Oakland Unified School District
Facilities Planning & Management
955 High Street
Oakland, California 94601

Request for Qualifications and Proposals for
Architect Services for Bridging Documents
for the
CCPA at Havenscourt and McClymonds High School Projects

RFQ/P Issued: June 16, 2021
Deadline for Requesting Invite for Virtual Pre-Submittal Conference: June 24, 2021

Virtual Pre-Submittal Conference: June 29, 2021 (10 a.m. PST)
Deadline for Submitting Questions: July 6, 2021 (4 p.m. PST)
District to Issue Addendum in Response to Questions: July 9, 2021

Proposals Due: July 14, 2021 (2 p.m. PST)
Interviews: TBD
Notification of District Decision: July 27, 2021 (tentative)
Selection by Governing Board: September 22, 2021
Request for Qualifications and Proposals (“RFQ/P”) for Architect Services for Bridging Documents for the CCPA at Havenscourt and McClymonds High School Projects

The Governing Board (the “Board”) of the Oakland Unified School District (the “District”) is seeking statements of qualifications and fee proposals from qualified providers of architect services for the preparation of design requirements and bridging documents for the design-build Coliseum College Prep Academy (CCPA) at Havenscourt and McClymonds High School projects (the “Projects”), plus other architect services related to the Projects. The District may elect to select one firm to execute both projects or two firms to execute one project each.

1. Critical Dates

There shall be a virtual non-mandatory pre-submittal conference on June 29, 2021, at 10:00 a.m. Interested parties shall request an invite no later than 5:00 p.m. on June 24, 2021 to participate in this virtual meeting.

Submittal Due Date:

An unbound wet-signed original + six (6) copies and a PDF version on a flash drive of the submittal shall be delivered no later than July 14, 2021, at 2:00 p.m. (PDT) to:

Oakland Unified School District
Facilities Planning & Management
955 High Street
Oakland, CA 94601
Attention: Tadashi Nakadegawa, Deputy Chief of Facilities Planning & Management

Due to the circumstances caused by the Covid-19 pandemic, the District will accept electronic Proposals sent via email in lieu of hard copies. Proposals received by the District no later than 2:00 PM (Pacific Standard Time) on July 14, 2021 via email will be accepted (to Juanita Hunter at juanita.hunter@ousd.org and the contacts below).

If you have any questions regarding this RFQ/P and/or submitting proposal electronically, please email Kenya Chatman at kenya.chatman@ousd.org and cc: to Colland Jang at colland.jang@ousd.org.

Hard copy submittals not received by the deadline will be returned unopened. Electronic submittals not received by the deadline will also be subject to rejection.

Interview Date:

To be determined.
Selection Date:

As currently scheduled, the Governing Board of the District will select architect(s) for the Project(s) at its regular Board meeting on September 22, 2021. The meeting will be held virtually until further notice. However, the District may choose to select the architect at another meeting.

2. Local, Small Local and Small Local Resident Business Enterprise Program

The Local Business Utilization Policy 7115 requires that there is a mandatory fifty percent (50%) LBU participation with a 25% or less Local Business (LBE) participation and a 25% or more Small Local or Small Local Resident Business (SLBE/SLRBE) participation for all capital program/construction-related contracts and professional services agreements.

On April 28, 2021, the Board of Education amended the Local Business Policy which had named the City of Oakland as the singular agency to certify local businesses to include five additional local business certifications. For businesses located in Oakland, Local Business and Small Local Business certifications may also be accepted from the Port of Oakland, Alameda County Transportation Commission, Alameda County Department of General Services, US Department of Transportation California Unified Certification Program, and the California Public Utilities Commission.

The District will follow the City of Oakland Small Business size standards in recognizing Small Local and Small Local Resident Businesses.

The full version of OUSD’s latest Local, Small Local and Small Local Resident Business Enterprise Program can be found by going to the OUSD home page: ousd.org> Offices and Programs> Facilities Planning & Management Department> For Contractors and Developers> Bids and Requests for Proposals> Bid Information> 2014 and 2021 Amendments to Local Business Participation Policy.

3. Project Descriptions

The Projects are intended to be Coliseum College Prep Academy at 1390 66th Avenue and McClymonds High School at 2607 Myrtle Street, in Oakland, Alameda County, California.

Background of CCPA at Havenscourt

The project is located at 3190 66th Avenue in Oakland, CA with Coliseum College Prep Academy taking over the Havenscourt Middle School. CCPA currently has 6 permanent buildings (the main 2-story administration/classrooms building M, three one-story classroom buildings A/B/C, a gymnasium building G, and 2-story cafeteria/classrooms building D), and 8 portable classrooms.

The campus is a focused 6th - 12th grade program that is comprised of both a middle school and a high school. The academic core courses include english, mathematics, laboratory science, history, and world language courses that are, as much as possible, taught through the lens of the theme of the pathway, which amplifies student engagement.

CCPA Project Scope

Since this high school does not have all elements as defined in the Oakland Unified School District
Educational specifications, the goal is to right-size the campus by exploring the option of adding a full-sized gymnasium and several new classrooms.

Enrollment at CCPA is currently at 610 students with projected growth at 960 students by school year 2025-26. By the year 2023-24, CCPA will no longer have enough space to serve expanded student population. Current classroom count is 42 with the goal of possibly expanding to 58 to accompany the projected increased enrollment as well as a specialized classroom, library, and library annex for middle school.

The selected architectural partner shall assist with a program of spaces/buildings and several site feasibility studies outlining potential options for growth and expansion.

**Background of McClymonds High School**

The project is located at 2607 Myrtle Street in Oakland, CA. McClymonds HS currently has 2 permanent buildings (the main 3-story administration/classrooms building and a single-story gymnasium building). The site is small compared to CDE standards and includes a full-size track and field complex, aquatics center, 5 tennis courts, and limited parking for staff.

The campus is a focused 9th - 12th grade program and is a premiere, transformative learning environment, building on the legacy of community activism in West Oakland, and empowering students to personalize their education pathways to become college, career, and community-ready graduates. At McClymonds High School, students create and implement STEAM (Science, Technology, Engineering, Arts and Math) Personalized Pathways in a supportive climate that embrace individuality while fostering respect for others. By taking ownership of their education, students embark on a journey of self-discovery, become more responsible and accountable so that they graduate college, career, and community ready.

**McClymonds High School Project Scope**

The campus has enough classrooms to support an enrollment of 1,200 students, however, current enrollment is around 350 students. The existing 3-story main building is aged and likely to require a full seismicity evaluation as well as a hard look at circulation patterns and functionality. The goal is to right-size the campus whether via a tear down replacement of key buildings on campus or to improve functional spaces to properly accommodate an increased student population. Current classroom count is 30+ with science labs, wood shop, and standard classrooms.

The selected architectural partner shall work with the district’s Academic Leadership to develop a series of programmatic and site feasibility options based on several enrollment models.

4. **Scope of Work**

The Scope of Work includes the preparation of the Project design requirements for the Design-Builder (i.e., the “Bridging Documents”), plus services during construction. Architect may not prepare a proposal, or perform any work, on behalf of any Design-Builder since that would be a conflict of interest due to the Architect being the District’s consultant and representing the District’s interests on this project.
The architect will be expected to perform the scope of services described in this RFQ/P and the architect agreement accompanying this RFQ/P (Attachment A), which will be the form of agreement that the architect must execute. Any statement of qualifications submitted in response to this RFQ/P (including the proposed hourly rates) must be based on the scope of services, obligations, and other terms of this RFQ/P and the architect agreement.

See Attachment B for more detail about the scope of architectural services, the scope of the Project, and the estimated schedule for the Project and its architectural services.

Design Consultant shall incorporate into its work and the work of all Sub-consultants the OUSD Material Standards for facilities and construction at such time as they are adopted. These shall include but not limited to Supplemental District Standards for Fire Alarm, Intrusion Alarm, Hydraulic Elevator, and Technology Services Data & Communications.

OUSD Material Standards can be found at the following: ousd.org> Offices and Depts> Facilities Planning & Management Department> For Contractors and Developers> Bids and Requests for Proposals> OUSD Design Guidelines> OUSD Material Standards

The Facilities Planning and Management Department has transitioned its program and construction program software to COLBIDocs with Account-Ability by Colbi Technologies. It shall be imperative that selected firms become fully acclimated to COLBIDocs to ensure they would be completely proficient through all project phases.

5. Statement Format and Content

The statement of qualifications should be clear, concise, complete, well organized, and demonstrate respondent’s ability to follow instructions.

An original + six (6) copies and a PDF version on a flash drive of the statement must be provided, with no more than 15 single-sided pages in total length. See alternative electronic submittal noted above.

All respondents are requested to follow the order and format specified below. Please tab or label each section of the submittal to correspond to the numbers/headers shown below.

The cover shall include the RFQ/P’s title and submittal due date, the name, address, fax number, and the telephone number of responding firm (or firms if there is a joint venture or association). The cover should also identify the proposed principal-in-charge and lead architect for the Project.

In order to adhere to the 15-page limit and follow the requested format order, responses may be condensed with full documents placed in an Appendix. Those full documents may include but not limited to the LBU participation worksheet, resumes, fee schedules, certificates, project example sheets, etc. Documents in the Appendix will not be counted against the page limit. The proposal cover, table of contents and dividers will also not be counted against in the 15-page limit.

The table of contents shall include complete and clear listings of headings and pages to allow easy reference to key information.
The following sections should be included in the statement in the order listed:

A. **Cover Letter**

A cover letter signed by an authorized officer of the firm submitting the statement, or signed by another person with authority to act on behalf of and bind the firm. Indicate contact person(s) for this Project.

B. **Mandatory Qualifications**

Respondents must hold an architect’s license which is current, valid and in good standing with the California Architects Board. Respondents must have the necessary qualifications to provide the requested services in accordance with California law. Provide the following information for each license:

1. Name of license holder exactly as on file
2. License number and expiration date
3. Whether license has been suspended or revoked in the past 5 years. If so, explain.

C. **Organization, Credentials, and General Background** (15 points)

Please provide a brief history of your organization, including:

1. Number of years the organization has been in business.
2. Location of office that will perform the work required by this RFQ/P.
3. List of basic services provided by your organization.

D. **School Facilities Planning and Design Experience** (20 points)

Describe the experiences/background of your organization in providing planning and design services for public school facilities required by this RFQ/P. Provide a list of similar projects performed over the last 5 years listing start and finish dates, project cost, contractor, owner, and owner contact information.

E. **Past Performance Record** (5 points)

If any of the following has occurred, please describe in detail the circumstances for each occurrence:

1. Failure to enter into a contract once selected/awarded.
2. Withdrawal of a proposal as a result of an error.
3. Termination or failure to complete a contract.
4. Debarment by any municipal, county, state, federal or local agency.
5. Involvement in litigation, arbitration, or mediation.
6. Conviction of the firm or its principals for violating any federal or state law related to architecture practice or contract performance.
7. Knowing concealment of any deficiency in the performance of a prior contract.
8. Falsification of information or submission of deceptive or fraudulent statements in connection with a contract, including allegations of, or litigation relating to, violations of the California False Claims Act.
9. Willful disregard for applicable rules, laws or regulations.
10. Information regarding any of the above may be deemed to indicate an unsatisfactory record of performance.

F. Project Team (15 points)

1. Identify key team members for this Project and provide their qualifications.
2. Describe how the Project would be staffed.
3. Identify all of your proposed consultants for the Project and provide their qualifications.
4. Provide an organization chart for the Project.

G. Client Satisfaction/References (5 points)

Provide a list of at least five educational client references for which your organization has performed planning and design services similar to those required by this RFQ/P. References must include:

1. Name, address, telephone number, and a contact person of the project owner.
2. Name, address, telephone number and a contact person for the contractor(s) working on the project(s).
3. Describe the project(s) on which your organization provided services, including costs.

H. Insurance (Mandatory Requirements)

Attach a letter from your insurance company indicating your firm’s ability to provide insurance as required in the attached agreement, including but not limited to the following:

1. A.M. Best financial strength rating (FSR) of A- or better.
2. Commercial General Liability Insurance: Commercial general Liability Insurance shall be at least as broad as Insurance Services office General Liability Coverage (Occurrence Form CG 0001), with coverage limits of not less than One Million Dollars ($1,000,000) per occurrence for bodily injury, personal injury and property damage/Two Million Dollars ($2,000,000) aggregate.
3. Automobile Liability Insurance: Automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto), with coverage limits of at least One Million Dollars ($1,000,000) for bodily injury and property damage each accident limit.
4. Workers’ Compensation and Employer’s Liability Insurance: The selected Architect shall insure (or be a qualified self-insured) under the applicable laws relating to workers’ compensation insurance, all of their employees working on the Project, in accordance with the “Workers Compensation and Insurance Act,” Division IV of the California Labor Code. The selected Architect shall provide employer’s liability insurance in the amount of at least One Million Dollars ($1,000,000) per accident for bodily injury and disease.
5. Errors and Omissions Insurance: Errors and omissions insurance shall be provided on an occurrence or claims-made basis with a limit of at least One Million Dollars ($1,000,000) with a deductible in an amount not to exceed the sum of Ten Thousand Dollars ($10,000).

6. All insurance will be in a form and with insurance companies acceptable to the District.

7. Insurance carriers shall be qualified to do business in California and maintain an agent for process within the State.

I. Current and Contracted Projects (15 points)

Attach a list of your firm’s projects currently underway and contracted for but not yet underway. List actual or expected start and completion dates of the projects, and explain how your firm will be able to effectively manage and perform the District’s Project while also managing and performing the listed projects.

J. Hourly Rates and Not-To-Exceed Amounts; Basis of Proposal (10 points)

Provide a proposed not-to-exceed amounts for (a) payments for basic services, and (b) payments for reimbursable expenses. Also provide an itemized spreadsheet that supports your estimated not-to-exceed amounts for payments for basic services and reimbursable expenses, including but not limited to proposed staffing and estimated hours of work. All elements of the fee calculations and reimbursable expense calculations must be provided, plus an hourly rate sheet for additional services (if different from the hourly rates for basic services).

Provide a list of your hourly rates for all personnel that may work on the Project. Provide at a minimum the hourly rates for:
Principal-in-Charge, Project Architect/Engineer, Job Captain, Technical Staff (CAD Operator) and Administrative Staff.

Also, provide a statement that your proposal is based on all terms in the required agreement (Attachment A) and that you will sign this form of agreement if the Board awards the contract to you.

K. Schedule for Services (Mandatory Requirement)

Provide a statement that you can provide the required services within the schedule proposed in Attachment B.

L. Other Contract Documents

Attach the following form(s) to your proposal:

Local Business Participation Form – Attachment C (15 points)

To calculate percentage of participation, assume usual and customary civil, landscape architecture, structural, mechanical and electrical engineering services would be provided.
Identify prime consultant, sub-consultant firms and status (i.e., certificate number and expiration date) of their City of Oakland or other approved agency LBE/SLBE certification.

6. Selection Process

A. The purpose of this RFQ/P is to enable the District to select the firm with whom the District may enter a contract for architectural services for the Project.

B. The District will use the selection and negotiation process outlined below. A review and selection committee composed of key District officials and consultants will review and evaluate all submittals and may conduct interviews.

C. Statements of qualifications and proposals will be opened privately to assure confidentiality and to avoid disclosure of the contents to competing respondents prior to and during the review, evaluation, and negotiation processes. However, to the extent that the submittals and proposals are public records under California law, they may be subject to release to members of the public if specifically requested under applicable law.

D. The following items will be considered by the District in the review process:
   - Conformance to the specified format.
   - Organization, presentation, and content of the statement.
   - Qualifications and experience.
   - Proposed methods and overall strategic plan to accomplish the work in a timely and competent manner within the District’s financial constraints and time frames.
   - Completeness of estimated cost of all architect services for the entire Project, and the cost itself.

7. Interviews, Selection, and Contract Negotiations

The District may, but is not obligated to, conduct interviews with the architects that respond to this RFQ/P. If conducted, the interviews will be held virtually on a date to be determined (“TBD”). At the time of the interview, the architect’s design team will be required to attend.

The District may enter negotiations with one or more of the proposing entities regarding the contract price. The terms of the architect agreement (*Attachment A*) other than price are not negotiable, including the payment structure. Should the District be unable to negotiate a satisfactory contract with one of the proposing entities, the District is under no obligation to enter an agreement with any of the entities. The District reserves the right to award the contract to the entity the District deems most suitable to undertake the Project based on many factors, including demonstrated competence and qualifications for the types of services to be performed, and a fair and reasonable price. The District further reserves the right to reject any or all statements or proposals, or waive any irregularities in any of the statements submitted pursuant to this RFQ/P.
8. General Information

Amendments: The District reserves the right to cancel or revise this RFQ/P in part or in its entirety. If the District cancels or revises the RFQ/P, all Respondents will be notified by addenda. The District also reserves the right to extend the date responses are due, or postpone the interview date.

Inquiries: Any questions concerning this RFQ/P or selection process may be directed to Kenya Chatman at kenya.chatman@ousd.org and cc: to Colland Jang at colland.jang@ousd.org, Oakland Unified School District. Replies involving any substantive issues will be issued by addenda by being posted on the District’s website and emailed to all parties recorded by the District as having received the RFQ/P documents.

9. Special Conditions

Non-Discrimination: The District does not discriminate on the basis of race, color, national origin, religion, age, ancestry, medical condition, disability, or gender in consideration for an award of contract.

Costs: Costs of preparing a statement in response to this RFQ/P are solely the responsibility of the Respondent.

Limitations: This RFQ/P does not commit the District to award a contract, to defray any costs incurred in the preparation of a statement pursuant to the RFQ/P, or to procure or contract for work. The District reserves the right to waive any irregularities in the statements received pursuant to this RFQ/P, or in the process outlined herein for selection of an architect for the Project.
ATTACHMENT A

AGREEMENT

BETWEEN

OAKLAND UNIFIED SCHOOL DISTRICT

AND

________________ [ARCHITECT FIRM]

FOR

ARCHITECTURAL SERVICES FOR BRIDGING DOCUMENTS

________________, 201_

OAKLAND UNIFIED SCHOOL DISTRICT

________________ Street

________________, California 9
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AGREEMENT
FOR
ARCHITECTURAL SERVICES

This Agreement for Architectural Services ("Agreement") is between the Oakland Unified School District, a California public school district (the "District"), and ____________________, license number ____________ (the "Architect"), with respect to the following recitals:

A. District proposes to undertake the construction of a work of improvement using a design-build delivery method, which requires the services of a duly qualified and licensed architect to prepare design requirements for the Design-Builder and oversee the Design-Builder’s design and construction.

B. Architect represents that Architect is licensed to provide architectural/engineering services in the State of California and is specially qualified to provide the services required by the District, specifically the design and construction oversight of public school(s).

C. The Parties have negotiated the terms under which Architect will provide such services and reduce such terms to writing by this Agreement.

The Parties therefore agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Additional Services. "Additional Services" shall mean those services in addition to the Basic Services that are provided by Architect and authorized in writing by the District, and as further defined in Article 6 below.

1.2 Agreement. "Agreement" shall mean this Agreement for Architectural Services.


1.4 Basic Services. Architect’s Basic Services consist of the design services, including landscaping architectural services and landscape irrigation design, civil, structural, mechanical, and electrical engineering services, required to complete the Project, as further defined in Article 5.

1.5 Bridging Documents. "Bridging Documents" shall mean the District’s requirements and restrictions for the Design-Builder’s design of the Project, including all documents required to be prepared by the District under Education Code section 17250.25(a).

1.6 Contract and Contract Documents. "Contract Documents" shall mean those documents which are part of and included in the contract between the District and the Design-Builder,
including the Bridging Documents (“Contract”).

1.6 **Design-Builder.** “Design-Builder” shall mean the design-build entity with which the District enters a design-build contract to design and construct the Project (the “Contract”).

1.7 **District.** “District” shall mean Oakland Unified School District, and its governing board members, employees, agents and authorized representatives.

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

1.9 **Design-Build Cost.** “Design-Build Cost” shall mean the estimate of total design-build costs to the District as initially submitted by the Architect under this Agreement and accepted by the District, and as subsequently revised under Article 5 of this Agreement.

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

**ARTICLE 2**

**RETENTION OF ARCHITECT; STANDARD OF CARE**

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

**ARTICLE 3**

**DESCRIPTION OF PROJECT**

3.1 The Project consists of design and construction of ____________ [insert Project description].

**ARTICLE 4**

**COMPENSATION**

4.1 **Basic Services.** For the Basic Services satisfactorily performed under this Agreement, Architect shall be compensated according to its hourly rate schedule (Section 4.8, below).
Architect’s total compensation for its Basic Services shall not exceed $_______, which is Architect’s estimate of the maximum total cost of its Basic Services on the Project, based on its ______________, 20___, fee estimate. However, Architect will not be compensated for any Basic Services required as a result of Wrongful Acts or Omissions. Architect acknowledges that the not-to-exceed amount for Basic Services, above, includes contingency compensation in the event that more time and costs than originally anticipated may be necessary to complete the Basic Services.

4.2 Additional Services. Architect may invoice separately for Additional Services if provided by Architect under Article 6, but the Architect’s total compensation for Additional Services shall not exceed $________. However, Architect will not be compensated for any Additional Services required as a result of Wrongful Acts or Omissions.

4.3 Reimbursable Expenses

4.3.1 “Reimbursable Expenses” are those actual out-of-pocket expenses directly incurred as a result of Architect’s performance of Basic or Additional Services under this Agreement. Architect may not charge a mark-up on Reimbursable Expenses. Reimbursable Expenses are limited to these expenses related to the Project: Fax, reproduction expense (excluding such expense for reproductions for office use by Architect and its consultants), postage, messenger, transportation, living expenses in connection with out-of-town travel, long distance communications, expense of renderings, models and mock-ups requested by District, expense of publishing under Article 5, expense of data processing and photographic production techniques when used in connection with Additional Services, and, if authorized in advance by the District, expense of overtime work requiring higher than regular rates. Reimbursable Expenses do not include indirect costs, such as general overhead (for example, home office overhead [including technology hardware and software] or insurance premiums), for which Architect must pay out of its compensation for services under Section 4.1, above; nor do they include expenses incurred in connection with Basic or Additional Services that result from Wrongful Acts or Omissions.

4.3.2 Architect shall be reimbursed by District for its Reimbursable Expenses on the Project. Architect’s total reimbursement for Reimbursable Expenses shall not exceed $_______, which is Architect’s estimate of the maximum total cost of Reimbursable Expenses on the Project.

4.4 The total not-to-exceed price under this Agreement based on Sections 4.1, 4.2, and 4.3 above is $________. For services satisfactorily performed, payment for Basic Services, Additional Services and Reimbursable Expenses shall be made on a monthly basis after receipt and approval by the District of the Architect's properly documented and submitted invoices. To be “properly documented and submitted,” an invoice shall be timely, be accompanied by all necessary documentation, list all activities performed, and for each activity performed list the person performing it and the person’s rate of compensation. Architect’s invoice shall be submitted within ten (10) days of the end of the monthly billing period. Invoices, receipts and other documentation to establish the validity of all Reimbursable Expenses shall be a prerequisite to District payment of such expenses. If District disputes a portion of a properly submitted invoice, it shall notify Architect of the dispute and, upon Architect’s request, arrange for a
meeting to confer about, and potentially resolve, the dispute. Prior to this meeting, Architect shall provide all documentation requested to support disputed portions of a properly submitted invoice. Regardless of any such dispute about an invoice or payment, Architect shall continue to provide all services required by this Agreement and law until the end of the Project, even if District and Architect cannot resolve all such disputes. Payments of undisputed portions of a properly submitted invoice shall be made within 60 days of receipt of the invoice; Architect otherwise waives all rights and remedies under law related to receipt of payment of undisputed amounts.

4.5 The Architect's compensation shall be paid notwithstanding a Design-Builder-caused delay in completion of the project. However, District may withhold from payments to Architect to the extent that (i) Basic and Additional Services remain to be performed, including but not limited to those required for project closeout and payments to Design-Builder, and (ii) Wrongful Acts or Omissions caused District to incur damages, losses, liabilities or costs, including but not limited to withholding any amounts for which Architect is responsible under Section 5.5.21. Dollars ($________) will be withheld from any Construction Phase payments until District receives certification of Field Act approval. If the total amount invoiced by Architect reaches the not-to-exceed Basic Services amount before Architect’s Basic Services under this Agreement are complete, Architect must complete the Basic Services without submitting additional invoices, or receiving additional payment, for Basic Services.

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

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

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

4.9 Architect shall not accept compensation or other benefits from other persons related to the Project, including payments from manufacturers of construction materials that are specified in the design.
ARTICLE 5
BASIC SERVICES TO BE RENDERED BY ARCHITECT

5.1 General

5.1.1 Architect's Basic Services consist of the design services, including landscaping architectural services and landscape irrigation design, civil, structural, mechanical, and electrical engineering services, required by law, this Agreement, and the applicable standard of care. The Basic Services also include the services described in this Article 5, below, including but not limited to preparation of the Bridging Documents, performance of other pre-Contract bridging services, and Contract administration and supervision services (including responding to requests for information from the Design-Builder, review of the Design-Builder’s design prior to DSA submission for compliance with the Bridging Documents, and preparation and processing of change orders). The District shall have the right to add or delete from the Architect’s scope of services as it may determine is necessary for the best interests of the Project and/or the District. Architect shall expeditiously and diligently perform all of its work and obligations under this Agreement. Architect may not cease, delay or reduce, or threaten to cease, delay or reduce, its performance based on a payment dispute with District under Section 4.4, above. The Architect acknowledges that its priority is to complete the Project and the Architect’s services, and that any payment disputes with the District under Section 4.4, if not resolved during the Project, must wait for resolution after the Project.

5.1.2 The Architect shall review the estimated cost of the Contract described more fully below at each phase of Architect's services, also as defined below. If such estimates are in excess of the District’s budget for the Project, the Architect shall revise the Contract’s type or quality of design and construction to come within the budgeted limit.

5.1.3 Whenever the Architect's services include the presentation to the District of Design-Build Cost, the Architect shall include a reasonable amount for contingency costs arising from, among other things, higher bids than anticipated, future increase in construction costs, and change orders based on unforeseen site conditions.

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

5.1.5 At the District's request, the Architect and Architect's consultants shall cooperate with District and the District's consultants in verifying that Architect's Bridging Documents and other pre-Contract bridging services and work product (plans, specifications, studies, drawings, estimates, etc.) relating to the Project are constructible and otherwise include all of the District’s needs for the Project. If there are project meetings during the bridging and design-build phases, Architect shall attend those meetings.

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

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

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

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

5.2 Consultants

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

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

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

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

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

5.3 Bridging Phase

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

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

5.3.3 The Architect shall review with the District alternative approaches to the Bridging Documents and the design-build scope of the Project, and shall include alternatives that may reduce the cost of the Project.

5.3.4 Based on a mutual understanding of the District’s budget and scope of work requirements, the Architect shall prepare for the District’s governing board’s written approval the Bridging Documents, which shall include, but not be limited to, the following: (a) Schematic design studies; (b) site utilization plans; (c) a description of the Project showing, among other things, size, type, design character, the scale and relationship of the components of the Project; (d) a complete description of all elements of design that the Design-Builder must include in its final design, including but not limited to (i) those elements specifically requested by the District, (ii) those elements not specifically requested by the District but which are nevertheless necessary to meet the District’s requirements for the Project, (iii) performance specifications for HVAC and other systems or elements of the Project, and (iv) quality or quantity of materials, equipment, or furnishings; (e) identification of all elements of the Design-Builder’s final design that must be approved by the District; and (f) a written schedule for the performance of the Contract that itemizes constraints and critical path issues, including deadlines for Design-Builder’s submission of the final design to DSA and a maximum number of calendar days for the Design-Builder to construct the Project. The Architect shall also prepare for the District’s governing board’s written approval a written estimated statement of Design-Build Cost. The Design-Build Cost estimate shall be based on current area, volume and other unit costs, shall conform to District’s total construction cost budget, and shall include reasonable contingencies for all construction and construction management work. The written schedule shall conform to District’s milestone and
completion deadline requirements. Nevertheless, Architect is encouraged to make recommendations to District regarding additional benefits that could be realized by increasing the District’s total construction cost budget, or by altering the District’s completion deadlines. If District incorporates any recommended changes, then Architect shall revise the Bridging Documents, including but not limited to the written statement of Design-Build Cost and written schedule for the performance of work, as necessary until District’s governing board approves them in writing. Architect shall attend, and present at, as many meetings of the District’s governing board as may be necessary to obtain the board’s approval of the Bridging Documents.

5.4 Proposals and Negotiations Phase

5.4.1 Following District’s governing board’s written approval of the Bridging Documents, and District’s governing board’s written acceptance of Architect's final estimate of Design-Build Cost and the design-build schedule, Architect shall continue to assist the District in finalizing the District’s Request for Qualifications, Request for Proposals, and Contract Documents. Architect shall reproduce the Bridging Documents in the number requested by the District and distribute them among interested design-builders. Architect shall also assist the District in obtaining Statements of Qualifications and Proposals, and shall assist the District in evaluating the Statements and Proposals from interested design-builders, and in awarding the Contract. All sets of Contract Documents, other than those for the use of the Architect or its consultants, requested by the District in excess of [number] shall be reproduced at District’s expense. Architect may not participate in the preparation of a proposal, or the work performed, by a design-build entity as it would be a conflict of interest with the Architect’s duties as the District’s consultant representing the District’s interests.

5.4.2 Should the proposal with the best value in response to the Request for Proposals exceed Architect’s most recent approved estimate of the Design-Build Cost as accepted by District by more than ten percent (10%), Architect shall, on request by District and as part of Architect's Basic Services, make such changes in the Bridging Documents as shall be necessary to bring new proposals within ten percent (10%) of such Design-Build Cost. In making such changes, Architect will exercise Architect's best judgment in determining the balance between the size of the Project, the type of construction, and the quality of the construction to achieve a satisfactory project within ten percent (10%) of Architect's Design-Build Cost.

5.4.3 Either on its own or in cooperation with the District, the Architect shall review the qualifications of all design-builders interested in the Project, and shall make recommendations to the District as to whether, in the Architect's professional opinion, the design-builder should be prequalified or short-listed.

5.4.4 If, in the District's discretion, the District will seek total or partial State funding for this Project, the Architect shall require interested design-builders to meet all applicable Disabled Veteran Business Enterprises requirements and goals. The Architect shall also prepare and submit the appropriate documentation to the OPSC.
5.5 Design-Build Phase

5.5.1 The design-build phase shall begin as described in the Contract.

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

5.5.3 Prior to submission of Design-Builder’s design to the DSA for review and approval, Architect shall review Design-Builder’s design for compliance with the Contract Documents. Such review shall be completed within fourteen (14) days of receipt of Design-Builder’s design.

5.5.4 The Architect shall timely provide District with copies of all of its correspondence with the Design-Builder.

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

5.5.6 Upon completion of construction, Architect shall review the Design-Builder’s set of as-built record drawings indicating dimensions and locations of all work, including but not limited to buried utility lines and mechanical, electrical and plumbing layouts, which shall be forwarded to the District upon completion of the Project. While Architect cannot guarantee precise accuracy of such drawings, Architect shall exercise reasonable care in reviewing such drawings to determine their general compliance with the Contract Documents. Architect shall have no responsibility for their conformity to field conditions, except that in the event that the Architect, consistent with standards of due care, becomes aware of non-conformity with field conditions, Architect shall have a duty immediately to notify the District in writing. Architect shall also assemble and deliver to District all written guarantees, instruction books, operation and maintenance manuals, diagrams, charts and other documents required of Design-Builder.

5.5.7 The Architect shall be responsible for the preparation and submission of any notifications regarding excavation in areas which are known or suspected to contain subsurface installations under Government Code section 4216, et seq. The Architect may delegate this
responsibility to the Design-Builder if such power to delegate was included in the Contract Documents and Request for Proposal, but Architect shall remain responsible for supervising such Design-Builder to ensure performance of this task. Architect shall provide a copy of all such notifications to the District.

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

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

Architect has the primary responsibility for the Project to supervise, coordinate and manage the compliance of all parties, including the District’s Inspector of Record/Project Inspector (“IOR”), Design-Builder, any Construction Manager, laboratories, District, and Architect itself with the DSA Construction Oversight Process.

The Architect must comply with the applicable requirements of the DSA Construction Oversight Process, including but not limited to (a) submitting the inspection card request form (DSA 102-IC), (b) providing a verified report (DSA 6-AE) at the completion of each block and section of each inspection card, and (c) directing and monitoring the IOR and laboratories of record, and (d) coordinating with the Owner, Design-Builder, any Construction Manager, laboratories, and the IOR to meet the DSA Construction Oversight Process requirements without delay or added costs to the Project.

5.5.10 The Architect shall visit the site, both as the Architect deems necessary and as requested by the District, but under no circumstances less than [ ] times per [ ] to maintain familiarity with the quality and progress of the Project, to determine that the Design-Builder’s work substantially complies with, and is substantially progressing in accordance with, all documents, drawings, plans, and specifications (including but not limited to the Contract Documents and the Design-Builder’s DSA-approved design). Such observations are to be distinguished from the continuous inspection provided by the Project Inspector unless Architect has agreed in writing to serve as the District’s Project Inspector.

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

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

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

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

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

5.5.16 The Architect will, consistent with standards of due care, make reasonable professional efforts to exclude hazardous materials from new construction. In the event the District or Architect is or becomes aware of the presence of, or exposure of persons to, asbestos, polychlorinated biphenyl (PCB) or any other toxic or hazardous contaminants, materials, air pollutants or water pollutants at the Project site ("Hazardous Substances"), or the substantial risk thereof, each shall have a duty immediately to notify the other in writing. The parties recognize, however, that neither Architect nor the District is trained or licensed in the recognition or remediation of Hazardous Substances.
With respect to asbestos and asbestos containing materials, the parties acknowledge that the Architect has recommended and the District has agreed to retain a qualified consultant to evaluate the presence of such materials at certain District facilities which are included in the scope of this Agreement. In the event that said consultant recommends a procedure to deal with such materials, said consultant shall have the responsibility to draft specification language for the removal or other remediation of such materials, and subsequently may be required to certify that they have been properly removed or otherwise remediated. Architect shall include consultant's recommendations and specifications in the appropriate design documents for modernization and shall, as part of its Basic Services, provide designs and other bid documents consistent therewith.

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

5.5.17 Based on the Architect’s observations, and an evaluation of each Application for Payment from Design-Builder, the Architect will estimate the amount of work completed by Design-Builder, and assist the District in (a) determining the amount owed to the Design-Builder, and (b) issuing Project Certificates for Payment incorporating such amount, all in accordance with the Contract Documents. The Architect’s estimation of the amount of work completed by Design-Builder shall constitute representations by the Architect to the District that the quality of the completed work is in accordance with the Contract Documents based upon Architect’s observations of the completed work, and that the Design-Builder is entitled to payment for the completed work.

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

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

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

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

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

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

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

5.5.21.1 In the event of such a change order, Architect shall be responsible for the difference between (a) what the Design-Builder would have added to its original bid for the Project if the Wrongful Act or Omission had not occurred (i.e., the “added value” portion of the change order), and (b) what the Design-Builder charges the District in the change order. The amount of added value of any change order work shall be based on the circumstances of the Architect’s Wrongful Act or Omission and the change order work necessitated by the Wrongful Act or Omission. It is the parties’ intent that the District should pay no more than what the District would have paid if the Wrongful Act or Omission had not occurred.

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

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

5.5.22 The Architect shall assist District in determining the date of actual final completion and make a final detailed on-site review of the job with representatives of the District and the Design-Builder. Architect shall also perform a warranty review with District 30-60 days before expiration of the specified warranty on the Project.
5.5.23 The Architect shall assist the District in issuing the final certificate for payment and any other documents required to be recorded by law or generally accepted architectural or construction contract practice upon compliance with the requirements of the Contract Documents (unless the other required documents are being provided by the Design-Builder), provided that such certification shall not constitute an admission that the Project has been completed in accordance with Contract Documents or in conformance with this Agreement.

5.5.24 Architect shall make reasonable professional efforts so that the finished design-build Project complies with all standards imposed by the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, disability access requirements of the State Building Code and any other laws applicable to disability access. If a court, administrative agency or other trier of fact later determines that Architect has violated any of the above-referenced laws, or District, because of Wrongful Acts or Omissions, has violated any of the above-referenced laws, Architect shall remedy the violation at its own cost. **Architect shall indemnify, defend and hold the District harmless under Article 18.1 of this Agreement for any breach of this paragraph due to Architect’s negligence, recklessness or willful misconduct.** The Architect shall not be responsible for acts or omissions of the Design-Builder or of any other persons performing portions of the Project not employed or retained by Architect, nor shall Architect be responsible for any subsequent changes in the law or any regulation applicable to disabled access or any subsequent differing interpretation of the laws or regulations applicable at the time Architect's design is reviewed by DSA. In the event that the Architect is or becomes aware of possible non-compliance with the foregoing standards, Architect shall have a duty immediately to notify the District in writing of the possible non-compliance.

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

### ARTICLE 6
**ADDITIONAL SERVICES TO BE RENDERED BY ARCHITECT**

6.1 "Additional Services" shall be provided by Architect if authorized or directed in writing by District. Such compensation shall be paid based on the hourly rates in Section 4.8 and as otherwise set forth in this Agreement.

6.2 The following is a list of services that are not included in the Basic Services to be provided under this Agreement, and may be directed as Additional Services in accordance with Article 6.1, above:

6.2.1 providing financial feasibility or other special studies;
6.2.2 providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Design-Build Phase;

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

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

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

6.2.6 providing services made necessary by the default of the Design-Builder;

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

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

6.2.9 selecting moveable furniture, equipment or articles which are not included in the Contract Documents;

6.2.10 providing services related to change orders requested by the District, but which are not subsequently authorized (see second sentence of Section 5.5.20.1), above; and

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

ARTICLE 7
RESPONSIBILITIES OF DISTRICT

It shall be the duty of District to:

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

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

7.3 furnish, at the District’s expense, the services of a Project Inspector;
7.4 review all documents submitted by the Architect and advise the Architect of decisions thereon within a reasonable time after submission;

7.5 issue appropriate orders to the Design-Builder through the Architect;

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

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

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

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

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

7.11 furnish prompt notice of any fault or defects in the Project or nonconformance with the Contract Documents or the Design-Builder’s DSA-approved design of which the District becomes aware. However, the District’s failure to do so shall not relieve the Architect of Architect’s responsibilities under Title 21, Title 24, and the Field Act for this Project and under this Agreement.
ARTICLE 8
PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

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

8.2 The following insurance shall be maintained by the Architect in full force and effect during the entire period of performance of this Agreement, including any extensions, and shall be written, to the extent reasonably available, on an "occurrence" basis: Commercial general liability insurance shall be in amounts not less than ________________________ Dollars ($__________) general aggregate, ________________________ Dollars ($__________) personal and advertising injury aggregate, with a per occurrence limit of ________________________ Dollars ($___________); Automobile liability insurance covering motor vehicles shall be in an amount not less than ________________________ Dollars ($___________) combined single limit. If liability insurance is not reasonably available on an occurrence basis, Architect shall provide liability insurance on a claims-made basis.

8.3 Said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the Declarations Page and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer’s limits of liability. Said insurance shall also include a waiver of any subrogation rights as against the District.

8.4 Should any of the required insurance be provided under a claims-made form, Architect shall maintain such coverage continuously throughout the term of this Agreement, and without lapse, for a period of at least ten (10) years beyond the Agreement expiration or the filing of a Notice of Completion (whichever is later), to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies. Nothing herein shall in any way limit or diminish Architect’s obligations to the District under any provision, including any duty to indemnify and defend the District.

8.5 The Architect’s insurance policies shall contain a provision for thirty (30) days written notice to the District of cancellation or reduction of coverage. The Architect shall name, on any policy of insurance required, the District as an additional insured. The Additional Insured
Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability shall not be reduced by the existence of such other insurance. Architect shall not commence work under this Agreement until all required insurance certificates, declarations pages and additional insured endorsements have been obtained and delivered in duplicate to the District for approval subject to the following requirements. Thereafter Architect shall produce a certified copy of any insurance policy required under this Article upon written request of the District.

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

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

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

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

8.10 Insurance companies providing the above policies shall be legally authorized, licensed and admitted through the California Department of Insurance to engage in the business of furnishing insurance in the State of California. All such insurance companies shall have no lower than an “A-, VIII” in Best’s Rating Guide and shall be satisfactory to the District.

8.11 Any failure to maintain any item of the required insurance may, at District’s sole option, be sufficient cause for termination of this Agreement.

ARTICLE 9
WORKER'S COMPENSATION INSURANCE

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

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

ARTICLE 10
ERRORS AND OMISSIONS INSURANCE

10.1 Prior to the commencement of services under this Agreement, the Architect shall furnish to the District satisfactory proof that the Architect has, for the period covered by this Agreement, errors and omissions insurance on an occurrence basis, with limits of at least $__________ Dollars and with a deductible in an amount not to exceed the sum of Ten Thousand Dollars ($10,000). If errors and omissions insurance is not reasonably available on an occurrence basis, Architect shall provide errors and omissions insurance on a claims-made basis.

10.2 Each of Architect's professional sub-consultants (including consultants of Architect's) shall comply with this Article 10, and Architect shall include such provisions in its contracts with them.

10.3 Said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the Declarations Page and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer’s limits of liability.

10.4 Should any of the required insurance be provided under a claims-made form, Architect shall maintain coverage continuously throughout the term of this Agreement, and without lapse, for a period of at least ten (10) years beyond the Agreement expiration or the filing of a Notice of Completion (whichever is later), to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policy. Nothing herein shall in any way limit or diminish Architect’s obligations to the District under any provision, including any duty to indemnify and defend the District.

10.5 Architect shall not commence work under this Agreement until all required insurance
certificates, declarations pages and additional insured endorsements have been obtained and delivered in duplicate to the District for approval. Thereafter Architect shall produce a certified copy of any insurance policy required under this Article upon written request of the District.

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

10.7 If the Architect fails to maintain such insurance, the District may, but shall not be required to, take out such insurance, and may deduct and retain the amount of the premiums from any sums due the Architect under this Agreement.

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

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

10.10 Insurance companies providing the above policies shall be legally authorized, licensed and admitted through the California Department of Insurance to engage in the business of furnishing insurance in the State of California. All such insurance companies shall have no lower than an “A-, VIII” in Best’s Rating Guide and shall be satisfactory to the District.

10.11 Any failure to maintain any item of the required insurance may, at District’s sole option, be sufficient cause for termination of this Agreement.

ARTICLE 11
COMPLIANCE WITH LAWS

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

ARTICLE 12
TERMINATION OF AGREEMENT

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

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

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

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

12.3 Miscellaneous Termination Provisions

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

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

ARTICLE 13
ARCHITECT AN INDEPENDENT CONTRACTOR

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

ARTICLE 14
STANDARDIZED MANUFACTURED ITEMS

14.1 The Architect shall consult and cooperate with the District in the use and selection of manufactured items to be used in the Project. Manufactured items, including but not limited to paint, finish hardware, plumbing fixtures and fittings, mechanical equipment, electrical fixtures and equipment, roofing materials, and floor coverings, shall be standardized to the District's criteria so long as the same does not interfere seriously with the building design or cost.

ARTICLE 15
OWNERSHIP OF DOCUMENTS

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

15.2 The Architect will provide the District with a complete set of reproducible designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect under this Agreement, and will retain, on the District's behalf, the original documents or reproducible copies of all such original documents, however stored, in the Architect's files for a period of no less than fifteen (15) years. Architect shall promptly make available to District any original documents it has retained under this Agreement upon request by the District.

ARTICLE 16
LICENSING OF INTELLECTUAL PROPERTY

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

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

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

**ARTICLE 17**

**ACCOUNTING AND OTHER RECORDS OF ARCHITECT**

17.1 Architect's records of accounts regarding the Project shall be kept in accordance with generally accepted accounting principles. District has the right to audit Architect’s records and files regarding any of the work Architect performed for District on the Project during or after the Project. District shall be given reasonable access to Architect’s records and files for audit purposes within ten (10) days of receipt of District’s request. Architect shall keep and maintain these records and files for ten (10) years after completion of the Project.

**ARTICLE 18**

**INDEMNITY**

18.1 Architect Indemnification. **To the fullest extent permitted by law, including California Civil Code section 2782.8, the Architect shall defend, indemnify, and hold harmless the District, the governing Board of the District, each member of the Board, and their officers, agents and employees (“District Indemnitees”) against claims arising out of, pertaining to, or relating to negligence, recklessness or willful misconduct of the Architect, the Architect's officers, employees, or consultants in performing or failing to perform any work, services, or functions provided for, referred to, or in any way connected with any work, services, or functions to be performed under this Agreement.**

The Architect’s defense obligation shall consist of payment of 50% of the attorneys’ fees, experts’ fees, and all other litigation costs incurred in the District’s defense (“Defense Costs”), with such payment occurring within thirty (30) days of Architect’s receipt of each invoice for such Defense Costs. After conclusion of the action against the District Indemnitees (including all appeals), the District shall reimburse the Architect for any amount of Defense Costs paid by Architect in excess of the proportional fault of the Architect to the extent specified in a settlement agreement, arbitration award, or verdict; or Architect shall reimburse the District for any amount of Defense Costs paid by District in excess of the proportional fault of the parties other than the Architect to the extent specified in a settlement agreement, arbitration award, or verdict.
For purposes of this Article 18.1 only, “claims” means all claims, demands, actions and suits brought by third parties against the District Indemnitees for any and all losses, liabilities, costs, expenses, damages and obligations.

This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Architect.

18.2 District Indemnification for Use of Third Party Materials. The District shall defend, indemnify, and hold harmless the Architect and its employees against any and all copyright infringement claims by any design professional formerly retained by the District arising out of Architect's completion, use, or re-use of that former design professional's designs or contract documents in performing this Agreement. Architect shall be entitled to such indemnification only if each of the following conditions are met: (a) Architect actually re-draws or completes such other designs or contract documents; (b) Architect complies with the provisions of Section 5.6 regarding use of materials prepared by other design professionals; (c) District has supplied Architect with the previously prepared documents or materials; and (d) District expressly requests that the Architect utilize the designs or contract documents in question. By providing this or any other indemnification in this Agreement, District does not waive any immunities.

ARTICLE 19
TIME SCHEDULE

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

19.2 Delays. The District recognizes that circumstances may occur beyond the control of either the District or the Architect and extensions for such delays may be made to the schedule if approved by the District. Any time during which the Architect is delayed in the Architect's work by acts of District or its employees or those in a direct contractual relationship with District or by acts of nature or other occurrences which were not or could not have been reasonably foreseen and provided for, and which are not due to any Wrongful Acts or Omissions, shall be added to the time for completion of any obligations of the Architect. District shall not be liable for damages to the Architect on account of any such delay.
20.1 This Agreement shall be governed by and construed in accordance with the laws of the State of California excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County in which the District maintains its district office, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

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

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

**District:** Oakland Unified School District  
Attn: ______________ [name and title]  
__________, California 9___

**Architect:** __________  
Attn: ______________ [name and title]  
__________, California 9___

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

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

20.6 The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties. No action or failure to act by the District shall constitute a waiver of any right or duty afforded the District under this Agreement, nor shall such action or failure to act constitute approval of, or acquiescence in, a breach under this Agreement, except as may be specifically agreed to in a written amendment to this Agreement.

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

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

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

20.10 Prior to executing this Agreement, the Architect shall submit a certification if required by Public Contract Code section 3006(b) for roofing projects.

20.11 If a party to this Agreement commences a legal action against the other party to enforce a provision of this Agreement or seek damages related to the services provided under this Agreement, the prevailing party in the legal action will be entitled to recover all of its litigation expense, costs and fees from the other party, including reasonable attorneys' and experts’ fees.

20.12 A party to this Agreement shall, as a condition precedent to initiating any litigation against the other party, demand mediation of any dispute (including a dispute related to indemnity by the Architect for claims against the District by a contractor or design-builder based on allegations of deficiencies in the Architect’s plans or specifications). The parties shall endeavor to include any third-party claimant in the mediation. The parties shall select a mediator and schedule the mediation within thirty (30) days of the initial demand for mediation. If the parties cannot agree on a mediator, the mediator shall be appointed by JAMS. The parties to the mediation, including the parties to this Agreement, shall pay equal shares of the mediator’s fees. Each party shall bear its own attorney’s fees related to the mediation.

20.13 Architect shall comply with the requirements of the District’s Local, Small Local, and Small Local Resident Business Enterprise Program, which may require a 50% minimum local participation requirement in the performance of this Agreement. A copy of this program may be obtained at www.ousd.k12.ca.us, under the Facilities Planning & Management Department drop down menu, at “Bids and Requests for Proposals.”

20.14 The following forms are incorporated into the contract:

- Roof project certification (if required; see Public Contract Code §3006).
- Fingerprinting Notice and Acknowledgement.
- Iran Contracting Act Certification.
- Workers’ Compensation Certification.
- Drug-Free Workplace Certification.
- Buy American Certification.
- Local Business Participation Form.

Within ten (10) days after award and before commencement of the services, the signed agreement, insurance documentation, and Student Contract Form (see Exhibit B to the Fingerprinting
Notice and Acknowledgement) shall be submitted to the District.

* * * * * * * * * * * * * * * * * * * *

ARCHITECT:
________________________ [name of firm]

By:________________________
____________ [title]

DISTRICT:
OAKLAND UNIFIED
SCHOOL DISTRICT

By:________________________
Superintendent
Exhibit A

RATE SCHEDULE
Exhibit B

PROJECT SCHEDULE
ATTACHMENT B

SCOPE OF ARCHITECTURAL SERVICES, SCOPE OF PROJECT AND TENTATIVE SCHEDULE FOR CCPA AND McCLYMONDS HS

PLANNING SCHEDULE

DISTRICT SCOPE:
Finalize Demographics (i.e., enrollment) and Academic Programming Needs: 10 work days
Initial Site Stakeholder Meeting: 10 work days
Present Project Delivery Methods to Facility Committee (DB or LLB): TBD
Board Approval Process of Project Delivery Method (DB or LLB): 60 work days
Site Committee Kick-Off Meeting: 10 work days
Solicitation Educational Planning (Architect Services for Bridging Documents): June 16, 2021
Present Recommendations to Award to BOE Facilities Committee: August 13, 2021
Board Contract Approval: September 22, 2021

CONSULTANT SCOPE:
Planning Kick-Off Meeting with Site Committee: September 23, 2021
Draft Site Specific Education Specifications plus Site Concept Options and Preliminary Pricing: 40 work days
Review Site Options with Site Committee: TBD
Final Site Concepts and Approve Options: 20 work days
Community Meeting: 5 work days (Completion no later than December 31, 2021)
# ATTACHMENT C

## LOCAL BUSINESS PARTICIPATION WORKSHEET

Prime Consultant:
RFQ/P: Architect Services for Bridging Documents

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<th>Team Member</th>
<th>Projected Percent of Total Fee Per Team Member</th>
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<th>SLBE %</th>
<th>SLRBE %</th>
<th>City of Oakland or other approved agency. Certification Number and Expiration Date.</th>
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TOTAL PARTICIPATION

Approval – LBU Compliance Officer