



MT. DIABLO UNIFIED SCHOOL DISTRICT
PURCHASING / WAREHOUSE DEPARTMENT
 2326 BISSO LANE
 CONCORD, CALIFORNIA 94520
 FAX: (925) 687-5044 (925) 825-7440

DATE 10/25/23

PURCHASE ORDER NO.
242421

VENDOR: NACHT AND LEWIS ARCHITECTS
 600 Q STREET STE 100
 SACRAMENTO, CA 95811

DELIVER TO: MT DIABLO UNIFIED SCHOOL DISTRICT
 MAINTENANCE & OPERATIONS
 1480 GASOLINE ALLEY
 CONCORD, CA 94520

Req. # R138239	Vendor # 051576	Ship Via DESTINATIO	Department / Site S051000	Requisitioner HILL, MARIE
Confirming <input type="checkbox"/> yes <input type="checkbox"/> no	Buyer LAURA WARNER	Extension #	Terms of Payment NET 30	Date Required 10/25/23

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
01	1	LOT	<p>**SIGNED AGREEMENT ATTACHED** BOARD APPROVED 6/28/2023, #15.32</p> <p>EL DORADO MIDDLE SCHOOL KITCHEN RENOVATION AND MULTI-USE ROOM REFRESH. NACHT & LEWIS TO PROVIDE PROFESSIONAL ARCHITECTURAL SERVICES WHICH INCLUDE: PROFESSIONAL QUALITY AND TECHNICAL ACCURACY OF ALL STUDIES, REPORTS, PROJECTIONS, MASTER PLANS, DESIGNS, DRAWINGS, SPECIFICATIONS AND OTHER SERVICES FURNISHED BY ARCHITECT UNDER THIS AGREEMENT AS WELL AS COORDINATION WITH ALL MASTERPLANS, STUDIES, REPORTS AND OTHER INFORMATION PROVIDED BY DISTRICT. ARCHITECT SHALL, WITHOUT ADDITIONAL COMPENSATION, CORRECT OR REVISE ANY ERRORS OR OMISSIONS IN ITS STUDIES, REPORTS, PROJECTIONS, MASTER PLANS, DESIGN, DRAWINGS, SPECIFICATIONS AND OTHER SERVICES.</p> <p>* NOTE TO VENDOR: NOTE ON ALL INVOICES - PURCHASE ORDER NUMBER & SITE</p> <p>PLEASE MAIL ALL INVOICES TO: ***continued***</p>	428,500.00	428,500.00
				TOTAL	

ACCOUNT NO.	AMOUNT

APPROVAL:

Superintendent

Date

SEND INVOICE TO: MT. DIABLO UNIFIED SCHOOL DISTRICT
 FISCAL SERVICE DEPARTMENT
 1936 CARLOTTA DRIVE
 CONCORD, CALIFORNIA 94519

TO RECEIVE PROPER PAYMENT THE ABOVE PO NUMBER MUST APPEAR ON ALL INVOICES, BILLS OF LADING, PACKAGES, CORRESPONDENCE, ETC.



MT. DIABLO UNIFIED SCHOOL DISTRICT
 PURCHASING / WAREHOUSE DEPARTMENT
 2326 BISSO LANE
 CONCORD, CALIFORNIA 94520
 FAX: (925) 687-5044 (925) 825-7440

DATE 10/25/23

PURCHASE ORDER NO.

242421

VENDOR: NACHT AND LEWIS ARCHITECTS
 600 Q STREET STE 100
 SACRAMENTO, CA 95811

DELIVER TO: MT DIABLO UNIFIED SCHOOL DISTRICT
 MAINTENANCE & OPERATIONS
 1480 GASOLINE ALLEY
 CONCORD, CA 94520

Req. # R138239	Vendor # 051576	Ship Via DESTINATIO	Department / Site S051000	Requisitioner HILL, MARIE
Confirming <input type="checkbox"/> yes <input type="checkbox"/> no	Buyer LAURA WARNER	Extension #	Terms of Payment NET 30	Date Required 10/25/23

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
			MAINTENANCE, OPERATIONS & FACILITIES 1480 GASOLINE ALLEY, CONCORD, CA 94520 UPDATED INSURANCE CERTIFICATES ARE REQUIRED WHEN YOUR POLICY EXPIRES ON: 6/24/24 - GENERAL LIABILITY AND AUTO, 3/12/24 - PROFESSIONAL LIABILITY, 9/1/24 - WORKERS COMPENSATION		
				Tax	0.00
				TOTAL	428,500.00

ACCOUNT NO.	AMOUNT
231715158 6210	428,500.00

APPROVAL:

Alvin C. Hill *SM*

Superintendent

Date

SEND INVOICE TO: MT. DIABLO UNIFIED SCHOOL DISTRICT
 FISCAL SERVICE DEPARTMENT
 1936 CARLOTTA DRIVE
 CONCORD, CALIFORNIA 94519

TO RECEIVE PROPER PAYMENT THE ABOVE PO NUMBER MUST APPEAR ON ALL INVOICES, BILLS OF LADING, PACKAGES, CORRESPONDENCE, ETC.

TERMS AND CONDITIONS

1. NO SUBSTITUTIONS accepted without approval of the Buyer.
2. Prices must be F.O.B. destination. DO NOT SHIP COLLECT.
3. Mt. Diablo Unified School District (MDUSD) is EXEMPT from payment of FEDERAL EXCISE TAX under Chapter 32. IRS Code. Federal Tax ID #68-0091157. Items are for the exclusive use of MDUSD and not for resale.
4. MAIL invoices in duplicate to: Fiscal Services Department, Accounts Payable, 1936 Carlotta Drive, Concord CA 94519. The purchase order number must appear on all packages, invoices and correspondence.
5. The seller assumes all risks in connection with the merchandise ordered until delivery to MDUSD as specified and accepted by MDUSD.
6. Merchandise is subject to inspection and test by MDUSD at the place of destination. If any merchandise is found at any time to be defective or nonconforming, MDUSD, in addition to all other rights, shall have the right, in whole or in part, to reject and return the merchandise at seller's expense and to receive full credit for it, or to require its replacement without additional cost to MDUSD.
7. Provider shall defend, indemnify, and hold harmless MDUSD, its officers, officials, employees, agents, and volunteers from and against all claims, damages, losses, and expenses, herein, caused in whole or in part by any negligent act or omission of the consultant, subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the negligence of MDUSD.
8. MDUSD may terminate this agreement and be relieved of the payment for any consideration if the contractor fails to perform the terms of this contract at the time and in the manner required. In the event of such termination, MDUSD may proceed with the work in any manner deemed proper by MDUSD. The cost to MDUSD shall be deducted from any sum due the contractor under this agreement, and the balance, if any, shall be paid to the contractor upon demand.
9. All materials by purchase order and/or contract must comply with all federal, CAL-OSHA, and local safety rules and regulations. A MSDS is required on items designated by OSHA as hazardous materials
10. The billing terms/cash discount available to the buyer shall begin on the date of acceptance of the merchandise or on the date of receipt of invoice, whichever is later.
11. Every publisher or manufacturer of instructional materials shall comply with Education Code Sections 60060 ET Seq.
12. Items furnished must comply with all applicable laws, regulations and requirements of responsible governmental agencies pertaining to their use in schools.

Additional Terms for Service Contracts

1. Services by Provider: Provider shall perform services in a manner commensurate with the highest professional standards by qualified and experienced personnel.
2. Independent Parties: Provider and its employees are independent contractors and not employees of MDUSD. Provider is responsible for any required payments on behalf of its insurance or other benefits.
3. Permits & License Compliance: Provider shall maintain all appropriate permits, licenses and certificates that may be required under this contract. Provider shall comply with all federal, state, and local law in its performance under this contract.
4. Termination: If provider fails to perform at the time and in the manner required by this contract, MDUSD may terminate the contract by giving written notice to provider and paying the reasonable and proportionate amount for services already provided.
5. Reports: Every document prepared under this contract is the exclusive property of MDUSD. No information prepared under this contract may be made available to any individual or organization without MDUSD's prior approval.
6. Hold Harmless: Provider shall indemnify and hold harmless MDUSD, its officers, employees, agents, and volunteers from and against all claims, damages, losses, and expenses, herein caused in whole or in part by any negligent act or omission of the consultant, subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable except where caused by the negligence of MDUSD.
7. Insurance: Provider shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the provider, its agents, representatives, or employees.

Coverage Required	Limits per Occurrence	Scope-as Broad
General Liability	\$1,000,000.00	As CG001
Automobile Liability	\$1,000,000.00	As ISO-CA001
Worker's Comp/Employers Liability	\$1,000,000.00	As req. by CA

The General Liability and Auto Liability policies are to contain or be endorsed to name MDUSD, its officers, officials, employees, and volunteers as additional insiders respects liability arising out of the activities performed in connection with this contract. The Contractor's coverage shall be primary and shall apply separately to each insured against who claim is made or suit is brought, except with respect to the limits of the insurer's liability. Contractor shall furnish MDUSD original Certificates of Insurance and endorsements (affecting coverage required by this clause) signed by a person authorized to bind coverage on its behalf. Insurance is to be placed with insurers with a current AM Best rating of not less than A: VII the endorsements are to be received and approved by MDUSD before work commences:

8. Miscellaneous Provisions:
 - a. Waiver – MDUSD's waiver of a breach of term is not deemed a waiver of any subsequent breach of the same term.
 - b. Cost of Litigation – If legal action is necessary to enforce this contract, the prevailing party is entitled to receive all costs and expenses including reasonable attorney's fees and costs of arbitration or litigation.
 - c. Entire Contract - This is the entire contract. Any modification must be in writing and signed by all parties.

Special Instructions to Vendor

1. MDUSD will not be responsible for payment of invoice if vendor ships this order to any address other than the "Ship To" address at the right unless the "Ship To" is changed by an official "Purchase Order Change Notice" document issued by the Purchasing Department.
2. Packing slip must accompany each delivery showing purchase order number, catalog number, serial number, description, and MDUSD stock number if applicable.
3. No changes without written authorization from the Purchasing Department.
4. Vendor shall include all applicable warranties.

**AGREEMENT FOR ARCHITECTURAL SERVICES
BY AND BETWEEN
MT. DIABLO UNIFIED SCHOOL DISTRICT AND
NACHT & LEWIS ARCHITECTS, INC.
MIDDLE SCHOOL KITCHEN MODERNIZATION & MU REFRESH PROJECT(S)**

TABLE OF CONTENTS

Article 1.	Definitions.....	2
Article 2.	Scope, Responsibilities, and Services of Architect.....	3
Article 3.	Architect Staff.....	6
Article 4.	Schedule of Services / Term.....	6
Article 5.	Construction Cost Budget	6
Article 6.	Fee and Method of Payment	7
Article 7.	Payment for Extra Services or Changes.....	8
Article 8.	Ownership of Data.....	8
Article 9.	Termination of Agreement	8
Article 10.	Architect Indemnity.....	10
Article 11.	Mandatory Mediation for Claims.....	11
Article 12.	Fingerprinting.....	11
Article 13.	Responsibilities of District	12
Article 14.	Liability of District	12
Article 15.	Nondiscrimination	12
Article 16.	Insurance.....	13
Article 17.	Covenant Against Contingent Fees	13
Article 18.	Entire Agreement/Modification	13
Article 19.	Non-Assignment of Agreement	13
Article 20.	Law, Venue.....	13
Article 21.	Alternative Dispute Resolution.....	14
Article 22.	Severability.....	14
Article 23.	Employment Status	14
Article 24.	Warranty and Certification of Architect.....	15
Article 25.	Cost Disclosure - Documents and Written Reports	16
Article 26.	Notices and Communications	16
Article 27.	Disabled Veteran Business Enterprise Participation	16
Article 28.	District's Right to Audit.....	16
Article 29.	Other Provisions	17
EXHIBIT A	RESPONSIBILITIES AND SERVICES OF ARCHITECT	A-1
EXHIBIT B	CRITERIA AND BILLING FOR EXTRA SERVICES.....	B-1
EXHIBIT C	SCHEDULE OF WORK.....	C-1
EXHIBIT D	PAYMENT SCHEDULE	D-1
EXHIBIT E	INSURANCE REQUIREMENTS	E-1

CERTIFICATES

This Agreement for Architectural Services is made as of **June 28, 2023**, between the **Mt. Diablo Unified School District** ("**District**") and **Nacht & Lewis Architects, Inc.** ("**Architect**") (individually a "**Party**" and collectively the "**Parties**"), for the following project ("**Project**"):

Middle School Kitchen Modernization & MU Refresh Project(s), located at **El Dorado Middle School (1750 West Street, Concord, CA 94521)**, as further described in the Project Scope attached hereto as **Exhibit A**.

The Project may include multiple components. Any one of the components or combination thereof may be changed, including terminated, in the same manner as the Project, as indicated herein, without changing in any way the remaining component(s). The provisions of this Agreement shall apply to each component without regard to the status of the remaining component(s). Architect must invoice for each component separately and District will compensate Architect for each component separately on a proportionate basis based on the level and scope of work completed for each component.

For and in consideration of the mutual covenants herein contained, the Parties agree as follows:

Article 1. Definitions

In addition to the definitions above, the following definitions for words and phrases shall apply when used in this Agreement, including all Exhibits:

- 1.1. Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
- 1.2. Architect:** The architect listed in the first paragraph of this Agreement, including all Consultants to Architect, although there is no contractual relationship between District and any Consultants employed by Architect under terms of this Agreement.
- 1.3. As-Built Drawings ("As-Built"):** Any document prepared and submitted by District's contractor(s) that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by change orders.
- 1.4. Bid Set:** The plans, drawings, and specifications at the end of the Construction Documents Phase that DSA has approved and that District can use to go out to bid for construction of the Project.
- 1.5. Conforming Set:** The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase. Architect shall ensure that DSA has approved all revisions to the Bid Set that are incorporated into the Conforming Set and for which DSA approval is required.
- 1.6. Construction Cost Budget:** The total cost to District of all elements of the Project designed or specified by Architect, as adjusted at the end of each design phase in accordance with this Agreement. The Construction Cost Budget is sometimes informally referred to as "hard costs" and does not include the compensation of Architect and Consultants, the cost of the land, rights-of-way, financing or other costs which are the responsibility of District, including construction management.
- 1.7. Construction Manager:** Architect recognizes that District may obtain the services of a construction manager for this Project. The Construction Manager, if any, upon prior written authorization by District, would be authorized to provide direction to Architect, and issue written approvals and Notices to Proceed on behalf of District. District reserves the right to designate a different Construction Manager at any time. Any task, including, but not limited to, reviews or approvals that District may perform pursuant to this Agreement may be performed by the Construction Manager,

unless that task indicates it shall be performed by District's Governing Board.

- 1.8. Consultant(s):** Any consultant(s), subconsultant(s), subcontractor(s), or agent(s) to Architect. Nothing in this Agreement shall create any contractual relationship between District and any Consultant employed by Architect under terms of this Agreement. Architect shall be solely responsible for any delay caused by its Consultants and any error or omission associated with Consultant's work.
- 1.9. Day(s):** Unless otherwise designated, "day(s)" means calendar day(s). "**Business days**" shall mean days except Saturday, Sunday, a day that is federally-recognized holiday, or a day that is a California-recognized holiday.
- 1.10. Deliverables** The work product and other output of the Services required to be performed by Architect as part of the Services, as specified in the relevant section of this Agreement.
- 1.11. District:** The **Mt. Diablo Unified School District**.
- 1.12. DSA:** The Division of the State Architect.
- 1.13. Force Majeure or Force Majeure Event:** Shall mean one (1) or more of the following events that prevents District's or Architect's performance and is beyond the reasonable contemplation of the Parties at the time they entered into this Agreement: fires; floods; lightning; explosion; windstorms; tornadoes; earthquakes; other natural catastrophes which neither Party can prevent; acts of nature or public enemy (including acts of terrorism); war (declared or undeclared); riot or similar civil disturbance; blockade; insurrections; revolution; epidemics; pandemics; viral outbreaks; quarantine restrictions; strikes; lockouts and other labor disputes; fuel shortages; or freight embargoes. Force Majeure Events may include the actions or omissions of third parties not under control of District or Architect. Notwithstanding the preceding, Force Majeure Events will **not** include market conditions reasonably foreseeable at the time the Parties entered into this Agreement and/or cost escalations that result from any action or inaction of Architect in performing the Services, including escalations to the Construction Cost Budget.
- 1.14. Project Budget:** The total amount indicated by District for the entire Project plus all other costs, including design, construction, administration, financing, and all other costs. The Project Budget is sometimes informally referred to as the "hard costs" and the "soft costs."
- 1.15. Record Drawings:** A final set of drawings prepared by Architect based upon marked-up prints, drawings, and other data furnished to Architect by Contractor that incorporates all changes from all As-Builts, sketches, details, and clarifications.
- 1.16. Service(s):** All labor, materials, supervision, services, tasks, and work that Architect is required to perform and that are required by, or reasonably inferred from, this Agreement, and that are necessary for the design and completion of the Project.
- 1.17. Visually Verify:** To verify to the fullest extent possible by physical inspection and reasonable investigation and without any destructive action.

Article 2. Scope, Responsibilities, and Services of Architect

- 2.1.** Architect shall render the Services as described in **Exhibit A**, commencing upon the execution of this Agreement. Architect's Services will be completed in accordance with the schedule attached as **Exhibit C**.
- 2.2.** Architect's Services hereunder shall be provided in conjunction with contracts between District and other Project participants including the Contractor and District's Construction Manager, if one is

retained by District for the Project.

- 2.3.** Architect and its Consultants shall provide Services for the Project: (i) using the professional skill and judgment; (ii) acting with due care and in accordance with applicable standards of care under California law for those providing similar services for projects of the size, scope and complexity of the Project for California school districts in or around the same geographic area of District; (iii) the terms of this Agreement; and (iv) in accordance with standards regarding the application and interpretation of applicable law, code, rule or regulation in effect at the time the Services are rendered (collectively, "Standard of Care").
- 2.4.** Architect's Services shall comply with professional architectural standards and applicable requirements of federal, state, and local law including, without limitation:
- 2.4.1. The California Building Standards Code (Title 24, California Code of Regulations), including amendments and ordinances.
- 2.4.2. Regulations of the State Fire Marshall (title 19, California Code of Regulations) and Pertinent Local Fire Safety Codes.
- 2.4.3. Americans with Disabilities Act.
- 2.4.4. Education Code of the State of California.
- 2.4.5. Government Code of the State of California.
- 2.4.6. Labor Code of the State of California, division 2, part 7, Public Works and Public Agencies.
- 2.4.7. Public Contract Code of the State of California.
- 2.4.8. U. S. Copyright Act.
- 2.5.** **Storm Water**. Architect, through its Consultant(s), shall be District's Qualified Storm Water Developer ("QSD") and shall prepare all documents necessary for District to be in compliance with the current Construction General Permit ("CGP") of the State Water Resources Control Board.
- 2.5.1. Architect must promptly inform District, in writing, if Architect will require a Consultant to be the QSD (e.g., Architect's Civil Engineer Consultant).
- 2.5.2. Prior to Architect's first submittal of Construction Documents for District's review and approval, Architect must identify all procedures, processes, items and work that will be required to comply with the CGP so that the Project contractor can price and perform that work.
- 2.6.** Architect shall contract with or employ at Architect's expense, any Consultant(s) Architect considers necessary to complete Architect's Services, including, but not limited to, architects, mechanical, electrical, structural, fire protection, civil engineers, landscape architects, food service, low voltage, data, and telephone Consultants, and interior designers, and cost estimation providers, licensed as required by applicable law. The names of Architect's Consultant(s) must be submitted to District for approval prior to commencement of Services. District reserves the right to reject Architect's use of any Consultant. Nothing in the foregoing procedure shall create any contractual relationship between District and any Consultant(s) employed by Architect under terms of this Agreement.
- 2.7.** Architect shall coordinate with District personnel and/or its designated representatives as may be

requested and desirable, including with other professionals employed by District for the design, coordination or management of other work related to the Project.

- 2.8. Architect shall identify the regulatory agencies that have jurisdiction over essential building and design elements and coordinate with and implement the requirements of the regulatory agencies, including, without limitation, California Department of Education (CDE), the Office of Public School Construction (OPSC), the Department of General Services (DGS), DSA Fire/Life Safety, DSA Access Compliance Section, DSA Structural Safety, State Fire Marshal, County and City Health Inspectors and any regulatory office or agency that has authority for review and supervision of school district construction projects.
- 2.9. Architect acknowledges the provisions in **Exhibit A** during the Construction Administration Phase entitled "Duty to Timely Respond to DSA Inquiries." Architect shall be solely responsible for any Project related delay and all costs or damages that result from Architect's failure to timely respond to DSA inquiries.
- 2.10. Architect shall provide Services required to obtain local agencies' approval for off-site work related to the Project including review by regulatory agencies having jurisdiction over the Project.
- 2.11. Architect shall coordinate with District's DSA Project Inspector(s).
- 2.12. Architect shall provide computer-generated pictures downloaded to computer files, updated as requested by District, that District may use on its website.
- 2.13. Architect shall coordinate and integrate its work with any of the following information and/or services as provided by District:
 - 2.13.1. Ground contamination or hazardous material analysis.
 - 2.13.2. Any asbestos and/or lead testing, design or abatement.
 - 2.13.3. Compliance with the California Environmental Quality Act ("CEQA"). Architect agrees to coordinate its work with that of any CEQA consultants retained by District, to provide current elevations and schematic drawings for use in CEQA compliance documents, and to incorporate any mitigation measures adopted by District into the Project design at no additional cost to District. If District and/or its CEQA consultant does not provide mitigation measures to Architect when reasonably required for incorporation into the Project design, Architect may invoice District for the work required to incorporate those mitigation measures as Extra Services in accordance with the Article herein entitled "Payment for Extra Services or Changes".
 - 2.13.4. Historical significance report.
 - 2.13.5. Soils investigation.
 - 2.13.6. Geotechnical hazard report, except as indicated in **Exhibit A**.
 - 2.13.7. Topographic surveys of existing conditions.
 - 2.13.8. State and local agency permit fees.
 - 2.13.9. Commissioning Agent and Reports.

2.13.10. Testing and Inspection.

Article 3. Architect Staff

- 3.1. Architect has been selected to perform the Services herein because of the skills and expertise of key individuals.
- 3.2. All proposed personnel and Consultants are subject to review and acceptance by District prior to commencing work on the Project. District's review and approval of any replacement personnel or Consultant is required prior to commencing work on the Project. District reserves the right to reject or request replacement of any personnel or Consultant in the best interest of the Project.
- 3.3. Architect shall not change any personnel or Consultant listed above without prior written notice to and approval by District, unless that person ceases to be employed by Architect. In either case, Architect shall provide District the opportunity to interview and approve any replacement personnel and/or Consultant.
- 3.4. If any personnel or Consultant (or Consultant employee) listed above fails to perform to the satisfaction of District, then upon written notice from District to Architect, Architect shall have five (5) Days to remove that person or Consultant from the Project and provide an acceptable replacement.
- 3.5. Architect represents that Architect has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of the Services and that no person having any such interest shall be employed by Architect.
- 3.6. Architect shall comply with Education Code section 17302(a) and agrees that any plans, specifications and/or estimates included in the Services shall be prepared under the supervision of licensed personnel, and that licensed personnel shall be in "responsible charge" of persons who observe the work of the Project construction.

Article 4. Schedule of Services / Term

- 4.1. Architect shall commence Services upon the execution of this Agreement and shall diligently perform the Services as described in **Exhibit A**, in compliance with the schedule in **Exhibit C**, and continue performance until the Project is completed ("Term"), or this Agreement is terminated as indicated herein, whichever is earlier. The Term is further detailed in the schedule in **Exhibit C**.
- 4.2. Time is of the essence and failure of Architect to perform Services in compliance with the schedule in **Exhibit C** is a material breach of this Agreement, unless the delay is beyond Architect's and/or its Consultant(s)' reasonable control.
- 4.3. The Parties agree that if this Agreement is in any way voided by an action based on Education Code section 17596, to the extent permitted by applicable law, the Parties may, if approved by District's Governing Board, enter into and approve subsequent agreement(s), addenda, or amendment(s) for terms of up to 5 years each and under the same terms and conditions of this Agreement.
- 4.4. Architect is not due any additional compensation or Fee if the Term is longer than indicated herein and acknowledges that its Fee is based on Architect performing the Services and all tasks within the Services and not based on the length of time to perform those Services or for the design or construction of the Project.

Article 5. Construction Cost Budget

- 5.1. Architect hereby accepts District's established Construction Cost Budget and Project scope. In accordance with **Exhibit A**, Architect shall have responsibility to further develop, review, and reconcile the Construction Cost Budget for District at the beginning of the Project and at the completion of each design phase. District and Construction Manager shall also have responsibility to develop, review, and reconcile the Construction Cost Budget with Architect.
- 5.2. Architect shall complete all Services as described in **Exhibit A**, including all plans, designs, drawings, specifications and other construction documents, so that the cost to construct the work designed by Architect will not exceed the Construction Cost Budget, as adjusted subsequently with District's written approval. Architect shall maintain cost controls throughout the Project to deliver the Project within the Construction Cost Budget.
- 5.3. District is relying on Architect's expertise regarding the cost of construction. If any of the following events occur:
- The lowest responsive base bid received exceeds the Construction Cost Budget by ten percent (10%) or more; or
 - The combined total of base bid and all additive alternates is ten percent (10%) or more below the Construction Cost Budget; or
 - The Construction Cost Budget increases in phases subsequent to the Schematic Design Phase due to reasonably foreseeable changes in the condition of the construction market in the county in which District's administrative office is located, in so far as these have not been caused by a Force Majeure Event.

Then District, in its sole discretion, has one or a combination of the following alternatives:

- 5.3.1. Give Architect written approval on an agreed adjustment to the Construction Cost Budget.
- 5.3.2. Authorize Architect to assist District to re-negotiate, when appropriate, and/or participate in re-bidding or requesting new proposals for the Project within three (3) months' time of receipt of bids (exclusive of District and other agencies' review time) at no additional cost to District.
- 5.3.3. Terminate this Agreement if the Project is abandoned, without further obligation by either Party.
- 5.3.4. Within three (3) months' time of receipt of bids, instruct Architect to revise the drawings and specifications (in scope and quality as approved by District) to bring the Project within the Construction Cost Budget for re-bidding at no additional cost to District. The modification of Construction Documents shall be the limit of Architect's responsibility arising out of the establishment of a Construction Cost Budget. All other obligations of Architect, including construction administration services, remain as stated in this Agreement.

Article 6. Fee and Method of Payment

- 6.1. Architect's Fee as described in **Exhibit D** shall be Architect's full compensation for the performance of all Services. Architect shall bill its Services in accordance with the requirements of **Exhibit D**.
- 6.2. No increase in Fee will be due from change orders generated during the Construction Administration Phase to the extent caused by Architect's error or omission.

- 6.3. Regardless of the structure of Architect's Fee, the Fee will be adjusted downward if the scope of Services is reduced by District in accordance with this Agreement. Architect will be paid for Services authorized and performed prior to District's notice to Architect of any reduction.

Article 7. Payment for Extra Services or Changes

- 7.1. District-authorized services outside of the scope described in **Exhibit A** or District-authorized reimbursables not included in Architect's Fee are "Extra Services." Any charge for Extra Services shall be paid by District as described in **Exhibit B** only upon certification that the claimed Extra Services were authorized and that the Extra Services have been satisfactorily completed. If any service is performed by Architect without prior **written** authorization by District or District's authorized representative, District will not be obligated to pay for that service.
- 7.2. The foregoing provision notwithstanding, District will pay Architect as described in **Exhibit B** for Extra Services that District or District's authorized representative verbally requests, provided that:
 - 7.2.1. Architect confirms each request in writing pursuant to the Notices and Communications Article of this Agreement,
 - 7.2.2. District has an opportunity to rescind or otherwise clarify the nature and/or scope of the request after receipt of Architect's notice, and
 - 7.2.3. Architect proceeds with those Extra Services not earlier than two (2) business days after District receives confirmation of the request from Architect.

Article 8. Ownership of Data

- 8.1. Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for District to use, at its discretion, all Deliverables that Architect or its Consultants prepare or causes to be prepared pursuant to this Agreement.
- 8.2. Architect retains its rights to all copyrights, designs and other intellectual property embodied in the Deliverables that Architect or its Consultants prepares or causes to be prepared pursuant to this Agreement.
- 8.3. Architect shall perform the Services and prepare all documents under this Agreement with the assistance of Computer Aided Design Drafting (CADD) (e.g., AutoCAD) Technology. Architect shall deliver to District, on request, a "thumb" drive or other District-approved media, electronic transfer or weblink, with these documents and that is compatible with the most current version of AutoCAD. As to any drawings that Architect provides in a CADD file format, District acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that District should rely on hard copies of all documents.
- 8.4. In order to evidence what CADD information was provided to District, Architect and District shall each sign a "hard" copy of reproducible documents that depict the information at the time Architect produces the CADD information. District agrees to release Architect from all liability, damages, and/or claims that arise due to any changes made to this information by any person other than Architect or Consultant(s) subsequent to it being provided to District.

Article 9. Termination of Agreement

- 9.1. If Architect fails to perform the Services to the reasonable satisfaction of District and as required by this Agreement, or if Architect fails to fulfill in a timely and professional manner Architect's material

obligations under this Agreement, or if Architect shall violate any of the material terms or provisions of this Agreement, District shall have the right to terminate this Agreement, in whole or in part, effective immediately upon District giving written notice thereof to Architect. In the event of a termination pursuant to this subdivision, Architect may invoice District for all Services performed until the date of the notice of termination. District shall have the right to withhold payment and deduct from Architect's invoice, any amounts equal to District's costs caused by Architect's negligent errors or omissions, recklessness, or willful misconduct. District may, at its discretion, provide Architect time to cure its default or breach.

- 9.2. District shall have the right in its sole discretion to terminate this Agreement for its own convenience. In the event of a termination for convenience, Architect may invoice District according to the percentage completed based on **Exhibit D** and District shall pay all undisputed invoice(s) for Services performed until the date of District's written notice of termination, not to exceed the Fee.
- 9.3. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of the termination.
- 9.4. Architect has the right to terminate this Agreement if District fails to make payment of undisputed amounts due to Architect hereunder. That termination shall be effective on the date District receives written notice of the termination from Architect. Architect may invoice District according to the percentage completed based on **Exhibit D** and District shall pay all undisputed invoice(s) for Services performed until Architect's notice of termination, not to exceed the Fee.
- 9.5. If, at any time in the progress of the Design Phases of the Project, District's Governing Board determines that the Project should be terminated, Architect, upon written notice from District of the termination, shall immediately cease performing Services. District shall pay Architect only the fee associated with the Services performed, from Architect's last paid invoice up to the date of the notice of termination, not to exceed the Fee.
- 9.6. If District suspends the Project for more than one hundred twenty (120) consecutive Days, Architect shall be compensated for Services performed prior to the notice of suspension. When the Project is resumed, the schedule shall be adjusted and Architect's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of Architect's Services. If District suspends the Project for more than eighteen (18) months, Architect may terminate this Agreement by giving written notice.
- 9.7. Following termination of this Agreement, for any reason whatsoever, Architect shall promptly deliver to District upon written request and at no cost to District the following items (hereinafter "Instruments of Service") in the electronic format requested by District and which District shall have the right to utilize in any way permitted by statute:
 - 9.7.1. One (1) set of the Contract Documents, including the bidding requirements, specifications, and all existing cost estimates for the Project, in electronic (.pdf) format.
 - 9.7.2. One (1) set of non-fixed image CADD drawing files in DWG format of plans developed for the Project as of the date of termination, including, without limitation, any architectural, plumbing, structural mechanical and electrical files; roof plan(s); sections and exterior elevations of the Project.
 - 9.7.3. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data and reports prepared by Architect under this Agreement.

- 9.8. In the event District changes or uses any fully or partially completed documents without Architect's knowledge and participation, District agrees to release Architect of responsibility for those changes, and shall indemnify and hold Architect harmless from and against any claim, including, but not limited to, reasonable attorneys' fees, on account of any damage or loss to property or persons, including injuries or death, arising out of that change or use except to the extent Architect is found to be liable in a forum of competent jurisdiction. In the event District uses any fully or partially completed documents without Architect's full involvement, District shall remove all title blocks and other information that might identify Architect and Architect's Consultants.

Article 10. Architect Indemnity

- 10.1. To the fullest extent permitted by California law and in accordance with California Civil Code section 2782.8, Architect shall indemnify, protect, defend and hold free and harmless District, its agents, representatives, officers, consultants, employees, trustees and members ("Indemnified Parties") from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney's and consultants' fees and causes of action to property or persons, including personal injury and/or death ("Claim(s)"), to the extent that the Claim(s) arises out of, pertains to, or relates to the negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), or willful misconduct of Architect, its directors, officials, officers, employees, contractors, subcontractors, Consultants or agents arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. This indemnity excludes Architect's liability as to the active or sole negligence or willful misconduct of District.

- 10.2. The following shall be Claims, to the extent they satisfy the definition of Claims herein:

10.2.1. **Cost of Project delays.** Without limiting Architect's liability for indirect cost impacts due to Project delays, the direct costs for which Architect shall be liable shall be proportionate to the amount District is liable to the Project contractor(s), subcontractor(s), suppliers, inspector(s), Construction Manager(s) for the Project delays, including the proportionate cost of interim housing necessitated by Project delays, to the extent that the Project delays arise out of, pertain to, relate to or result from the negligent errors or omissions, recklessness, or willful misconduct of Architect in the performance of any Services that falls below the Standard of Care as defined herein.

10.2.2. **Cost of construction change orders for errors and omissions.** Without limiting Architect's liability for indirect cost impacts, the direct costs for which Architect shall be liable shall equal the difference between the cost of the change order(s) and the reasonable cost of the work had that work been a part of the originally prepared construction documents, to the extent that the change order(s) arise out of, pertain to, relate to or result from the negligent errors or omissions, recklessness, or willful misconduct of Architect in the performance of any Services that falls below the Standard of Care as defined herein.

These amounts may be paid by Architect to District or District may in reasonable good faith withhold those costs from amounts owing to Architect, pending resolution of the Claim(s).

- 10.3. Architect's duty to indemnify and defend under this Agreement shall apply during the term of this Agreement and shall survive any expiration or termination of this Agreement until any such Claim(s) are barred by the applicable statute of limitations and is in addition to any other rights or remedies that District may have under the law or this Agreement.
- 10.4. Architect's duty to defend shall begin upon District's notification to Architect of a Claim. At that time, Architect shall pay for the defense of the Claim at its sole cost. At the resolution of a Claim, either by

dispute resolution, settlement, litigation, arbitration or otherwise, District and Architect shall base their proportionate percentage of fault for the Claim either upon (1) the determination of a third-party neutral that adjudicated or settled the Claim (e.g., a mediator, an arbitrator, a judge, etc.) or (2) if no determination was made, based on a mutual good faith determination of District and Architect. At that time the Parties shall determine the defense costs that are chargeable to Architect and a payment from one Party to the other Party shall be made within sixty (60) Days to satisfy that reconciliation.

Article 11. Mandatory Mediation for Claims

- 11.1. The Parties agree prior to commencing any legal action relating to any Claim to submit the Claim to a mandatory good-faith mediation process (“Mediation”). The Parties’ expectations are that if the Claim is made by a third party (e.g., a contractor), that the third party will be a participant in the Mediation. The Parties agree that any statute of limitations applicable to any Claim shall be tolled for the period from the date a Party requests Mediation through fourteen (14) Days after termination of the Mediation, unless otherwise agreed to by the Parties.
- 11.2. Except as set forth below, the Parties agree to refrain from filing, maintaining or prosecuting any action related to the Claim during the pendency of the Mediation provided that the Mediation must commence within thirty (30) Days after a Party makes written demand to the other for Mediation.
- 11.3. The Parties shall participate in a minimum of one full-day mediation session before the Mediation may be declared unsuccessful and terminated by either Party. The Mediation shall be conducted in accordance with the rules as the Parties agree upon, or in the absence of agreement, in accordance with the Commercial Mediation Rules of JAMS/Endispute. Evidence of anything said, any admission made, and any document prepared in the course of the Mediation shall not be admissible in evidence or subject to discovery in any court action pursuant to Evidence Code Section 1152.5.
- 11.4. The Parties shall mutually agree to the selection of a mediator who must be an attorney that is experienced in public works construction claims. If the Parties are unable to agree upon a mediator, then the mediator shall be appointed by JAMS/Endispute.
- 11.5. The Mediation shall take place at a location within twenty (20) miles of District’s administrative office. The mediator’s fees and administrative fees, if any, shall be split equally between the Parties, but, unless otherwise agreed to in writing, each Party shall bear its own attorney’s fees.
- 11.6. If any Party commences a legal action without first attempting to resolve the Claim as required by this Article 11, that Party shall be in breach of this Agreement and shall not be entitled to recover attorney’s fees that might have otherwise been recoverable.
- 11.7. This Mediation process shall only apply to Claims pursuant to the Architect Indemnity provision herein and shall not apply to any dispute to be resolved pursuant to the Alternative Dispute Resolution provision herein.

Article 12. Fingerprinting

Architect has read and understands Education Code section 45125.2 and acknowledges that, according thereto, the Parties have determined and agreed that the Services provided by Architect, Consultants, and their employees will have only limited contact with pupils at most. Architect agrees that it is responsible for complying with Education Code section 45125.1 throughout the completion of the Services. Architect shall promptly notify District in writing of any facts or circumstances which might reasonably lead District to determine that contact will be more than limited as defined by Education Code section 45125.1(d).

Article 13. Responsibilities of District

- 13.1. District shall examine the documents submitted by Architect and shall render any decision(s) required of District, in a timely manner to avoid unreasonable delay in the performance of Architect's Services.
- 13.2. District shall verbally or in writing advise Architect if District becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in Architect's Deliverables. Failure to provide this notice shall not relieve Architect of its responsibility therefore, if any.
- 13.3. Unless District and Architect agree that a hazardous materials consultant shall be a Consultant of Architect, District shall furnish the services of a hazardous material consultant or other consultants when those services are requested in writing by Architect and deemed necessary by District or are requested by District. These services include: asbestos and lead paint survey; abatement documentation; and specifications related to these matters which are to be incorporated into bid documents prepared by Architect. If the hazardous materials consultant is furnished by District and is not a Consultant of Architect, the specifications shall indicate that the specifications prepared by District's consultant relating to these matters, are included in Architect's bid documents for District's convenience and have not been prepared or reviewed by Architect. The bid documents shall also direct questions about the specifications to the consultant that prepared the specifications.
- 13.4. District personnel and/or its designated representatives shall coordinate with Architect as may be requested and beneficial for the coordination or management of work related to the Project.
- 13.5. District shall timely provide to Architect all relevant information in its possession regarding the Project that is necessary for performance of Architect's Services.
- 13.6. District shall pay all fees required by agencies having jurisdiction over the Project.

Article 14. Liability of District

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

Article 15. Nondiscrimination

- 15.1. Architect agrees that no discrimination shall be made in the employment of persons under this Agreement because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military and veteran status, or any other protected characteristic of a person.
- 15.2. Architect shall comply with any applicable regulations and laws governing nondiscrimination in employment.

Article 16. Insurance

16.1. Architect shall comply with the insurance requirements for this Agreement, set forth in Exhibit E.

16.2. Architect shall provide certificates of insurance and endorsements to District prior to commencement of the Services as required in Exhibit E.

Article 17. Covenant Against Contingent Fees

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

Article 18. Entire Agreement/Modification

18.1. This Agreement, including the Exhibits incorporated by reference into this Agreement, is considered a completely integrated agreement, supersedes all previous contracts or agreements of any kind, oral or written, and constitutes the entire understanding and agreement of the Parties. No extrinsic evidence of any kind or character may be admitted to alter or amend the terms of this completely integrated agreement, unless evidenced by an amendment to this Agreement as provided for herein. Architect shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both Parties. Architect specifically acknowledges that in entering this Agreement, Architect relies solely upon the provisions contained in this Agreement.

18.2. This Agreement shall not include or incorporate the terms of any proposal, general conditions, conditions, master agreement, or any other terms or documents prepared by Architect. The attachment of any Architect-prepared document to this Agreement shall not be interpreted or construed to incorporate those terms into this Agreement, unless District approves of that incorporation in a separate writing signed by District. If proposals, quotes, statement of qualifications, or other similar documents prepared by Architect are incorporated into this Agreement, then that incorporation shall be limited to those terms that describe only Architect's scope of work, rates, price, and schedule.

Article 19. Non-Assignment of Agreement

This Agreement is intended to secure the specialized services of Architect. Therefore, Architect may not assign, transfer, delegate or sublet any interest therein without the prior written consent of District and any purported assignment, transfer, delegation or sublease without District's prior written consent shall be considered null and void. Likewise, District may not assign, transfer, delegate or sublet any interest therein without the prior written consent of Architect and any purported assignment, transfer, delegation or sublease without Architect's prior written consent shall be considered null and void.

Article 20. Law, Venue

20.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any clause of this Agreement shall be determined and governed

by the laws of the State of California.

- 20.2.** The county in which the Project is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

Article 21. Alternative Dispute Resolution

21.1. Architect's Invoices.

21.1.1. If District disapproves of any portion or amount(s) of Architect's invoices, District shall within thirty (30) Days of receipt of a disputed invoice, communicate to Architect in writing, with reasonable detail, the portion or amount of Architect's invoice that is disapproved for payment, the portion or amount that is approved for payment, and the basis for District's disapproval ("Disputed Architect Invoice Detail").

21.1.2. If Architect disagrees with the Disputed Architect Invoice Detail, Architect shall communicate to District in writing, and request to meet and confer in good faith to determine if the disagreement can be resolved. If reasonably possible, the meet and confer shall be scheduled to occur within thirty (30) Days of Architect's request.

21.1.3. If the Parties cannot resolve the matter during the meet and confer, the Disputed Architect Invoice will be handled as a "dispute" as provided herein.

21.2. Disputes between the Parties shall be resolved by the following processes:

21.2.1. **Negotiation.** The Parties shall first attempt in good faith to resolve any dispute by negotiation. The Parties' meet and confer process for any Disputed Architect Invoice Detail as detailed above, shall satisfy this negotiation requirement.

21.2.2. **Mediation.** Within thirty (30) Days following a Party's receipt of a notice from the other Party requesting mediation, the Parties shall:

21.2.2.1. Administer the dispute pursuant to the Mandatory Mediation provisions indicated herein, or

21.2.2.2. If there are no other parties involved, administer the dispute pursuant to non-binding mediation administered in accordance with the Commercial Mediation Rules of JAMS/Endispute, unless waived by mutual stipulation of the Parties.

21.2.3. **Litigation.** Disputes that are not settled following completion of the negotiation and/or mediation processes shall be litigated in the California Superior Court in the county in which the Project is located.

- 21.3.** Architect shall neither rescind nor stop the performance of its Services pending the outcome of any dispute.

Article 22. Severability

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

Article 23. Employment Status

- 23.1.** Architect shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which Architect performs the Services; provided always, however, that the Services to be provided by Architect shall be provided in a manner consistent with all applicable standards and regulations governing such Services.
- 23.2.** Architect understands and agrees that Architect's personnel are not and will not be eligible for membership in or any benefit from any District group plan for hospital, surgical or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee.
- 23.3.** Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Architect is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Architect which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 23.4.** Should a relevant taxing authority determine a liability for Services performed by Architect for District, upon notification of such fact by District, Architect shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Architect under this Agreement (offsetting any amounts already paid by Architect which can be applied as a credit against that liability).
- 23.5.** A determination of employment status pursuant to the preceding two (2) paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Architect shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Architect is an employee for any other purpose, then Architect agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Architect was not an employee.
- 23.6.** Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 24. Warranty and Certification of Architect

- 24.1.** Architect warrants and certifies that Architect is properly certified and licensed under the laws and regulations of the State of California to provide the Services that it has agreed to perform.
- 24.2.** Architect warrants and certifies that it is aware of the provisions of the California Labor Code that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with those provisions before commencing the performance of the Services.
- 24.3.** Architect warrants and certifies that it is aware of the provisions of California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since Architect is performing Services as part of an applicable "public works" or "maintenance" project, and since the total compensation is One Thousand Dollars (\$1,000) or more, Architect agrees to fully comply with and to require its

Consultant(s) to fully comply with all applicable Prevailing Wage Laws. Architect shall ensure that it and its Consultants comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its Certified Payroll Records to the Labor Commissioner, and are registered pursuant to Labor Code section 1725.5.

Article 25. Cost Disclosure - Documents and Written Reports

Architect shall be responsible for compliance with California Government Code section 7550, if the total cost of this Agreement exceeds Five Thousand Dollars (\$5,000).

Article 26. Notices and Communications

Notices and communications between the Parties may be sent to the following addresses:

District:	Architect:
Mt. Diablo Unified School District	Nacht & Lewis Architects, Inc.
1936 Carlotta Drive	600 Q Street, Suite 100
Concord, CA 93519	Sacramento, CA 95811
Attn: Superintendent	Attn: Brian Maytum

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the day after delivery.

Article 27. Disabled Veteran Business Enterprise Participation

Pursuant to section 17076.11 of the Education Code, District has a participation goal for disabled veteran business enterprises (DVBEs) of at least three (3) percent, per year, of funds expended each year by District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the "Act"). This Project may use funds allocated under the Act. Therefore, to the extent feasible and pertaining to future hirings, Architect, before it executes this Agreement, shall provide to District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBEs in conjunction with this Agreement, and documentation demonstrating Architect's good faith efforts to meet these DVBE goals.

Article 28. District's Right to Audit

- 28.1.** District retains the right to review and audit, and the reasonable right of access to Architect's and any Consultant's premises to review and audit Architect's compliance with the provisions of this Agreement ("District's Audit Right"). District's Audit Right includes the right to inspect, photocopy, and to retain copies, outside of Architect's premises, of any Project-related records, documents and other information with appropriate safeguards, if such retention is deemed necessary by District in its sole discretion. District shall keep this information confidential, as allowed by applicable law.
- 28.2.** District's Audit Right includes the right to examine all books, records, documents and any other evidence of procedures and practices that District determines are necessary to discover and verify that Architect is in compliance with the requirements of this Agreement.
- 28.3.** If there is a claim for additional compensation or for Extra Services, District's Audit Right includes the right to examine books, records, documents, and any other evidence and accounting procedures and practices that District determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

- 28.4.** Architect shall maintain complete and accurate records for a minimum of seven (7) years and in accordance with generally accepted accounting practices in the industry. Architect shall make available to District for review and audit, all Project related accounting records and documents, and any other financial data. Upon District's request, Architect shall submit exact duplicates of originals of all requested records to District.
- 28.5.** Architect shall include audit provisions in all of its subcontracts and shall ensure that this Article is binding upon all Consultants.
- 28.6.** Architect shall comply with these provisions within fifteen (15) Days of District's written request to review and audit any Project-related documents, Deliverables, records and information maintained by Architect.
- 28.7.** Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of more than Ten Thousand Dollars (\$10,000), this Agreement shall be subject to examination and audit by the State Auditor, at the request of District, or as part of any audit of District, for a period of three (3) years after final payment under this Agreement.

Article 29. Other Provisions

- 29.1.** Neither District's review, approval of, nor payment for, any of the Services shall be construed to operate as a waiver of any rights under this Agreement, and Architect shall remain liable to District in accordance with this Agreement for all damages to District caused by Architect's failure to perform any of the Services to the Standard of Care.
- 29.2.** Each Party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each Party acknowledges that the drafting of this Agreement was the product of negotiation, that no Party is the author of this Agreement, and that this Agreement shall not be construed against any Party as the drafter.
- 29.3.** Architect shall issue a credit to District as an offset to the Fee, in an amount equal to one hundred percent (100%) of the tax deduction and/or credit Architect receives, if any, based on the Project per the energy efficient commercial building deduction. (26 U.S.C. §179D)
- 29.4.** Architect acknowledges that District is a public agency that is subject to heightened curiosity by the news media and the public and that Architect may not be apprised of all facts surrounding the Project. Accordingly, Architect shall promptly refer all inquiries from the news media or public concerning this Agreement or Architect's performance of Services to District, and Architect shall not make any statements or disclose any documents to the media or the public relating to the performance of Services or the effects caused thereby. If Architect receives a complaint from a citizen or member of the public concerning the performance or effects of this Agreement, it shall promptly inform District of that complaint. In its sole discretion, District shall determine the appropriate response to the complaint.
- 29.5. Confidentiality.** Architect, and its Consultants, and employee(s) shall maintain the confidentiality of all information received in the course of performing the Services. Architect understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
- 29.6.** All Exhibits and all Certificates attached hereto are hereby incorporated by this reference and made a part of this Agreement.

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

Dated: 10/23/, 2023

Mt. Diablo Unified School District

By: _____

Print Name: ADRIAN VARGAS

Print Title: Chief Business Officer

Dated: June 21, 2023

Nacht & Lewis Architects, Inc.

By: _____

Print Name: Brian J. Maytum, AIA

Print Title: Principal / Vice-President

EXHIBIT A

RESPONSIBILITIES AND SERVICES OF ARCHITECT

TABLE OF CONTENTS

- 1. BASIC SERVICES**
- 2. PRE-DESIGN AND START-UP SERVICES**
- 3. SCHEMATIC DESIGN PHASE**
- 4. DESIGN DEVELOPMENT PHASE**
- 5. CONSTRUCTION DOCUMENTS PHASE**
- 6. BIDDING PHASE**
- 7. CONSTRUCTION ADMINISTRATION PHASE**
- 8. CLOSEOUT PHASE**
- 9. MEETINGS / SITE VISITS / WORKSHOPS**

Project Description. The Project shall include the design of the following at Middle School Kitchen Modernization & MU Refresh Project(s), located at El Dorado Middle School (1750 West Street, Concord, CA 94521).

El Dorado Middle School

Architect shall provide all professional services necessary for completing the following:

- Upgrade to the existing facility to include a the complete replacement of the kitchen including the replacement of all food service equipment, exhaust hoods, utilities and the reconfiguration of the kitchen to better respond to current needs. Kitchen to receive new code compliant cook line, exhaust hood with fire suppression system and walk-in freezer/refrigerator.
- Upgrade the existing assembly area with new finishes, improved acoustics, new lighting, new audio/visual system per MDUSD standards, removal of existing unit ventilators and other improvements as needed to better respond to current needs.
- Infill the existing skylights.
- Provide new HVAC systems throughout the building, including the kitchen and assembly areas.
- Explore the condition of any existing EMS system and make improvements as required to connect new work.
- Provide minor modifications to the existing low voltage systems to accommodate new work. It is anticipated that the existing EST fire alarm system can be modified to accommodate any reconfiguration of the kitchen and overall building improvements. Upgrades will be required to provide code compliant voice-evac function to the existing fire alarm system. Phone, clock/bell, intercom and data systems will be maintained and modified within the building as needed to accommodate the new work.
- Remove all abandon equipment from the existing boiler room and custodian room and convert boiler room to storage space if possible.
- Minor site improvements outside the building will be required to replace the grease interceptor and provide DSA required accessible site upgrades including accessible parking, drop-off and path of travel to the project area and main administration office.
- The refinement of this scope will be done during early programming and schematic design collaboration between the MDUSD and the design team. On-site meetings will be held to discuss this scope in detail and determine the best course of action.

1. BASIC SERVICES

Architect agrees to provide the services described below:

- 1.1.** Architect shall be responsible for the professional quality and technical accuracy of all studies, reports, projections, master plans, designs, drawings, specifications and other services furnished by Architect under this Agreement as well as coordination with all Master plans, studies, reports and other information provided by District. Architect shall, without additional compensation, correct or revise any errors or omissions in its studies, reports, projections, master plans, design, drawings, specifications and other services.

- 1.2.** District shall provide all information available to it to the extent the information relates to Architect's scope of work. This information shall include, if available;
 - 1.2.1. Physical characteristics;
 - 1.2.2. Legal limitations and utility locations for the Project site(s);
 - 1.2.3. Written legal description(s) of the Project site(s);
 - 1.2.4. Grades and lines of streets, alleys, pavements, and adjoining property and structures;
 - 1.2.5. Adjacent drainage;
 - 1.2.6. Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the Project site(s);
 - 1.2.7. Locations, dimensions and necessary data with respect to existing buildings, other improvements and trees;
 - 1.2.8. Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths;
 - 1.2.9. Surveys, reports, as-built drawings; and
 - 1.2.10. Subsoil data, chemical data, and other data logs of borings.

- 1.3. Site Inspection / Visual Verification.** During or before the "Pre-Design and Start-Up Services" identified below, Architect shall Visually Verify all available information and all existing utilities related to the Project, including capacity, and document the location of existing utility lines, telephone, water, sewage, storm drains and other lines on or around the Project to the extent determinable by the documents provided by District.
 - 1.3.1. If Architect determines that the information or documentation District provides is insufficient for purposes of design or if Architect requires additional information through further action (e.g., required destructive action; a topographical survey; geotechnical report; structural, mechanical, and/or chemical tests; tests for air and/or water pollution; test borings; test pits; determinations of soil bearing values; percolation tests; ground corrosion tests; resistivity tests; tests for hazardous materials; tests for anticipating subsoil conditions; and/or other information that District has not provided), Architect shall request that District acquire that information at the soonest possible time after Architect becomes aware that this additional information is needed. Architect must include in that request:
 - 1.3.1.1. A report with specific details on the scope of the additional information or documentation that Architect determines is needed, including the process

required (e.g., destructive investigation/testing) to acquire that additional information or documentation; and

1.3.1.2. The cost that Architect proposes to charge District to acquire that required additional information or documentation.

1.3.2. If the Parties mutually agree, this additional information and service shall be procured through Architect, who may invoice District for those services as Extra Services.

1.4. Technology Backbone. Architect shall be responsible for the coordination of the design and the layout of the technology backbone system with District's Information Technology Department and/or District's technology and security consultant and lay out any included technology backbone system. The coordination effort shall include location and routing of raceways, conduits and outlets and the required spaces to accommodate electrical, data and communication wiring. Architect and consultant(s) shall prepare and be responsible for documents prepared by Architect based on the information provided by District's technology and security consultant as appropriate to the level of design completion.

1.5. District Standards. Architect and its Consultants shall incorporate into the Deliverables all adopted District product standards for facilities and construction. Architect and its Consultants shall not incorporate any specific products, items, systems, or materials unless the District's Governing Board has adopted those item(s) as a District standard.

1.6. Interior Design. Provide interior design and other similar services required for or in connection with selection and color coordination of materials. Architect is required to coordinate the placement of furniture, equipment layout, or schematic space allocation. District shall procure furnishings and moveable equipment. Advise District on lead times and availability of all Project equipment, materials, supplies, and furnishings to ensure that all of these will be available to District in a timely fashion so as to not delay the Project and/or delay District's beneficial occupancy of the Project.

1.7. Mandatory Assistance

Except for Claims as defined in this Agreement, if a third-party dispute or litigation, or both, arises out of, or relates in any way to the Services provided under this Agreement, upon District's request, Architect, its agents, officers, and employees agree to assist in resolving the dispute or litigation. Architect's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation ("Mandatory Assistance").

District will compensate Architect for fees Architect incurs in providing Mandatory Assistance as Extra Services under Exhibit B. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third-party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Architect, its Consultants, agents, officers, and employees, Architect shall reimburse District the fees paid for Mandatory Assistance.

1.8. Oversight and Inspection Requirements

1.8.1. Architect agrees and acknowledges that Architect must comply with all applicable DSA requirements, including the requirements of the most recent versions (including any updates to any of these documents made by DSA during the performance of the Services) of DSA documents PR 13-01 (Procedure: Construction Oversight Process) attached hereto as Exhibit F (PR 13-01), IR A-6 (Interpretation of Regulations:

Construction Change Document Submittal and Approval Process) attached hereto as Exhibit G (IR A-6, DSA Form 3 (Project Submittal Checklist) attached hereto as Exhibit H (Form 3), and all other applicable documents and requirements.

- 1.8.2. Distribution of CCD Category A Documents. Architect shall provide the contractor and Project Inspector with DSA approved Construction Change Document (CCD) Category A prior to commencement of work shown thereon.
- 1.8.3. CCD Category A Statement in Final Verified Report. The final verified report (form DSA-6A/E) from Architect must include a statement that all changes to or affecting the Structural Safety, Access Compliance or Fire & Life Safety portions of the Project have been approved by DSA.
- 1.8.4. No DSA Approval. If Architect determines that the Project does not require DSA approval, Architect shall inform District in writing prior to the Bidding Phase, as to why it has determined that DSA approval is not required. Architect shall advise District the name of the agency having jurisdiction over the Project (e.g., the city in which the Project is located) and obtain, on behalf of District, all permits and approvals required to construct the Project.

2. PRE-DESIGN AND START-UP SERVICES

2.1. Project Initiation

Within seven (7) Days following execution of this Agreement Architect shall:

- 2.1.1. Review the proposed Schedule of Work set forth in Exhibit C and prepare a detailed scope of work list and work plan for documentation in a computer-generated Project schedule to District's satisfaction. This scope of work list and work plan will identify specific tasks including, but not limited to: interviews, data collection, analysis, report preparation, planning, architectural programming, concepts and schematic design preparation and estimating that are part of the work of the Project. Architect shall also identify milestone activities or dates, specific task responsibilities, required completion times necessary for the review and approval by District and by all regulatory agencies and additional definition of the Deliverables.
- 2.1.2. Review the developed work plan with District and its representatives to familiarize them with the proposed tasks and schedule and develop necessary modifications.

2.2. Development of Architectural Program

Architect shall prepare for District's review an architectural program as follows:

- 2.2.1. Perform pre-design investigations to establish appropriate guidelines around which and within which the Project is to be designed. Identify design issues relating to functional needs, directives and constraints imposed by regulatory codes. Review all data pertinent to the Project including survey, site maps, geotechnical reports and recommendations, soil testing results reports, and pertinent historical data, and other relevant information provided by District.
- 2.2.2. Review applicable code sections of the California Code of Regulations, Title 24, including amendments.

- 2.2.3. Identify design issues relating to functional needs, directives and constraints imposed by applicable regulatory codes.
- 2.2.4. Based on survey and topography data provided by District, input into computer and develop existing conditions base for the Schematic Design Phase.
- 2.2.5. Administer Project as required to coordinate work with District and between Consultants.
- 2.2.6. Confer with District's Technology Department to verify technological requirements for the Project.

2.3. Construction Cost Budget

- 2.3.1. Architect shall have responsibility to further develop review and reconcile the Construction Cost Budget within the parameters of the Project Budget established in District's implementation plan. The estimates forming the basis of the Construction Cost Budget are to be based on the developed functional architectural programs as approved by District. The following conditions apply to the Construction Cost Budget prepared by Architect:
 - 2.3.1.1. All costs are to be based on current bid prices, with escalation rate and duration clearly identified as a separate line item; rate of cost escalation and projected bid and construction dates are to be as approved by District and its representatives.
 - 2.3.1.2. Format shall be in a building systems format (e.g., foundations, substructure, structural system, exterior wall enclosure, window systems, etc.) for new buildings, and summarized by the Construction Specification Institute (CSI) category for buildings being modernized.
 - 2.3.1.3. Contingencies for design, bidding, and construction are to be included as individual line items, with the percentage and base of calculation clearly identified.
 - 2.3.1.4. Architect shall include all information and estimates from District and/or Construction Manager that are intended to be part of the Construction Cost Budget.
 - 2.3.1.5. Seven (7) Days prior to submittal of documents, Architect shall submit its proposed Construction Cost Budget to District and Construction Manager for review and approval. At that time, Architect shall coordinate with District and Construction Manager to further develop, review, and reconcile the Construction Cost Budget.
 - 2.3.1.6. Mechanical, electrical, civil, landscape and estimating Consultant(s) shall participate in the progress meeting as appropriate and shall provide input and feedback into the development of the Construction Cost Budget.
- 2.3.2. The Construction Cost Budget for the Project at this stage must at no point exceed District's Project Budget allocation for construction, unless specifically approved in writing by District. The accuracy of the Construction Cost Budget shall be the responsibility of Architect.

2.3.3. Throughout all Design Phases, Architect must recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary so that the design comes within the estimated Construction Cost Budget. Architect will receive no additional fee for any redesign service necessary to revise the Project design or Deliverables due to cost escalations or market conditions that Architect should have reasonably anticipated.

2.4. Presentation

Architect along with any involved consultant(s) shall present and review with District and, if directed, with its Governing Board, the summary and detail of work involved in this Phase, including two dimensional renderings of any proposed facility suitable for public presentation.

2.5. Deliverables and Numbers of Copies

Architect shall provide to District a hard copy of the following items produced in this Phase, together with one copy of each item in electronic format:

- 2.5.1. Two copies of Architectural Program (include comparison between developed program and "model" program, include narrative explaining any substantial deviations);
- 2.5.2. Two copies of Site Plan;
- 2.5.3. Two copies of revised Construction Cost Budget;
- 2.5.4. Two copies of final Schedule of Work;
- 2.5.5. Two copies of meeting Reports/Minutes from Kick-off and other meetings; and
- 2.5.6. Two copies of renderings provided to District for public presentation.

2.6. Meetings

During this Phase, Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops.

3. SCHEMATIC DESIGN PHASE

Upon District's acceptance of Architect's work in the previous phase and assuming District has not delayed or terminated this Agreement, Architect shall prepare for District's review a Schematic Design study, containing the following items as applicable to the Project scope:

- 3.1. Prepare and review with District staff a scope of work list and work plan identifying specific tasks including, but not limited to: interviews, data collection, analysis, report preparation, planning, architectural programming, concepts and schematic design preparation and estimating that are part of the work of the Project. Identify milestone activities or dates, specific task responsibilities of Architect, required completion times necessary for the review and approval by District and by pertinent regulatory agencies and further define Deliverables.
- 3.2. Review the developed work plan with District and its representatives to familiarize them with the proposed tasks and schedule and develop necessary modifications.

3.3. Architectural

- 3.3.1. Scaled floor plans showing overall dimensions, identifying the various major areas and their relationship. Include circulation and room-by-room tabulation of all net usable floor areas and a summary of gross floor area. Also, provide typical layouts of major equipment or operational layout.
- 3.3.2. Preliminary building exterior elevations and sections in sufficient detail to demonstrate design concept indicating location and size of fenestration.
- 3.3.3. As applicable, identify proposed roof system, deck, insulation system and drainage technique.
- 3.3.4. Identify minimum finish requirements, including ceiling, floors, walls, doors, windows, and types of hardware.
- 3.3.5. Identify code requirements, include occupancy classification(s) and type of construction.

3.4. Structural

- 3.4.1. Layout structural systems with dimensions and floor elevations. Identify structural systems (including pre-cast, structural steel with composite deck, structural steel bar joists); with preliminary sizing identified.
- 3.4.2. Identify foundation systems (including fill requirements, piles, caissons, spread footings); with preliminary sizing identified.

3.5. Mechanical

- 3.5.1. Calculate block heating, ventilation, and cooling loads including skin versus internal loading.
- 3.5.2. Select a minimum of two (2) HVAC systems that appear compatible with loading conditions for subsequent life cycle costing.
- 3.5.3. Show selected system on drawings as follows:
 - 3.5.3.1. Single line drawing(s) of all mechanical equipment spaces, ductwork and pipe chases.
 - 3.5.3.2. Location and preliminary sizing of all major equipment and duct work in allocated spaces.
 - 3.5.3.3. Schematic piping.
 - 3.5.3.4. Temperature control zoning.
- 3.5.4. Provide design criteria to include the intent base of design for the Project.
- 3.5.5. Evaluate and confirm the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.

3.6. Plumbing

- 3.6.1. As applicable, identify plumbing systems, including a conceptual single line diagram showing major piping and equipment, and identifying the sizes and locations of major equipment items including toilets, pumps, tanks, vaults and related items.

3.7. Electrical

- 3.7.1. Calculate overall approximate electrical loads.
- 3.7.2. Identify proposed electrical system for service, power, lighting, low voltage and communication loads, including proposed or planned additional buildings or other facilities on the Project site.
- 3.7.3. Show system(s) selected on drawings as follows:
 - 3.7.3.1. Single line drawing(s) showing major distribution system.
 - 3.7.3.2. Location and preliminary sizing of all major electrical systems and components including:
 - 3.7.3.2.1. Load centers.
 - 3.7.3.2.2. Main panels.
 - 3.7.3.2.3. Switch gear.
- 3.7.4. Provide design criteria to include the intent base of design for the Project.
- 3.7.5. Evaluate and confirm the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.

3.8. Civil

- 3.8.1. Develop on and off-site utility systems such as sewer, water, storm drain, firewater lines and fire hydrants.
- 3.8.2. Identify surface improvements including roadways, walkways, parking (with assumed wheel weights), preliminary finish grades and drainage.
- 3.8.3. Coordinate finish floor elevations with architectural site plan.

3.9. Landscape

Develop and coordinate landscape design concepts entailing analysis of existing conditions, proposed components and how the occupants will use the facility. Include location and description of planting, ground improvements and visual barriers.

3.10. Specifications

Prepare outline specifications of proposed architectural, structural, mechanical and electrical materials, systems and equipment and their criteria and quality standards. Architect is to use District's standardized equipment/material list for new construction and modernization in development of the Project design and specifications. Architect shall review and comment on

District's construction bid contracts and contract documents ("Division 0" documents) and Division 1 documents as part of its work under this Agreement.

3.11. Construction Cost Budget

Revise the Construction Cost Budget for the Project. Along with the conditions identified in the preceding Phase, the following conditions apply to the revised Construction Cost Budget:

3.11.1. Schematic Estimates: This estimate consists of unit cost applied to the major items and quantities of work. The unit cost shall reflect the complete direct current cost of work. Complete cost includes labor, material, waste allowance, sales tax and subcontractor's mark-up.

3.11.1.1. General conditions shall be applied separately. This estimate shall be prepared by specification section and summarized by the CSI categories.

3.11.2. The estimate shall separate the Project's building cost from site and utilities cost. Architect shall submit to District the cost estimating format for prior review and approval.

3.11.3. Escalation: all estimates shall be priced out at current market conditions. The estimates shall incorporate all adjustments as appropriate, relating to mid-point construction, contingency, and cost index (i.e. Lee Saylor Index).

3.11.4. The Construction Cost Budget for the Project must at no point exceed District's Project Budget allocation for construction. The accuracy of the Construction Cost Budget shall be the responsibility of Architect.

3.11.5. Architect shall submit its proposed Construction Cost Budget to District and Construction Manager for review and approval. At that time, Architect shall coordinate with District and Construction Manager to further develop, review, and reconcile the Construction Cost Budget.

3.11.6. Throughout all Design Phases, Architect must recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary so that the design comes within the estimated Construction Cost Budget. Architect will receive no additional fee for any redesign service necessary to revise the Project design or Deliverables due to cost escalations or market conditions that Architect should have reasonably anticipated.

3.11.7. At the end of this Phase, the Construction Cost Budget may include design contingencies of no more than ten percent (10%) in the cost estimates.

3.12. Meetings

During this Phase, Architect shall attend, take part in, and, when indicated and requested by District and School Site staff, conduct meetings, site visits, and workshops. Architect shall take part in all meetings requested by District and School Site staff during the Schematic Design Phase.

3.13. Deliverables and Numbers of Copies

Architect shall upload all design documentation and Deliverables utilizing District's Project

management information system and guidelines. Additionally, Architect shall provide to District a hard copy of the following items produced in this phase, together with one copy of each item in electronic format:

- 3.13.1. Two copies of breakdown of Construction Cost Budget as prepared for this Phase;
- 3.13.2. Two copies of meeting Reports/Minutes;
- 3.13.3. Two copies of Schematic Design Package with alternatives;
- 3.13.4. Two copies of a statement indicating changes made to the Architectural Program and Schedule; and
- 3.13.5. Two copies of DSA file, including all correspondence and meeting notes to date, or notification in writing that Architect has not met or corresponded with DSA.

3.14. Presentation

- 3.14.1. Architect shall present and review with District the detailed Schematic Design.
- 3.14.2. The Schematic Design shall be revised within the accepted program parameters until a final concept within the Construction Cost Budget has been accepted and approved by District at no additional cost to District.

3.15. District Sign Off

- 3.15.1. Architect shall not begin Design Development Phase services until District provides written approval of the Schematic Design package.

4. DESIGN DEVELOPMENT PHASE

Upon District's acceptance of Architect's work in the previous phase and assuming District has not delayed or terminated this Agreement, Architect shall prepare from the accepted Deliverables from the Schematic Design Phase the Design Development Phase documents consisting of the following for each proposed system within Architect's Services:

4.1. Architectural

- 4.1.1. Scaled, dimensioned floor plans with final room locations including all openings.
- 4.1.2. 1/8" scale building sections showing dimensional relationships, materials and component relationships.
- 4.1.3. Identification of all fixed equipment to be installed.
- 4.1.4. Site plan completely drawn with beginning notes and dimensions including grading and paving.
- 4.1.5. Preliminary development of details and large-scale blow-ups.
- 4.1.6. Legend showing all symbols used on drawings.
- 4.1.7. Floor plans identifying all fixed and major movable equipment and furniture.

- 4.1.8. Further refinement of outline specification for architectural, structural, mechanical, electrical, civil and landscape manuals, systems and equipment.
- 4.1.9. Typical reflected ceiling development including ceiling grid and heights for each ceiling to be used, showing:
 - 4.1.9.1. Light fixtures.
 - 4.1.9.2. Ceiling registers or diffusers.
 - 4.1.9.3. Access Panels.

4.2. Structural

- 4.2.1. Structural drawing with all major members located and sized including roof and floor framing and foundation plans.
- 4.2.2. Establish final building and floor elevations.
- 4.2.3. Preliminary specifications.
- 4.2.4. Identify foundation requirement (including fill requirement, piles) with associated soil pressure, water table and seismic center.

4.3. Mechanical

- 4.3.1. Heating and cooling load calculations as required and major duct or pipe runs sized to interface with structural.
- 4.3.2. Major mechanical equipment should be scheduled indicating size and capacity.
- 4.3.3. Ductwork and piping should be substantially located and sized.
- 4.3.4. Devices in ceiling must be located.
- 4.3.5. Legend showing all symbols used on drawings.
- 4.3.6. More developed outline specifications indicating quality level and manufacture.
- 4.3.7. Control systems must be identified.
- 4.3.8. Further evaluation and confirmation of the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.

4.4. Plumbing

- 4.4.1. As applicable, identify updated, detailed single line diagram of the Project's plumbing including toilet plans, schematic piping, hot and cold and gas piping and sewer lines.
- 4.4.2. Major plumbing equipment must be scheduled indicating size and capacity.

4.4.3. Provide plumbing engineering calculations.

4.5. Electrical

4.5.1. All lighting fixtures must be located and scheduled showing all types and quantities of fixtures to be used, including proposed lighting levels for each usable space.

4.5.2. All major electrical equipment must be scheduled indicating size and capacity.

4.5.3. Complete electrical distribution including a one-line diagram indicating final location of switchboards, communications, controls (high and low voltage), motor control centers, panels, transformers and emergency generators, if required. Low voltage system includes fire alarm system, security system, clock and public address system, voice data system, and telecom/technology system.

4.5.4. Legend showing all symbols used on drawings.

4.5.5. More developed and detailed outline specifications indicating quality level and manufacture.

4.5.6. Further evaluation and confirmation of the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.

4.6. Civil

4.6.1. Further refinement of Schematic Design Phase development of on and off-site utility systems for sewer, electrical, water, storm drain and fire water. Includes, without limitation, pipe sizes, materials, invert elevation location and installation details.

4.6.2. Further refinement of Schematic Design Phase roadways, walkways, parking and storm drainage improvements. Includes details and large-scale drawings of curb and gutter, manhole, thrust blocks, paved parking and roadway sections.

4.7. Landscape

Further refinement of Schematic Design concepts. Includes coordination of hardscape, landscape planting, ground cover and irrigation main distribution lines.

4.8. Bid Documents

Architect shall review and comment on District's construction bid contracts and contract documents ("Division 0" documents and "Division 1" documents).

4.9. Construction Cost Budget

4.9.1. Revise the Construction Cost Budget for the Project. Along with the conditions identified in this Agreement and the preceding Phases, the following conditions apply to the revised Construction Cost Budget:

4.9.2. Design Development Estimate: This further revised estimate shall be prepared by specification section, summarized by CSI category and divided by trade and work item. The estimate shall include individual item unit costs of materials, labor and equipment.

Sales tax, contractor's mark-ups, and general conditions shall be listed separately.

- 4.9.3. The Construction Cost Budget for the Project must at no point exceed District's Project Budget allocation for construction. The accuracy of the Construction Cost Budget shall be the responsibility of Architect.
- 4.9.4. Architect shall submit its proposed Construction Cost Budget to District and Construction Manager for review and approval. At that time, Architect shall coordinate with District and Construction Manager to further develop, review, and reconcile the Construction Cost Budget.
- 4.9.5. At this stage of the design, the Construction Cost Budget may include design contingencies of no more than ten percent (10%) in the cost estimates.

4.10. Constructability Review

District and/or its designee may conduct a construction review of the Design Development documents. If conducted, District will provide that report to Architect who shall make necessary changes along with providing written comments for each item listed in the report, at no additional cost to District.

4.11. Meetings

During this Phase, Architect shall attend, take part in, and, when indicated and requested by District and School Site staff as necessary, conduct meetings, site visits, and workshops. Architect shall take part in any meeting requested by District and School Site staff during the Design Development Phase.

4.12. Deliverables and Numbers of Copies

4.12.1. Architect shall upload all design documentation and Deliverables utilizing District's Project management information system and guidelines. Additionally, Architect shall provide to District a hard copy of the following items produced in this phase, together with one copy of each item in electronic format:

4.12.1.1. Two copies of Design Development drawing set from all professional disciplines necessary to deliver the Project;

4.12.1.2. Two copies of specifications;

4.12.1.3. Two copies of revised Construction Cost Budget; and

4.12.1.4. Two copies of DSA file, including all correspondence and meeting notes to date, or notification in writing that Architect has not met or corresponded with DSA.

4.13. Presentation

4.13.1. Architect shall present and review with District the detailed Design Development Deliverables.

4.13.2. The Design Development Deliverables shall be revised within the accepted program parameters until a final concept within the accepted Construction Cost Budget has been approved by District at no additional cost to District.

4.14. District Sign Off

Architect shall not begin Design Development Phase services until District provides written approval of the Design Development package.

5. CONSTRUCTION DOCUMENTS PHASE

Upon District's acceptance of Architect's work in the previous phase and assuming District has not delayed or terminated this Agreement, Architect shall prepare from the accepted Deliverables from the Design Development Phase the Construction Documents consisting of the following for each proposed system within Architect's scope of work:

5.1. Construction Documents ("CD") 50% Stage:

5.1.1. General

Prior to listing any specific equipment, material, supply, or furnishing, Architect shall verify, list and identify lead times and availability of all Project equipment, materials, supplies, and furnishings and ensure that all of these will be available to the contractor(s) in a timely fashion so as to not delay the Project and/or delay District's beneficial occupancy of the Project. Architect shall also provide other options to District regarding other possible and more available equipment, materials, supplies, or furnishings.

5.1.2. Architectural

5.1.2.1. Site plan developed to show building location, and major site elements.

5.1.2.2. Elevations (exterior and interior), sections and floor plans corrected to reflect design development review comments.

5.1.2.3. Architectural details and large blow-ups started including waterproofing details.

5.1.2.4. Well-developed finish, door, and hardware schedules.

5.1.2.5. Fixed equipment details and identification started.

5.1.2.6. Reflected ceiling plans coordinated with floor plans and mechanical and electrical systems.

5.1.3. Structural

5.1.3.1. Structural floor plans and sections with detailing well advanced.

5.1.3.2. Structural footing and foundation plans, floor and roof framing plans with detailing well advanced.

5.1.3.3. Completed cover sheet with general notes, symbols and legends.

5.1.4. Plumbing

5.1.4.1. Update all plumbing calculations and have all plumbing sized and plumbing schedule for equipment substantially developed.

5.1.5. Mechanical

5.1.5.1. Mechanical calculations virtually completed with all piping and ductwork sized.

5.1.5.2. Large scale mechanical details started.

5.1.5.3. Mechanical schedule for equipment substantially developed.

5.1.5.4. Complete design of Emergency Management System (“EMS”).

5.1.6. Electrical

5.1.6.1. Lighting, power, signal and communication plans showing all switching and controls. Fixture schedule and lighting details development started.

5.1.6.2. Distribution information on all power consuming equipment; lighting and device branch wiring development well started.

5.1.6.3. All electrical equipment schedules started.

5.1.6.4. Special system components approximately located on plans.

5.1.6.5. Complete design of low voltage system. Low voltage system includes fire alarm system, security system, clock and public address system, voice data system, and telecom/technology system.

5.1.7. Civil

5.1.7.1. All site plans, site utilities, parking, walkway, and roadway systems updated to reflect revisions from Design Development Phase Documents, including all topographical and major site elements and existing/proposed contour lines.

5.1.7.2. Site utility plans started.

5.1.8. Landscape

All landscape, hardscape, and irrigation plans updated to reflect update revisions from Design Development Phase Documents.

5.1.9. Specifications

More than fifty percent (50%) complete development and preparation of technical specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.

5.1.9.1. No part of the specifications shall call for a designated material, product, thing, or service by specific brand or trade name unless:

5.1.9.1.1. The specification is followed by the words “or equal” so that bidders may furnish any equal material, product, thing, or service,

as required by Public Contract Code section 3400, or

5.1.9.1.2. The designation is allowable by a specific exemption or exception pursuant to Public Contract Code, section 3400.

5.1.9.2. Specifications shall not contain restrictions that will limit competitive bids other than those required for maintenance convenience by District and only with District's prior approval.

5.1.9.3. Specifications shall be in CSI format.

5.1.10. Construction Cost Budget

5.1.10.1. Revise the Construction Cost Budget for the Project. Along with the conditions identified in the preceding phases, Architect shall update and refine the Design Development Phase revisions to the Construction Cost Budget.

5.1.10.2. The Construction Cost Budget for the Project must at no point exceed District's Project Budget allocation for construction. The accuracy of the Construction Cost Budget shall be the responsibility of Architect.

5.1.10.3. Architect shall submit its proposed Construction Cost Budget to District and Construction Manager for review and approval. Architect shall coordinate with District and Construction Manager to further develop, review, and reconcile the Construction Cost Budget.

5.1.10.4. At this stage of the design, the Construction Cost Budget shall not include any design contingencies of no more than five percent (5%) in the cost estimates.

5.1.11. Constructability Review

District and/or its designee may conduct a construction review of the 50% Construction Documents. If conducted, District will provide that report to Architect who shall make necessary changes along with providing written comments for each item listed in the report, at no additional cost to District.

5.1.12. Deliverables and Numbers of Copies

Architect shall upload all design documentation and Deliverables utilizing District's Project management information system and guidelines. Additionally, Architect shall provide to District a hard copy of the following items produced in this phase, together with one copy of each item in electronic format:

5.1.12.1. Two copies of reproducible copies of working drawings;

5.1.12.2. Two copies of specifications;

5.1.12.3. Two copies of statement of requirements for testing and inspection of service for compliance with Construction Documents and applicable codes; and

5.1.12.4. Two copies of a statement indicating any authorized changes made to the design from the last phase and the cost impact of each change on the previously approved Construction Cost Budget. If no design changes occur but

shifts of costs occur between disciplines, identify for District review.

5.1.13. District Sign Off

Architect shall not begin Construction Documents – 100% / Completion Stage services until District provides written approval of the then current fixtures, equipment, and finishes prepared by Architect.

5.2. Construction Documents – 100% / Completion Stage:

5.2.1. Architectural

5.2.1.1. Completed site plan.

5.2.1.2. Completed floor plans, elevations, and sections.

5.2.1.3. Architectural details and large blow-ups completed, including waterproofing details.

5.2.1.4. Finish, door, and hardware schedules completed, including all details.

5.2.1.5. Fixed equipment details and identification completed.

5.2.1.6. Reflected ceiling plans completed.

5.2.2. Structural

5.2.2.1. Structural floor plans and sections with detailing completed.

5.2.2.2. Structural calculations completed.

5.2.3. Mechanical

5.2.3.1. Large scale mechanical details complete.

5.2.3.2. Mechanical schedules for equipment completed.

5.2.3.3. Completed electrical schematic for environmental cooling and exhaust equipment.

5.2.3.4. Complete energy conservation calculations and report.

5.2.4. Plumbing

5.2.4.1. Plumbing calculations completed.

5.2.4.2. Large scale plumbing details completed.

5.2.4.3. Plumbing schedules for equipment completed.

5.2.5. Electrical

5.2.5.1. Lighting and power plan showing all switching and controls. Fixture schedule

and lighting details completed.

5.2.5.2. Distribution information on all power consuming equipment, including lighting, power, signal and communication device(s) branch wiring completed.

5.2.5.3. All electrical equipment schedules completed.

5.2.5.4. Special system components plans completed.

5.2.5.5. Electrical load calculations completed.

5.2.6. **Civil**

All site plans, site utilities, parking and roadway systems completed.

5.2.7. **Landscape**

All landscape, hardscape, and irrigation plans completed.

5.2.8. **Specifications**

5.2.8.1. Complete development and preparation of technical specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.

5.2.8.2. No part of the specifications shall call for a designated material, product, thing, or service by specific brand or trade name unless:

5.2.8.2.1. The specification is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service, as required by Public Contract Code section 3400; or

5.2.8.2.2. The designation is allowable by specific allowable exemption or exception pursuant to Public Contract Code section 3400.

5.2.8.3. Specifications shall not contain restrictions that will limit competitive bids other those required for maintenance convenience by District and only with District's prior approval.

5.2.8.4. At one hundred percent (100%) review, District shall review the specifications and direct Architect to make all necessary corrections at no additional cost to District.

5.2.8.5. Coordination of the specifications with specifications developed by other disciplines.

5.2.8.6. Specifications shall be in CSI format.

5.2.9. **Construction Cost Budget**

5.2.9.1. Revise the Construction Cost Budget for the Project. Along with the conditions identified in the preceding phases, Architect shall update and refine the 50% Construction Documents Phase revisions to the Construction Cost Budget.

5.2.9.2. The Construction Cost Budget for the Project must at no point exceed District's Project Budget allocation for construction. The accuracy of the Construction Cost Budget shall be the responsibility of Architect.

5.2.9.3. Architect shall submit its proposed Construction Cost Budget to District and the Construction Manager for review and approval. At that time, Architect shall coordinate with District and Construction Manager to further develop, review, and reconcile the Construction Cost Budget.

5.2.9.4. At this stage of the design, the Construction Cost Budget shall not include any design contingencies in excess of the cost estimates.

5.2.10. Constructability Review

District and/or its designee shall conduct a construction review of the Construction Documents. A report shall be given to Architect who shall make necessary changes along with providing written comments for each item listed in the report.

5.2.11. Meetings

During this phase, Architect shall attend, take part in, and, when indicated and requested by District and School Site staff conduct meetings, site visits, and workshops. Architect shall take part in all necessary meetings requested by District and School Site staff during the Construction Document Phase.

5.2.12. Deliverables and Numbers of Copies

Architect shall upload all design documentation and Deliverables utilizing District's Project management information system and guidelines. Additionally, Architect shall provide to District a hard copy of the following items produced in this phase, together with one copy of each item in electronic format:

5.2.12.1. Two copies of reproducible copies of working drawings;

5.2.12.2. Two copies of specifications;

5.2.12.3. Two copies of engineering calculations;

5.2.12.4. Two copies of revised Construction Cost Budget;

5.2.12.5. Two copies of statement of requirements for testing and inspection of service for compliance with Construction Documents and applicable codes;

5.2.12.6. Two copies of DSA file including all correspondence, meeting, back check comments, checklists to date; and

5.2.12.7. Two copies of a statement indicating any authorized changes made to the design from the last phase and the cost impact of each change on the previously approved Construction Cost Budget. If no design changes occur but shifts of costs occur between disciplines, identify for District review.

5.2.13. District Sign Off

Architect shall not begin Construction Documents Final Back-Check Stage services until District has provided written approval of the final fixtures, equipment, and finishes prepared by Architect.

5.3. Construction Documents Final Back-Check Stage

The Construction Documents final back-check stage shall be for the purpose of Architect incorporating all regulatory agencies' comments into the drawings, specifications, and estimates. All changes made by Architect during this stage shall be at no additional cost to District.

5.3.1. **Approval of Construction Documents.** Architect shall obtain all necessary approvals for the Construction Documents from governmental agencies with jurisdiction therefor as necessary for the bidding and construction of the work depicted in the Construction Documents, including without limitation, approvals by DSA. Architect shall revise the Construction Documents as required by DSA or other governmental agencies to obtain their respective approvals. Except for Architect's fees (which are included in the Contract Price for Basic Services) incurred in obtaining the approvals or preparing revisions pursuant to the foregoing, District shall pay all other costs or fees necessary for obtaining the approvals.

5.3.2. The final Construction Documents delivered to District upon completion of Architect's work shall be the Bid Set and shall consist of the following:

5.3.2.1. Drawings: Original tracings of all drawings on Architect's tracing paper with each Architect/Consultant's State license stamp.

5.3.2.2. Specifications: Original word-processed technical specifications on reproducible masters in CSI format.

5.3.3. Architect shall update and refine the completed Construction Documents.

5.3.4. District Sign Off

Architect's Construction Documents Phase services shall not be deemed complete until District has provided written approval of the final Construction Documents.

6. BIDDING PHASE

Upon District's acceptance of Architect's work in the previous phase and assuming District has not delayed or terminated this Agreement, Architect shall perform Bidding Phase services.

6.1. Architect shall:

6.1.1. Contact potential bidders and encourage their participation in the Project.

6.1.2. Coordinate the development of the bidding procedures and the construction contract documents with District. The development of bidding procedures and the construction contract documents shall be the joint responsibility of District and Architect.

6.1.3. Attend bid walk(s) as scheduled.

6.1.4. While the Project is being advertised for bids, all questions concerning intent of design

will be referred to District for screening and subsequent processing through Architect.

- 6.1.5. If items requiring interpretation of the drawings or specifications are discovered during the bidding period, those items shall be analyzed by Architect for decision by District as to the proper procedure required. Corrective action will be in the form of an addendum prepared by Architect and issued by District.
- 6.1.6. Attend bid opening.
- 6.1.7. Coordinate with Consultants.
- 6.1.8. Timely respond to District questions and clarifications.

6.2. Deliverables and Number of Copies

Architect shall upload the following Deliverables utilizing District's Project management information system and guidelines. Architect shall provide to District a hard copy of the following items produced in this phase, together with one copy of each item in electronic format:

- 6.2.1. Two copies of meeting report/minutes from kick-off meeting;
- 6.2.2. Two copies of meeting report/minutes from pre-bid site walk;
- 6.2.3. Upon completion of the Bidding Phase, Architect shall produce a Conforming Set of plans and specifications incorporating all addenda issued. Architect shall supply District with two (2) complete, reproducible sets of plans and specifications marked as a "Conforming Set", and one (1) electronic set of plans in AutoCAD 2006 or compatible and one (1) electronic copy of the conforming specifications in Microsoft Word.

7. CONSTRUCTION ADMINISTRATION PHASE

Upon District's acceptance of Architect's work in the previous phase and assuming District has not delayed or terminated this Agreement, Architect shall perform Construction Administration Phase services for District as follows:

- 7.1. Architect's responsibility to provide Construction Administration Phase services commences with District's award of the contract for construction of the Project and terminates upon satisfactory performance and completion of all tasks in this phase and commencement of the Closeout Phase or upon District's termination of this Agreement, whichever occurs first.
- 7.2. **Management System.** Architect shall, to the extent required and applicable, utilize District's online construction management system to provide the Services hereunder.
- 7.3. **Change Orders**
 - 7.3.1. Architect shall review all Project change order requests to determine if those requests are valid and appropriate. Architect shall provide a recommendation to District regarding whether the change should be approved, partially approved, returned to the contractor for clarification, or rejected.
 - 7.3.2. Architect shall provide its response to a change order request as soon as possible and within a time to not cause a delay to the Project and/or delay District's beneficial occupancy. Architect shall be responsible for any delay established by contractor

resulting from Architect's response time exceeding the time required for District's response to change orders set forth in the Project construction contract. Architect shall be solely responsible for coordinating any response required by Consultants to provide a substantive and acceptable response. Architect shall be responsible for any delay caused by Consultants for Consultant's failure to timely respond to a change order.

- 7.3.3. Architect shall furnish all necessary additional drawings for supplementing, clarifying, and/or correcting purposes and for change orders. District shall request these drawings from Architect and shall be at no additional cost unless designated as Extra Services by District. The original tracing(s) and/or drawings and contract wording for change orders shall be submitted to District for duplication and distribution.

7.4. Submittals

- 7.4.1. Architect shall review and approve or take other appropriate action upon contractor's submittals such as: shop drawings, project data, samples and change orders, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the contract documents.
- 7.4.2. Architect shall review contractor's schedule of submittals and advise District on whether that schedule is complete. Architect shall provide District with proposed revisions to this schedule and advise District on whether District should approve this schedule.
- 7.4.3. Architect's action upon contractor's submittals shall be taken as expeditiously as possible so as to cause no unreasonable delay in the construction of the Project or in the work of separate contractors, while allowing sufficient time in Architect's professional judgment to permit adequate review. In no case shall the review period associated with a single, particular submittal exceed ten (10) business days from its receipt by Architect, unless the complexity of the submittal warrants a longer time period for the review to be mutually agreed upon by both Parties. Architect's response to each submittal shall be a substantive and acceptable response. This 10-day time period shall not include time when a submittal is within District's control or if the submittal is being reviewed by DSA. In no way does this provision reduce Architect's liability if it fails to prepare acceptable documents.

- 7.5. **RFIs.** During the course of construction, Architect must respond to all Requests for Information ("RFI") as expeditiously as possible so as not to impact and delay the construction progress. In no case shall Architect's review period associated with a RFI exceed seven (7) Days, unless the complexity of the RFI warrants a longer time period for review as reasonably agreed to by District in writing in its sole discretion. Architect's response to each RFI shall be a substantive and acceptable response. This 7-day time period includes time when a submittal is within the control of Architect's Consultants. This 7-day time period shall not include time when a submittal is within District's control or if the submittal is being reviewed by DSA. In no way does this provision reduce Architect's liability if it fails to prepare acceptable documents. Architect shall be solely responsible for coordinating any response required by Consultants to provide a substantive and acceptable response. Architect shall be responsible for any delay caused by any Consultant for Consultant's failure to timely respond.

- 7.6. On the basis of on-site observations, Architect shall keep District informed of the progress and the quality of the work and shall endeavor to guard District against defects and deficiencies in the work. Architect shall notify District in writing of any defects or deficiencies Architect observes in the work performed by District's contractors. However, Architect shall not be a guarantor of the contractor's performance. Further, Architect shall not have control over, charge of, or

responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction work.

7.7. Rejection of Work. Architect shall have the authority, only after written pre-approval of District, to reject Project contractors' work that does not conform to the requirements of the construction contract documents. Architect shall have the authority, upon its sole discretion, to reject Project contractors' work that presents an immediate risk of injury to persons.

7.8. Quality Control/Punch List Process. During the Construction Administration and Closeout Phases, Architect shall evaluate Project contractors' execution and overall delivery of work and shall use Architect's best efforts to ensure the Project meets or exceeds the criteria as set forth in the Conforming Set. The Parties acknowledge that this process is not commissioning of the Project or the Project's system(s).

7.8.1. The Quality Control/Punch List ("QC/Punch") Process is a comprehensive and systematic process to verify that the building systems and assemblies are constructed and installed as designed to meet District's requirements. Quality Control during the Construction Phase, the Closeout Phase, and all warranty periods shall achieve the following specific objectives:

7.8.1.1. Verification and documentation that assemblies and equipment are installed per manufacturer's recommendations, product minimum standards, and the design intent expressed in the Contract Documents.

7.8.1.2. Verification and documentation that the manufacturer(s) and designer(s) of assemblies, equipment, and systems have approved the full compliance, performance, and operation of all completed assemblies, equipment, and systems for that they manufactured and/or designed.

7.8.1.3. Verification and documentation that assembly, equipment, and system function.

7.8.1.4. Verification of the completeness of operations and maintenance materials.

7.8.1.5. Ensure that District's operating personnel receive all required training and are offered additional and supplemental training, on the operation and maintenance of building assemblies, equipment, and systems.

7.8.1.6. Verification and documentation of all incomplete items on punch list, and items of known non-compliance in materials, installation or operation.

7.8.2. The QC/Punch Process does not reduce the responsibility of any designers or contractors to provide a finished and fully functioning product.

7.9. As-Built Drawings. Architect shall review and evaluate for District, the contractor(s)' documentation of the actual construction performed during the Project that the contractor(s) must prepare and submit as As-Built.

7.9.1. Architect shall provide to contractor(s), electronic "background" copies of all plans on which the contractor(s) shall indicate its "As-Built" in electronic format back to District.

7.10. Record Drawings. Only if requested specifically by District, Architect shall incorporate all information on all As-Built, sketches, details, and clarifications, and prepare one set of final Record Drawings for District. The Record Drawings shall incorporate onto one set of electronic

drawings, all changes from all As-Builts, sketches, details, and clarifications. If a set of Record Drawings has been requested by District, then (1) Architect shall deliver it to District at completion of the construction and (2) its receipt of Record Drawings, approved by District, shall be a condition precedent to District's approval of Architect's final payment. Architect may insert the following notice on the Record Drawings:

These drawings [or corrected specifications] have been prepared based on information submitted, in part, by others. Architect has provided a review consistent with its legal standard of care.

- 7.11. O&M Manuals / Warranties.** Architect shall review equipment, operation and maintenance manuals, and a complete set of warranty documents for all equipment and installed systems, to ensure that they meet the requirements of the plans and specifications.
- 7.12.** Architect shall also provide, at District's request, architectural/engineering advice to District on start-up, break-in, and debugging of facility systems and equipment, and apparent deficiencies in construction following the acceptance of the contractor's work.
- 7.13. Contractor's Application for Payment.** Failure of Architect to perform the following tasks shall be a material breach of this Agreement.
- 7.13.1. **Development of Payment Procedures.** In consultation with District and Construction Manager, 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 Project contractor(s).
- 7.13.2. **Certification of Payment Due.** Based on Architect's observations and evaluations, Architect shall certify the amount due on each application for progress payment. Architect shall review and respond to applications for progress payment in a prompt manner so as to allow District to timely meet its payment obligations to Project contractor(s) under the terms of the construction contract documents and applicable law, rule or regulation.
- 7.13.3. **Final Payment.** Architect shall review, evaluate and certify for payment the Project contractor(s)'s application for final payment. Architect shall review and respond to the Project contractor(s)'s application for final payment in a prompt manner so as to allow District to timely meet its obligation to make payment of the Final Payment under applicable law, rule or regulation.
- 7.13.4. Recommendations of Payment by Architect constitute Architect's representation to District that work has progressed to the point indicated to the best of Architect's knowledge, information, and belief, and that the quality of the work is in general conformance with the contract documents.
- 7.14. Meetings**
- During this phase, Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops.
- 7.15. Deliverables and Number of Copies**
- Architect shall upload the following Deliverables utilizing District's Project management information system and guidelines. Architect shall provide to District a hard copy of the following

items produced in this phase, together with one copy of each item in electronic format:

- 7.15.1. Two copies of meeting report/minutes from kick-off meeting;
- 7.15.2. Two copies of observation reports; and
- 7.15.3. Two copies of weekly meeting reports.

7.16. Duty to Timely Respond to DSA Inquiries. Architect acknowledges that District, DSA, and/or the Inspector of Record may require Architect to submit changes or clarifications to the Construction Drawings and other documentation to DSA for its consideration and approval during the Construction Administration Phase ("DSA Request"). Any delay by Architect in responding to the DSA Request is likely to result in delays to the Project. Accordingly, Architect shall respond expeditiously and with all due diligence to any DSA Request ("DSA Response"), provided that in no event shall Architect's DSA Response occur later than two (2) Days after Architect receives notice of the DSA Request, unless a longer period of time is approved in writing, in advance, by District.

8. CLOSEOUT PHASE

8.1. As the Construction Administration Phase progresses, Architect shall perform the following Closeout Phase services for District:

- 8.1.1. Architect shall review the Project and observe the construction as required to determine when the contractor has completed the construction of the Project and shall prepare punch lists of items that remain in need of correction or completion.
- 8.1.2. Architect shall collect from the contractor, review, and forward to District all written warranties, operation manuals, spare parts, lien waivers, and Certificates of Inspection and Occupancy with Architect's recommendation as to the adequacy of these items.
- 8.1.3. Architect shall prepare or collect, as applicable, and provide to DSA, all reports required by DSA related to the design and construction of the Project.
- 8.1.4. Architect shall obtain all required DSA approval on all CCDs and any other changes that require DSA approval.
- 8.1.5. Architect shall prepare verified report(s) for the Project (DSA-6A/E Verified Report, Rev 04/08, or more recent revision if available).
- 8.1.6. Architect shall prepare a set of Record Drawings for the Project, as requested by District.
- 8.1.7. Architect shall review and prepare a package of all warranty and O&M documentation.
- 8.1.8. Architect shall organize electronic files, plans and prepare a Project binder.
- 8.1.9. Architect shall coordinate all Services required to close-out the design and construction of the Project with District and between Consultants.
- 8.1.10. Architect shall coordinate and obtain DSA approval of the Project in a time period not to exceed twelve (12) months from the date of the start of the Closeout Phase (see Exhibit C) or issuance of final payment release to the contractor(s); whichever occurs first.

8.2. When the design and construction of the Project is complete, District may prepare and record with the County Recorder a Notice of Completion.

8.3. Meetings

During this phase, Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops.

8.4. Deliverables and Number of Copies

Architect shall upload the following Deliverables utilizing District's Project management information system and guidelines. Architect shall provide to District a hard copy of the following items produced in this phase, together with one copy of each item in electronic format:

8.4.1. All Project punch lists; and

8.4.2. Upon completion of the Project, all Project documents, including As-Builts and Record Drawings (if requested by District). These Deliverables are the sole property of District.

9. MEETINGS / SITE VISITS / WORKSHOPS

9.1. Architect shall attend, take part in, and, when requested, conduct meetings, site visits and workshops, as indicated below. Architect shall chair, conduct and take minutes of any meeting Architect attends (excluding Governing Board meetings and Citizens' Bond Oversight Committee meetings). Architect shall invite District and/or its representative to participate in these meetings. Architect shall keep a separate log to document design/coordination comments generated in these meetings. The approximate number of meetings below is an estimated requisite to adequately achieve the indicated meeting objective. THE EXACT NUMBER OF MEETINGS REQUIRED TO ACCOMPLISH THE MEETING OBJECTIVES WILL BE BASED ON THE ARCHITECTURAL TEAM'S PERFORMANCE. ADDITIONAL MEETINGS OR FEWER MEETINGS MAY BE HELD, AS NECESSARY, TO ACHIEVE THE MEETING OBJECTIVES, BUT AT NO ADDITIONAL COMPENSATION TO ARCHITECT.

9.2. General Meeting, Site Visit and Workshop Requirements

9.2.1. Architect shall always be prepared to answer questions and issues from District staff, site staff, potential bidders, and/or contractors, as applicable.

9.2.2. Architect shall maintain documentation of all meetings, site visits or site observations held in conjunction with the design and construction of the Project, with documentation of major discussion points, observations, decisions, questions or comments. This documentation shall be furnished to District and/or its representative for inclusion in the overall Project documentation.

9.2.3. As required, Architect shall provide at no additional cost to District copies of all documents or other information needed for each meeting, site visit, and workshop.

9.2.4. Each meeting may last up to one full Day (eight (8) hours) and shall be held at District's office or at the Project site, unless otherwise indicated.

9.3. Meetings During Project Initiation Phase

9.3.1. Within seven (7) Days following execution of this Agreement, Architect shall participate

in one Project kick-off meeting to determine the Project intent, scope, budget and timetable, which shall encompass the following:

9.3.1.1. Architect, its appropriate Consultant(s), and District staff, shall attend the meeting.

9.3.1.2. The Project kick-off meeting will introduce District's and Architect's key team members to each other and define roles and responsibilities relative to the Project.

9.3.1.3. During this meeting, Architect shall:

9.3.1.3.1. Identify and review pertinent information and/or documentation necessary from District for the completion of the Project.

9.3.1.3.2. Review and explain the overall Project goals, general approach, tasks, work plan and procedures and deliverable products of the Project.

9.3.1.3.3. Review and explain the scope of work and Project work plan for all parties present; determine any adjustments or refinements that need to be made to the work plan.

9.3.1.3.4. Review documentation of the Project kick-off meeting prepared by District's representative and comment prior to distribution.

9.4. Initial Site Visits meeting(s)

9.4.1. Architect shall visit the Project site to complete a visual inventory and documentation of the existing conditions.

9.4.2. Access to the Project site and associated areas shall be coordinated in advance with District. If additional site visits are required, such visits shall be at no additional costs to District.

9.5. Meetings During Architectural Program meeting(s)

9.5.1. Architect shall participate in two (2) public community information site meetings to receive input from the community regarding its desires and expectations regarding the design of the Project and the schedule of use of the sites during construction.

9.5.2. Architect shall conduct one (1) site meeting with District's facilities team to gather information from the facilities team, maintenance team, and site personnel and to make a visual presentation regarding the Project.

9.5.3. Electrical, civil, mechanical, structural, landscaping, and estimating consultant(s) shall participate in these meetings as appropriate and shall provide input and feedback into the development of the Construction Cost Budget.

9.6. Meetings During Schematic Design Phase meeting(s)

9.6.1. Within fourteen (14) Days following the start of the Schematic Design Phase, Architect shall conduct one design workshop with District's facilities team and site personnel to

complete a basic design framework with computer-aided design equipment (CADD). District may, at its discretion, allow Architect to proceed with this meeting without using CADD. Architect shall conduct a meeting at least every two (2) weeks during this Phase with itself, all its Consultants required for that meeting, District, and their designated representatives, until District has indicated its acceptance of Architect's Schematic Design. District reserves the right to require attendance of specific Consultant(s). This workshop shall include the following:

9.6.1.1. Architect shall designate its team member duties and responsibilities;

9.6.1.2. Architect and District shall review District goals and expectations;

9.6.1.3. District shall provide input and requirements;

9.6.1.4. Architect and District shall review Project scope and budget, including the Construction Cost Budget and the Project Budget;

9.6.1.5. Prepare and/or revise the scope of work list and general work plan from the Pre-Design Phase, for documentation in a computer-generated Project schedule; and

9.6.1.6. Establish and agree regarding methods to facilitate the communication and coordination efforts for the Project.

9.6.2. Architect shall conduct approximately four (4) District-Architect coordination meetings, one every 2 weeks, throughout the Schematic Design Phase.

9.6.3. Architect shall conduct approximately four (4) Design Committee meetings throughout the Schematic Design Phase.

9.7. Meetings During Design Development Phase meeting(s))

9.7.1. At the time designated for completion of the Design Development package, Architect shall conduct four meetings with District to review the following:

9.7.1.1. Present the Design Development package for review and comment to proceed with preparation of final plans and specification.

9.7.1.2. Architect and District shall review Project scope and budget, including the Construction Cost Budget and the Project Budget.

9.7.2. Value Engineering Workshop meeting(s))

Architect shall conduct value engineering workshop(s), as requested by District, including Architect's consultant(s), District, and Construction Manager. This workshop shall be on-going and may include several meetings.

9.8. Meetings During Construction Documents Phase meeting(s))

9.8.1. Prior to beginning work on the fifty percent (50%) design package, Architect shall conduct meetings with District to revise the Design Development package and receive comments.

- 9.8.2. At the time designated for completion of the fifty percent (50%) submittal package, Architect shall conduct one meeting, per package or submittal, with District to review the following:
 - 9.8.2.1. Present the fifty percent (50%) submittal package for review and comment to proceed with preparation of final plans and specification.
 - 9.8.2.2. Architect and District shall provide further review of Project scope and budget, including the Construction Cost Budget and the Project Budget.
 - 9.8.2.3. At the time designated for completion of the one hundred percent (100%) Construction Document package, Architect shall conduct meetings with District to review the following:
 - 9.8.2.3.1. Present the one hundred percent (100%) Construction Document package for review and comment to proceed with preparation of final plans and specification.
 - 9.8.2.3.2. Architect and District shall provide further review of Project scope and budget, including the Construction Cost Budget and the Project Budget.

9.9. Meetings During Bidding Phase meeting(s))

- 9.9.1. Attend and take part in two meetings with all potential bidders, District staff, and Construction Manager.
- 9.9.2. Conduct one kick-off meeting, per site, with the successful bidder, District staff, and Construction Manager to finalize the roles and responsibilities of each party and provide protocols and processes to follow during construction.

9.10. Meetings During Construction Administration Phase

- 9.10.1. Architect shall visit the Project site as necessary or when requested by District or Construction Manager, but in no case less than once per week, sufficient to determine that the Project is being constructed in accordance with the plans and specifications, and to resolve discrepancies in the contract documents and to monitor the progress of the construction of the Project. After any visit, Architect must submit to District an architect field observation report within two (2) business days of Architect's visit.
- 9.10.2. Conduct weekly project meetings with District staff to review with District staff the progress of the work.
- 9.10.3. Architect shall ensure that Consultant(s) visit the site in conformance with their agreement.

9.11. Citizens' Bond Oversight Committee Meetings

Architect acknowledges that the design and construction of the Project is subject to oversight by District's citizens' bond oversight committee. Architect shall, at District's direction, attend District citizens' bond oversight committee meeting(s) and present Architect's design to District's citizens' bond oversight committee for review and recommendation to District's Governing Board.

9.12. Governing Board Meetings

Architect acknowledges that District's Governing Board must approve all designs. Architect shall, at District's direction, attend Board meeting(s) and present Architect's design to District's Governing Board for review and approval.

EXHIBIT B
CRITERIA AND BILLING FOR EXTRA SERVICES

Architect shall bill hourly for any Extra Services, unless provided for otherwise herein, or unless an alternate payment structure is expressly requested in writing by District. The following Extra Services shall be performed by Architect if needed and if authorized in writing by District in accordance with the Article "Payment for Extra Services or Changes":

1. Making revisions in drawings, specifications, or other documents when such revisions are:
 - 1.1. Required to comply with direction from District that is substantively different than approvals or instructions previously given by District.
 - 1.2. Required by the enactment or revisions of codes, laws, or regulations subsequent to the preparation of the Conforming Set, unless those enactments or revisions were foreseeable or reasonably should have been foreseeable by Architect prior to preparation of the Conforming Set.
 - 1.3. Due to changes required as a result of District's failure to respond to a written request from Architect within a reasonable time, as requested by Architect.
 - 1.4. Required to provide services in connection with Change Orders and directive not the fault of Architect.
2. Providing services required because of significant documented changes in a Project initiated by District, including but not limited to size, quality, complexity, District's schedule, or method of bidding or negotiating and contracting for construction.
3. Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of that work.
4. Providing services made necessary by the default of contractor(s), by major defects, or deficiencies in the work of contractor(s).
5. In the absence of a final Certificate of Payment or Notice of Completion, providing Services more than sixty (60) Days after the date of completion of work by contractor(s) and after Architect has completed all its obligations and tasks under this Agreement.
6. Providing Deliverables or other items in excess of the number indicated in **Exhibit A**. Before preparing, providing, sending, or invoicing for extra deliverables, Architect shall inform District that expected deliverables may be in excess of the number indicated in **Exhibit A**, so that District can procure the additional deliverables itself or direct Architect to procure the deliverables at District's expense or on District's account at a specific vendor. This includes the cost and preparation of Record Drawings.
7. Providing services as directed by District that are not part of the Services of this Agreement.
8. Providing services as an expert and/or witness for District in any mediation, arbitration, and/or trial in which Architect is (1) not a party, and (2) did not in any way cause the dispute that is being adjudicated.
9. Providing training, adjusting, or balancing of systems and/or equipment sixty (60) Days after completion of work by contractor(s) and after Architect has completed all of its obligations and tasks under this Agreement.

10. The mark-up on any approved item of Extra Services performed by Consultant(s) shall not exceed **five percent (5%)**.
11. Mileage to/from the Project site is **NOT** reimbursable as Extra Services.
12. There shall be no payment for Extra Services or Changes that have not been authorized in writing by District prior to the performance of the identified Extra Service or Change.

EXHIBIT C

SCHEDULE OF WORK

1. Promptly after the execution of this Agreement, Architect shall prepare and submit for approval to District a Schedule of Work showing the order in which Architect proposes to carry out Architect's Services ("Schedule of Work"). The Schedule of Work shall apply to the completion of all services listed hereunder within the times established by this Agreement. The Schedule of Work shall be in the form of a progress chart clearly delineating all important increments and review dates. Architect shall update the Schedule of Work on a monthly basis and deliver two (2) copies to District along with the monthly billing.
2. Architect shall complete all Services in accordance with the Schedule of Work as authorized by District in writing.
3. The durations stated in the Schedule of Work must include the review periods required by District and all other regulatory agencies.
4. All times to complete tasks set forth in this Exhibit are of the essence. If delays in the Schedule of Work are imposed by District's inability to comply with requested meeting schedules, Architect shall maintain the right to request an adjustment in the Schedule of Work if deemed necessary to meet the deadlines set forth in this Exhibit. If approved, such extensions shall be authorized in writing by District.

Phase	Start Date
Schematic Design Phase	September 1, 2023
Design Development Phase	October 1, 2023
Construction Documents Phase	December 1, 2023
Division of State Architect	February 1 2024
Bid Opening	June 1, 2024
Construction Administration	August 1, 2024
Post Construction	December 1, 2024

5. **Note:** The exact dates required to completion of the Project construction are subject District's modification in accordance with District's construction contract with the contractor(s), but Architect acknowledges that its Fee is based on Architect's performance of the Services and **not** on the length of time to perform those Services or for the design or construction of the Project.

EXHIBIT D

PAYMENT SCHEDULE

1. Compensation

- 1.1. District shall pay Architect for all Services satisfactorily completed pursuant to this Agreement in an amount equal to the following ("Fee"):
- 1.2. The Fee shall be full compensation for all Architect's Services, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location, offices, per diem expenses, printing and shipping of Deliverables in the quantities set forth in Exhibit A or any other direct or indirect expenses incident to providing the Services. Except as expressly set forth in this Agreement and Exhibit B, there shall be no payment for extra costs or expenses.
- 1.3. District shall pay Architect for all Services satisfactorily performed pursuant to the following schedule ("Payment Schedule"):

As identified in the fee proposal documentation, per site. Listed as Exhibit F

2. Method of Payment. Invoices shall be on a form approved by District and are to be submitted to District via District's authorized representative.

- 2.1. Architect is responsible for promptly paying its Consultants. If reasonably requested by District Architect shall submit to District documentation showing proof that payments were made to Consultant(s). If so requested, this documentation shall be a precondition of District's payment to Architect.

3. Format and Content of Invoices

- 3.1. Architect acknowledges that Architect's invoices for Basic Services must include detailed descriptions of the Services performed.

EXHIBIT E

INSURANCE REQUIREMENTS

Architect shall procure prior to commencement of the Services and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services by Architect, Architect's agents, representatives, employees and Consultant(s). Architect's liabilities, including but not limited to Architect's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Architect's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated as a material breach of contract.

1. **Minimum Scope and Limits of Insurance.** Coverage shall be at least as broad as the following scopes and limits and shall be an occurrence-based basis unless otherwise indicated:
 - 1.1. **Commercial General Liability.** One million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location or the general aggregate limit shall be twice the required occurrence limit.
 - 1.2. **Commercial Automobile Liability, Any Auto.** One million dollars (\$1,000,000) per accident for bodily injury and property damage.
 - 1.3. **Workers' Compensation Liability.** For all Architect's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Architect shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide employers' liability coverage with minimum liability coverage of one million dollars (\$1,000,000) per accident for bodily injury or disease. Architect shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
 - 1.4. **Employment Practices Liability.** For all Architect's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Architect shall keep in full force and effect, an Employment Practices Liability policy. That policy shall provide employers' liability coverage with minimum liability coverage of one million dollars (\$1,000,000) per occurrence. Architect shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
 - 1.5. **Sexual Molestation and Abuse Liability Insurance.** Two million dollars (\$2,000,000) per incident. Architect shall procure and maintain, during the life of this Agreement, sexual molestation and abuse insurance. Architect shall require its Consultants to procure and maintain sexual molestation and abuse insurance for all employees of Consultants. Any class of employee or employees not covered by a Consultant's insurance shall be covered by Architect's insurance. If any class of employee or employees engaged in Services under the Agreement, on or at the Site of the Project, are not covered under the sexual molestation and abuse insurance, Architect shall provide, or shall cause a Consultant to provide, adequate insurance coverage to cover any employee(s) not otherwise covered before any of those employee(s) commence work.
 - 1.6. **Professional Liability.** This insurance shall cover the design professional's liability arising from the services of Consultant(s) with a minimum of one million dollars (\$1,000,000) per claim limit and two million dollars (\$2,000,000) aggregate limit, and subject to no more than twenty-five

thousand dollars (\$25,000) per claim deductible, coverage to continue through completion of construction plus "tail" coverage for two (2) years thereafter. This policy can be on a claims-made basis.

2. **Deductibles and Self-Insured Retention.** Architect shall inform District in writing if any deductibles or self-insured retention exceeds \$25,000. At the option of District, either:
 - 2.1. District can accept the higher deductible; or
 - 2.2. Architect's insurer shall reduce or eliminate the deductibles or self-insured retention as respects District, its officers, officials, employees and volunteers.
3. **Other Insurance Provisions.** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
 - 3.1. District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for those changes.
 - 3.2. The coverage scope and limits of insurance indicated herein shall be the greater of:
 - 3.2.1. The minimum coverage and limits specified in this Agreement; or
 - 3.2.2. The broader coverage and maximum limits of coverage, if any, of any existing insurance policy required of Architect to be kept pursuant to this Agreement.
 - 3.3. District, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of Architect; instruments of Service and completed operations of Architect; premises owned, occupied or used by Architect; or automobiles owned, leased, hired or borrowed by Architect. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. Architect shall ensure that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage limits/requirements shall also be available to the Additional Insureds.
 - 3.4. For any claims related to the projects, Architect's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of Architect's insurance and shall not contribute with it.
 - 3.5. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.
 - 3.6. Architect's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - 3.7. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after thirty (30) Days prior written notice by certified mail, return receipt requested, has been given to District. At the option of District, Architect shall be the party required to provide District this notice in lieu of Architect's insurance provider.
4. **Acceptability of Insurers.** Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A:VII. Architect shall inform District in writing if any of its insurer(s) have an A.M. Best's rating less than A:VII. At the option of District, either:

- 4.1. District can accept the lower rating;
 - 4.2. Require Architect to procure insurance from another insurer.
5. **Verification of Coverage.** Architect shall furnish District with:
- 5.1. Certificates of insurance showing maintenance of the required insurance coverage; and
 - 5.2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by District before Services commence.

June 14, 2023

Dinah Baharin
Sr. Construction Manager
Mt. Diablo Unified School District
1480 Gasoline Alley
Concord, California 94520

**Subject: MDUSD El Dorado Middle School Multi-Purpose Building Upgrade
Scope & Fee Proposal for Professional Services**

Dear Dinah,

Nacht & Lewis (N&L) is pleased to continue to provide professional architectural services to you and the Mt. Diablo Unified School District (District/MDUSD). This proposal is based on similar work at Valley View Middle School and discussions with you and Melanie Koslow over the past several months. The following forms the basis of this proposal.

Project Understanding:

- Since El Dorado Middle School is a sister school to Valley View Middle School the project scope will be virtually identical to that recently designed and under construction at Valley View with some additional work to be done at the assembly area.
- The District would like to upgrade the existing multi-purpose building to include alterations to the kitchen, assembly area and stage.
- A significant focus of the project will be the complete replacement of the kitchen including the replacement of all food service equipment, exhaust hoods, utilities and the reconfiguration of the kitchen to better respond to current needs. Kitchen to receive new code compliant cook line, exhaust hood with fire suppression system and walk-in freezer/refrigerator.
- Upgrade the existing assembly area with new finishes, improved acoustics, new lighting, new audio/visual system per MDUSD standards, removal of existing unit ventilators and other improvements as needed to better respond to current needs.
- Infill the existing skylights.
- Stage currently has an accessible lift and is in good condition with newly refinished stage floor and theater curtains. No significant work is anticipated for the stage area.
- Provide new HVAC systems throughout the building, including the kitchen and assembly areas.
- Explore the condition of any existing EMS system and make improvements as required to connect new work.
- Provide minor modifications to the existing low voltage systems to accommodate new work. It is anticipated that the existing EST fire alarm system can be modified to accommodate any reconfiguration of the kitchen and overall building improvements. Upgrades will be required to provide code compliant voice-evac function to the existing fire alarm system. Phone, clock/bell, intercom and data systems will be maintained and modified within the building as needed to accommodate the new work.

- Remove all abandon equipment from the existing boiler room and custodian room and convert boiler room to storage space if possible.
- Unlike at Valley View MS, it appears the student restrooms in the MP have not had a formal accessible upgrade. Upgrades to these restrooms will be required by DSA as part of this project.
- Minor site improvements outside the building will be required to replace the grease interceptor and provide DSA required accessible site upgrades including accessible parking, drop-off and path of travel to the project area and main administration office.
- The new HVAC equipment and new kitchen equipment will be broken out into separate bid packages for early procurement under a pre-purchase arrangement to be run by the MDUSD.
- The refinement of this scope will be done during early programming and schematic design collaboration between the MDUSD and the design team. On-site meetings will be held to discuss this scope in detail and determine the best course of action.

Scope of A/E Services

Programming & Field Review

- Meet with MDUSD Facilities, Food Service and site staff as required to fully understand the scope of the project, desired improvements and existing facility conditions.
- Two or three site visits are anticipated for this phase of work.
- Review existing building and site conditions.
- Compile and review available record drawings and previous campus upgrade projects.
- Meet with DSA Oakland for a pre-design DSA-92 meeting.
- Prepare conceptual scope of work documentation and provide report to MDUSD in PDF format.

Schematic Design

- Develop conceptual scope into preliminary graphic design documents including site and floor plans to accurately describe the proposed improvements.
- One site visit is anticipated for this phase of work.
- Meet with Contra Costa County Environmental Health Department or other agency having jurisdiction over the operational permitting of the kitchen scope of this project. Discuss the schematic design and understand agency design and review requirements.
- Provide rough order of magnitude (ROM) cost estimate.
- Perform DSA structural rehabilitation review analysis. From the schematic design and estimated construction cost, analyze if a full DSA building structural upgrade report and design improvements will be required. This is generally based on the cost of new improvements relative to the full replacement cost of the building. If new improvement costs exceed 51% of a full building replacement, DSA could require a full building structural upgrade.
- Provide schematic design package to MDUSD in PDF format.

Design Development

- Develop schematic design into a well-detailed and functional design including site plan, floor plans, reflected ceiling plans, building sections, interior and exterior elevations and 3-D graphic images.

- One additional site visit is anticipated for this phase of work.
- Provide detailed cost estimate based on design development package.
- Provide design development package to MDUSD in PDF format.

Construction Documents to DSA

- Develop design development into a full-detailed and engineered design package including drawings, specifications and engineering calculations. The design team will provide all technical sections of the project specifications. MDUSD to provide Division 0 & 1 contract and bidding requirements and design team with assist in coordinating with the technical sections.
- Meet with the local fire authority to review site access and fire water flow and gain approval on the DSA-810 form for fire and life safety site conditions. One visit to the local fire authority is anticipated for this scope of work.
- Prepare all required DSA submittal documents, forms and applications and make electronic submittal for DSA review.
- Provide detailed cost estimate based on design development package
- Provide construction document package to MDUSD in PDF format.

Construction Documents w/ DSA Approval

- Perform in-house constructability review of DSA submittal.
- Review and respond to DSA electronic plan review comments and perform final electronic backcheck to gain formal DSA approval of the drawings and specifications.
- Provide final DSA approved construction document package to MDUSD in PDF format.

Bid/Award

- Assist in the selection and DSA approval of an Inspector of Record.
- Provide DSA approved bid documents in PDF format.
- Attend (1) pre-bid site conference.
- Assist in the review of bid results.
- Note: Scope includes assisting the MDUSD in creating separate pre-bid packages for the HVAC components and for the food service equipment. The work will be designed as a single package for DSA approval purposes, but designated equipment can be broken out and bid separately as was done at Valley View MS.

Construction Administration

- Attend (1) pre-construction site conference.
- Attend bi-weekly site OAC meetings for the duration of the project. Assume four-month construction duration. Weekly OAC meetings may be accommodated for the first 4 weeks of construction.
- Review submittals and shop drawings, respond to contractor field questions, review pay applications, assist in the development of change orders and process applicable changes through DSA.
- Perform punch walk and document findings.

Project Closeout

- Review contractor provided record drawings and closeout documents.
- Assist MDUSD in certified project closeout with DSA.

Exclusions & Assumptions

- This proposal does not include topographic surveys or civil engineering that may be needed in the design and engineering of this project. N&L recommends the MDUSD retain the services of a qualified surveyor to provide a limited topographic ground survey of the project area to assist N&L in designing accessible parking and paths of travel improvements. If a survey is not provided, N&L will make basic assumptions from field observations to best design accessible upgrades with limited information. This is what was done at Valley View MS but leaves some room for contractor cost impacts during construction.
- Work of this project is generally limited to the multi-purpose building only. No landscaping or site development work is anticipated unless required for accessibility improvements. If our preliminary site reviews indicate that new paving improvements are required for access compliance, a civil engineer may need to be retained to assist in the design of select site upgrades. Additional fees may be required and requested under the terms of additional services of the contract.
- This proposal does not include geotechnical or geohazard reports, electrical load surveys, or other surveys and reports that may be needed in in the design and engineering of this project. However, it is not anticipated these types of surveys or reports will be required for this project.
- The work of this project may require accessibility improvements to select staff and student restrooms, paths of travel and parking. While this campus has had previous accessible upgrades, a project of this nature will trigger compliance with current accessibility codes and regulations. Nacht & Lewis will review existing conditions and include any required upgrades in this project.
- This proposal does not include the complete replacement of existing low voltage systems throughout the campus. Existing systems will be modified as required to accommodate the new work within the multi-purpose building.
- While this project will be designed to all applicable California energy standards, including CalGreen, however, this proposal does not include LEED or CHPS design, documentation or certification.
- This proposal does not include application fees related to agency reviews including, DSA, CDE, CGS, local health department or water district, local fire authority, or other agencies having jurisdiction.
- This proposal assumes that the existing campus primary electrical service has the capacity to serve the upgrades proposed for this project. If significant upgrades to the existing primary

service and transformer, and/or if an additional primary service is required to serve this building, additional design, engineering and utility company coordination fees may be required and requested under the terms of additional services of the contract.

- This proposal assumes that the proposed upgrades to this building will not trigger a full DSA structural rehabilitation. If upon our team's early analysis of the proposed improvements, upgrade costs, and the condition of the existing facility, a full rehabilitation is required, additional fees will be required and will be requested under the terms of additional services of the contract. A formal structural review and analysis consistent with DSA requirements could add upwards of \$65,000 to the design and engineering fees identified in this proposal.
- This proposal does not include hard copy print sets. All work will be presented in electronic PDF format.
- All reimbursable costs associated with site visits, meetings, meals, postage and other incidental project costs are included in the lump sum fee of this proposal. Nacht & Lewis will not request reimbursable costs for these incidental items unless previously discussed and approved by the MDUSD in advance.

Consulting Partners

Nacht & Lewis will provide the following consultants to assist in the design and construction administration of this project. All costs for these consultants are included in the lump sum fee identified in this proposal.

- Degenkolb – Structural Engineering
- Capital Engineering Consultants – Mechanical & Plumbing Engineering
- EDGE Electrical – Power, Lighting and Low Voltage Engineering
- Art Davis (AMD) – Food Service Design
- Cumming – Cost Estimating

Schedule

While a definitive design or construction schedule has not been provided by the MDUSD, it is anticipated that construction documents can be delivered a little more quickly to DSA than was done at Valley View MS simply due to the repetitive nature of this campus. We anticipate the following general schedule:

- | | |
|--------------------------------|---------------------------------|
| • Programming & Field Review | July thru Aug. 2023 (2 months) |
| • Schematic Design | Sept. 2023 (1 month) |
| • Design Development | Oct. thru Nov. 2023 (2 months) |
| • Const. Docs. to DSA | Dec. thru Jan. 2024 (2 months) |
| • Const. Docs. w/ DSA Approval | Feb. thru May 2024 (4 months) |
| • Bid/Award | June thru July. 2024 (2 months) |
| • Construction Admin. | Aug. thru Nov. 2024 (4 months) |
| • Project Closeout | Dec. 2024 (1 month) |

Construction Cost

A definitive construction budget has not been provided by the MDUSD, however, discussions have suggested this project to be in the range of \$3-\$4 million and similar to Valley View MS with some additional scope at the MP space. This is an estimate of bid-day construction cost and not total project cost which includes all fees, permits, testing and inspection. N&L will provide professional cost estimating services to provide accurate and detailed construction cost evaluations from early schematic design through the submittal of construction documents to DSA. For the purpose of this proposal, N&L estimates total construction cost, including pre-purchased equipment, to be approximately \$3.75 million.

Fee Proposal

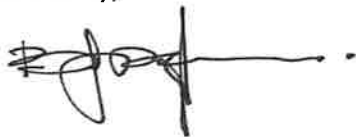
Nacht & Lewis will provide the work as a lump sum fee of **\$428,500** inclusive of all normal direct expenses and deliverables indicated in this proposal. Fees will be billed on a monthly percent completion basis per the following schedule:

Phase Fee Distribution

- Programming & Field Review (5%)
- Schematic Design (10%)
- Design Development (15%)
- Const. Docs. to DSA (30%)
- Const. Docs w/ DSA Approval (5%)
- Bid/Award (5%)
- Construction Administration (25%)
- Project Closeout (5%)

Since a formal agreement has not been provided for our review, Nacht & Lewis reserves the right to modify this proposal upon review of the project specific contract. Should the above proposal be acceptable, please provide a project specific agreement for our review. If you have any questions or concerns regarding this proposal, please do not hesitate to call. As always, Nacht & Lewis values our professional relationship and we pledge our full support in fulfilling your project objectives.

Sincerely,



Brian J. Maytum, AIA, LEED AP
Principal/Vice-President
Nacht & Lewis Architects, Inc.

CC: Melanie Koslow, MDUSD

IRAN CONTRACTING ACT CERTIFICATION
(Public Contract Code § 2204)

Pursuant to Public Contract Code section 2204, an Iran Contracting Act certification is required for solicitations of goods or services of one million dollars (\$1,000,000) or more.

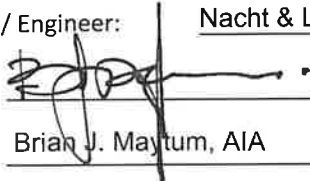
Architect / Engineer shall complete **ONLY ONE** of the following three paragraphs.

1. Architect / Engineer's total Fee is less than one million dollars (\$1,000,000).
OR
2. Architect / Engineer's total Fee is one million dollars (\$1,000,000) or more, but Architect / Engineer is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to Public Contract Code § 2203(b), and Architect / Engineer is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 Days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.
OR
3. Architect / Engineer's total Fee is one million dollars (\$1,000,000) or more, but District has given prior written permission to Architect / Engineer to submit a proposal pursuant to Public Contract Code § 2203(c) or (d). **A copy of the written permission from District is included with this Agreement.**

I certify that I am duly authorized to legally bind Architect / Engineer to this certification, that the contents of this certification are true, and that this certification is made under the laws of the State of California.

Date: June 21, 2023

Proper Name of Architect / Engineer: Nacht & Lewis Architects, Inc.

Signature: 

Print Name: Brian J. Maytum, AIA

Title: Principal / Vice-President

RUSSIAN SANCTIONS CERTIFICATION

On February 21, 2022, President Biden issued Executive Order 14065 (“**Federal Order**”) imposing economic sanctions and prohibiting many activities including, but not limited to, investing in, importing to, exporting from, and contracting with, areas of Ukraine and in Russia. On March 4, 2022, California Governor Newsom issued Executive Order N-6-22 requiring state agencies to take steps to ensure any agency and entity under contract with state agencies comply with the Federal Order (“**State Order**”).

The District requires the Architect / Engineer, as a vendor with the District, to comply with the economic sanctions imposed in response to Russia’s actions in Ukraine, including the orders and sanctions identified on the U.S. Department of the Treasury website (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>).

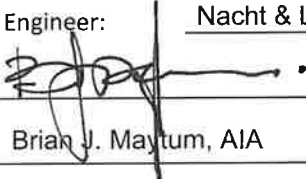
If your Firm’s contract with the District has a cumulative value of \$5 million or more, you must also provide a written response to the District, in addition to this certification, indicating:

- (1) that your Firm is in compliance with the required economic sanctions of the Federal and State Orders;
- (2) the steps your Firm has taken in response to Russia's actions in Ukraine, including, but not limited to, desisting from making new investments in, or engaging in financial transactions with, Russian entities, not transferring technology to Russia or Russian entities, and directly providing support to the government and people of Ukraine.

I certify that I am duly authorized to legally bind the Architect / Engineer to this certification, and I certify that the Architect / Engineer is compliant with the Federal Order and the State Order.

Date: June 21, 2023

Proper Name of Architect / Engineer: Nacht & Lewis Architects, Inc.

Signature:  _____

Print Name: Brian J. Maytum, AIA

Title: Principal / Vice-President

ROOFING CONTRACT FINANCIAL INTEREST CERTIFICATION
(Public Contract Code section 3006)

I Brian J. Maytum, AIA, Nacht & Lewis Architects, Inc.
Name Name of Architect / Engineer

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

Furthermore, I Brian J. Maytum, AIA, Nacht & Lewis Architects, Inc.
Name Name of Architect / Engineer

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

I Brian J. Maytum, AIA, Nacht & Lewis Architects, Inc.
Name Name of Architect / Engineer

Have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract:

Name of firm: None

Mailing address: _____

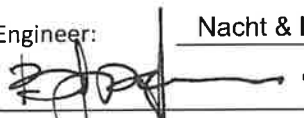
Addresses of branch office used for this Project: _____

If subsidiary, name and address of parent company: _____

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

Date: June 21, 2023

Proper Name of Architect / Engineer: Nacht & Lewis Architects, Inc.

Signature: 

Print Name: Brian J. Maytum, AIA

Title: Principal / Vice-President