

**CONDITIONS OF AGREEMENT FOR
ON-GOING ARCHITECTURAL SERVICES**

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CONDITIONS OF AGREEMENT FOR ON-GOING ARCHITECTURAL SERVICES

ARTICLE 1 RELATIONSHIP OF PARTIES

- 1.1 Relationship of Architect to Other Project Participants.** The Architect's services hereunder shall be provided in conjunction with contracts between the District and other Project participants including the Contractor and the District's Construction Manager, if one is retained by the District for the Project. The Contractor awarded the Construction Contract is responsible for performance of its obligations under the Construction Contract. Architect's services hereunder shall not be deemed or construed to be Architect's assumption of responsibility for, or control over construction means, methods sequences or procedures, or for safety at the Site, all of which are and remain the responsibility of the Contractor.
- 1.2 Architect Independent Contractor.** In providing services hereunder, Architect shall be an independent contractor to the District. The express terms hereof set forth the limited extent to which Architect is authorized to act on behalf of the District in its independent contractor capacity. Architect shall be responsible to the District and third parties for the consequences of Architect's actions or conduct which exceed the express limited scope of Architect's authority to act on behalf of the District set forth herein.
- 1.3 District Responsibilities.**
- 1.3.1 Information. The District shall provide full information regarding the Assigned Project, including the District's objectives, general description of the scope, schedule requirements, construction budget, and other constraints and requirements which may affect the Assigned Project. The District shall loan to the Architect all surveys, soils and foundation data, hazardous materials reports, as-built plans, and any other such information in the District's possession that may assist the Architect in the completion of the documents for the Assigned Project.
- 1.3.2 District Representative. The District shall designate a representative to act on the District's behalf with respect to the Project and who shall be authorized to render decisions on behalf of the District and to carry out the District's responsibilities under this Agreement, all of which shall be discharged or performed in a manner so as to avoid unreasonable delay in the orderly and sequential progress of Project design and construction and Architect's services hereunder
- 1.3.3 District Consultants. Except for the Sub-Consultants retained by the Architect, the District shall furnish all legal, accounting, insurance and other consulting services as may be necessary for the Project.
- 1.3.4 Test and Inspections. The District shall furnish or otherwise retain inspection or testing services in connection with construction of the Project as required by applicable code, regulation, ordinance or the terms of the Construction Contract. The District shall provide, if required by applicable code, regulation or rule or by conditions encountered, tests or inspections for hazardous or toxic materials.
- 1.3.5 District Notice of Non-Conformity. The District will give prompt written notice to the Architect if the District becomes aware of any fault, failure or neglect of Architect or the services provided by Architect hereunder; provided that the failure or delay by District in giving such written notice shall not constitute a waiver of any right or remedy of the District arising out of such fault, failure or neglect of the Architect.
- 1.4 Architect Standard of Care.** Architect and its Sub-Consultants shall provide the Basic Services and authorized Additional Services for an Assigned Project: (i) using its best professional skill and judgment; (ii) acting with due care and in accordance with respective applicable standards of care under California law for those providing similar services for projects of the size, scope and complexity of an Assigned Project; (iii) the terms of this

Agreement; and (iv) in accordance with said standards regarding application and interpretation of applicable law, code, rule or regulation at the time services are rendered. All services provided pursuant to this Agreement shall be in accordance with the provisions of the California Public Contract Code, including the prohibition against proprietary specifications.

1.4.1 Specifications calling for designated materials must be in conformance with Public Contract Code Section 3400. The “or equal” provision may be eliminated when a product or system must match an existing product or system, particularly if it is an existing campus standard.

1.5 Applicable Codes, Rules & Regulations.

1.5.1 Code Requirements. It is Architect’s responsibility to design the Project in compliance with all applicable federal and state laws, codes, rules, regulations, ordinances, and standards. The District is not subject to local jurisdictions for construction on real estate owned or controlled by the District. However, the design and construction of utility connections and/or fire-protection systems may require liaison with local jurisdictions, which Architect shall coordinate through the District’s Project Manager. Likewise, Architect shall coordinate through the District’s Project Manager any construction or encroachment upon city- or county-owned property, all of which is subject to local codes and permit requirements.

1.5.2 District Design Standards. Architect shall design the Project in compliance with all District design standards, including but not necessarily limited to: Mt. SAC Standards for Building Systems and Mt. SAC Standards for Telecommunications and Audio Visual Equipment. Architect shall interface with District staff to ensure District’s design standards are correctly applied on a project-by-project basis.

1.6 Hazardous Materials.

1.6.1 In the event that 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 containments, materials, air pollutants or water pollutants at the site (“Hazardous Substances”), or the substantial risk thereof, each shall have a duty to immediately notify the other in writing. Upon such knowledge or notice, the District shall promptly retain a qualified consultant to investigate, test, and determine the presence of such Hazardous Substances and, if such Hazardous Substances are found at the site to an unacceptable degree, to provide services that may include, among other things, recommendations as to the removal, encapsulation or other appropriate handling of such Hazardous Substances. The District shall promptly retain qualified experts in handling of such Hazardous Substances to undertake the consultant’s recommendations.

1.6.2 District acknowledges that the Architect is unable to reasonably obtain professional liability or other insurance for claims arising out of the performance or failure to perform professional services related to the investigation, detection, abatement, replacement, discharge or removal of products, materials or processes containing Hazardous Substances. Accordingly, the Architect shall not provide such services, but shall coordinate its services with the District and the District’s hazardous substances’ consultants as needed to progress the work.

1.6.3 The District hereby agrees to bring no claim for negligence, breach of contract, indemnity or other action against the Architect if such a claim arises out of Hazardous Substances, except as related to the Architect’s responsibility in Article 1.6.1, above.

ARTICLE 2 BASIC SERVICES.

- 2.1 Architect Representation.** The Architect shall designate a Project Architect for all Phases of Basic Services for an Assigned Project. The Architect's Project Architect shall: (a) be reasonably satisfactory to the District; (b) will not be replaced without approval of the District; (c) shall have the overall responsibility for performance of Architect's obligations hereunder; and (d) be authorized to act on behalf of the Architect in discharge of Architect's services hereunder. During the Construction Phase, the Project Architect shall be readily available to communicate by telephone, telecopier, correspondence, e-mail or other means of communication to provide design direction and decisions as necessary to avoid delay, hindrance or interruption to completion of Project design and construction.
- 2.2 Sub-Consultants.** Basic Services for each Assigned Project enumerated in this Article 2 include architectural, design and engineering services for the following elements necessary or appropriate to produce accurate Construction Documents for the Assigned Project: architectural, civil, structural, mechanical, electrical, plumbing, interior/building graphics/signage, interim and exterior lighting, fire/life-safety systems, landscaping, and telecommunications/data/security conduit portions of an Assigned Project.
- 2.3 Project Submittals.** The Architect shall assemble all materials required for each submittal and present in the form of drawings, reports and exhibit boards as appropriate and as specified in the *List of Design Requirements & Deliverables* for the Assigned Project. A binder of narrative responses shall accompany each submittal. The narrative response shall address each required on the List. Project submittals are required at the following design milestone points:
- Schematic presentation to CMPCT (at building floor plan & elevation layout)
 - 100% Schematic Design (update of initial submittal)
 - 50% Design Development (progress submittal)
 - 100% Design Development
 - 50% Construction Documents (progress set)
 - 90% Construction Documents (plan check)
 - 100% Final Construction Documents (reflective of bid set)
- 2.4 Cost Estimate Submittals.**
- 2.4.1 Throughout the Project, the Architect is expected to keep the project cost within the construction budget and is required to periodically submit a current Estimated Project Construct Cost to verify and document this. Project construction cost estimates shall be developed/updated and submitted as a part of each of the following submittals, and as specified in the *List of Design Requirements & Deliverables* for the Assigned Project:
- Schematic presentation to CMPCT
 - 100% Schematic Design (updated)
 - 100% Design Development
 - 50% Construction Documents
 - 90% Construction Documents (updated)
 - 100% Final Construction Documents (updated)
- 2.4.2 Each cost estimate shall:
- Reflect the best professional estimate of actual costs anticipated.
 - Establish internal estimating allowances, consistent with good professional practice, appropriate to the phase of development. Larger allowances are assumed held at early phased gradually diminishing to zero at completion of final cost estimate. Do not include a discrete line-item allowance for 'contingency'.
 - Adjust reported cost values to contract ENR CCCI value. Do NOT present costs to the estimated start of construction, mid-point of construction, or to present day values.

Questions regarding the calculation of ENR CCCI values should be reviewed with the District's Project Manager.

- 2.4.3 If the Construction Cost Estimate materially exceeds the District's Project Construction Budget, the Architect shall consult with the District and revise the Project Documents as necessary so that the Construction Cost Estimate for the Work depicted in the Project Documents is consistent with the Project Construction Budget. Revisions of the Project Documents to conform with the Project Construction Budget shall be without adjustment to the Contract Price unless the District shall have directed modifications to, or inclusions in, the scope of the Assigned Project or component parts thereof which cause the Project Construction Budget to be exceeded

2.5 Regulatory Approvals.

The Architect is responsible for obtaining review and approval by applicable regulatory agencies, including but not limited to the following:

- Handicap Access Compliance (ADA) – Division of State Architect (DSA)
- Fire / Life / Safety – DSA
- Structural – DSA
- Seismic – Third-party, performed concurrent with DSA review
- Code Plan Check – Third party, performed concurrent with DSA review
- Energy – Third-party, performed concurrent with DSA review (The District participates in California Community College Investor-Owned Utility Partnership to ensure its buildings exceed Title 24 energy requirements).
- State/local Health Departments – Required when the project involves food services, pools, or other components regulated by the health department
- Federal and state environmental regulatory agencies

2.6 Basis of Design Reports

2.6.1 Architect shall develop basis of design reports for key building systems as a tool to help the District understand the implications of design decisions being made during the design process.

2.6.2 A Basis of Design report shall be prepared for each of the follow systems:

2.6.3 Each report shall provide a narrative discussion covering the following points:

- Applicable codes and standards
- Performance characteristics
- Life cycle cost analysis spreadsheet that includes:
 - Initial cost of system
 - Energy costs
 - Maintenance and custodial costs
 - Life expectancy (including major subsystems)
 - Replacement costs (if applicable)
 - Total cost of ownership over 50 years

2.6.4 Basis of Design Reports are required at the following design milestones (*see Project Assignment – Attachment A - List of Design Requirements and Deliverables for specific project requirements*):

- 50% Schematic Design
- 100% Schematic Design
- 100% Design Development
- 90% Construction Documents (plan check)

2.7 Code Analysis Reports and Plans

Provide a narrative discussion and summary of building code issues, impacts and restrictions particular to each Project Assignment. The outline shall include an written report and

diagrammatic plan drawings delineating design criteria (e.g. exit paths, travel distances, required exists, rated walls and corridors, building occupancy, construction type, and fire zones). The analysis shall be updated for each design phase.

2.8 Interdisciplinary Coordination Review

Evidence of interdisciplinary coordination is required as a part of design document and construction document submittals. Such coordination review shall include the following:

- 2.8.1 A narrative discussion of methodology used to segregate structural, mechanical, electrical and plumbing systems. Describe any zoning or hierarchies used.
- 2.8.2 Provide composite drawing files to show mechanical duct routing relative to structural constraints, ceiling heights and wall locations.

2.9 Building Commissioning

Building commissioning may be undertaken at the discretion of the District. Whenever it is undertaken, the Architect's responsibilities as shown in the *Project Assignment – Attachment A – List of Design Requirements and Deliverables* shall be performed by the Architect at no additional cost to the District.

2.10 Response to District Comments/Directions

The District will provide written comments to the Architect for each submittal. Architect shall provide a written response to each item prior to the next submittal. When the response indicates work has been incorporated into the documents, the response must indicate the appropriate drawing location and specification section incorporating the work.

2.11 Schematic Design Phase.

- 2.11.1 The Architect shall review the Project Construction Budget and other information provided by the District pursuant to Article 1.3.1 hereof to ascertain the requirements and constraints of the Assigned Project.
- 2.11.2 In consultation with the District, the scope, requirements and constraints of the Assigned Project shall be defined and agreed upon. Architect shall provide the District with a preliminary evaluation of the District's requirements and constraints, including the selection of materials, building systems, equipment, the Project Construction Budget and alternative approaches to design and construction of the Assigned Project.
- 2.11.3 At the beginning of this phase, Architect shall visit the project site to become familiar with existing site conditions, including the site location and size, utility capacities, and connection options of external utilities. Visit all relevant areas of existing buildings to be altered. Contact the Project Manager for information on underground utilities and site constraints. Prepare and submit a report that identifies the existing conditions found and list recommendations or plans of action.
- 2.11.4 Upon the receipt of written authorization from the District, Architect shall prepare the Schematic Design Documents that realize the mutually understood preliminary evaluation. The Schematic Design submittal shall describe the exterior design, functional relationships of interior areas, the relationship of the project to the site, other buildings and the campus, materials to be used in construction, the types of mechanical, electrical and structural systems to be utilized and the magnitude of the cost of each portion of the work, as specifically detailed in the *Project Assignment – Attachment A – List of Design Requirements and Deliverables*.
- 2.11.5 Submittals: Upon completion of the Schematic Design Documents, or at such other intervals during Architect's development of Schematic Design Documents as may be agreed upon by District and Architect, Architect shall submit the same to the District for information, review and comments:
 - 2.11.5.1 One (1) copy of Schematic Design Documents specified in the *List of Design Requirements and Deliverables*.

- 2.11.5.2 Architect shall present Schematic Design Documents to the District Facilities Team at 50% – 75% completion of this phase.
- 2.11.5.3 Architect shall submit 100% Schematic Design Documents for review and approval by the District's Campus Master Planning Coordinating Team (CMPCT).
- 2.11.6 Schedule: Architect shall complete work and services required under the Schematic Design Phase and submit such work to the District for its approval in accordance with the Submittal Schedule established in the Project Assignment.

2.12 Design Development Phase.

2.12.1 Initial Design Development Documents.

- 2.12.1.1 Upon receipt of written authorization from the District to proceed and based upon the approved Schematic Design Documents, Project Construction Budget, schedule and other requirements or constraints mutually agreed upon and understood between the District and Architect for an Assigned Project, the Architect shall prepare Initial Design Development Documents.
- 2.12.1.2 Initial Design Development Documents shall consist of Drawings and other documents which define and illustrate the size, character and quality of the entire Project, and illustrate scale and other relationships of the various components of the Work, and an outline of Specifications. The Design Development Documents shall incorporate all of the comments or modifications of the District to the Schematic Design Documents.
- 2.12.1.3 Initial Design Development Documents shall include a site plan referencing the California Coordinate Grid System, floor plans, foundation plans, elevations, cross sections, and outline specifications. The exterior design systems, type of structural system, mechanical system along with electrical system shall be delineated and defined in drawings and specifications.
- 2.12.1.4 Submittals: Upon completion of the Initial Design Development Documents, or at such other intervals during Architect's development of Initial Design Development Documents as may be agreed upon by District and Architect, Architect shall submit the same to the District for information, review and comments as follows:
 - 2.12.1.4.1 Incidental progress drawings/sketches, estimates, and reports as required to support the design process, as specified in *List of Design Requirements and Deliverables* for the Project Assignment.
 - 2.12.1.4.2 Two (2) sets: Initial Design Development Documents
- 2.12.1.5 Schedule: Architect shall complete work and services required under the Initial Design Development Phase and submit such work to the District for its approval in accordance with the Submittal Schedule established in the Project Assignment.

2.12.2 Final Design Development Documents.

- 2.12.2.1 The District and Architect will confer and consult with each other to arrive at mutual understandings and agreements as to which of the District's comments to the Initial Design Development Documents are to be incorporated into the Final Design Development Documents.
- 2.12.2.2 Upon receipt of written authorization from the District to proceed, Architect shall prepare Final Design Development Documents which consist of the Initial Design Development Documents revised to incorporate therein the mutually agreed upon changes and other comments.

2.12.2.3 Submittals: Upon completion of the Final Design Development Documents, Architect shall submit the same to the District for review and approval as follows:

2.12.2.3.1 Incidental progress drawings/sketches, estimates, and reports as required to support the design process, as specified in *List of Design Requirements and Deliverables* for the Project Assignment

2.12.2.3.2 Three (3) sets: Final Design Development Documents, including drawings and specifications.

2.12.2.4 Schedule: Architect shall complete work and services required under the Initial Design Development Phase and submit such work to the District for its approval in accordance with the Submittal Schedule established in the Project Assignment.

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

2.13 Construction Documents Phase.

2.13.1 Construction Documents. Upon receipt of written notice from the District to proceed and based upon the approved Final Preliminary Plans, the Architect shall prepare Working Drawings consisting of all Drawings and Specifications and other Design Documents necessary or appropriate for setting forth in detail the requirements for the Work with sufficient clarity, coordination and consistency to permit qualified and capable contractors to bid upon and construct the Work depicted therein for the Project Construction Budget. Bid alternates shall be developed as an integral part of the Construction Documents, and any special conditions shall be identified and coordinated therein. The required Construction Documents for the Project are as shown in the *Project Assignment – Attachment A – List of Design Requirements & Deliverables*.

2.13.2 Approvals of Construction Documents. The Architect shall obtain all necessary approvals or permits for the Construction Documents from governmental agencies with jurisdiction therefore as necessary for the bidding and construction of the Work including without limitation, approvals by the Division of State Architect (“DSA”). Such work does not include the preparation of special research studies, variances, special documentation or surveys, special tests or environmental studies and submissions, which services, if provided by the Architect outside of the scope of work originally agreed upon by the Parties, shall be compensated as Additional Services. Without adjustment of the Contract Price for an Assigned Project, Architect shall revise Construction Documents as required by DSA or other governmental agencies with jurisdiction over the Project to obtain their respective approval(s) or permit issuance. For final plan check approval, drawings shall be stamped by the California Architect

- and/or Engineer of record and consultant responsible for the design.
- 2.13.3 Constructability and Design Review; Value Engineering. The District reserves the right to conduct, or cause to be conducted, constructability reviews and/or value engineering of the Construction Documents. If the District elects to conduct either constructability reviews or value engineering, the District shall notify the Architect of the same and the Architect shall submit Construction Documents to the District for such constructability reviews and/or value engineering. The District and Architect will confer and consult with each other to arrive at mutual understandings and agreements as to which of the constructability review and/or value engineering comments are to be incorporated into the Construction Documents. The Construction Documents shall incorporate mutually agreed upon comments and the Architect shall submit revised Construction Documents to the District for approval. Architect shall revise Construction Documents as necessary to obtain the District's reasonable approval thereof.
- 2.13.4 Submittals. Architect shall provide to the District, for review and information, the Drawings, Specifications and other documents depicting the then current status of the Architect's preparation of Construction Documents. At a minimum, such submittals shall be provided as follows:
- 2.13.4.1 Incidental progress drawings/sketches as required to support the design process
- 2.13.4.2 50% Construction Document Submittal:
Three (3) sets: Construction Documents, including drawings, specifications, calculations, reports, cost estimates, and all other deliverables specified in the *List of Design Requirements & Deliverables*.
- 2.13.4.3 90% Construction Document (DSA) Submittal:
Three (3) sets: Construction Documents, including drawings, specifications, calculations, reports, cost estimates, and all other deliverables specified in the *List of Design Requirements & Deliverables*
Back-Check: One (1) set of back-check documents as DSA issues them.
- 2.13.4.4 100% Construction Documents
- 2.13.4.4.1 One (1) set: Clear background, reproducible copy of stamped Drawings.
- 2.13.4.4.2 Three (3) sets of full-size stamped Drawings, Specifications, and other documents to be included in the Bid Documents.
- 2.13.4.4.3 One (1) half-size (11x17) set of the stamped Drawings.
- 2.13.4.4.4 One (1) copy: Electronic files of Construction Documents on CD-ROM. Verify current software versions accepted by the Project Manager prior to transmitting electronic files.
- 2.13.4.4.5 Three (3) copies of all other reports, cost estimates, and other required documentation, as specified in the *List of Design Requirements & Deliverables*.
- 2.13.5 Submittal Schedule: Architect shall provide the above listed Construction Document submittals at intervals mutually agreed upon by the District and Architect as set forth in the Project Assignment submittal schedule, or in the absence of such mutual agreement at such intervals as reasonably determined by the District.
- 2.13.6 Architect Provision of Reproducible Construction Documents. The Architect shall provide the District with the type and number of sets of reproducible Drawings included in the final approved Construction Documents for bidding and construction purposes as specified above. Reproduction of these sets is at the cost of the District, except to the extent that reproduction is required by revisions or corrections arising out of errors or omissions of the Architect or its Sub-Consultants, in which case, the Architect shall

bear all costs of preparing revisions or corrections and reproduction of Construction Documents. The District will furnish Architect with five (5) sets of the final approved Construction Documents for use by Architect and its Sub-Consultants in the Bidding and Construction Phases of the Project; reproduction of additional sets of the Construction Documents is at the expense of the Architect without adjustment of the Contract Price.

2.14 Bidding Phase.

- 2.14.1 Development of Bid Documents. In consultation with the District, the Architect will advise and make recommendations to the District for bidding and award of the Construction Contract. Architect will generally review and comment upon the District's proposed forms of Construction Contract and General, Special and other Conditions thereof for conformity and consistency with the Construction Documents. Architect shall assist the District in preparation of information, documents and forms necessary or appropriate for bidding. At the sole election and discretion of the District, bidding/construction of an Assigned Project may be by multiple trade contractors each under contract to the District for a portion of the Assigned Project or by a single general contractor. The Assigned Project construction delivery process selected by the District for a Project shall not result in adjustment of the Contract Price for an Assigned Project
- 2.14.2 Bidding Process. During the bidding for Construction Contract, Architect will: (i) attend pre-bid conference(s), as called by the District; (ii) assist the District in responding to bidders' inquiries, questions or clarification requests, and/or requests for substitutions relating to the bidding, the Project, the Design Documents, or the Construction Documents; and (iii) where necessary or appropriate, the Architect will prepare and assist the District in issuance of addenda to the Design Documents, Contract Documents, Bid Documents and/or Construction Documents for the Project. Architect will assist the District in the receipt and review of bidders' Bid Proposals, including the review of Bids Proposals for responsiveness and bidder responsibility, analyses of Bid Proposals and recommendations for the selection of the Contractor for the award of the Construction Contract. As requested by the District, the Architect will assist the District in obtaining required governmental approval(s) for award of the Construction Contract.
- 2.14.3 Bid Costs Exceeding Project Construction Budget. If within one hundred fifty (150) days of the date upon which Architect obtains final DSA approval for the Construction Documents, the District shall have solicited Bid Proposals from bidders for award of the Construction Contract and such Bid Proposals are opened by the District within said one hundred fifty (150) days and the lowest bona fide Bid Proposal exceeds the Project Construction Budget, the District may: (i) approve of an increase in the Project Construction Budget; (ii) reject all Bid Proposals and authorize re-bidding of the Project; (iii) abandon or terminate the Project; or (iv) revise the scope, or reduce or eliminate portions of the Assigned Project so as to limit and reduce Construction Costs. Unless the District has theretofore directed changes, modifications or inclusions in the scope of the Assigned Project or component parts thereof which cause the Bid Proposals to exceed the Project Construction Budget, if the District elects to revise the Project pursuant to (iv) above, the Architect shall make all necessary revisions to the Construction Documents without adjustment of the Contract Price of the Assigned Project; if the District elects to reject all Bid Projects and re-bid the Assigned Project, for such subsequent re-bid(s), Architect shall perform with dispatch the obligations set forth in Articles 2.6.1 and 2.6.2 above in connection with such re-bid(s) without adjustment of the Contract Price for the Assigned Project, provided that the services of the Architect and Sub-Consultants shall be the limits of the Architect's responsibilities

under this Article 2.6.3.

2.15 Construction Phase.

- 2.15.1 Administration of Construction Contract. Architect will provide assistance to the District in administration of the Construction Contract and construction of the Assigned Project. The scope of the Architect's services in administration of the Construction Contract shall include all activities and responsibilities set forth herein and in the Construction Contract. If the District retains a Project Manager for an Assigned Project, the Architect's administration of the Construction Contract shall be in conjunction with the services and responsibilities of the Project Manager. The Architect shall be a representative of the District and shall have the authority to act on behalf of the District only to the extent expressly provided for by the terms hereof and as may be subsequently modified in accordance with the provisions hereof. Duties, responsibilities and limitations of the Architect's authority shall not be restricted, modified or extended without written agreement of the District and the Architect along with consent by the Contractor and/or Project Manager as necessary or appropriate. Architect shall cooperate with and comply with controls, procedures, processes and reporting functions reasonably implemented by the District with respect to design or construction of the Assigned Project.
- 2.15.2 Term of the Construction Phase. The Architect shall advise and consult with the District regarding construction of an Assigned Project commencing with the award of the Construction Contract until Final Payment under the Construction Contract is due and Final Completion of construction of an Assigned Project is certified by the Architect. The Architect must complete and submit all close-out documents, including Record Drawings and/or reporting requirements to governmental agencies, prior to the District's release of final payment of the Architect's fees.
- 2.15.3 Site Observations. The Architect shall attend weekly or other meetings relating to the Assigned Project and shall visit the Site at intervals appropriate to the stage of construction, as required by the conditions of construction or the Site, or as may be reasonably requested by the District from time to time for the purpose of becoming generally familiar with the progress and quality of the Work completed and to generally determine if the Work is being performed in a manner indicating that upon completion it will be materially in accordance with the Construction Contract and the Construction Documents. Sub-Consultants will attend meetings as appropriate and required by the schedule and sequencing of construction. On the basis of observations made during Site visits and in its capacity as an Architect, the Architect shall: (i) keep the District informed of the progress and quality of the Work; and (ii) endeavor to guard the District against defects and deficiencies in the Work and the failure or refusal of the Contractor to perform the Work in accordance with the terms and intent of the Construction Contract and the Construction Documents. Without limiting any other right or remedy of the District whether pursuant to this Agreement or by operation of law, if in the course of its Site observations, the Architect fails to discover or report to the District any major defect or deficiency in construction of the Work, or in the Work itself, which by exercise of due care should have been observed by the Architect and reported to the District, the Architect will provide all design services necessary for remedial or corrective measures for such conditions without additional cost or expense to the District. The provisions hereof shall not be construed as requiring the Architect to make exhaustive or continuous Site observations to check on the quality or quantity of the Work. The Architect shall have access to the Work wherever in preparation, fabrication or progress.

2.15.4 Contractor Applications for Payment.

2.15.4.1 Development of Payment Procedures. In consultation with the District and the Project Manager, the Architect shall assist in the development and implementation of procedures, forms and documents for the submittal, review, processing and disbursement of Progress Payments to the Contractor.

2.15.4.2 Certification of Payment Due. Based on the Architect's observations and evaluations and in conjunction with the observations and evaluations of the Project Manager and the District's Inspector of Record, the Architect shall certify the amount due on each Application for Progress Payment. Such certification shall be the Architect's representation to the District that based upon the Architect's Site observations in accordance with this Agreement and the data contained in the Application for Progress Payment, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the terms of the Construction Contract. Issuance of a Certificate for Payment shall constitute Architect's representation to the District that the Contractor is entitled to the amount certified.

2.15.4.3 Limitations Upon Architect's Certification. The Architect's certifications and representations hereunder are subject to an evaluation of the Work for conformity with the terms of the Construction Contract upon Substantial Completion, the results of subsequent tests and inspections, minor deviations from the terms of the Construction Contract correctable prior to Final Completion and any specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall not be deemed a representation that the Architect has: (i) made exhaustive or continuous Site inspections to check the quality or quantity of the Work; (ii) reviewed construction means, methods, sequences or procedures; (iii) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the District to substantiate the Contractor's right to payment, except as included in the materials accompanying an Application for Progress Payment transmitted to and reviewed by the Architect hereunder; or (iv) ascertained for or what purpose the Contractor has used funds previously disbursed under prior Application(s) for Progress Payment.

2.15.4.4 Final Payment. In conjunction with the Project Manager and the District's Inspector of Record, the Architect shall review, evaluate and certify for payment the Contractor's Application for Final Payment.

2.15.4.5 Timely Action by Architect. Upon receipt of any of the Contractor's Applications for Progress Payment and the Application for Final Payment, the Architect shall promptly commence and complete its review, evaluation and certification of the amount due on each such application so that the District can make payment of the amount certified within the time permitted by law without incurring liability for interest and/or the Contractor's attorneys fees resulting from untimely payments of any Progress Payment or the Final Payment. If the Architect fails to take timely action pursuant to the preceding, the Architect shall be liable to the District for all costs, demands, liabilities or losses arising out of or related to such failure to timely take action.

2.15.5 Rejection of Work. The Architect shall have the authority, after notification to the District, to reject Work which does not conform with the requirements of the Construction Contract. Whenever the Architect considers it necessary or appropriate for implementation of the intent of the Construction Contract upon notice to and authorization by the District, the Architect may require additional inspection or testing of

the Work in accordance with the provisions of the Construction Contract, whether such Work is prepared, fabricated, installed or constructed. This authority of the Architect, or the Architect's good faith determination to exercise or not exercise such authority, shall not, however, give rise to a duty or responsibility of the Architect to the District, the Contractor or any others performing or providing Work of the Project to exercise or not to exercise such authority.

2.15.6 Submittals.

2.15.6.1 Submittal Procedures. In consultation with the District and the Project Manager, Architect shall assist in the development and implementation of forms, documents and procedures for the handling, review and processing the Contractor's Submittals required for an Assigned Project.

2.15.6.2 Submittal Review. The Architect shall review, and take appropriate action upon Submittals for the purpose of checking for conformance with the information given and the design concept expressed in the Design Documents. The Architect's actions hereunder shall be taken with such reasonable promptness as to cause no delay or interruption to the activities of the Contractor or others performing construction activities at the Site affected by such Submittal while allowing sufficient time in the Architect's professional judgment to permit adequate review. If a Submittal Schedule or time frames for completion of the Architect's review and evaluation of Submittals are developed and established pursuant to the Construction Contract with the participation and concurrence of the Architect, Architect's actions hereunder shall conform with such Submittal Schedule or time frames; Architect shall be responsible for all results or consequences of its failure or refusal to complete its review and evaluation of Submittals in accordance with such Submittal Schedule. When professional certification of performance characteristics of materials, systems or equipment is required by the terms of the Construction Contract, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Construction Contract.

2.15.6.3 Color and Material Boards and Schedules. Architect shall revise and update the materials/color schedule and materials boards, as necessary to reflect the actual manufacturers' products that have been submitted by Contractor and approved for use on the Project.

2.15.6.4 Limitations Upon Submittal Review. The Architect's review of Submittals is not for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor in accordance with the Construction Contract. The Architect's review shall not constitute approval of safety precautions or, unless otherwise expressly stated by the Architect, construction means, methods, sequences or procedures.

2.15.7 Changes.

2.15.7.1 Changes Procedures and Processing. In consultation with the District and the Project Manager, the Architect shall assist in the development of procedures, forms and processes for the evaluation of Changes or potential Changes to the Work of an Assigned Project.

2.15.7.2 Evaluation of Changes; Change Orders. The Architect shall assist the District and the Project Manager, in evaluating Change Proposals of the

Contractor and will advise the District of the nature, extent and scope of Change Proposals along with alternatives. Where Changes are authorized by the terms of the Construction Contract, the Architect shall assist the District and the Project Manager to prepare, execute and forward to District a Change Order describing such Change and the adjustment if any, to the Contract Price or Contract Time of the Construction Contract.

2.15.7.3 Authority to Direct Minor Changes. The Architect may authorize and direct minor Changes in the Work of an Assigned Project which do not involve an adjustment of the Contract Time or the Contract Price of Construction Contract and which are consistent with the intent of the Design Documents. Such Changes shall be effected by written order requested by the Architect and issued by the Project Manager or District.

2.15.8 Interpretations.

2.15.8.1 Procedures for Handling Contractor's Requests. In conjunction with the District and the Project Manager, the Architect shall assist in the development of forms, documents and procedures for the transmittal, handling, response and disposition of requests and inquiries relative to the Work or the Design Documents.

2.15.8.2 Architect's Interpretation. The Architect shall interpret and decide matters concerning the performance of the District or the Contractor on written request of either the District or the Contractor. The Architect shall respond to and issue clarifications as necessary to address and resolve questions or inquiries of the Contractor relative to coordination, consistency and clarity of the Design Documents and the component parts thereof. The Architect's responses to the foregoing shall be made with reasonable promptness and within any time limits established in the Construction Contract or which may otherwise be mutually agreed upon.

2.15.8.3 Effect of Architect's Decisions. The Architect's decisions and interpretations rendered hereunder shall be consistent with the intent of and reasonably inferable from the Construction Contract or the Design Documents and shall be in writing or in the form of drawings. When making such decisions or interpretations, the Architect shall endeavor to secure faithful performance of the Contractor and the District, shall show no partiality to either and shall not be liable for the results of such decisions or interpretations rendered in good faith, in accordance with the terms hereof and the Architect's discharge of due care. The Architect's decisions or interpretations in matters pertaining to aesthetic effect shall be final and binding on the Contractor and District if consistent with the intent expressed in the Construction Contract or Design Documents.

2.15.8.4 Contractor Claims. The Architect shall render written decisions regarding claims, disputes or other matters in controversy between the District and the Contractor arising under the Construction Contract, including the execution or progress of Work thereunder. The Architect's decisions shall be in accordance with any applicable time limits set forth in the Construction Contract; if no time limits are set forth, the Architect shall render decisions within a reasonable time.

2.15.9 Records and Reports. The Architect shall maintain current, accurate and complete records of the Project Construction, including without limitation, correspondence, memorandum, Change Orders, Change Order Requests, Proposal Requests and similar records relating to an Assigned Project. The Architect shall timely prepare and

submit all reports regarding the Project construction required by applicable law, rule or regulation.

- 2.15.10 Limitations Upon Architect's Construction Phase Services. Architect's services during the Construction Phase shall not be deemed Architect's assumption of, or control over, construction means, methods and sequences or Site safety, all of which remain the responsibility of the Contractor. Architect shall not have control over or charge of the acts or omissions of the Contractor or its Subcontractors or their agents and employees.

2.16 Post Construction Phase.

- 2.16.1 Substantial Completion. Upon request of the Contractor and in conjunction with the District, the Architect shall inspect the Work to determine if Substantial Completion has been achieved and if not the measures necessary to achieve Substantial Completion. The Architect shall determine and certify the date of Substantial Completion of the Assigned Project.
- 2.16.2 Punchlist. At the time of determining Substantial Completion and in conjunction with the District, the Project Manager and the Contractor, the Architect shall note the discovered conditions of the Work requiring correction, replacement, removal or other action necessary to comply and conform with the requirements of the Construction Contract ("the Punchlist"). The Architect shall, in conjunction with the District, the Project Manager, if any, and the Contractor, determine the time reasonably necessary to complete the Punchlist items. If mutual agreement is not reached establishing the time for the Contractor's completion of the Punchlist, the Architect shall make a binding good faith determination of the time for the Contractor's completion of the Punchlist. The Architect shall thereafter periodically review the Contractor's performance and completion of the Punchlist.
- 2.16.3 Final Completion. In conjunction with the District and the Project Manager, and upon request of the Contractor, the Architect shall inspect the Work of an Assigned Project to determine that Final Completion has been achieved and that the Work conforms and complies with the requirements of the Construction Contract, including completion of the Punchlist prepared at Substantial Completion. The Architect shall determine and certify the date of Final Completion.
- 2.16.4 Submittals and Submittal Schedule for Close-Out Documents. The Architect shall assist the Project Manager to compile and assemble the Contractor's close-out documents for delivery to the District, including without limitation, Record As-Built Drawings, Operations and Maintenance manuals, key schedules, and Warranties. The Architect shall prepare and submit for processing such documentation as required by governmental agencies, including DSA, in connection with completion of the Work of the Project. Within sixty (60) days of the date of Final Completion of an Assigned Project, Architect shall provide District with one (1) complete reproducible set of "Architect's Record Drawings" which shall be based upon the Contractor's "As-Built" drawings showing significant changes between the Work of the Drawings made during construction, including those incorporated into Change Orders issued under the Construction Contract, locations of building systems concealed or covered, including without limitation, utility structures and distribution systems and electrical, mechanical, plumbing and structural systems. Each sheet of the Architect's Record Drawings shall note clearly "RECORD" with the data source, date of drawing and signature on behalf of Architect. Concurrently with delivery of the reproducible set of the Architect's Record Drawings, the Architect shall delivery to the District two (2) corresponding electronic files of the Architect's Record Drawings on CD ROM.

ARTICLE 3 ADDITIONAL SERVICES.

3.1 Additional Services. The services described in this Article 3 are not included in the scope of Architect's Basic Services for an Assigned Project, unless expressly set forth in the Project Assignment for an Assigned Project.

3.2 Contingent Additional Services. If Contingent Additional Services described below are provided by Architect through no fault or neglect of Architect, prior to providing any such Additional Services, Architect shall notify the District in writing; the District may direct the Architect to not proceed with all or any portion of Contingent Additional Services described in Architect's written notice. The following constitute Contingent Additional Services for an Assigned Project:

3.2.1 Document Revisions. Making significant revisions to the Drawings, Specifications or other Design Documents where such revisions are: (i) inconsistent with approval or instructions previously given by the District, including revisions necessary due to significant adjustments in the District's Program, budget or construction completion time for the Assigned Project; (ii) required by enactment of, or revisions to codes, laws, rules or regulations applicable to the Work of the Project where such enactment or revision could not have been reasonably foreseen by Architect; or (iii) due to the District's failure to render decisions in a timely manner.

3.2.2 District/Contractor Default. Services required or necessary as a result of the default or termination of the Contractor, failure of performance by the District or the Contractor, or major defects or deficiencies in the Work of the Contractor which were not and could not have been noted by the Architect in its Site observations under Article 2 hereof.

3.2.3 Document Changes. Except as provided in Article 2 above, preparing Drawings, Specifications or other Design Documents, along with supporting data in connection with Changes to the Work of an Assigned Project.

3.2.4 Contractor Substitutions. Providing services in connection with the evaluation(s) or request(s) by the Contractor to provide substitute or alternative systems, equipment or materials to those indicated in the Construction Documents and making subsequent revisions to the Construction Documents and other documentation resulting therefrom.

3.2.5 Damaged Work. Providing consultation or other services in connection with repairs, replacements or corrections of the Work damaged or destroyed by fire or other casualty so long as no negligent or willful acts, omissions or other conduct of Architect or its employees, agents or representatives have caused or contributed to such damage or destruction.

3.2.6 Excessive Contractor Claims. Providing services in connection with evaluation of an extensive and excessive number of claims submitted by the Contractor, except to the extent that such claims arise out of the services, Design Documents or other work product provided or performed by or through Architect hereunder.

3.2.7 Expert Witness. Providing services as an expert witness in connection with a public hearing, arbitration or other legal proceeding arising out of the Project, except where Architect is a party thereto, is called as a percipient witness (in which case Architect shall be entitled to witness fees and costs as allowed by law) or is found liable for damages or other relief.

3.3 Optional Additional Services. The Optional Additional Services described herein shall be provided by Architect only upon the specific written request of the District. Optional Additional Services shall be compensated for in accordance with the terms of this Agreement.

3.3.1 Future Improvements. Services relative to future systems, facilities or equipment not included within the scope of the Assigned Project.

- 3.3.2 Existing Conditions. Services to investigate existing conditions or facilities not included within the scope of the Assigned Project or to provide measured drawings thereof.
- 3.3.3 Furniture, Furnishings, Equipment. Services in connection with the District's selection, procurement or installation of furniture, furnishing or equipment not included within the scope of the Assigned Project.
- 3.3.4 Financial/Special Studies. Providing financial feasibility or other special study.
- 3.3.5 Special Surveys. Providing planning surveys or special surveys for Site evaluations, comparative studies or assessment of environmental conditions.
- 3.3.6 Verification of District Provided Information. Providing services to verify the accuracy of drawings or other information provided by the District.
- 3.3.7 Operational/Maintenance Cost Analysis. Analysis of ownership, operational or maintenance costs to the District.
- 3.3.8 Additional Sub-Consultants. Providing services of Sub-Consultants, except for architectural, civil, structural, mechanical, electrical, plumbing, interior/building graphics/signage, interim and exterior lighting, landscaping, fire/life-safety systems and telecommunications/data/security conduit portions of the Work which are included and contemplated as part of the Basic Services hereunder.
- 3.4 Compensation for Additional Services.** Additional Services described in this Article 3, which are not part of the Basic Service of an Assigned Project, shall be compensated for the same in one of the following manners and identified as a part of the authorization for Additional Services.
- 3.4.1 Fixed Fee. At its discretion, District may elect to negotiate a fixed fee for any additional services.
- 3.4.2 Work by Architect. For work performed by principals and employees of the Architect, the Architect shall receive an amount not to exceed two times the direct payroll costs for services of principals and/or employees for actual time expended to provide the authorized extra services. Reimbursement to principals for providing drafting or other related services normally provided by an employee shall be reimbursed at the maximum rate for services of employees. The Architect shall provide a Rate Sheet at the onset of the Assigned Project listing rates applicable to the Assigned Project within the limits listed above.
- 3.4.3 Work by Architect's Consultants. For work performed by firms or individuals not employees of the Architect, but engaged by the Architect to assist in providing the authorized Additional Services, the Architect shall receive one and one tenth (1.10) times the amount to be paid by the Architect to its Consultants for said services. Payment to Consultants for services rendered is limited to direct project costs, including a maximum of two times the direct payroll costs for services of principals and/or employees for actual time expended to provide the authorized Additional Services.

ARTICLE 4 INSURANCE AND INDEMNITY

4.1 Architect Insurance.

- 4.1.1 Workers Compensation and Employers Liability Insurance. Architect shall purchase and maintain Workers' Compensation Insurance covering claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts that may be liable. Architect shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Architect. The Employer's Liability Insurance required of Architect hereunder may be obtained by Architect as a separate policy of insurance or as an additional coverage under the

- Workers' Compensation Insurance required to be obtained and maintained by Architect hereunder.
- 4.1.2 Commercial General Liability and Property Insurance. Architect shall purchase and maintain Commercial General Liability and Property Insurance as will protect Architect from the types of claims set forth below which may arise out of or result from Architect's services under this Agreement and for which Architect may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than Architect's employees; (ii) claims for damages insured by usual personal injury liability coverage; (iii) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; and (v) contractual liability insurance applicable to Architect's obligations under this Agreement. District shall be an additional insured to Architect's commercial general liability insurance policy.
- 4.1.3 Automobile Liability Insurance. Insurance to be procured and maintained by Architect and its Sub-Consultants hereunder and shall be in the coverage amounts set forth in the Agreement.
- 4.1.4 Professional Liability Insurance. Architect will procure and maintain professional liability insurance covering liabilities of the Architect arising out of the performance of services under this Agreement.
- 4.1.5 Sub-Consultants' Insurance. Each of the Sub-Consultants retained by the Architect to provide or perform a portion of the services or obligations of the Architect under this Agreement shall obtain and maintain policies of insurance for Workers Compensation, Employers Liability, Commercial General Liability/Property Damage and Professional Liability. Each policy of insurance to be obtained by each of the Architect's Sub-Consultants shall conform with the standards or requirements set forth in Articles 4.1.1, 4.1.2 and 4.1.3 above.
- 4.1.6 Coverage Amounts. Insurance to be procured and maintained by Architect and its Sub-Consultants hereunder shall be in the coverage amounts set forth in the Agreement.
- 4.1.7 Policy Endorsements; Evidence of Insurance. Architect shall deliver to the District Certificates of Insurance evidencing each of the policies of insurance in the coverage amounts required hereunder. All policies of insurance required hereunder shall be issued by insurer(s) admitted to issue insurance by the State of California and to the reasonable satisfaction of the District. Coverages under each policy of insurance required hereunder, whether by endorsement or otherwise, shall provide that such policy will not be modified or canceled without at least thirty (30) days advance written notice to the District.
- 4.2 District General Liability Insurance.** District shall obtain and maintain General Liability Insurance covering District for claims of bodily injury, death or property damage arising out of the Project. District may, at its sole election, provide self-insurance in satisfaction of its obligations hereunder.
- 4.3 Indemnity.**
- 4.3.1 Architect Indemnity. To the fullest extent permitted by law and in accordance with the provisions of California Civil Code §2782.8, the Architect shall indemnify, protect, defend and hold harmless the District and its employees, officers, Trustees, agents and representatives (collectively "the Indemnified Parties") from any and all claims, demands, losses, responsibilities or liabilities for: (i) injury or death of Architect's employees arising out of this Agreement; (ii) injury or death of persons, damage to

property, or other costs or charges, directly or indirectly arising out of, pertaining to, relating to or attributable to, in whole or in part, the negligent, reckless or willful acts, omissions, errors and/or other conduct of Architect, its Sub-Consultants or the employees, agents and representatives of Architect or any of its Sub-Consultants in performing or providing any of the obligations, services or other work product contemplated under this Agreement, but excluding liability as to the active or sole negligence or willful misconduct of the District. The foregoing shall include without limitation, attorneys fees, experts fees and costs, investigation expenses and costs incurred by the District, and any defense afforded pursuant to this paragraph shall be provided by counsel acceptable to the District. The Architect's obligations hereunder are not limited in any way or by any limitation on the amount or type of damages or compensation payable to the Architect or its Sub-Consultants or their respective agents and employees under applicable policies of insurance, workers' compensation acts, disability benefits acts, or other employee benefits acts. The provisions of this Article shall apply during the period of Architect's performance under this Agreement and shall survive the termination of this Agreement until any such claim, demand, loss, responsibility or liability covered by the provisions hereof is barred by the applicable Statute of Limitations.

- 4.3.2 District Indemnity of Architect. The District shall indemnify and hold harmless Architect from all claims arising out of bodily injury (including death) and physical damage (other than to the Project itself and property covered by insurance under Article 4.1.2 hereof) which arise out of the negligent or willful acts, omissions or other conduct of the District. District shall indemnify and hold harmless Architect from all claims on account of any damages or loss to property or persons, including death, arising out of Hazardous Substances, except where the Architect is found to be liable for such damages or losses by a court or forum of competent jurisdiction.

ARTICLE 5 TERMINATION; SUSPENSION

- 5.1 Termination for Default.** Either the District or Architect may terminate this Agreement or a Project Assignment upon seven (7) days advance written notice to the other if there is a default by the other Party in its performance of a material obligation hereunder or in connection with a Project Assignment and such default in performance is not caused by the Party initiating the termination. Such termination shall be deemed effective the seventh (7th) day following the date of the written termination notice, unless during such seven (7) day period, the Party receiving the written termination notice shall commence to cure it default(s) and diligently thereafter prosecute such cure to completion. In addition to the District's right to terminate this Agreement pursuant to the foregoing, the District may terminate this Agreement upon written notice to Architect if: (a) Architect becomes bankrupt or insolvent, which shall include without limitation, a general assignment for the benefit of creditors or the filing by Architect or a third party of a petition to reorganize debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for Architect or any of Architect's property on account of Architect's insolvency; or (b) if Architect disregards applicable laws, codes, ordinances, rules or regulations. If District exercises the right of termination hereunder, the Contract Price due the Architect, if any, shall be based upon Basic Services and authorized Additional Services incurred or provided prior the effective date of the District's termination of this Agreement or an Assigned Project, reduced by the District's prior payments of the Contract Price and losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or a Project Assignment or the cause(s) for termination of this Agreement or a Project Assignment. Payment of the amount due the Architect, if any, shall be made by District only after completion of the Post-Construction

Phase of this Agreement or the Assigned Project, as applicable. Architect shall remain responsible and liable to District all losses, damages or other costs sustained by District arising out of termination pursuant to the foregoing or otherwise arising out of Architect's default hereunder, to the extent that such losses, damages or other costs exceed any amount due Architect hereunder for Basic Services or authorized Additional Services.

5.2 District's Right to Suspend. The District may, in its discretion, suspend all or any part of the construction of an Assigned Project or the Architect's services under a Project Assignment; provided, however, that if the District shall suspend construction of an Assigned Project or Architect's services under a Project Assignment for a period of sixty (60) consecutive days or more and such suspension is not caused by the Architect's default or the acts or omissions of Architect or its Sub-Consultants, upon rescission of such suspension, the Contract Price for the Assigned Project will be subject to adjustment to reflect actual costs and expenses incurred by Architect, if any, as a direct result of the suspension and resumption of the Assigned Project construction or Architect's services under a Project Assignment. If such is the case, the Architect's submittal schedule established in the Project Assignment shall also be subject to an adjustment, if required, as a direct result of the suspension and resumption of the Architect's services.

5.3 District's Termination for Convenience. The District may, at any time, upon seven (7) days advance written notice to Architect terminate this Agreement or a Project Assignment for the District's convenience and without fault, neglect or default on the part of Architect. In such event, the Agreement shall be deemed terminated seven (7) days after the date of the District's written notice to Architect or such other time as the District and Architect may mutually agree upon. In such event, the District shall make payment of the Contract Price to Architect for services provided through the date of termination plus actual costs incurred by Architect directly attributable to such termination.

5.4 Architect Suspension of Services. If the District shall fail to make payment of the Contract Price when due Architect hereunder, Architect may, upon seven (7) days advance written notice to the District, suspend further performance of services hereunder until payment in full is received. In such event, Architect shall have no liability for any delays or additional costs of Project construction due to, or arising out of, such suspension.

5.5 Architect Obligations Upon Termination. Upon the District's exercise of the right of termination under Article 5.1 or Article 5.3, the Architect shall take action as directed by the District relative to on-going preparation of the Design Documents or construction of an Assigned Project. If requested by the District, the Architect shall within five (5) days of such request, assemble and deliver to the District all work product, instruments of service and other items of a tangible nature (whether in the form of documents, drawings, samples or electronic files) prepared by or on behalf of the Architect under this Agreement. The Architect shall deliver the originals of all work product, instruments of service and other items of a tangible nature requested by the District pursuant to the preceding sentence; provided, however, that the Architect may, at its sole cost and expense, make reproductions of the originals delivered to the District.

ARTICLE 6 GENERAL

6.1 Marginal Headings; Captions. The titles of the various Paragraphs of the Agreement and the Articles of these Conditions are for convenience of reference only and are not intended to and shall in no way enlarge or diminish the rights or obligations of Architect and District hereunder.

6.2 Cumulative Rights; No Waiver. Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by District or Architect hereunder shall

be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default by the other.

6.3 Notices. Notices Architect or District are required or desire to serve on the other shall be valid only if addressed to the other as set forth in the Agreement or modified by notice hereunder from time to time. Notices shall be effective only if transmitted by personal delivery requiring signature acknowledging receipt or by United States Mail, Certified, Return Receipt Requested, First Class, postage fully pre-paid.

6.4 Disputes.

6.4.1 Continuation of Architect Services. Except in the event of the District's failure to make undisputed payment of the Contract Price due Architect, notwithstanding any disputes between District and Architect hereunder, Architect and District shall each continue to perform their respective obligations hereunder; including the obligation of the Architect to continue to provide and perform services hereunder pending a subsequent resolution of such disputes.

6.4.2 Mandatory Mediation. All claims, disputes and other matters in controversy between the Architect and the District arising out of or pertaining to this Agreement shall be submitted for resolution by non-binding mediation conducted under the auspices of the American Arbitration Association ("AAA") and the Construction Mediation Rules of the AAA in effect at the time that a Demand For Mediation is filed. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the District or the Architect commencing arbitration proceedings pursuant to Article 6.4.3 below.

6.4.3 Arbitration. All claims, disputes or other matters in controversy between Architect and District arising out of or pertaining to the Project or this Agreement which are not fully resolved through the mandatory mediation set forth in Article 6.4.2 above shall be settled and resolved by binding arbitration conducted under the auspices of the AAA Construction Industry Arbitration Rules in effect at the time of the filing of a Demand for Arbitration. If any claim or dispute is asserted by the Architect, the Project Manager, the Contractor or the District relating to the Project and arising in whole or in part out of this Agreement, the services provided by or through the Architect hereunder or the Instruments of Service prepared by or through the Architect, Architect and District agree that any arbitration proceedings initiated between Architect and District hereunder shall be consolidated with any arbitration proceedings initiated in connection with such other claim or dispute with the Architect or the Contractor. Any arbitration hereunder shall be conducted in the AAA Regional Office closest to the Site.

6.5 Severability. If any provision of this Agreement is deemed illegal, invalid unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted herefrom, but all remaining provisions will remain and continue in full force and effect.

6.6 Records.

6.6.1 Architect Accounting Records. Architect shall maintain complete and accurate records of its personnel engaged in performing any service hereunder, personnel expenses, Reimbursable Expenses and other direct costs incurred in connection with performance under this Agreement. Records shall be maintained on the basis of generally accepted accounting principles applied consistently and shall be available for inspection or reproduction by the District upon reasonable request at any time during Architect's performance hereunder. Following completion of an Assigned Project and the Agreement or the termination of this Agreement, Architect shall maintain accounting records for five (5) years or such longer period required by applicable law, code, rule or regulation, during which time such records shall be

available to District or as otherwise required by law, code, rule or regulation for inspection or reproduction.

- 6.6.2 Project Records. Records, documents and other materials generated or received by Architect in the course of performing services hereunder may, following completion of an Assigned Project or termination of this Agreement, be retained by the District in its sole discretion.

6.7 Definitions.

- 6.7.1 Construction Contract. The Contract for Construction awarded by the District to the Contractor for the construction of the Project. References to “Construction Contract” include Trade Contracts awarded by the District to a Trade Contractor for construction of an Assigned Project by multiple Trade Contractors.
- 6.7.2 Contractor. The individual or entity awarded the Construction Contract by the District for the Project. “Contractor” includes Trade Contractors.
- 6.7.3 Design Documents. The Drawings, Specifications, calculations and other work product prepared by the Architect or its Sub-Consultants for an Assigned Project or any portion thereof. Design Documents include Drawings, Specifications and other documents prepared by the Architect or a Design Consultant for an Assigned Project.
- 6.7.4 Design Consultant(s). Design Consultant(s) are individuals or entities retained by Architect to provide or perform a portion of the Architect’s services or work product hereunder, including any portion of the Design Documents. Sub-Consultants shall be duly licensed as required by law, rule or regulation and shall be qualified to perform or provide the portion of Architect’s services or work product assigned by having previously provided design consulting services for California public school project design and construction. The District shall have the right to reasonably disapprove a Design Consultant. Architect shall be responsible for the adequacy, timeliness and quality of services or work product provided or performed by Sub-Consultants; Architect shall be liable to District for, and shall defend, indemnify and hold harmless District and its Board of Trustees, employees, officers, agents and representatives from and against, all losses, costs, damages, liabilities, actions or demands arising out of the services or work product provided or performed by Sub-Consultants.
- 6.7.5 Submittals. Shop Drawings, Product Data or Samples prepared or provided by the Contractor or its Subcontractor(s) or supplier(s) illustrating some portion of the Work of an Assigned Project.
- 6.7.6 Site. The physical area for construction and related activities of an Assigned Project.
- 6.7.7 Drawings and Specifications. The Drawings are the graphic and pictorial portions of the Design Documents showing generally the location, design and dimensions of the Work of an Assigned Project, including without limitation, plans, elevations, sections, details, schedules and diagrams. Specifications are the portion of the Design Documents which consist of written requirements for materials, equipment, construction systems, standards, criteria and workmanship for the Work and related services for an Assigned Project.
- 6.7.8 Work. All of the construction and other services required by the terms of the Construction Contract, including all labor, materials, equipment and other services required of the Contractor under the terms of the Construction Contract to complete an Assigned Project.
- 6.7.9 Project Construction Budget. The Project Construction Budget refers to the total costs allocated by the District for construction of an Assigned Project, exclusive of the Contract Price under this Agreement, site acquisition costs and the costs of furniture, furnishing and/or equipment for the Project. The Project Construction Budget established by the District for an Assigned Project may be modified by the District

upon notice to the Architect. As used in this Agreement, the term “Project Construction Budget” refers to the then current amount allocated for construction of an Assigned Project as modified from time to time.

- 6.7.10 Construction Cost Estimate. Construction Cost Estimates are estimates prepared by or on behalf of the Architect of the current costs of labor, materials, equipment and services plus a reasonable allowance for the Contractor’s profit, overhead and administrative cost as necessary to complete construction of an Assigned Project in accordance with the Design Documents. Construction Cost Estimates shall include a reasonable allowance for contingencies relating to market conditions at the time of solicitation of Contractor bids for the Work of the Assigned Project and Changes in the Work during construction of the Assigned Project; the allowance for contingency costs shall be consistent with the contingency established by the District in the Project Construction Budget, if any.
- 6.7.11 Project Manager. The District’s Project Manager is the individual or entity retained by the District as an independent contractor to provide certain management, planning, and other services and/or work product in connection with the design and/or construction of the Project. Services, functions and responsibilities of the Project Manager shall be provided in conjunction with and complementary to the Architect’s services and work product under this Agreement. Unless otherwise specified by the District, the District’s Project Manager is Bovis Lend Lease.
- 6.7.12 Assigned Project. An Assigned Project is a Project described in a Project Assignment issued by the District under this Agreement.
- 6.7.13 Project Assignment. A Project Assignment is the written instrument issued by the District and mutually executed by the District and the Architect which establishes the specific terms and conditions for the Architect’s performance and provision of Architectural and related services for an Assigned Project. The form of Project Assignment is attached as Exhibit A to the Agreement. Notwithstanding execution of the Agreement by the District and the Architect, the Architect shall have no right to provide Architectural services or to be compensated for any Project which may be undertaken by the District unless the District has theretofore issued a Project Assignment for such Project and the Project Assignment is mutually executed by the District and the Architect.

6.8 Use of Design Documents.

- 6.8.1 Ownership. Notwithstanding any provision of law to the contrary, including without limitation the provisions of Education Code §17316, all of the Architect’s Instruments of Service, including without limitation, the originals and reproducible transparencies of the Drawings, Specifications and other Design Documents prepared by or on behalf of the Architect under this Agreement (which include, but are not limited to, working drawings, and master plans, preliminary sketches, Architectural presentation drawings, structural and other engineering calculations or computations and estimates) are and shall remain the property of the District. By executing this Agreement, the Architect acknowledges that it transfers to the District all of the Architect’s copyright rights in and to the Instruments of Service to the District; the Architect further acknowledges that by executing this Agreement, it waives all copyright rights relating to the Instruments of Service, including without limitation, all statutory, common law and reserved rights. Upon the termination of this Agreement or the abandonment of all or any portion of an Assigned Project, the District may use any portion of the Instruments of Service (whether completed or in progress) for any purpose, in the sole and exclusive discretion of the District without additional compensation to the Architect. Architect shall not, without the prior consent and

approval of the District, which shall not be unreasonably withheld, reproduce or otherwise use any documents or rights owned by the District pursuant to this Agreement, except for standard details, notes and assemblies.

- 6.8.2 District Use of Design Documents. Upon the termination of this Agreement, a Project Assignment Amendment or the abandonment of all or any portion of an Assigned Project, the District may use any portion of the Design Documents (whether completed or in progress) for any purpose, in the sole and exclusive discretion of the District without additional compensation to the Architect. Whether the Assigned Project is completed or if completion of the Design documents or construction of an Assigned Project is not by the Architect under this Agreement and the District re-uses or modifies Design Documents completed by the Architect or prepared by the Architect prior to the termination of this Agreement, termination of a project Assignment Amendment or the abandonment of an Assigned Project, the District shall indemnify, defend and hold harmless the Architect from claims, liabilities, suits, demands, losses, costs and expenses, including reasonable attorneys fees and legal costs arising out of damage or loss to property or persons, including death, arising out of the District's re-use or modification of the Architect's Design Documents. The foregoing notwithstanding, the District shall not be liable for the defense, indemnity or hold harmless of the Architect if the Architect is determined by an arbitrator (or arbitration panel) or a court of competent jurisdiction to be liable for such damages or losses.
- 6.8.3 Electronic Files. With the Architect's submission of Construction Documents to the District pursuant to the terms hereof, Architect shall also submit to the District electronic files of the same. Electronic files of the Drawings shall be prepared in the latest version of commercially available computer aided drafting software. Electronic text files shall be prepared in the latest version of MS Word.

[End of Section]