Allocation Board. Architect shall be responsible for all submittals required of the Architect by the Division of the State Architect (“DSA”), OPSC and California Department of Education in connection therewith.

5.3 **Schematic Design Phase**

5.3.1 The Architect shall review all information concerning the Project delivered or communicated by the District to the Architect to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the District.

5.3.2 The Architect shall provide a preliminary evaluation of the District's Project, schedule and construction budget requirements, each in terms of the other.

5.3.3 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.

5.3.4 Based on a mutual understanding of the District's budget and scope of work requirements, the Architect shall prepare for the District's governing board's written approval, schematic design documents, which include but are not limited to, schematic design studies, site utilization plans, a description of the Project showing, among other things, the scale and relationship of the components of the Project, preparation of a written estimated statement of Project Construction Cost and a written schedule for the performance of the work that itemizes constraints and critical path issues. The schematic design documents shall represent a 15% complete design. The Project Construction Cost shall be based on current area, volume and other unit costs, shall conform to District's total construction cost budget, and shall include reasonable contingencies for all construction and construction management work. The written schedule shall conform to District's milestone and completion deadline requirements. Nevertheless, Architect is encouraged to make recommendations to District regarding additional benefits that could be realized by increasing the District's total construction cost budget, or by altering the District's completion deadlines. If District incorporates any recommended changes, then Architect shall revise the schematic design documents, including but not limited to the written statement of Project Construction Cost and written schedule for the performance of work, as necessary until District's governing board approves them in writing. Architect shall attend, and present at, as many meetings of the District's governing board as may be necessary to obtain the board's approval of the schematic design documents.

5.3.5 The Architect shall submit to the District a preliminary Project Construction Cost based on current area, volume and other unit costs.

5.4 Design Development Phase

5.4.1 Following District's governing board's written approval of the schematic design documents, including the estimate of Project Construction Cost and schedule, Architect shall provide all necessary architectural and engineering services to prepare design development documents for the District's governing board's written approval, which fix and describe the size and character of the project and which shall include, but are not limited to, site and floor plans, elevations and other approved drawings and shall outline the specifications of the entire Project as to kind and quality of materials, categories of proposed work such as architectural, structural, mechanical and electrical systems, types of structures and all such other work as may be required. During the design development phase, Architect will keep the Project within all budget and scope constraints set by the District. The design development documents shall represent a 50% complete design. The design development documents shall include a revised Project Construction Cost, and a revised construction schedule. The revised Project Construction Cost shall be based on current area, volume and other unit costs. The revised Project Construction Cost shall conform to District's total construction cost budget and shall include reasonable contingencies for all construction and construction management work, and the revised construction schedule shall conform to District's milestone and completion deadline requirements. Nevertheless, Architect is encouraged to make recommendations to District regarding additional benefits that could be realized by altering the District's total construction cost budget or completion deadlines. If District incorporates any recommended changes or otherwise does not approve the submitted design development documents, then Architect shall revise the design development documents, including but not limited to the written statement of Project Construction Cost and written schedule for the performance of work, as necessary until District's governing board approves them in writing. Architect shall attend, and present at, as many meetings of the District's governing board as may be necessary to obtain the board's approval of the design development documents.

5.4.2 The Architect shall assist the District and its consultants in the preparation and/or modification of the Storm Water Pollution Prevention Plan if any such plan is required for this Project.

5.4.3 Architect shall prepare necessary documents for and oversee the processing of District's application for and obtaining of required approvals from the DSA, the OPSC (if applicable), the Department of Education, the State Fire Marshall and other agencies exercising jurisdiction over the Project. Architect shall also be responsible for the preparation and submission of any required applications, notices or certificates to public agencies as required by law. Architect shall provide a copy of all such documents to the District.

5.4.4 The Architect shall advise the District of any adjustments to the preliminary Project Construction Cost.

5.4.5 Architect shall identify areas of construction for which unit pricing shall be required as part of the Contractor's bid.

5.4.6 Architect shall provide at no expense to the District one complete set of preliminary plans for the review and written approval of the District and one set for each public agency having approval authority over such plans for their review and approval at no expense to the District.

5.5 Contract Documents Phase

5.5.1 Following the District's governing board's written approval of the design development documents, including the Project Construction Cost and construction schedule, the Architect shall prepare Contract Documents for the written approval of District's governing board consisting of 100% complete working drawings and specifications setting forth the work to be done in detail sufficient for construction, including but not limited to the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work. Architect shall also update the construction schedule and the Project Construction Cost for written approval of District's governing board. The Contract Documents shall conform to, comply with, and satisfy all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the Americans with Disabilities Act ("ADA"). As part of the Contract Documents, Architect shall prepare an accurate set of drawings indicating dimensions and locations of existing buried utility lines, which shall be included in the bid packages. If the project is intended to be split into multiple prime contracts, then the Contract Documents shall be structured in order to maximize the ability to create multiple prime bid packages for the Project, and shall identify the bid packages to be created.

5.5.2 Architect shall consult with and involve the District in development of the bid documents and bid package, and shall forward them to the District for written approval prior to their use. If the District is using a multiple prime delivery method for the Project with multiple bid packages, then Architect shall consult with and involve the District in identification and development of the bid documents and bid packages, and shall forward them to the District for written approval prior to their use.

5.5.3 Prior to submission of the Contract Documents to DSA for plan check, the Architect shall submit the Contract Documents to the District for an opportunity to review them for various issues, including but not limited to constructability, scheduling, general completeness, clarity, consistency, coordination, cost-effectiveness, value engineering, identification of possible add/delete bid alternatives, time of construction, and suitability for separation of the Project design, plans and specifications into bid packages for various categories and/or portions of the work. However, such review by District is not required.

5.5.4 After approval by the District's governing board and any constructability review, the Architect shall submit the Contract Documents to DSA for plan check, and make the necessary corrections to secure DSA approval.

5.5.5 The Architect shall give the District, at the time of DSA approval of the final form of the Contract Documents, Architect's final estimate of Project Construction Cost and construction schedule, which shall be given final written approval by District's governing board along with the Contract Documents. The revised Project Construction Cost shall be based on current area, volume and other unit costs, and on a mutually acceptable recognized building cost index, and shall include a reasonable contingency. In preparing the revised estimate of Project Construction cost and construction schedule for the Contract Documents, the Architect shall consult with and involve the District in the process to maximize accuracy and completeness. If the District is intending to enter multiple prime contracts, the Project Construction Cost shall include separate bid estimates for each bid package, plus a reasonable contingency; and the construction schedule

shall reflect the fact that multiple contractors will be performing separate bid packages, including a general conditions bid package. The revised Project Construction Cost estimate shall conform to District's total Project budget, and the revised construction schedule shall conform to District's milestone and completion deadline requirements. Architect shall attend, and present at, as many meetings of the District's governing board as may be necessary to obtain the board's written approval of the Contract Documents.

5.6 Bidding and Negotiations Phase

5.6.1 Following DSA's and District's governing board's written approval of Contract Documents, and District's governing board's written approval of Architect's final estimate of Project Construction Cost and construction schedule, Architect shall continue to work with the District in finalizing the bid documents and bid package, as described in Section 5.5.2, above. Architect shall reproduce the bid documents and bid package in the number requested by the District and distribute them among interested contractors. Architect shall also assist the District in obtaining bids, and shall assist the District in evaluating contract proposals or bids and substitutions proposed by contractors, and in awarding the bids. All sets of Contract Documents, which does not include those for the use of the Architect or its consultants, requested by the District shall be reproduced at District's expense.

5.6.2 Architect's estimate of Project Construction Cost at the time of DSA approval of the Contract Documents shall be current as of that date. Should bids be received more than ninety (90) days after the date of that Project Construction Cost, the Architect's total construction cost shall be escalated by the cost-of-construction in the then current mutually agreed upon recognized building cost index.

5.6.3 Should the lowest responsible and responsive bid received on a bid package exceed Architect's most recent approved estimate of Project Construction Cost for that bid package (or amount adjusted according to the then current mutually agreed upon recognized building cost index) as accepted by District by more than ten percent (10%), Architect shall, on request by District and as part of Architect's Basic Services, make such changes in the plans and specifications as shall be necessary to bring new bids within ten percent (10%) of such Project Construction Cost. In making such changes, Architect will exercise Architect's best judgment in determining the balance between the size of the Project, the type of construction, and the quality of the construction to achieve a satisfactory project within ten percent (10%) of Architect's Project Construction Cost. To avoid the potential for bids to exceed the estimate by more than 10% at bid opening, the Architect may, as an alternative, include in the Contract Documents for a bid package one or more deductive alternatives so that Architect and District may evaluate different means to achieve a satisfactory project within ten percent (10%) of the Architect's Project Construction Cost.

5.6.4 Either on its own or in cooperation with the District, the Architect shall review the qualifications of all bidders for the construction of the Project, and shall make recommendations to the District as to whether, in the Architect's professional opinion, a bidder meets the minimum requirements.

5.6.5 If, in the District's discretion, the District will seek total or partial State funding for this Project, the Architect shall, in addition to the above, publish the invitation to bid in the appropriate regional trade papers and publications devoted to Disabled Veteran Business

Enterprises. The Architect shall also prepare and submit the appropriate documentation to the OPSC.

5.7 Construction Phase

5.7.1 The construction phase shall begin on the date stated in the official Notice to Proceed.

5.7.2 All instructions to the Contractor shall be forwarded through the Architect unless otherwise directed by the District. The Architect shall advise and consult with the District in the general administration of the Project. The Architect will have authority to act on behalf of the District only to the extent provided in the Contract Documents, unless District grants additional authority in writing.

5.7.3 The Architect shall timely provide District with copies of all of its correspondence with the Contractors.

5.7.4 The Architect shall provide prompt and timely direction to the District, Project inspectors and/or contractors as to the interpretation of Contract Documents. Architect shall respond to all requests for information ("RFI's") from a Contractor within fourteen (14) calendar days of receipt, unless the subject of the RFI is impacting, or may impact, the critical path of the project and is causing, or may cause, delay, in which case the Architect shall respond as soon as possible, if not immediately. If the Architect is not able to take action within the time required due to reasons beyond Architect's control, the Architect may take action within a reasonable period of time under the circumstances; however, the Architect shall make such determination within seven (7) calendar days of receipt of the RFI, and shall notify the District and Contractor immediately after such determination with an explanation as to why the Architect cannot take action within the time required, what the Architect is doing to expedite its response, when the Architect expects to be able to issue a response, and what action, if any, should be taken by District or Contractor in the meantime to mitigate delays and/or costs.

5.7.5 Based on information provided by the Contractor and Architect's own knowledge of the Project (including documents in Architect's possession or reasonably available to it), Architect shall prepare an accurate set of as-built record drawings indicating dimensions and locations of all work, including but not limited to buried utility lines and mechanical, electrical and plumbing layouts, which shall be forwarded to the District upon completion of the Project. While Architect cannot guarantee precise accuracy of such drawings, Architect shall exercise reasonable care in reviewing such drawings to determine their general compliance with the Contract Documents. Architect shall have no responsibility for their conformity to field conditions, except that in the event that the Architect, consistent with standards of due care, becomes aware of non-conformity with field conditions, Architect shall have a duty immediately to notify the District in writing. Architect shall also assemble and deliver to District all written guarantees, instruction books, operation and maintenance manuals, diagrams, charts and other documents required of Contractors.

5.7.6 The Architect shall be responsible for the preparation and submission of any notifications regarding excavation in areas which are known or suspected to contain subsurface installations pursuant to Government Code section 4216, *et seq.* The Architect may delegate this

responsibility to a Contractor if such power to delegate was included in the Contract Documents and bid package, but Architect shall remain responsible for supervising such Contractor to ensure performance of this task. Architect shall provide a copy of all such notifications to the District.

5.7.7 The Architect shall, at all times, have access to the Project wherever it is in preparation and progress. To the extent reasonably possible given Contractor's work in progress, the District shall provide such access so that the Architect may perform its functions under the Agreement and Contract Documents.

5.7.8 In the discharge of its duties of observation and interpretation, the Architect shall require Contractors to comply with the Contract Documents, and shall guard the District against defects and deficiencies in the work of the Contractor. The Architect shall advise and consult with the District and inspectors concerning the Contractor's compliance with the Contract Documents and shall assist the District and inspectors in securing the Contractor's compliance.

5.7.9 The Architect shall visit the site enough times to adequately perform its professional duties (both as the Architect deems necessary and as requested by the District), but under no circumstances less than one time per week unless fewer visits are authorized by the district, to maintain familiarity with the quality and progress of the Project, to determine that the Contractor's work substantially complies with all documents, drawings, plans and specifications and that the Project is progressing in substantial accordance with the Contract Documents. Such observations are to be distinguished from the continuous inspection provided by the Project inspector unless Architect has agreed in writing to serve as the District's Project inspector.

5.7.10 The Architect shall notify the District promptly of any significant defect in materials, equipment or workmanship, and of any default by any Contractor in the orderly and timely prosecution of the Project. Architect will exercise reasonable care in the discharge of Architect's obligation to discover significant defects and faults.

5.7.11 The Architect shall review and approve, take exception to, or take other appropriate action upon all schedules, shop drawings, samples and other submissions of the Contractor to determine general conformance with the Project design and specifications as set forth in the Contract Documents. All such action shall be taken within fourteen (14) days of receipt of the submittals, unless the critical path of the Project is impacted in which case Architect shall take such action as soon as possible. If Architect is not able to take such action within the required time due to reasons beyond Architect's control, the Architect may take action within a reasonable period of time under the circumstances; however, the Architect shall make such determination within four (4) calendar days of receipt of the submission, and shall notify the District and Contractor immediately after such determination with an explanation as to why the Architect cannot take action within the time required, what the Architect is doing to expedite its response, when the Architect expects to be able to issue a response, and what action, if any, should be taken by District or Contractor in the meantime to mitigate delays and/or costs. The Architect will have the authority to reject work and materials which do not conform to the Contract Documents. The Architect's approval of a specific item shall not be an approval of an assembly of which the item is a component. Whenever, in the Architect's reasonable judgment, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the Architect will have authority to require special inspection or testing of the work or materials in accordance with the Contract Documents whether or not such work or materials be then fabricated, installed or completed. The Architect will also recommend

substitution of materials or equipment when, in the Architect's reasonable judgment, such action is necessary to the accomplishment of the intent and purpose of the Contract Documents. Such actions as are described in this paragraph shall be taken with reasonable promptness.

5.7.12 Architect shall assist the District in requiring Contractor to provide assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals and training personnel for operation and maintenance.

5.7.13 The Architect shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the work. The Architect shall not be responsible for acts or omissions of the Contractor, subcontractors, or their agents or employees or of any other persons performing portions of the Project not employed or retained by Architect, unless due to Wrongful Acts or Omissions.

5.7.14 The Architect shall make such regular reports as shall be required by agencies having jurisdiction over the Project and keep the District informed in writing of the progress of the Project.

5.7.15 The Architect will, consistent with standards of due care, make reasonable professional efforts to exclude hazardous materials from new construction. In the event the District or Architect is or becomes aware of the presence of, or exposure of persons to, asbestos, polychlorinated biphenyl (PCB) or any other toxic or hazardous contaminants, materials, air pollutants or water pollutants at the Project site ("Hazardous Substances"), or the substantial risk thereof, each shall have a duty immediately to notify the other in writing. The parties recognize, however, that neither Architect nor the District is trained or licensed in the recognition or remediation of Hazardous Substances.

With respect to asbestos and asbestos containing materials, the parties acknowledge that the Architect has recommended and the District has agreed to retain a qualified consultant to evaluate the presence of such materials at certain District facilities which are included in the scope of this Agreement. In the event that said consultant recommends a procedure to deal with such materials, said consultant shall have the responsibility to draft specification language for the removal or other remediation of such materials, and subsequently may be required to certify that they have been properly removed or otherwise remediated. Architect shall include consultant's recommendations and specifications in the appropriate design documents for modernization and shall, as part of its Basic Services, provide designs and other bid documents consistent therewith.

When construction is properly completed, Architect shall provide such certification as to Hazardous Substances as is required of architects for such projects by the OPSC.

5.7.16 Based on the Architect's observations, and an evaluation of each Project Application for Payment, the Architect will determine the amount of work completed by Contractor, and assist the District in determining the amount owing to the Contractor and issuing Project Certificates for Payment incorporating such amount, all in accordance with the Contract Documents. The Architect's determination of the amount of work completed by Contractor shall constitute a representation by the Architect to the District that the quality of the completed work is

in accordance with the Contract Documents based upon Architect's periodic observations and that the Contractor is entitled to payment for the completed work.

5.7.17 Notwithstanding anything else in this Agreement, as a part of its Basic Services the Architect shall assist the District in evaluating and responding to claims, disputes and other matters in question between the Contractor and the District, including but not limited to claims made against the District as a result of alleged or claimed Wrongful Acts or Omissions, and shall in all instances provide such truthful testimonial assistance as may be required by the District at no cost to the District. Architect agrees to toll all statutory periods of limitation for District's claims, lawsuits or other proceedings against Architect which arise out of, or are related to, any claims by Contractors against District until Contractors' claims are fully and finally resolved. This tolling period commences upon a Contractor's initial submission of a notice of claim, change order request or claim. At any time, District may terminate the tolling period effective ten (10) days after written notice to Architect, and after such termination, District may pursue claims, lawsuits or other proceedings against Architect.

5.7.18 The Architect will provide construction advice to the District on apparent deficiencies in construction, both during construction and after acceptance of the Project.

5.7.19 The Architect shall recommend, prepare and process the necessary change orders. Payment of fees to the Architect as a result of change orders shall be handled as follows:

5.7.19.1 District-initiated change orders. If a change order is initiated by the District, the Architect's fee for services related to such change order shall be paid as an Additional Service under Articles 4 and 6. If a change order is solicited by the District but not subsequently authorized by the District, the Architect shall be paid for time spent on the proposed change order.

5.7.19.2 Change orders due to Architect. When a change order is necessitated as a result of Wrongful Acts or Omissions, the Architect's services in connection with that change order are not compensable and Architect shall not include those services on any invoice.

5.7.19.3 Change orders beyond District or Architect control. If a change order is necessitated as a result of changes in law, in-field changes required by governing agencies after document approval, unknown, unforeseeable or hidden conditions, or actual conditions inconsistent with available drawings of existing conditions, such change orders shall be handled in the same manner as District-initiated change orders.

5.7.20 Notwithstanding any other provision of this Agreement, in the event a change order is caused by, or necessitated as a result of, Wrongful Acts or Omissions, or the District otherwise incurs costs or damages as a result of Wrongful Acts or Omissions, the Architect shall be responsible for the following:

5.7.20.1 In the event of such a change order, Architect shall be responsible for the difference between (a) what the contractor would have added to its original bid for the Project if the Wrongful Act or Omission had not occurred (i.e., the "added value" portion of the change order), and (b) what the contractor charges the District in the change order. The amount

of added value of any change order work shall be based on the circumstances of the Architect's Wrongful Act or Omission and the change order work necessitated by the Wrongful Act or Omission. It is the parties' intent that the District should pay no more than what the District would have paid if the Wrongful Act or Omission had not occurred.

5.7.20.2 In addition, Architect shall be responsible for any other costs or damages which the District incurs as a result of Wrongful Acts or Omissions, including but not limited to any delay damages the District pays to, or cannot collect from, Contractor or any third party.

The District may back-charge, and withhold payment from the Architect for these costs and damages, and may seek reimbursement for any amount which exceeds any retention of the contract amount at the time of collection. When District so back-charges and withholds, upon Architect's request District and Architect shall meet and confer in good faith in an effort to reach agreement on (a) whether a Wrongful Act or Omission occurred, (b) whether it caused the change order expense, (c) what damages have been incurred by District, and (d) what portion of the damages are attributable to Architect as described above. If District and Architect do not reach agreement on all four of these items when meeting and conferring, then District and Architect shall use mediation in good faith to resolve the dispute. If mediation fails, then either District or Architect can initiate a court action to resolve the dispute.

5.7.21 The Architect shall provide a color schedule of all finish materials in the Project for the District's review and approval.

5.7.22 The Architect shall assist District in determining the date of final completion and make a final detailed on-site review of the job with representatives of the District and the Contractor. Architect shall also perform a warranty review with District 30-60 days before expiration of the specified warranty on the Project.

5.7.23 The Architect shall assist the District in issuing the final certificate for payment and any other documents required to be recorded by law or generally accepted architectural or construction contract practice upon compliance with the requirements of the Contract Documents, provided that such certification shall not constitute an admission that the Project has been completed in accordance with Contract Documents or in conformance with this Agreement.

5.7.24 Architect shall make reasonable professional efforts so that the finished project complies with all standards imposed by the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, disability access requirements of the State Building Code and any other laws applicable to disability access. If a court, administrative agency or other trier of fact later determines that Architect has violated any of the above-referenced laws, or District, because of Wrongful Acts or Omissions, has violated any of the above-referenced laws, Architect shall remedy the violation at its own cost. **Architect shall indemnify, defend and hold the District harmless pursuant to Article 18.1 of this Agreement for any breach of this paragraph due to Architect's negligence, recklessness or willful misconduct.** The Architect shall not be responsible for acts or omissions of the Contractor or of any other persons performing portions of the Project not employed or retained by Architect, nor shall Architect be responsible for any subsequent changes in the law or any regulation applicable to disabled access or any subsequent differing interpretation of

the laws or regulations applicable at the time Architect's design is reviewed by DSA. In the event that the Architect is or becomes aware of possible non-compliance with the foregoing standards, Architect shall have a duty immediately to notify the District in writing of the possible non-compliance.

5.8 Use of Previously Prepared Materials

In the event that there exist previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Architect, whether supplied by District or by Architect, which are relied upon, altered or otherwise utilized by Architect, Architect shall be responsible for giving appropriate recognition to such other design professionals in any materials prepared by Architect pursuant to this Agreement.

Article 6

ADDITIONAL SERVICES TO BE RENDERED BY ARCHITECT

6.1 "Additional Services" shall be provided by Architect if authorized in writing by District. No additional compensation shall be paid to Architect for performing these Additional Services unless the District and the Architect agree in writing as to the amount of compensation for such services prior to such services being rendered. Such compensation shall be paid based on the hourly rates in Section 4.8 and as otherwise set forth in this Agreement. Any work performed by Architect without written authorization OR without written agreement on compensation shall be presumed to be Basic Services.

6.2 The following list of services are not included in the Basic Services to be provided under this Agreement, and they will be performed only in accordance with Article 6.1, above:

6.2.1 providing financial feasibility or other special studies;

6.2.2 providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase;

6.2.3 providing coordination of Project performed by separate contractors or by the District's own forces;

6.2.4 providing analyses of owning and operating costs, or detailed quantity surveys or inventories of material, equipment and labor;

6.2.5 making revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given, are required by the enactment or revision of codes, laws or regulations subsequent to the District's approval of Contract Documents or are due to other causes not within the control of the Architect;

6.2.6 providing consultation concerning replacement of any work damaged by fire or other cause during construction of the Project, and furnishing services as may be required in connection with the replacement of such work;

6.2.7 providing services made necessary by the default of the Contractor;

6.2.8 preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding, other than when resulting from Architect's or its consultants' alleged Wrongful Acts or Omissions;

6.2.9 providing services of consultants for other than the normal architectural, civil, soils, structural, mechanical and electrical engineering services for the Project;

6.2.10 at the District's request, selecting moveable furniture, equipment or articles which are not included in the Contract Documents;

6.2.11 providing services related to change orders requested by the District, as discussed in Section 5.7.19.1, above; and

6.2.12 providing any other services not otherwise included in the Agreement and not customarily furnished in accordance with generally accepted architectural practice.

Article 7

RESPONSIBILITIES OF DISTRICT

It shall be the duty of District to:

7.1 pay all fees required by any reviewing or licensing agency;

7.2 designate a representative authorized to act as a liaison between the Architect and the District in the administration of this Agreement and the Contract Documents;

7.3 furnish, at the District's expense, the services of a Project Inspector;

7.4 review all documents submitted by the Architect and advise the Architect of decisions thereon within a reasonable time after submission;

7.5 issue appropriate orders to Contractors through the Architect;

7.6 furnish existing soil investigation or geological hazard reports, which the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Architect;

7.7 furnish the services of a hydrologist or other consultants not routinely provided by the Architect when such services are reasonably required by the scope of the Project and are requested by the Architect;

7.8 provide asbestos review and abatement, identifying materials which may qualify for same;

7.9 furnish available as-built drawings for buildings and utilities systems related to the Project, which the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by the Architect. The District will also provide information regarding programmatic needs and specific equipment selection data;

7.10 furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents, which the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by the Architect; and

7.11 furnish prompt notice of any fault or defects in the Project or nonconformance with the Contract Documents of which the District becomes aware (however, the District's failure to do so shall not relieve the Architect of Architect's responsibilities under Title 21, Title 24, and the Field Act for this Project and under this agreement).

Article 8

PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

8.1 Prior to the commencement of services under this Agreement, the Architect shall furnish to the District a certificate of insurance, Additional Insured Endorsement and Declarations Page for the period covered by this Agreement, for public liability and property damage with an insurance carrier satisfactory to the District, under forms satisfactory to the District, to protect the Architect and District against loss from liability imposed for damages (1) on account of bodily or personal injuries, including death, disease and sickness, accidentally suffered or alleged to have been suffered by any person or persons that may be caused directly or indirectly by the performance of this Agreement, and (2) on account of injury to or destruction of property, including the resultant loss of use of the Project or other District facilities or equipment, resulting from acts of commission or omission by the Architect, or otherwise resulting directly or indirectly from the Architect's operations in the performance of this Agreement. The District shall be named as an additional insured on all such policies.

8.2 The following insurance shall be maintained by the Architect in full force and effect during the entire period of performance of this Agreement, including any extensions, and shall be written on an "occurrence" basis: Commercial general liability insurance, excluding coverage for motor vehicles, shall be in amounts not less than One Million Dollars (\$1,000,000.00) general aggregate, One Million Dollars (\$1,000,000.00) personal and advertising injury aggregate, with a per occurrence limit of One Million Dollars (\$1,000,000.00); Automobile liability insurance covering motor vehicles shall be in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit.

8.3 The Architect's insurance policies shall contain a provision for thirty (30) days written notice to the District of cancellation or reduction of coverage. The Architect shall name, on any policy of insurance required, the District as an additional insured. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the

additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insured's have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability shall not be reduced by the existence of such other insurance. Architect shall not commence work under this Agreement until all required insurance certificates, declarations pages and additional insured endorsements have been obtained and delivered in duplicate to the District for approval subject to the following requirements. Thereafter Architect shall produce a certified copy of any insurance policy required under this section upon written request of the District.

8.4 At the time of making application for any extension of time, Architect shall submit evidence that insurance policies will be in effect during the requested additional period of time.

8.5 If the Architect fails to maintain such insurance, the District may, but shall not be required to, take out such insurance to cover any damages of the above-mentioned classes for which the District might be held liable on account of the Architect's failure to pay such damages, and deduct and retain the amount of the premiums from any sums due the Architect under this Agreement.

8.6 Nothing contained in this Agreement shall be construed as limiting, in any way, the extent to which the Architect may be held responsible for the payment of damages resulting from the Architect's operations.

8.7 Each of Architect's consultants shall comply with this Article, and Architect shall include such provisions in its contracts with them.

Article 9

WORKER'S COMPENSATION INSURANCE

Prior to the commencement of services under this Agreement, the Architect shall furnish to the District satisfactory proof that the Architect and all engineers, experts, consultants and subcontractors the Architect intends to employ have taken out, for the period covered by this Agreement, workers' compensation insurance with an insurance carrier satisfactory to the District for all persons whom they may employ in carrying out the work contemplated under this Agreement in accordance with the Workers' Compensation Laws of the State of California. If the Architect employs any engineer, expert, consultant or subcontractor which it did not intend to employ prior to commencement of services, it must furnish such proof of workers' compensation insurance to the District immediately upon employment. Such insurance shall be maintained in full force and effect during the period covered by this Agreement including any extensions of time. If the Architect is self-insured, the Architect shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the District.

Prior to the commencement of services under this Agreement, the Architect shall furnish to the District satisfactory proof that the Architect and all engineers, experts, consultants and subcontractors the Architect intends to employ have taken out employer's liability insurance with an insurance carrier satisfactory to the District. During the course of Architect's services, if Architect ever intends to employ additional or different engineers, experts, consultants or subcontractors, before so employing them Architect shall furnish such satisfactory proof of insurance to the District. Such insurance shall be maintained in full force and effect during the period covered by this Agreement including any extensions of time. If the Architect is self-insured, the Architect shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the District.

Article 10

ERRORS AND OMISSIONS INSURANCE

10.1 Prior to the commencement of services under this Agreement, the Architect shall furnish to the District satisfactory proof that the Architect has, for the period covered by this Agreement, errors and omissions insurance on an occurrence basis with limits of at least One Million Dollars (\$1,000,000.00) with a deductible in an amount not to exceed the sum of Ten Thousand Dollars (\$10,000).

10.2 Each of Architect's professional sub-consultants (including consultants of Architect's) shall comply with this Article, and Architect shall include such provisions in its contracts with them.

Article 11

COMPLIANCE WITH LAWS

Architect shall be familiar with, and Architect and Architect's design shall comply with, all State and Federal laws and regulations applicable to the Project or lawfully imposed upon the Project by agencies having jurisdiction over the Project, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, prevailing wage law, and the Americans with Disabilities Act ("ADA").

Article 12

TERMINATION OF AGREEMENT

12.1 **Termination by District** – This Agreement may be terminated, or the Project may be canceled, by the District for the District's convenience and without cause at any time immediately upon written notice to the Architect. In such event, the Architect shall be compensated for (a) all Basic or Additional Services completed, and Reimbursable Expenses incurred, pursuant to this Agreement through the date of termination, (b) such Basic or Additional Services performed, and Reimbursable Expenses incurred, after termination which are authorized by the District, and (c) any costs incurred by reason of such termination; but less any amounts the District is entitled to withhold under law or this Agreement. Upon the District's request and authorization, Architect shall perform any and all Basic and Additional Services necessary to complete the work in progress as of the date of termination.

For any material breach of contract by the Architect, the District may also terminate the Agreement for cause by delivering written Notice of Intent to Terminate to the Architect. Such Notice shall include the following: (1) A description of such material breach, and (2) a date not less than fourteen days (14) after delivery of the notice by which the Architect must cure such breach. In response to such Notice, if the Architect fails to cure, and fails to reasonably commence to cure, the breach(es) by the deadline set by the Notice, then the District may terminate the Agreement by written notice delivered to the Architect, which shall be effective upon such delivery. In such event, the Architect shall be compensated for all services completed pursuant to this Agreement through the date of termination, together with compensation for such services performed after termination which are authorized by the District, but less any amounts the District is entitled to withhold under law or this Agreement. Upon the District's request and authorization, Architect shall perform any and all services necessary to complete the work in progress as of the date of the termination.

12.2 Termination by Architect – For any material breach of contract by the District other than one related to a payment or invoice dispute as described in Section 4.4 of this Agreement, the Architect may terminate the Agreement by delivering written Notice of Intent to Terminate to the District. Such Notice shall include the following: (1) A description of such material breach, (2) a date not less than fourteen (14) days after delivery of the notice by which the District must cure such breach or reasonably commence to cure such breach, (3) the status of work completed as of the date of the Notice of Intent to Terminate, and (4) a description and cost estimate of the effort necessary to complete the work in progress. In response to such Notice, if the District fails to cure, and fails to reasonably commence to cure, the breach by the deadline set by the Notice, then Architect may terminate the Agreement by written notice delivered to the District within ten (10) days of the cure deadline, which shall be effective upon such delivery.

In the event of such termination by Architect, Architect shall be compensated for all Basic and Additional Services completed, and Reimbursable Expenses incurred, pursuant to this Agreement through the date of termination, together with compensation for such Basic and Additional Services performed, and Reimbursable Expenses incurred, after termination which are authorized by the District. Upon the District's request and authorization, Architect shall perform any and all Basic and Additional Services necessary to complete the work in progress as of the date of termination.

12.3 Miscellaneous Provisions

12.3.1 Following the termination of this Agreement for any reason whatsoever, the District shall have the right to utilize any designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by the Architect, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to other projects, provided that any invalidity of such license in relation to such other projects shall not affect the validity of such license in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316. Architect shall promptly make any such documents or materials available to the District upon request without additional compensation.

12.3.2 In the event of the termination of this Agreement for any reason whatsoever, all designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect or any of its agents pursuant to this Agreement shall immediately upon request by the District be delivered to the District. Architect may not refuse to provide such writings or materials for any reason whatsoever, including but not limited to a possessory interest lien for any claim the Architect may have against the District or a claim by the Architect to an ownership interest in the intellectual property embodied in the documents or materials.

Article 13

ARCHITECT AN INDEPENDENT CONTRACTOR

It is specifically agreed that in the making and performance of this Agreement, the Architect is an independent contractor and is not and shall not be construed to be an officer or employee of the District.

Article 14

STANDARDIZED MANUFACTURED ITEMS

The Architect shall consult and cooperate with the District 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 fittings, mechanical equipment, electrical fixtures and equipment, roofing materials, and floor coverings, shall be standardized to the District's criteria so long as the same does not interfere seriously with the building design or cost.

Article 15

OWNERSHIP OF DOCUMENTS

All designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect pursuant to this Agreement shall be and shall remain the property of the District for all purposes, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to any other project, provided that any invalidity of such ownership in relation to any other project shall not affect the validity of such ownership in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316.

The Architect will provide the District with a complete set of reproducible designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data

magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect pursuant to this Agreement, and will retain, on the District's behalf, the original documents or reproducible copies of all such original documents, however stored, in the Architect's files for a period of no less than fifteen (15) years. Architect shall promptly make available to District any original documents it has retained pursuant to this Agreement upon request by the District.

Article 16

LICENSING OF INTELLECTUAL PROPERTY

This Agreement creates a non-exclusive and perpetual license for the District to copy, use, modify, reuse or sublicense any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect pursuant to this Agreement, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to other projects, provided that any invalidity of such license in relation to such other projects shall not affect the validity of such license in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316. The Architect shall require any and all subcontractors and consultants to agree in writing that the District is granted a similar non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

The compensation for this Project includes compensation not only for any use in connection with this Project and use or re-use for repair, maintenance, renovation, modernization or other alterations or revisions to this Project, but also for any re-use by the District in relation to other projects. The only other term or condition of such re-use shall be that if the District re-uses the plans prepared by the Architect and retains another certified architect or structural engineer for the preparation of those plans for the re-use, the District shall indemnify and hold harmless the Architect and its consultants, agents, and employees from and against any claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from, in whole or in part, the re-use to the extent required by Education Code section 17316, subdivision (c).

Architect represents and warrants that Architect has the legal right to license any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates or other documents that Architect or its consultants prepares or causes to be prepared pursuant to this Agreement. **Architect shall indemnify, defend and hold the District harmless pursuant to Article 18.1 of this Agreement for any breach of Article 16 due to Architect's negligence, recklessness or willful misconduct.** The Architect makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or

otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Architect and provided to Architect by the District.

Article 17

ACCOUNTING RECORDS OF ARCHITECT

Architect's records of accounts regarding the Project shall be kept in accordance with generally accepted accounting principles and shall be available to the District or its authorized representative at mutually convenient times.

Article 18

INDEMNITY

18.1 Architect Indemnification

The Architect shall defend, indemnify, and hold harmless the District, the governing Board of the District, each member of the Board, and their officers, agents and employees against the payment of any and all costs and expenses, including but not limited to attorney's fees and litigation costs, claims, suits and liability arising out of, pertaining to, or relating to negligence, recklessness or willful misconduct of the Architect, the Architect's officers, employees, or consultants in performing or failing to perform any work, services, or functions provided for, referred to, or in any way connected with any work, services, or functions to be performed under this Agreement.

18.2 District Indemnification for Use of Third Party Materials

The District shall defend, indemnify, and hold harmless the Architect and its employees against any and all copyright infringement claims by any design professional formerly retained by the District arising out of Architect's completion, use or re-use of that former design professional's designs or contract documents in performing this Agreement. Architect shall be entitled to such indemnification only if each of the following conditions are met: (a) Architect actually re-draws or completes such other designs or contract documents; (b) Architect complies with the provisions of Article 5.8 regarding use of materials prepared by other design professionals; (c) District has supplied Architect with the previously prepared documents or materials; and (d) District expressly requests that the Architect utilize the designs or contract documents in question. By providing this or any other indemnification in this Agreement, District does not waive any immunities.

Article 19

TIME SCHEDULE

19.1 Time for Completion

Time is of the essence of this Agreement. The Architect shall timely complete its Basic and Additional Services as expeditiously as possible and according to the schedule attached as Exhibit "B" to this Agreement.

19.2 Delays

The District recognizes that circumstances may occur beyond the control of either the District or the Architect and extensions for such delays may be made to the schedule if approved by the District. Any time during which the Architect is delayed in the Architect's work by acts of District or its employees or those in a direct contractual relationship with District or by acts of nature or other occurrences which were not or could not have been reasonably foreseen and provided for, and which are not due to any Wrongful Acts or Omissions, shall be added to the time for completion of any obligations of the Architect. District shall not be liable for damages to the Architect on account of any such delay.

Article 20

MISCELLANEOUS PROVISIONS

20.1 This Agreement shall be governed by and construed in accordance with the laws of the State of California excluding its choice of law rules. If any action is instituted to enforce or interpret this Agreement, venue shall only be in the appropriate state or federal court having venue over matters arising in Sacramento County, California, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the School District.

20.2 The Architect shall not assign or transfer any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of the District.

20.3 All notices, certificates, or other communications hereunder shall be deemed given when personally delivered or mailed by certified mail, postage prepaid, to the parties at the addresses set forth below:

District:	Architect:
Sacramento City Unified School District Planning and Construction Attn: Paul Breckenridge 425 First Avenue Sacramento CA 95818	HMC Architects Attn: Brian Meyers 300 Capitol Mall, Studio 1230 Sacramento, CA 95814

20.4 This Agreement shall inure to the benefit of and shall be binding upon the Architect and the District and their respective successors and assigns.

20.5 If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

20.6 The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties.

20.7 Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either the District or the Architect.

20.8 This Agreement constitutes the entire agreement between the parties, and supersedes any prior agreement or understanding. There are no understandings, agreements, representations or warranties, expressed or implied, not specified in this Agreement. The Architect, by the execution of this Agreement, acknowledges that the Architect has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

20.9 The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's professional materials. The Architect's materials shall not include the District's confidential or proprietary information if the District has previously advised the Architect in writing of the specific information considered by the District to be confidential or proprietary.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed this 7th day of October, 2011.

**SACRAMENTO CITY
UNIFIED SCHOOL DISTRICT**

HMC ARCHITECTS

By: _____
Patricia A. Hagemeyer
Chief Business Officer

By: _____
Signature

Date

Print Name/Title

Date

September 13, 2011

Mr. Paul Breckenridge, AIA, LEED AP
Sacramento City Unified school District
Project Manager III
425 1st Avenue
Sacramento, CA 95818



Re: Proposal for Full Basic Architectural / Engineering Services
John Morse Therapeutic Center Campus Modernization
HMC #3168012-000

Dear Paul:

HMC ARCHITECTS is pleased to submit the following Proposal to provide Architectural, Civil, Mechanical, Electrical, Structural Engineering and Landscape Design Services for the above-mentioned project.

A. Scope of Work:

Modernize the Administration and Multipurpose Room at the John Morse Therapeutic Center. HMC will also be developing an outdoor dining area adjacent to the MP Room. Services will include preliminary educational programming meetings to determine the exact extent of the modernization. It will be the District's desire to utilize sustainable design precepts wherever practical. Depending on the scope of services and overall budget, the District may elect to submit for a High Performance Incentive Grant. All services related to the HPI Grant Program are outlined separately and will be utilized if achievable.

Scope of Services includes the following:

Architectural including HPI services
Civil: including topographic survey, minor civil scope, and a fireline extension
Mechanical: HVAC improvements, plumbing and HPI services
Electrical: Lighting, Power and HPI services
Structural: Miscellaneous improvements
Landscape: Miscellaneous improvements

B. Exclusions:

1. Specialty Consultants.
2. Special studies.
3. Geotechnical investigations.
4. Test and Inspections.
5. Renderings.

Mr. Paul Breckenridge, AIA, LEED AP
September 13, 2011
Page 2

C. Compensation:

Fee for the scope of work listed above shall be a fixed fee of One Hundred Sixty-four Thousand, Four Hundred and Ninety-five Dollars (\$164,495).

D. Additional Services:

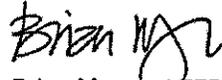
If Additional Services are required beyond the original Scope of Work, HMC will bill on an hourly basis per Attachment "A", HMC Rate Schedule.

E. Reimbursable Expenses:

Reimbursable expenses are in addition to compensation for Basic and Owner approved Additional Services, including printing, plotting, delivery and other expenses related to Agency review, including the submittal of electronic files, Bidding, Construction or other Owner requested costs. Expense of transportation (including mileage) in connection with the Project; Expenses in connection with authorized out-of-town travel, including travel time; and fees paid for securing approval of authorities having jurisdiction over the Project. The Architect's compensation shall be computed based at cost (1.0) times the amounts invoiced to the Architect.

Please review this Proposal and if you have any questions, please contact me at (916) 325-1100, ext. 213.

Sincerely,



Brian Meyers, LEED® AP / Associate

Encl.: Attachment "A" – HMC Hourly Rate Schedule

cc: L. Eloff, P. Nemeth, File-CN-AOA
\\sac-1\projects\Projects\3186 SCUSD\012_J Morse Therapeutic Ctr Campus Mod\01-CN\02.
AOA\Proposals\Ltr Proposal-P_Breckenridge 110913 .doc

ATTACHMENT "A"

HMC Rate Schedule Standard Hourly Rate by Professional Category (Not all categories need apply to this contract)

Description	Rates
Principal in Charge	\$ 195
Project Director	\$ 190
Project Leader/Technical Leader	\$ 135
Sr Project Manager/Sr Project Architect/Sr Technical Manager	\$ 185
Project Manager/Project Architect/Technical Manager	\$ 160
Project Coordinator	\$ 115
Intermediate Drafter	\$ 105
Sr Construction Administrator	\$ 190
Construction Administrator	\$ 140
Construction Administration Support	\$ 80
Design Director	\$ 195
Design Leader	\$ 120
Project Designer	\$ 150
Senior Project Designer	\$ 175
Designer II	\$ 110
Designer	\$ 85
Senior Interior Project Designer	\$ 165
Senior Interior Designer	\$ 170
Interior Design Coordinator	\$ 90
Interior Design Leader	\$ 115
Interior Designer	\$ 125
Sustainable Design	\$ 135
Cost Estimating	\$ 185
Specifications	\$ 165
Agency Compliance	\$ 90
Education Facilities Planner	\$ 160
Senior Education Facilities Planner II	\$ 175
Senior Education Facilities Planner I	\$ 195

These are the current hourly rates effective June 1, 2011 through June 30, 2012 and are subject to change one time annually effective June 1st



Task / Activity

PROJECTED HOURS

PIC (Phil)	Sr. PM (Brian)	PL (Destrea)	Sr. CA (Mark)	Cost (Sam)	Agency (Jenny)	Specs (Dan)	Total
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SCUSD - John Morse Therapeutic Center

Initial Planning Phase

1.1	Educational Programming - Kickoff Meeting / Scope definition	1	4					5
1.2	Project Feasibility Analysis - Phasing Planning		24	24				48
1.3	DSA plan research - verify current A#'s					2		2
1.4	Preliminary Cost Model		4	2			2	8

Schematic Design

2.1	Kickoff Meeting / Scope definition / Site Visit		4					4
2.2	Site Meeting		2	2				4
2.3	Review As-builts		2	4				6
2.4	Prepare base drawings			12				12
2.5	Site Investigation		8	8	8			24
2.6	Prepare SD Package	2	4	12				18
2.7	Cost Estimate		4				8	12
2.8	Consultant Coordination (team meetings)		4	4				8
2.9	General Administration					4		4

Design Development

3.1	Owner Review Meeting - SD approval		4					4
3.2	Plan Refinement			6				6
3.3	Interior Elevations		1	6				7
3.4	Reflected Ceiling Plans		1	6				7
3.5	Wall Sections		1	6				7
3.6	Prepare DD package	2	2	24				28
3.7	Cost Estimate		4				8	12
3.8	Consultant Coordination (team meetings)		4	4				8
3.9	General Administration					4		4

Construction Documents

4.1	Owner Review Meeting - DD approval		4					4
4.2	Plan Refinement			6				6
4.3	Interior Elevations - Coordination w/ M&E		1	4				5
4.4	Reflected Ceiling Plans - Coordination w/ M&E		1	8				9
4.5	Detailing Wall Sections		1	8		2		11
4.6	General Details		6	24		2		32
4.7	Final Specifications		2	2			18	22
4.8	Consultant Coordination (team meetings)		8	8				16
4.9	General Administration		4	4			4	12
4.10	Final Plan Review / QA	4	4			16		24
4.11	DSA submittal Package Preparation		4	12			4	20



Task / Activity

PROJECTED HOURS									
PIC (Phil)	Sr. PM (Brian)	PL (Desirea)	Sr. CA (Mark)	Cost (Sam)	Agency (Jenny)	Specs (Dan)	Total		

Agency Review

5.1	Plan Check Comment Review		4							4
5.2	Review and Address Comments			6						6
5.3	Consultant Coordination (team meeting)		2	2						4
5.4	Back-Check Appointment		1	8						9
5.5	Approval and Plan Distribution						2			2

Construction Administration (assumes 14 week construction)

6.1	Typical CA Services - OAC meetings, RFI/Submittal review	1	14	14	112		28			169
6.2	Closeout Documentation		4	4			16			24
	Total hours	10	137	230	140	18	64	18		617
	Rate	\$195	\$185	\$135	\$190	\$185	\$90	\$165		
	TOTAL COMPENSATION	\$1,950	\$25,345	\$31,050	\$26,600	\$3,330	\$5,760	\$2,970		\$97,005

Consultant Fees:

	Civil - minor civil scope: fireline extension / topographic survey									\$6,500
	Electrical - lighting - typical modernization improvements									\$12,000
	Mechanical - replace units									\$16,000
	Structural - modernization improvements									\$8,500
	Landscape - TBD									\$5,000
										\$145,005

High Performance Incentive Grant - Additional Services

Architectural

7.1	Discuss HPI Alternatives		1	1						2
7.2	Site Survey - site and neighborhood conditions			2						2
7.3	Documentation - Research CEQA info, Joint Use, Transit, Outdoor photometrics, building re-use calcs, material recycle content data		10	10						20
7.4	Specify construction waste management requirements & material recycle content requirements									2
7.5	Additional DSA backcheck time required for HPI		2	6						8
7.6	Review & format consultant info to meet HPI submittal requirements		2							2
7.7	OPSC Funding Documentation Support / Estimating		6				12			18
	Total hours		21	19			12			54
	Rate	\$195	\$185	\$135	\$190	\$185	\$90	\$165		
	SUB TOTAL COMPENSATION		\$3,885	\$2,565		\$2,220		\$330		\$9,000



Task / Activity	PROJECTED HOURS									
	PIC (Phil)	Sr. PM (Brian)	PL (Desiree)	Sr. CA (Mark)	Cost (Sam)	Agency (Jenny)	Specs (Dan)	Total		
Mechanical Engineering										
8.1								18		
8.2								18		
8.3								20		
8.4								20		
Electrical Engineering (\$154 / hr)										
9.1								6		
9.2								4		
HPI Consultant Fees:										
									Civil	n/a
									Electrical	\$1,540
									Mechanical	\$8,950
									Structural	n/a
									Landscape	n/a
									Subtotal Add for HPI Services:	
										\$19,490

AGREEMENT FOR SERVICES

Between

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

And

Think Together

The Sacramento City Unified School District ("District") and the **Think Together** ("Think Together") collectively hereinafter referred to as "the Parties" hereby enter into this Agreement for program services ("Agreement") effective on August 15th 2011 ("Effective Date") with respect to the following recitals:

RECITALS

WHEREAS, the District desires to engage Think Together to develop, maintain and sustain programs that offer support services to Kit Carson Middle School; HW Harkness and Woodbine Elementary Schools during the critical after school hours to improve the quality of life for families, enhance literacy opportunities and improve academic performance and attendance for the students; and

WHEREAS, District and Think Together will work collaboratively to develop, support, coordinate, and provide academic enrichment programs and recreational activities supporting the After School Education and Safety (ASES) after school programs at Kit Carson Middle School; HW Harkness and Woodbine Elementary Schools during the school year. This collaboration is designed to provide students avenues to maintain and expand learning opportunities, and promote academic achievement, assist children and adults from low-income families to achieve challenging State content standards, provide opportunities for parents to actively participate in their children's education, provide safe, supervised, and high-quality after school care for students, and deter, tobacco, alcohol and other drug use.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

A. Roles and Responsibilities.

i. Think Together shall adhere to scope of services outlined in Attachment A for Bowling Green Dependent Charter Schools:

ii. District shall adhere to scope of service outlined in Attachment A. District shall provide funding pursuant to Paragraph B, below. District shall provide and coordinate space and location of all District-sponsored ASES professional development, meetings, and trainings. District shall coordinate the convening all contractors to facilitate program planning and modifications.

B. Payment. For provision of services pursuant to this Agreement, District shall pay Think Together ~~\$286,981.25~~, to be made in installments upon receipt of properly submitted invoices. The final installment shall not be invoiced by Think Together or due until completion of all obligations pursuant to this Agreement. For provisions of services pursuant to this Agreement, Think Together shall provide documentation of ~~\$43,048 in-kind~~ match to the District.

C. Independent Contractor. While engaged in providing the services provided in this Agreement and otherwise performing as set forth in this Agreement, Think Together, and each of Think Together employees, is an independent contractor, and not an officer, employee, agent, partner, or joint venturer of the District.

D. Insurance Requirements. Prior to commencement of services and during the life of this Agreement, Think Together shall provide the District with a copy of its policy evidencing its comprehensive general liability insurance coverage in a sum not less than \$1,000,000 per occurrence. Think Together will also provide a written endorsement to such policy naming District as an additional insured, and such endorsement shall also state "Such insurance as is afforded by this policy shall be primary, and any insurance carried by District shall be excess and noncontributory." If insurance is not kept in force during the entire term of the Agreement, District may procure the necessary insurance and pay the premium therefore, and the premium shall be paid by the Think Together to the District.

E. Fingerprinting Requirements. Think Together agrees that any employee it provides to District shall be subject to the fingerprinting and TB requirements set forth in the California Education Code. If an employee is disqualified from working for District pursuant to the requirements of the California Education Code, Think Together agrees to provide a replacement employee within 15 days of receiving notification that the previous employee has been disqualified. Failure to adhere to the terms of this provision is grounds for termination of the Agreement.

F. Period of Agreement. The term of this Agreement shall be from August 15, 2011, through June 30, 2012. Either Party may terminate this Agreement without cause and without incurring further financial obligation with a delivery of a written notice at least thirty (30) days in advance to the other Party at the address below:

If to: Think Together
c/o Randy Barth
2100 E. 4th Street, Suite 200,
Santa Ana, CA 92705.

If to: Sacramento City Unified School District
c/o Zena Scott, Youth Engagement
Serna Center
5735 47th Avenue, Box 767
Sacramento, CA 95824
916-643-7992

G. Indemnity. Think Together agrees to indemnify and hold harmless the District and its successors, assigns, trustees, officers, employees, staff, agents and students from and against all actions, causes of action, claims and demands whatsoever, and from all costs, damages, expenses, charges, debts and liabilities whatsoever (including attorney's fees) arising out of any actual or alleged act, omission, negligence, injury or other causes of action or liability proximately caused by Think Together and/or its successors, assigns, directors, employees, officers, and agents related this Agreement. Think Together has no obligation under this Agreement to indemnify and hold harmless the District and is not liable for any actions, causes of action, claims and demands whatsoever, and for any costs, damages, expenses, charges, debts or other liabilities whatsoever (including attorney's fees) arising out of any actual or alleged act, omission, negligence, injury or other causes of action or liability proximately caused by the

District and/or its successors, assigns, trustees, officers, employees, staff, agents or students. The parties expressly agree that the indemnity obligation set forth in this Agreement shall remain in full force and effect during the term of this Agreement. The parties further agree that said indemnity obligations shall survive the termination of this Agreement for any actual or alleged act, omission, negligence, injury or other causes of action or liability that occurred during the term of this Agreement...

H. Severability. If any provisions of this Agreement are held to be contrary to law by final legislative act or a court of competent jurisdiction inclusive of appeals, if any, such provisions will not be deemed valid and subsisting except to the extent permitted by law, but all other provisions will continue in full force and effect.

I. Applicable Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. If any action is instituted to enforce or interpret this Agreement, venue shall only be in the appropriate state or federal court having venue over matters arising in Sacramento County, California, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

J. Assignment. This Agreement is made by and between Think Together and the District and any attempted assignment by them, their successors or assigns shall be void unless approved in writing by all parties.

K. Entire Agreement. This Agreement constitutes the entire agreement between THINK TOGETHER and District with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings advertisements publications and understandings of any nature whatsoever with respect to the same subject matter unless expressly included in this Agreement. The parties hereby waive the presumption that any ambiguities in a contract are read against the drafter of same. The parties further agree and represent that each of them are the drafters of every part of this Agreement.

L. Amendments. The terms of this Agreement shall not be amended in any manner except by written agreement signed by the parties.

M. Execution In Counterparts. This Agreement may be executed in counterparts such that the signatures of the parties may appear on separate signature pages. Facsimile or photocopy signatures shall be deemed original signatures for all purposes.

N. Authority. Each party represents that they have the authority to enter into this Agreement and that the undersigned are authorized to execute this Agreement.

O. Approval/Ratification by Board of Education. This Agreement shall be subject to approval/ratification by the District's Board of Education.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate.

DISTRICT:

By: _____
Patty Hagemeyer
Chief Business Officer
Sacramento City Unified School District

Date

THINK TOGETHER:

By:  _____
Authorized Signature

9/8/11

Date

Print Name: Randy Barth

Title: CEO

 28 9/13/11

ASES: Sacramento City USD and Think Together
Scope of Services: August 15, 2011 to June 30, 2012
Attachment A*

DISTRICT shall:

1. Provide evaluation and/or survey of projects as required.
2. Recognize Think Together in all sponsored events and on brochures, flyers, and promotional material, as appropriate.
3. Provide a district after school liaison for each school that will provide the support and guidance needed to operate the after school program.
4. Meet monthly with the site coordinator of Think Together to identify program needs, successes, and assistance needed.
5. Designate a school staff contact person to work directly with the site coordinator for program planning, staff hiring assistance and to address any implementation issues.
6. Help recruit program staff among school site staff and parents.
7. Help train program staff and volunteers on school procedures and educational/curriculum materials being used at the school that should be integrated into the Program.
8. Help recruit students into the Program and provide the Program access to parents of participating students.
9. Help provide parents/student forums for the Program to obtain feedback on what is working and what new services/program elements need to be added/modified.
10. Provide space for the program to operate, including office space for the site coordinator, classroom space for classes and activities, and storage space for program supplies/materials.
11. Provide after school snack consistent with requirements of USDA.
12. Help coordinate custodial and storage needs of the Program.
13. Meet monthly with the District contact person, Think Together site liaison and site administrator to identify program needs, successes, and assistance needed.

THINK TOGETHER shall:

1. Provide a comprehensive after school academic, enrichment and recreation program to include at least one hour of homework and tutoring assistance daily from school closure until 6:00 PM at designated schools. Program elements shall also include other educational and enrichment/recreational and violence and alcohol tobacco and other drug education and prevention activities.
2. Will work closely with school sites and District to keep student enrollment and daily attendance as close to and within the agreed upon parameter as outlined in the grant award. Student days of attendance will be monitored by Think Together and adjustments made to ensure that the program maximizes all funding reimbursements not exceeding available funding.
3. Think Together will work collaboratively with the District and the school to create a comprehensive program plan for the after school program. The plan will be shared out with stakeholders.
4. Think Together will provide an End of Year report on status of all outcomes and objectives.
5. Maintain and provide to the District monthly attendance and program activities records.
6. Think Together shall maintain at least 85% of targeted attendance for the school site.
7. Comply with requirements of the USDA related to administration and operation of after school snack and other District-sponsored nutrition programs.
8. Develop special activities or field trips for the sites individually and collectively. The Think Together shall obtain prior parental permission for students' participation in District sponsored field trips and excursions, and obtain prior permission from the school site principal or designee.
9. Attend and provide monthly reports at the Youth Engagement Advisory Board and/or other designated meetings and monthly site coordinators meetings, as well as other planning meetings as necessary.
10. Work collaboratively with the other outside service providers contracted by the District to provide after school services at school sites.
11. Communicate progress of project/partnership development on a timely and consistent manner to the District
12. Communicate new partnership opportunities with the District.
13. Advertise, when possible, project/partnership in newspaper, events, press releases, etc, with the prior approval of the District.
14. Provide a site coordinator and sufficient staffing to maintain a 20:1 student/staff ratio.
15. Utilize a Self-Assessment Tool for After School programs as the monitoring and evaluation device on a monthly basis.

16. Provide annually in-kind support and direct services totaling approximately \$14,277, such financial support to be itemized and reported annually to the District.
17. Meet monthly with the site coordinator and District contact person to identify program needs, successes, and assistance needed.
18. Act as liaison with parents in supporting the Family Literacy component

School Site shall:

1. Designate a school staff person to work directly with the site coordinator for program planning, staff hiring assistance and to address any implementation issues.
2. Help recruit program staff among school site staff and parents.
3. Help train program staff and volunteers on school procedures and educational/curriculum materials being used at the school that should be integrated into the Program.
4. Help recruit students into the Program and provide the Program access to parents of participating students.
5. Help provide parents/student forums for the Program to obtain feedback on what is working and what new services/program elements need to be added/modified.
6. Provide space for the program to operate, including office space for the site coordinator, classroom space for classes and activities, and storage space for program supplies/materials.
7. Help coordinate custodial and storage needs of the Program.
8. Meet monthly or as needed with the site coordinator, district liaison, site liaison and site administrator to identify program needs, successes, and assistance needed.
9. Provide data information back to SCUSD for reporting to California Department of Education on student progress within the ASES after school program.