

AGREEMENT FOR ARCHITECTURAL SERVICES

By and Between

The Perris Union High School District

and

Baker Nowicki Design Studio

for

Paloma Valley High School CTE Building Addition Project

Dated February 15, 2017

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AGREEMENT FOR ARCHITECTURAL SERVICES

This Agreement for Architectural Services (“Agreement”) is made effective as of November 20, 2013 (“Effective Date”) by and between the Perris Union High School District (“District”), a public school district existing and operating pursuant to California law, and PJHM Architects (“Architect”), a California corporation, entity number C1918682. The District and the Architect may hereinafter be referred to individually as a “Party” and collectively as the “Parties.”

**ARTICLE I
EXECUTION OF AGREEMENT**

Section 1.1 Adequate Consideration. Subject to performance by each Party of its obligations pursuant to this Agreement, the respective rights and obligations of the Parties set forth in this Agreement shall be deemed and construed to constitute full and adequate consideration for this Agreement.

Section 1.2 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. This page may be detached from counterpart originals and combined to physically form one or more original copies of this Agreement containing the signatures of both Parties.

Section 1.3 Due Authority and Binding Effect. Each individual signing this Agreement represents and warrants that he or she has been authorized by appropriate action of the Party that he or she represents to sign, and thereby bind such Party to, this Agreement.

Section 1.4 Signatures. The Parties have executed this Agreement as evidenced by the following signatures of their duly-authorized representatives:

PERRIS UNION HIGH SCHOOL DISTRICT

Baker Nowicki Design Studio

By: _____
Candace Reines, Assistant Superintendent
Business Services

By: _____
Print Name: _____
Title: _____

***(The Agreement continues on the following page;
the remainder of this page intentionally left blank.)***

ARTICLE II INTENT

Section 2.1 District Goals. The District presently intends to undertake and complete the planning, design, construction and closeout of the school-facilities construction project described in Exhibit "A" attached hereto ("Project"). The District desires to obtain, subject to the provisions herein, professional design and related services that are consistent with the applicable standard of care set forth in Section 4.1 and the requirements of this Agreement, and that permit completion of the Project by the date specified in Exhibit A hereto, as such date may be adjusted from time to time in accordance with applicable contracts providing for construction of the Project.

Section 2.2 Architect Representation of Capability. The Architect represents that it has all of the knowledge, experience, skills, licenses and financial and other resources (including, without limitation, in-house design staff) necessary to provide any and all planning, design, coordination and other services required pursuant to this Agreement ("Architectural Services") to accomplish the District's goals as are described in this Article II.

Section 2.3 Construction and Project Budgets. The Parties hereby acknowledge that the District has limited sources and amounts of funds available to pay for planning, design, construction, and equipping of the Project. The Parties further acknowledge that neither Party has control over the costs of labor, materials or equipment, or any contractors' methods of determining bid or proposal amounts. However, the District intends that the total construction cost and total Project cost not exceed the applicable amounts specified in Exhibit A hereto. Therefore, the Parties shall reasonably cooperate in determining and, as necessary, adjusting the scope of the Project and/or the materials, equipment and other elements of the construction, as required pursuant to this Agreement, in order to ensure that the total construction cost and total Project cost do not exceed such specified amounts. Notwithstanding anything to the contrary, the District may increase the permissible total construction cost and/or total Project cost, including, without limitation, because additional sources and/or amounts of funds have been made available for such purposes, because the District desires enhancement of the Project, or because the District desires to change the construction after such work has commenced. Likewise, subject to the other provisions of this Agreement, the District may decrease the permissible total construction cost and/or total Project cost, including, without limitation, to effect a reduction in the scope of the Project from what was anticipated as of the Effective Date.

Section 2.4 Architect to Design Within Approved Construction Budget. The Architect shall have an ongoing obligation to design the Project so that it may be fully and completely constructed for a total cost not to exceed the approved construction budget for the Project set forth in Exhibit A hereto, as it may be duly modified from time to time. As estimates of the cost to construct the Project are developed, the Architect shall review such estimates and comment in writing to the District on whether the Project reasonably can be constructed for a cost that is within the then-applicable approved construction budget. If at any time it is reasonably anticipated that the cost to construct the Project will exceed the then-applicable approved construction budget, the Architect must, without additional cost to the District, modify the design of the Project in a manner reasonably acceptable to the District that maintains the character and function of the planned improvements, but reduces the estimated total cost to construct the Project to within such approved construction budget. In each

such case, the Architect must present proposed modifications to the design of the Project to the District for approval.

Section 2.5 Architect to Minimize Construction Costs. The Architect, during the design phases of the Project, must: (i) make reasonable and ongoing efforts to minimize the total cost to construct the Project; and (ii) reasonably cooperate with the District and the contractor that is to construct the Project with respect to their efforts to minimize the total cost to construct the Project. For purposes of the foregoing, “the design phases of the Project” shall include, but are not limited to, submission of construction documents to the Department of General Services, Division of State Architect (“DSA”) and DSA back-check comment implementation, change orders, requests for information, project-meeting-related recommendations by the Architect, and project-meeting-related requests by the District as to design issues, whether any of those activities occur before or after DSA approval of the plans and specifications for the Project. The Architect must not implement or seek DSA or other required approval of any design alternative that increases the cost of the Project by more than an insignificant amount unless the Architect first obtains the District’s written approval. If the Architect has any question regarding whether an increased cost will be significant, the Architect must confer with the District prior to taking the action that will result in such increased cost. Not as a limitation on the requirements of this Section, when particular levels of functionality, aesthetics and/or other parameters for the Project, as approved by the District, can be achieved using a design that will cost less to construct than alternative designs, while still satisfying all applicable codes and other governmental requirements, the Architect must incorporate the lower-cost design into the plans and specifications for the Project unless directed otherwise by the District. In connection with the foregoing, the Architect must present for District consideration all reasonable cost-savings alternatives relating to aesthetic, functional, or other non-technical matters. In each such case, the Architect must provide the District with information reasonably sufficient to permit the District to decide between the suggested alternatives, and the District shall have a reasonable amount of time thereafter to provide written direction to the Architect as to the District’s preferred alternative.

ARTICLE III SCOPE OF ARCHITECTURAL SERVICES

Section 3.1 Required Services. Upon receipt of a notice to proceed with Architectural Services from the District, the Architect shall provide the Architectural Services required for the Project as are described in Exhibit “B” attached hereto and elsewhere in this Agreement, all in accordance with the terms and conditions of this Agreement. The District, in its sole discretion, may eliminate or modify some or all of the scope of the Architectural Services described in Exhibit B hereto. The District shall compensate the Architect for providing the Architectural Services as provided in Article VI.

Section 3.2 Time for Completion. As described in more detail in Section 12.1, time is of the essence with respect to the subject matter of this Agreement. The Architect acknowledges that the District may incur substantial damages if the Architectural Services are not timely completed in accordance with this Agreement and, as a result, the District is not able to commence operations of the Project as planned. The Architect shall endeavor with good-faith reasonable efforts to cause the Architectural Services to be commenced and completed within such times as will permit the District to

meet the milestone dates established for the Project in Exhibit A hereto. Nevertheless, the Parties understand that factors outside the Architect's control may affect the Architect's ability to complete the services to be performed pursuant to this Agreement. In any case, except as provided in Section 12.2 herein, the Architect shall diligently apply its skills, knowledge, experience, consultants, personnel and other resources consistent with sound professional practices as necessary for the District to achieve full completion of the construction of the Project by the completion date and within the budgets established for the Project. The District may provide written notice to the Architect at any time the District determines that the Architect is not meeting, or reasonably may or will not meet, the milestone dates established in Exhibit A hereto. Immediately upon receipt of any such notice, regardless of the cause of any delay, the Architect shall assign to or employ for purposes of the Project, or, as applicable, shall cause its consultant(s) to assign to or employ for purposes of the Project, such additional personnel as are sufficient to make up for lost time and so that all subsequent Architectural Services are completed in accordance with the milestone dates set forth in Exhibit A hereto.

Section 3.3 Scope of Project. The District, in its sole discretion, may modify the scope of the Project or any portion thereof, in which event, if necessary, compensation payable to the Architect pursuant to this Agreement shall be adjusted as provided in Article X herein. Notwithstanding anything in this Agreement that might be construed to the contrary, the compensation payable to the Architect shall not be increased absent any increase or expansion in scope of the Project. For purposes of this Agreement, "increase or expansion in scope of the Project" shall mean that the Architect is required to provide Architectural Services beyond those necessary for the Project as it is expressly or implicitly contemplated by the Parties as of the Effective Date.

Section 3.4 Business Administration. The services and work to be provided by the Architect pursuant to this Agreement shall be deemed and construed to include any and all business administration and management services necessary for the Architect to conduct its business and perform this Agreement, regardless of whether expressly described in this Agreement. The Architect shall perform such business administration and management in an expeditious and economical manner consistent with the interests of the District.

Section 3.5 Consistency with Construction Delivery Method. Exhibit A hereto sets forth the District's determination regarding whether the Project shall be constructed on the basis of: (i) multiple-prime contracts, which involves separate contracts for the various trades necessary for construction of the Project; (ii) a single contract for construction of the Project awarded to a general contractor; (iii) interrelated contracts for lease-leaseback construction of the Project in accordance with Education Code Section 17406; or (iv) some other construction delivery method as permitted by law. To the extent required by law or otherwise made applicable, the District shall award construction contracts after competitive bidding and/or competitive process(es). The Architect shall incorporate the District's standardized "front-end" construction documents into the bidding and construction documents prepared pursuant to this Agreement, and shall ensure that the bidding and construction documents it prepares are consistent with the construction delivery method specified for the Project and the competitive bidding and/or competitive processes required by law or otherwise made applicable to the Project. The Architect shall as necessary implement and adhere to all policies, procedures and time-lines set forth in the District's standardized front-end construction documents, including, without limitation, all procedures for review and approval of payment applications.

Section 3.6 Assistance in Selecting Consultants. Upon request, the Architect shall assist the District with: (i) selection of a DSA approved construction inspector for the Project (“Project Inspector”), including, without limitation, any processing of documentation with the DSA as necessary in connection with approval of the Project Inspector; and/or (ii) selection and retention of other professional or other services as requested by the District.

Section 3.7 Coordination with District Consultants. The District, in its sole discretion, may at any time employ consultants in connection with the Project other than the Architect. To facilitate achieving the District’s goals for the Project as those may be refined, revised or modified from time to time, the Architect shall at all times reasonably cooperate, coordinate and consult with the District and the District’s consultants in regard to the Architect’s activities in connection with its performance of this Agreement. Although the Architect shall coordinate its own services with the professional services of all consultants on the Project, whether retained by the District or Architect, such coordination shall not relieve any contractors or other design professionals from complying with their respective standards of care. The Architect shall not be responsible for errors and omissions of consultants it does not retain; provided that the Architect shall have a duty to review any consultant work-product to determine if it is obviously unreasonable or erroneous, or otherwise will adversely affect the Project or the Architectural Services. The District shall require that its consultants maintain professional liability insurance as the District determines is appropriate to the services provided.

Section 3.8 Additional Architectural Services. The District may at any time request that the Architect provide Architectural Services related to the Project that are in addition to services previously required pursuant to this Agreement (“Additional Architectural Services”). When authorized, Additional Architectural Services shall for all purposes of this Agreement be construed and administered in the same manner as other Architectural Services required pursuant to this Agreement. As used herein, Additional Architectural Services shall mean any service or work by the Architect that the District determines is desirable or convenient, or necessary in relation to or in addition to the Project, but which was not previously within the anticipated scope of the Architectural Services. The District shall authorize Additional Architectural Services in the form of an Architectural Change Order (defined in Section 3.9). The Architect shall not perform any Additional Architectural Services without obtaining an approved Architectural Change Order, and the District shall not be responsible for payment for any Additional Architectural Services performed in the absence of an applicable approved Architectural Change Order. The District shall pay for authorized Additional Architectural Services as provided in Sections 3.9 and 6.4 herein.

Section 3.9 Architectural Change Orders.

(a) Written orders for changes in the Architectural Services shall be substantially in the form set forth in Exhibit “C” attached hereto (each an “Architectural Change Order”), and must be duly approved by the Board of Trustees of the District (“District Board”). No Architectural Change Order shall be deemed or construed to be valid or effective for any purpose prior to approval by the District Board. Each Party must reasonably cooperate with the other Party with respect to determining mutually-agreeable terms for proposed Architectural Change Orders. In the event the Parties are unable to agree on the terms for any Architectural Change Order, the Parties shall resolve the dispute as provided in Section 11.8 herein.

(b) An Architectural Change Order shall be compensated as Additional Architectural Services if the change: (i) is an alteration in scope of the Project requested by the District except as may be required to ensure that the total construction cost and total Project cost do not exceed the maximum amounts permitted by this Agreement and as specified under Section 2.4; (ii) is necessary as a result of a change in applicable law that the Architect reasonably could not have anticipated; (iii) is necessary as a result of "field" changes mandated by a governmental agency with jurisdiction over the Project after approval of the plans and specifications, which change could not reasonably have been anticipated by Architect and the field change is not attributable to any error, omission or other defect in the plans and specifications; or (iv) results from unknown, unforeseeable or hidden conditions, or from actual conditions inconsistent with drawings of existing conditions available to the Architect.

(c) The Architect, at no cost to the District, shall prepare, process and implement any and all Architectural Change Orders necessary as a result of any error, omission or other defect in the plans, specifications or other Architectural Services, including, without limitation, those that arise from the negligence, recklessness or willful misconduct of the Architect or any Architect Consultant (defined in Section 4.7 herein). The Architect must complete all of the foregoing actions, as well as all Architectural Services required pursuant to any such Architectural Change Order, within such time as will avoid any unreasonable delay or additional delay in the Project. Architect shall be responsible for any damages incurred by the District as a result of the Architectural Change Order which is necessitated by Architect's, or Architect's Consultant's, negligence, recklessness or willful misconduct.

Section 3.10 Contract Disclosure. Government Code Section 7550 requires disclosure of contracts and contract amounts with respect to documents or written reports prepared for or under the direction of a public agency, if prepared in whole or in part by non-employees of the public agency for compensation in excess of five thousand dollars. If the requirements of Section 7550 apply to this Agreement, the Architect shall prepare a separate written summary that: (i) lists this Agreement and all agreements with Architect Consultants and others providing work or services in connection with this Agreement, and the respective dollar amounts of such agreements; (ii) states that such compensation is for the multiple documents prepared pursuant to this Agreement; and (iii) lists the multiple documents prepared pursuant to this Agreement. The Architect shall provide such written summary to the District upon completion of all other work and services required pursuant to this Agreement and as a condition precedent to final payment to the Architect pursuant to this Agreement. Such written summary shall be deemed to be incorporated as a part of the plans, specifications and other documents and written reports prepared pursuant to this Agreement.

ARTICLE IV TERMS AND CONDITIONS FOR ARCHITECT'S SERVICES

Section 4.1 Architect Qualifications. The Architect represents that it possesses and shall apply all personnel, professional qualifications, skills, knowledge, experience and financial capacity and reserves as are necessary to timely and competently provide the Architectural Services required pursuant to this Agreement. The Architect further represents and warrants that it has all licenses, certifications, permits, and other approvals of whatever nature as are legally required to perform the

Architectural Services required pursuant to this Agreement, and that it shall maintain the same in effect at all times when performing the Architectural Services. The Architect shall at all times perform the Architectural Services required pursuant to this Agreement consistent with the professional skill and care ordinarily provided by architects qualified and experienced in the planning, design, funding, construction, modernization, rehabilitation, and reconstruction of school facilities in the State of California ("State"), assuming they would be providing such services in the same or similar locality under the same or similar circumstances as the Architect will pursuant to this Agreement. The Architect shall perform the Architectural Services required pursuant to this Agreement as expeditiously as is consistent with such levels of professional skill and care and the orderly progress of the Project.

Section 4.2 Independent Contractor. The Architect is an independent contractor and shall not be deemed or construed to be an employee, general agent or general representative of the District. Any limited agent or limited representative status conferred on the Architect pursuant to this Agreement shall be deemed and construed to extend only so far as is reasonably necessary for the Architect to perform its duties and responsibilities pursuant to this Agreement. As between the Architect and the District, the personnel (including, without limitation, employees of any Architect Consultant) performing any of the Architectural Services on behalf of the Architect shall at all times be subject to the exclusive direction and control of the Architect. The Architect shall pay or otherwise be responsible for all wages, salaries and other amounts due to such personnel. The Architect shall be responsible for all reporting and other obligations with respect to such personnel, including, but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance.

Section 4.3 Manner of Performing Architectural Services.

(a) Except as expressly set forth in this Agreement or agreed by the Parties in writing after the Effective Date, the Architect shall have the sole discretion to determine the manner in which it will perform the Architectural Services.

(b) The Architect shall furnish at its sole cost and expense all technical and professional services, including labor, material, equipment, transportation, supervision and skill, necessary to perform the Architectural Services required pursuant to this Agreement.

(c) The Architect also shall comply with all District rules, policies or other requirements applicable to presence on District property, including, but not limited to, policies regarding use of drugs, alcohol, and tobacco, and, in any situation where pupils are or may be present, the District's policy for criminal-history background checks. As between the Architect and the District, the Architect shall be solely responsible and liable for any failure of Architect or any of its employees or Architect Consultants to so comply.

(d) The Architect shall become and remain familiar with, and shall at all times comply with, any and all federal, State and local laws, rules, regulations and other governmental requirements applicable to the performance of the Architectural Services pursuant to this Agreement. As between the Architect and the District, the Architect shall be solely responsible and liable for any failure of Architect or any of its employees or Architect Consultants to so comply.

(e) If it is determined that the Architect, in order to comply with the Labor Code, is required to pay prevailing wages for all or any portion of the Architectural Services on the Project, the Architect shall be solely responsible and liable for any failure to pay any such prevailing wages due to Architect's employees or Architect's Consultant.

Section 4.4 Responsibility for Architectural Services. As between the Architect and the District, the Architect shall in all circumstances be solely responsible and liable for the professional quality, technical accuracy and the coordination of the Architectural Services and the work products thereof, including, without limitation, the plans, specifications and other documents intended to facilitate planning and construction of the Project. The Architect, without additional compensation and within such time as necessary to prevent any unreasonable delay in the Architectural Services and/or construction of the Project, shall correct or revise any and all errors or omissions in the Architectural Services. The Architect, without additional compensation and regardless of whether it has received final payment pursuant to this Agreement, also shall correct any such errors or omissions identified within one year of acceptance of the Architectural Services. The District's acceptance of any work or services performed by or on behalf of the Architect shall not be deemed or construed to constitute a waiver by the District or to relieve the Architect of its responsibility and liability for any errors and omissions in such work or services. If, at any time prior to one year after final payment to the Architect pursuant to this Agreement, the Architect becomes aware of any error, omission or other defect in the Architectural Services and/or the products thereof, the Architect shall immediately provide written notice thereof to the District, and any failure by the Architect to provide such notice shall be deemed a material breach of the Architect's obligations pursuant to this Agreement.

Section 4.5 Equal Opportunity Employer. The Architect represents and warrants that it is an equal opportunity employer and that it shall not discriminate against any employee or any applicant for employment in violation of any applicable federal, State or other governmental law, rule, regulation or other requirement, including, without limitation, discrimination on the basis of characteristics or attributes such as race, religion, color, national origin, ancestry, sex, or age. The Architect shall not unlawfully discriminate with respect to any of its activities as an employer, including, but not be limited to, initial employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, and termination of employment.

Section 4.6 Designated Architect Representatives.

(a) The Architect's representative(s) for all purposes of this Agreement (each a "Designated Architect Representative") are designated in Exhibit "D" attached hereto. The Architect may at no time designate more than three Designated Architect Representatives for purposes of communications with the District and its consultants, decision-making on behalf of the Architect, and other administration of this Agreement.

(b) Each Designated Architect Representative must be duly authorized by the Architect to make decisions on behalf of the Architect and to bind the Architect thereto. Should any Designated Architect Representative have only limited authority, e.g., within a specific scope of services or for a limited portion of the Architectural Services, the limitation(s) on such person's authority must be specified in Exhibit D hereto. At least one Designated Architect Representative must be fully authorized to make any and all decisions necessary in connection with this Agreement and the Project.

(c) The Architect may change any Designated Architect Representative(s) for good cause (e.g., termination of employment, maternity leave, disability, et cetera) and upon written approval by the District of the replacement Designated Architect Representative(s). The Architect shall specify in reasonably-detailed writing any limitation(s) on the authority of any of its replacement Designated Architect Representative(s).

(d) The District may require that the Architect replace any Designated Architect Representative designated in Exhibit D hereto or otherwise providing Architectural Services pursuant to this Agreement if the District determines that the performance of such person is unsatisfactory. Within ten days after receipt of written notice from the District requiring removal of a Designated Architect Representative, the Architect shall have removed such person from the Project and obtained written approval of the replacement Designated Architect Representative.

Section 4.7 Architect Consultants.

(a) The Architect, at its expense, shall employ or retain such engineers and other consultants as required for the Architect to perform its obligations pursuant to this Agreement (each an "Architect Consultant"), including, without limitation, architects, landscape architects, mechanical engineers, electrical engineers, structural engineers, and civil engineers. Each Architect Consultant must be licensed to practice its profession in the State and must be fully qualified to perform the services it is to perform in connection with this Agreement. Notwithstanding the foregoing, the consultants specified in Paragraph 13 of Part L of Exhibit B hereto, if required for the Project, shall be provided by the Architect as an Additional Architectural Service.

(b) The Architect shall obtain District approval of each Architect Consultant prior to such Architect Consultant commencing any of the work or services required pursuant to this Agreement. The Architect shall describe in writing to the District the scope and extent of the work or services to be provided by each Architect Consultant and the names and contact information of each Architect Consultant's project manager or key or lead personnel for purposes of the Project. The District, in its reasonable discretion, may approve or disapprove of any Architect Consultant.

(c) Architect Consultants may provide assistance during any phase of the Project planning, design and/or construction, including, without limitation, review of schedules, shop drawings, samples, submittals, and requests for information. Architect Consultants also may, to the extent consistent with Title 24, Part 1, Sections 4-316(b) and 4-333(a), and other applicable requirements, conduct periodic visits to the Project site to determine conformance with Project design and specifications and may participate in the final site visits and development of any "punch list" items.

(d) Unless the District requests direct communication, all communications to the District from any Architect Consultant must be directed through the Architect.

(e) Notwithstanding performance of any of the Architectural Services by any Architect Consultant(s), as between the Architect and the District, the Architect shall remain solely liable for performance of all of the Architectural Services required pursuant to this Agreement. Nothing in this Agreement shall be deemed or construed to create a contractual relationship between the District

and any Architect Consultant.

(f) The District may require that the Architect replace any Architect Consultant, or employee or other representative thereof, if the District determines that the performance of such Architect Consultant or person is unsatisfactory. Within ten days after receipt of written notice from the District, the Architect shall have removed the applicable Architect Consultant or person from the Project and obtained written approval of a replacement for the Architect Consultant or person removed.

Section 4.8 No Assignment or Subcontracting. All Architectural Services to be furnished pursuant to this Agreement shall be deemed and construed to be professional services. Therefore, except as provided in Section 4.7, the Architect shall have no right or power to assign, sublet, transfer or otherwise substitute its interest in, or its rights or obligations pursuant to, this Agreement without the prior written consent of the District. Except as provided in Section 4.7, the Architect shall perform the Architectural Services required pursuant to this Agreement with resources available within its own organization, and no portion of such Architectural Services shall be performed by any subcontractor to the Architect without the prior written consent of the District.

Section 4.9 Accounting Records and Other Materials. The Architect and each Architect Consultant shall prepare and maintain appropriate files, accounts and other records relating to their performance pursuant to this Agreement. The Architect and each Architect Consultant shall maintain such records in accordance with generally-accepted accounting principles and standards. The Architect and each Architect Consultant shall permit representatives of the District, the State, and any other governmental entity with jurisdiction in whole or part over the Project or the Architectural Services, at any reasonable time and with reasonable notice, to inspect, review and/or copy any or all such records, including, without limitation, for purposes of determining whether the Architectural Services are being or have been performed in accordance with the terms of this Agreement and/or applicable law. The Architect shall include in each contract with the Architect Consultants provisions to effect the requirements of this Section, and any failure by the Architect to do so shall be deemed and construed as a material breach by the Architect of its obligations pursuant to this Agreement.

Section 4.10 Copies of Materials. The District shall have the right, at any reasonable time and after reasonable notice, to obtain for its records copies of all drawings, specifications, accounting and other records, schedules, and other materials that may be prepared by the Architect or any Architect Consultant pursuant to this Agreement, including, without limitation, additional copies of materials previously provided to the District. Except as otherwise provided in this Agreement, the District shall pay the cost of copying materials that it requests, not to exceed the reasonable direct costs of copying such materials.

ARTICLE V DISTRICT RESPONSIBILITIES

Section 5.1 Designated District Representatives. The District's representatives as of the Effective Date for purposes of administering this Agreement are designated in Exhibit D hereto (each a "Designated District Representative"). The District Board or the District's Superintendent or Assistant Superintendent Business Services may at any time and for any reason designate in writing to the

Architect a replacement for any Designated District Representative. Should any Designated District Representative have only limited authority, e.g., within a specific area of responsibility or for a limited portion of the administration required for this Agreement, the limitations on such person's authority are specified in Exhibit D hereto. For any and all purposes of this Agreement, and except as may be provided herein, the Architect shall not accept or rely on any consent, instruction or direction from any person not designated in Exhibit D hereto or not having the requisite authority to provide such consent, instruction or direction. In no event shall any such unauthorized consent, instruction or direction be deemed or construed to bind the District or make it responsible or liable for any act or forbearance by the Architect in response thereto. Nothing in this Section shall be deemed or construed to eliminate any requirement for approval, instruction or direction by the District Board if required by law, contract, or as determined necessary or convenient by the District. The District, at any time and with respect to any matter relating to this Agreement, may determine that District Board approval, instruction or direction is necessary or convenient. In addition, nothing in this Section shall be deemed or construed to limit the Architect's obligations to coordinate, cooperate and consult with all District staff and consultants.

Section 5.2 Project Information. To the extent of information not otherwise available to the Architect, the District shall provide such information regarding the Project or the Project site as the Architect may reasonably request from time to time, including, without limitation, any available as-built drawings for existing facilities and/or the Project site. The District shall respond within a reasonable time to the Architect's requests for clarification(s) in regard to any Project information.

Section 5.3 District Approvals. The District shall review within a reasonable time any Project submittals as are provided by the Architect and which require District approval. Subject to the Architect providing each such submittal a reasonable time in advance of when a decision is required, and subject to the Architect making the District aware of any applicable time constraints, the District shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Architectural Services and the Project.

Section 5.4 Inspections and Testing. The District, at its expense and if and as required, shall retain a Project Inspector for the Project. Except as otherwise provided in any construction contract or other agreement related to the Project, the District shall pay for any structural, mechanical, chemical and other laboratory tests, inspections, and reports for the Project (including, without limitation, review and identification of potential asbestos-containing materials) that are required by any applicable law, required to obtain any necessary permit or approval, or required by the plans and/or specifications for the Project. Upon request of the Architect, the District also shall pay for the services of a hydrologist, certified abatement consultant, or other consultants not typically provided by architects when such services are reasonably necessary for Architect to perform the Architectural Services. The Architect shall timely inform the District regarding the need for any such tests, inspections, reports and services, and, unless any are within the contractual responsibility of another District consultant, the Architect shall act on the District's behalf to obtain and schedule the same. The Architect shall not cause to be performed any destructive testing or opening of any concealed portions of any building or other structure in the absence of written approval by the District.

Section 5.5 Hazardous Materials.

(a) In the event either Party becomes aware of the presence of, discharge of, or exposure of any person to, any Hazardous Materials (defined in Subsection (c) of this Section) at or in the immediate vicinity of the Project site, or of the substantial likelihood or risk of any such presence, discharge or exposure, such Party shall immediately notify the other Party in writing.

(b) To the extent the Architect deems necessary or advisable, the Architect shall recommend that the District retain a qualified consultant to evaluate whether asbestos and/or asbestos-containing materials (herein, "Asbestos Containing Materials") are present at the Project site. If a consultant recommends a procedure to deal with any Asbestos Containing Materials that are present at the Project site, the District shall require that the consultant draft specifications for the removal or other remediation of the Asbestos Containing Materials, and subsequently may require certification that the Asbestos Containing Materials have been properly removed or otherwise remediated. The Architect shall include the consultant's recommendations and specifications in the appropriate design documents for the Project and shall provide designs and other bid documents consistent therewith. Nothing in the foregoing shall be deemed or construed to relieve the Architect for responsibility for its design of the Project, and the Architect must provide written notice to the District if the Architect reasonably determines that consistency of its design with the consultant's recommendations and specifications would result in violation of any applicable law, or would otherwise render the Architect's design of the Project inappropriate.

(c) When all work in connection with or related to any Asbestos Containing Materials or other Hazardous Materials has been fully and properly completed, the District's consultant shall provide such certification relating to Hazardous Materials as is required by the DSA, the Office of Public School Construction ("OPSC"), and any other governmental agencies with jurisdiction over the Project. "Hazardous Materials," for purposes of this Section, means any hazardous or toxic substance, material, or waste which is or becomes subject to regulation as such by any agency, municipality or political subdivision of the State or the United States, including, but not limited to, any material or substance that is any of the following:

- (i) a hazardous substance, as defined in Section 25316 or subdivision (p) of Section 25501 of the Health and Safety Code;
- (ii) a hazardous material, as defined in subdivision (o) of Section 25501 of the Health and Safety Code;
- (iii) a regulated substance, as defined in subdivision (g) of Section 25532 of the Health and Safety Code;
- (iv) a hazardous waste, as defined in Section 25117 of the Health and Safety Code;
- (v) an extremely hazardous waste, as defined in Section 25115 of the Health and Safety Code;
- (vi) petroleum;

- (vii) asbestos;
- (viii) designated as a hazardous substance for purposes of Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. Sec. 1321);
- (ix) a hazardous waste, as defined by subsection (5) of Section 1004 of the federal Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6903);
- (x) a hazardous substance, as defined by subsection (14) of Section 101 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601); or
- (xi) a regulated substance, as defined in Section 9001 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. Sec. 6991).

Section 5.6 Site Surveys. If reasonably determined necessary by the Architect, the District shall procure at its expense a certified survey of the Project site, including: (i) grades and lines of streets, alleys, pavements, adjoining properties and structures; (ii) adjacent drainage; (iii) rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the building site; (iv) locations, dimensions and floor elevations of existing buildings, other improvements and trees; and (v) available utility services and lines, both public and private above and below grade, including inverts and depths. All information on the survey customarily referenced to a benchmark shall be referenced to an available permanent benchmark closest to or on the Project site.

Section 5.7 Reimbursement of Fees. The District shall pay for all fees required to be paid to any reviewing or licensing agency in connection with the design or approval of the Project. The Architect must provide written notice to the District of any fees due, a sufficient time in advance of when due as to permit payment without delay of the Architectural Services or the Project, The District shall have no responsibility or liability for business or professional licensing or any other fees required for Architect to conduct its business.

Section 5.8 Professional Services. The District shall at its expense procure such legal, accounting, insurance and other professional services as may be required or convenient for the District to perform its duties pursuant to this Agreement. Such professional services may include, without limitation, auditing services as required to verify applications for payment for work on the Project or to confirm fees and expenses paid by the Architect on behalf of the District.

Section 5.9 Notice of Defects and Claims. The District shall notify the Architect within a reasonable time after receipt or becoming aware of any fault or defect in the Architectural Services or the Project, or of any claim, action or other proceeding arising therefrom.

**ARTICLE VI
COMPENSATION FOR ARCHITECTURAL SERVICES**

Section 6.1 Basic Architect Fee and Reimbursable Expenses.

(a) In exchange for the Architect satisfactorily providing the Architectural Services required pursuant to and in accordance with this Agreement, the District, in accordance with this Article, shall pay to the Architect such compensation as is specified in Exhibit "E" attached hereto ("Basic Architect Fee"). Exhibit E hereto specifies the amount of, or the basis for calculating the amount of, the Basic Architect Fee as one of the following:

- (i) a lump-sum not-to-exceed amount;
- (ii) an amount determined by application of a sliding scale of fees to the "Construction Cost" of the Project, with separate sliding scales applicable to what primarily are new construction projects and what primarily are modernization projects;
- (iii) an amount determined by applying applicable hourly rates for Architectural Services as are specified in Exhibit E hereto to the number of personnel hours required to provide such Architectural Services, but with an estimated, but non-binding, total amount specified; or
- (iv) an amount determined by applying applicable hourly rates for Architectural Services as are specified in Exhibit E hereto to the number of personnel hours required to provide such Architectural Services, but subject to a specified not-to-exceed total amount.

(b) The Basic Architect Fee shall be deemed and construed to include compensation to the Architect for any and all out-of-pocket expenses incurred by the Architect in the performance of the Architectural Services, including, but not limited to, costs of items to be delivered to District in accordance with this Agreement, printing and reproduction costs, shipping expenses, travel expenses, meal expenses, telephone expenses, and similar costs and expenses. Notwithstanding the foregoing, the District shall also reimburse the Architect in accordance with Section 6.3 for authorized Reimbursable Expenses incurred by the Architect.

(c) For purposes of clause (ii) of Subsection (a) of this Section, the amounts included within the term "Construction Cost" shall include:

- (i) the initial amount payable to the contractor pursuant to the contract providing for construction of the Project or, if multiple contracts, the total of the initial amounts payable to the contractors pursuant to such contracts; plus
- (ii) the cost of any items required for construction of the Project and specified in the construction documents prepared by the Architect for the Project that are to be purchased directly by the District, not by a construction contractor, but does not include furniture, equipment, or other items related to the use of the Project; plus

- (iii) the amounts of any change orders or amendments to the construction contract(s) that increase the cost to construct the Project, but not including any change orders or amendments to the extent necessary to implement the Architect's obligations pursuant to Article II herein; plus
- (iv) the total of any "general conditions" costs payable to the construction contractors that are not included within the amounts described in the foregoing clauses of this Subsection; plus
- (v) if the District contracts for professional construction management services for the Project, while utilizing a "multi-prime" construction delivery method, the compensation to be paid to the construction manager; less
- (vi) the amounts of any change orders or amendments to the construction contract(s) that decrease the cost to construct the Project.

(d) This Subsection shall apply only in the event the Basic Architect Fee is to be determined in accordance with clause (ii) of Subsection (a) of this Section. If the District requires that the Architect prepare documentation for an additive alternative to some element of the Project, the Parties, as an obligation to the Architect being required to prepare such documentation, shall establish in an Architectural Change Order a fixed or not-to-exceed price for the work required for the Architect to prepare such documentation. If such additive alternate ultimately is not included within the scope of a construction contract for the Project, then the Architect shall be paid such compensation as is specified in the Architectural Change Order. If such additive alternate ultimately is included within the scope of a construction contract for the Project, then the Architect's compensation for preparing the associated documentation shall be deemed to be included in the amounts determined pursuant to clause (ii) of Subsection (a) of this Section. Notwithstanding anything to the contrary, the Architect shall be responsible for the cost of preparing any documentation for an additive or other alternate to the extent it is required to implement the Architect's obligations pursuant to Article II herein.

(e) This Subsection shall apply only in the event the Basic Architect Fee is to be determined in accordance with clause (ii) of Subsection (a) of this Section. After the Architect completes the design development phase of the Architectural Services and the District has approved the design development concepts, if the District deletes a significant portion of the Project from the scope of the construction contractor's work for any reason other than to ensure that the total construction cost and total Project costs do not exceed the amount permitted pursuant to this Agreement, the Parties shall equitably adjust the compensation payable to the Architect for the work associated with the deleted portion of the Project and shall set forth such compensation in an Architectural Change Order as a fixed fee amount. Notwithstanding anything to the contrary, the Architect shall not be further compensated for the portion of the Project that is deleted and not constructed to the extent such deletion is required to implement the Architect's obligations pursuant to Article II herein.

Section 6.2 Apportionment of Basic Architect Fee.

(a) Exhibit E hereto may provide that the Basic Architect Fee is to be paid in accordance with payment benchmarks or a payment schedule, in which event the District shall pay the portions of the Basic Architect Fee earned by the Architect to the Architect in accordance with such benchmarks or schedule and the other provisions of this Agreement.

(b) If Exhibit E hereto does not specify any payment benchmarks or schedule, the maximum portion of the Basic Architect Fee that the Architect may invoice to the District in any particular month shall be determined by dividing the total Basic Architect Fee, either the total lump-sum or the not-to-exceed amount, whichever is applicable, by the number of months in the Payment Period (defined below). If the Payment Period is not evenly divisible into full-month periods, the remainder shall be deemed a full month for purposes of determining the maximum portion of the Basic Architect Fee payable to the Architect each month. For purposes of this Section, "Payment Period" shall mean the period commencing with the date for commencement of the Architectural Services as specified in Exhibit A hereto and ending either on the projected date for DSA close-out of the Project or, if DSA close-out is not applicable or if the District will not require DSA close-out, then on the date for final completion of construction of the Project as set forth in Exhibit A hereto.

(c) If Exhibit E hereto does not specify any payment benchmarks or schedule, and the Basic Architect Fee is adjusted in accordance with this Agreement, the maximum amount of the Basic Architect Fee payable in any particular month thereafter shall be calculated by dividing the revised Basic Architect Fee, less all amounts paid to date, by the remaining portion of the Payment Period. Likewise, if, for any reason, the schedule for completion of Architectural Services is modified, the maximum amount of the Basic Architect Fee for the Project payable in any particular month thereafter shall be calculated by dividing the Basic Architect Fee, less all amounts paid to date, by the modified Payment Period.

Section 6.3 Reimbursable Expenses. For purposes of this Agreement, "Reimbursable Expenses" shall mean only those out-of-pocket expenses expressly stated in this Agreement as being reimbursable to the Architect, such as costs of inspections and testing pursuant to Section 5.4, fees pursuant to Section 5.7, and other expenses approved in advance pursuant to this Section. Reimbursable Expenses may include the cost of photographs, renderings, models and mock-ups as are requested by the District, if the Architect is not otherwise required to provide such items pursuant to this Agreement. Reimbursable Expenses shall include only those costs that: (i) are for an item not expressly or implicitly the responsibility of the Architect pursuant to this Agreement; (ii) are directly related to provision of the Architectural Services, and (iii) are approved by the District in advance of such costs being incurred by the Architect. The Architect shall take all reasonable steps necessary to obtain the most competitive prices available for such Reimbursable Expenses and shall invoice Reimbursable Expenses to the District at the actual cost incurred by the Architect plus fifteen percent. The Architect shall not incur any Reimbursable Expenses without the prior written approval of the District, and the District shall not be obligated to pay any expense or cost incurred by the Architect prior to obtaining such approval.

Section 6.4 Additional Architectural Services. If Additional Architectural Services are authorized as herein provided, the Basic Architect Fee for the Project shall be adjusted to include compensation for the Additional Architectural Services as is specified in the applicable Architectural Change Order. If the compensation for Additional Architectural Services is specified on an hourly basis, the hourly rates specified in Exhibit "E" hereto shall apply. In no event shall the overhead, profit and other mark-up on any Additional Architectural Services, whether provided by the Architect or any Architect Consultant, constitute more than ten percent of the cost of the Additional Architectural

Services.

Section 6.5 Invoicing and Payment.

(a) Not later than the tenth day of each month, the Architect shall invoice the District for requested payments of the Basic Architect Fee and any authorized Reimbursable Expenses attributable to the preceding month. Such invoice(s) must include any and all amounts, without limitation, to be asserted by the Architect as payable on account of Architectural Services and Reimbursable Expenses attributable to the preceding month. The Architect may submit invoices to the District that combine the Architect's requests for payment of the Basic Architect Fee and Reimbursable Expenses, provided that such amounts are separately itemized in the invoice. Any and all invoiced amounts are subject to verification by the District. The Architect shall in each invoice specifically describe the basis or bases for the compensation requested and shall submit the invoice to the District together with documentation reasonably, specifically and adequately supporting the Architect's request for compensation as set forth in the invoice. Except as provided in this Agreement, the District shall review and pay all approved amounts set forth in an invoice within thirty days of receipt of the invoice.

(b) Notwithstanding anything to the contrary, the District may request that the Architect provide additional information or documentation as may be necessary for the District to verify and approve the compensation requested in the invoice. The Architect shall provide any such information or documentation requested by the District promptly, but in no event later than fourteen days after receipt of the District's request. In the event the District so requests additional information or documentation, the period in which the District must pay the Architect shall be extended by the number of days taken by the Architect to provide reasonably adequate supporting information or documentation.

Section 6.6 Final Payment. Upon full and final completion of all Architectural Services, the Architect may submit a final invoice to the District for the balance of the Basic Architect Fee for the Project. Subject to the provisions of Section 6.5 herein other than for timing of payment, the District shall pay the balance of the applicable Basic Architect Fee to the Architect within forty-five days of the receipt of the final invoice.

Section 6.7 Interest on Late Payments. All amounts hereby payable by the District to the Architect that remain unpaid after the applicable period allowed pursuant to this Agreement, at the option of the Architect, shall accrue interest at the rate specified in Subsection (b) of Civil Code Section 3320. In such event, the interest payable pursuant to this Section shall be in lieu of any other interest. The provisions of this Section shall be construed to mean that interest shall not accrue during the pendency of any dispute in regard to any amount payable or during any period in which the District is awaiting receipt of additional information or documentation in support of an invoiced amount as provided in Section 6.5 herein.

Section 6.8 Disputed Amounts.

(a) In the event of a good-faith dispute between the Parties regarding any amounts set forth in an invoice submitted by the Architect, the District shall provide written notice to the Architect specifying each disputed amount and setting forth the basis or bases for the dispute in detail reasonably sufficient to explain the District's objection to payment of the disputed amount ("Notice of

Payment Dispute”). Notwithstanding anything to the contrary, in such event, the District may withhold up to the amount permitted by Civil Code Section 3320 from any payment to the Architect. The foregoing shall not be deemed or construed to limit any other remedies available to the District. Notwithstanding any dispute, after withholding appropriate funds in accordance with this Section, the District shall pay the remainder of any undisputed portions or amounts of an invoice, if any, within the time required pursuant to this Agreement.

(b) The District shall provide a Notice of Payment Dispute to the Architect in accordance with whichever of the following is applicable: (i) not later than fourteen days after receipt of the invoice that includes the disputed amount(s); (ii) not later than fourteen days after receipt of additional supporting information or documentation relating to the disputed amount(s) provided by the Architect in accordance with Subsection (b) of Section 6.5; or (iii) at any time after failure of the Architect to provide information or documentation relating to the disputed amount(s) requested by the District pursuant to Subsection (b) of Section 6.5 prior to the expiration of the maximum fourteen-day period specified therein for providing such information or documentation.

(c) Not later than ten days after receipt of any Notice of Payment Dispute, the Architect shall provide to the District any justification of a disputed amount as the Architect desires to submit. If the Architect does not submit any justification of a disputed amount within such ten-day period, the Architect shall be deemed to have withdrawn its request for such amount and it shall be deemed to be deleted from the invoice in which it had been included and may not be re-invoiced by the Architect. If the Architect submits any justification of a disputed amount, not later than ten days after receipt of such justification, the District shall either pay the disputed amount or provide Architect with a written explanation of District’s continuing objection.

(d) In the event of a continuing objection by the District to payment of a disputed amount after exchange of information as provided above in this Section, the Parties may resolve the dispute in the manner permitted pursuant to this Agreement and applicable law, but the District shall not be required to pay the disputed amount prior to resolution of the dispute by the Parties. Any such extension of time for payment by the District shall be in addition to any extension of time available to the District pursuant to Section 6.5 herein. Notwithstanding the existence of, and pending resolution of, any claim, disagreement or dispute between the Parties in regard to any disputed amount, the Architect shall continue to provide and perform the Architectural Services required pursuant to this Agreement. If it is determined by a court of competent jurisdiction that the District wrongfully withheld or did not timely pay the Architect in violation of Civil Code Section 3320, the Architect shall be entitled to a penalty of one and one-half percent of the improperly withheld amount, in lieu of any interest otherwise due, per month for every month that payment is not made, as set forth in Civil Code Section 3320(b).

ARTICLE VII ARCHITECT INDEMNIFICATION AND INSURANCE

Section 7.1 Indemnification of District.

(a) To the fullest extent permitted by law, Architect shall indemnify and hold-harmless the District, the District Board and each member thereof, and the District’s other officers

and employees (collectively, not including the District, the “District Agents”), and each of them, from and against any and all claims, actions, damages, losses, costs and expenses (including, without limitation, attorney’s fees and expenses), and other liabilities of any nature arising from, pertaining to, or relating to the negligence, recklessness or willful misconduct of the Architect, any Architect Consultant, or anyone working under or for any of them, in connection with the performance of this Agreement. The Architect’s obligations pursuant to this Subsection shall extend to, but are not limited to, any and all liability arising out of:

- (i) Workers Compensation and Employers Liability. Any and all claims under Workers’ Compensation acts and other employee benefit acts with respect to any employees of the Architect or any Architect Consultant arising out of Architect’s work pursuant to this Agreement; and
- (ii) General Liability. Any and all claims for damages related to (1) death or bodily injury to any person; (2) injury to, loss or theft of any property; or (3) any failure or alleged failure to comply with any provision of law or this Agreement; and
- (iii) Professional Liability. Any and all claims arising out of, pertaining to, or relating to the professional negligence, recklessness, or willful misconduct of the Architect or any person, firm or corporation employed by the Architect, either directly or by independent contract, in connection with the Project.

(b) The Architect shall reasonably cooperate with the District in any defense of claims, actions, suits, or other proceedings within the scope of Subsection (a) of this Section that may be brought or instituted against the District and/or any District Agents, based upon such claim relating to the negligence, recklessness or willful misconduct of the Architect or Architect’s Consultants. However, with respect to 7.1(a)(iii) above, the Architect’s obligation to indemnify does not include the obligation to separately defend actions or proceedings brought against the District but rather to reimburse the District for attorney’s fees and costs incurred by the District in defending such actions or proceedings, to the extent that such action is determined to have arisen out of, pertained to or relates to the professional negligence, recklessness, or willful misconduct of the Architect, or the Architect’s consultants or as the parties otherwise agree in settlement. In the event the claims are alleged to be based upon the sole negligence, recklessness or willful misconduct of the Architect, then, if requested by the District, the Architect shall defend both the Architect and the District through a joint defense by Architect’s counsel provided that there is no conflict of interest and/or the District does not elect to defend itself. If there is a conflict of interest that cannot be waived and/or the District elects to defend itself, then there is no upfront duty to defend and the Architect shall reimburse the District for attorney’s fees and costs incurred by the District in defending such actions or proceedings, to the extent that such action is determined to have arisen out of, pertained to or relates to the professional negligence, recklessness, or willful misconduct of the Architect, or the Architect’s consultants or as the parties otherwise agree in settlement.

(c) Notwithstanding anything to the contrary, the Architect's obligations pursuant to Subsections (a) and (b) of this Section shall not apply to a claim, demand, action, damage, loss or other liability to the extent, and only to the extent, such liability is attributable to the active negligence, sole negligence or intentional misconduct of the District or any of the District Agents.

(d) The foregoing provisions of this Section shall be interpreted in a manner consistent with Civil Code Section 2782.8 as it exists as of the Effective Date. The Architect's obligations pursuant to this Section shall survive the expiration or termination of this Agreement and, if applicable, the completion of the construction of the Project.

Section 7.2 Required Insurance Coverage.

(a) The Architect shall obtain and maintain at all times during the performance of the Architectural Services such policies of insurance coverage as may be required by law, but, at a minimum, shall obtain and maintain the insurance coverages as are described in this Section and Exhibit "F" attached hereto. The insurance coverage to be maintained by Architect pursuant to this Agreement shall be provided in the form of policies specifically applicable to this Agreement, unless the District agrees otherwise in writing, but in no event shall any claim or recovery related to other work by the Architect reduce or eliminate coverage required pursuant to this Agreement. Each such insurance policy shall be primary and not contributing with respect to any insurance or self-insurance programs covering or maintained by the District and/or any of the District Agents. The performance of the Architect's obligation to obtain and maintain the insurance coverages required pursuant to this Agreement is a material part of the consideration given to the District for this Agreement and any failure by the Architect to obtain, maintain or renew such policies as provided herein shall be deemed and construed as a material breach by the Architect of its obligations pursuant to this Agreement. If the Architect fails to maintain the insurance policies as required pursuant to this Agreement, the District may, in its discretion, obtain and maintain such insurance coverage as it determines necessary and withhold funds from the Architect due hereunder, without liability or recourse by the Architect, to pay the cost of such insurance coverage.

(b) Prior to the commencement date for the Architectural Services set forth in Exhibit A hereto, the Architect shall provide to the District duly authorized and executed certificates of insurance evidencing that such insurance policies are in effect (each a "Certificate of Insurance"). In addition, within fifteen days after such commencement date, the Architect shall provide to the District complete copies of all insurance policies (including, without limitation, all applicable endorsements) required pursuant to this Agreement. The District shall review the insurance policies and Certificates of Insurance to determine compliance with the requirements of this Agreement. The Architect shall provide updated Certificates of Insurance to the District for each renewal of an insurance policy required pursuant to this Agreement.

(c) Notwithstanding anything to the contrary: (i) the Architect must have the Professional Liability Policy described in Exhibit F hereto in full force and effect prior to commencing the Architectural Services; (ii) each renewal or replacement of the Professional Liability Policy must have a retroactive date that is prior to the date the Architect commenced the Architectural Services to be performed pursuant to this Agreement; and (iii) the Architect must maintain the Professional Liability Policy in full force and effect, AND APPLICABLE TO CLAIMS ARISING FROM THE PROJECT, without any

gaps in coverage, for a period of at least five years following final completion and acceptance of the Project. If the claims reporting period applicable to the Project, as specified in or determined pursuant to the Professional Liability Policy, will terminate prior to the end of the five-year period following final completion and acceptance of the Project, the Architect at its cost must obtain and provide to the District an endorsement to extend the claims reporting period to include whatever remains of such five-year period. Otherwise, as and when necessary, the Architect at its cost must obtain a supplemental extended reporting period (tail) applicable to the Professional Liability Policy to provide coverage until the end of the five-year period following final completion and acceptance of the Project. Such tail coverage shall be required, for example: (i) if the Architect intends to switch insurance carriers and the prospective new carrier will not agree to cover claims arising from the Project submitted at any time prior to the end of the five-year period following final completion and acceptance of the Project; (ii) if the Architect's business is to be wound-up or otherwise terminated, whether voluntarily or involuntarily; or (iii) when necessary for any other reason to ensure that professional liability insurance applicable to the Project is in effect at all times required by this Agreement.

(d) The insurance policies required pursuant to this Agreement shall be issued by one or more insurers licensed to do business in this State and having an A.M. Best Company rating of not less than an "A-" and Financial Size Category of not less than "IX." Each insurance policy and each Certificate of Insurance shall expressly require that the insurer provide written notice to the District not less than thirty days prior to any cancellation, termination, or expiration without renewal of the policy or not less than ten days in the event of cancellation due to nonpayment of premium. The Architect shall notify the District of any modification in the coverage thirty days prior to such modification taking effect. The foregoing language is required in each Certificate of Insurance and in each corresponding policy. Language in any insurance policy or Certificate of Insurance to the effect that the insurer shall "endeavor" to provide such notice shall not be acceptable.

(e) Except as may be expressly stated in this Agreement, nothing in this Agreement, including, without limitation, provisions for insurance coverage set forth in this Section, shall be deemed or construed to eliminate, limit or condition in any manner the District's remedies in the event of, or the Architect's responsibility for, damages incurred by the District arising from any operation, act or failure to act by the Architect in connection with this Agreement.

Section 7.3 Consultant Indemnification and Insurance. The Architect shall require that each Architect Consultant indemnify the District in accordance with Section 7.1 and obtain and maintain insurance coverage in accordance with Section 7.2. The Architect shall include in each contract with any Architect Consultants provisions to effect the requirements of this Section, and any failure by the Architect to do so shall be deemed and construed as a material breach by the Architect of its obligations pursuant to this Agreement.

Section 7.4 Waiver of Subrogation. To the fullest extent permitted by law and without voiding or impairing the coverage afforded by the insurance required hereunder, each Party hereby waives any and all rights it or its insurer may have against the other Party, whether through subrogation or otherwise, to recovery for any loss, damage and/or other liability to the extent covered by the insurance policies, if any, required to be maintained by either the Architect or the District pursuant to this Agreement. Each such insurance policy must contain an express written waiver of all rights of

subrogation to such extent. A waiver of subrogation shall be effective as to any individual or entity regardless of whether such individual or entity: (i) would otherwise have a duty of indemnification, contractual or otherwise; (ii) did not pay the insurance premium directly or indirectly; and (iii) has an insurable interest in any property damaged.

ARTICLE VIII PROHIBITED ACTIVITIES

Section 8.1 Solicitation. The Architect represents and warrants that it has not: (i) employed or retained any entity or person other than a bona fide employee working solely for the Architect (“BFE”) to solicit or secure this Agreement; (ii) paid or agreed to pay any entity or person, other than a BFE, any fee, commission, percentage, or similar compensation for soliciting, securing or entering into this Agreement; (iii) given, granted or promised any gift or other consideration to any entity or person, other than a BFE, contingent upon or resulting from soliciting, securing or entering into this Agreement. If the District determines that the Architect has breached or violated the foregoing warranty, the District shall have the right, in its discretion and without liability or recourse by the Architect, to rescind or void this Agreement or to deduct from amounts due to the Architect the full amount of any fee, commission, percentage or compensation paid in violation of this Section.

Section 8.2 Conflicting Interests. At no time during the performance of and prior to full completion of any work or services pursuant to this Agreement shall the Architect, any Architect Consultant, or any person having any financial interest in or employed by either the Architect or any Architect Consultant, have or acquire any ownership, financial or other similar interest in any other entity performing any work or services in connection with the Project, including, without limitation, any entity providing supplies, materials, construction services or construction management services in connection with the Project.

Section 8.3 District Consultants and Agents. Except to the extent the Project Inspector may be construed to be a representative of the DSA, the Project Inspector, the construction manager, if any, and any other consultants employed by the District in connection with the Project, and each of their employees, consultants and sub-consultants, are solely and exclusively representatives of the District. The Architect shall not solicit or offer any act, compensation, gift or other consideration of any type or form, from or to any such entity or person, or act in any other manner that would result in, or create the appearance of, a conflict of interests for any such entity or person.

Section 8.4 District Employees. Neither the Architect nor any of the Architect Consultants shall: (i) solicit or offer any act, compensation, gift or other consideration of any type or form, from or to any officer, employee or agent of the District, or act in any other manner that would result in, or create the appearance of, a conflict of interests for any such person; (ii) employ any officer, employee or agent of the District regardless of whether such employment might otherwise occur outside any such person’s regular work hours or on weekends, holidays or vacations; or (iii) employ any person who was an officer, employee or agent of the District at any time within one year prior to the Effective Date.

ARTICLE IX
DOCUMENTS PREPARED OR USED FOR THE PROJECT

Section 9.1 Ownership, Use and Storage of Project Documents.

(a) In accordance with Education Code Section 17316, any and all plans, specifications, cost estimates, original or reproducible transparencies of working plans and master plans, preliminary sketches, architectural presentation drawings, structural computations, estimates, photographs and other documents prepared or obtained by the Architect pursuant to this Agreement (collectively, "Project Documents") are and shall remain the property of the District for repair, maintenance, renovation, modernization or other purposes, only as they relate to the Project. The Project Documents shall be deemed and construed to include any and all such documents fixed in any tangible means of expression, including, but not limited to physical drawings on paper, mylar, vellum, et cetera; data magnetically, physically or otherwise recorded on computer disks, cards, tapes, et cetera; data recorded by any electronic, electro-magnetic, or other or similar means; images recorded on any type of film, including, without limitation, any photographs. Except as necessary or required in connection with the Project, the Architect shall not permit use of the Project Documents or reproductions to be made of any Project Documents, without the prior written approval of the District. Nevertheless, the Architect expressly reserves its ownership right and right to use its standard details, designs and specifications. The Architect may use photographs or other representations of the Project only upon prior written consent of the District.

(b) Upon completion of all Architectural Services and as a condition to final payment to the Architect pursuant to this Agreement, the Architect shall provide the District with a complete, reproducible set of all Project Documents. The Architect shall, for the benefit of the District, retain the original Project Documents, however stored or maintained, in the Architect's files for a period of not less than fifteen years after final payment to Architect pursuant to this Agreement. Upon any request of the District during such fifteen-year period, the Architect shall promptly make available to District any and all of the original Project Documents as requested by the District. In the event during such fifteen-year period, the entity that is the Architect, for any reason, is to be terminated, disbanded, closed or otherwise will no longer exist, the Architect shall offer to transfer all of the original Project Documents to the District. At any time after the end of such fifteen-year period, if the Architect proposes to dispose of the original Project Documents, the Architect shall offer to transfer all of the original Project Documents to the District.

Section 9.2 Copyright of Project Documents. The copyrights over any and all Project Documents, including, but not limited to all common law, statutory and other reserved rights, shall vest in the District, and the Architect hereby expressly transfers to the District and waives all of such copyrights, without limitation. The Architect shall include in each contract with any Architect Consultants that each such Architect Consultant also expressly transfer to the District and waive all of such copyrights, without limitation. Failure of the Architect to require such provisions in its contracts with the Architect Consultants shall be deemed and construed as a material breach by the Architect of its obligations pursuant to this Agreement. This Agreement creates an exclusive and perpetual right solely for the District to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein, subject to the terms set forth in this Article IX. The Architect represents and warrants that it has or will have the legal right to transfer and waive all copyrights, designs and other

intellectual property embodied in Project Documents, whether prepared directly by the Architect or any Architect Consultant. The Architect shall be responsible and liable for costs and expenses incurred by the District arising from any failure or alleged failure of Architect to comply with its obligations pursuant to this Section.

Section 9.3 Reuse of Project Documents. Notwithstanding anything to the contrary, if the District intends to reuse all or any portion of the Project Documents for another project on which Architect is not the architect of record, District shall pay a fee of three percent (3%) of the Construction Cost to the Architect for such reuse. The District may reuse the Project Documents for any purpose as determined by the District in its sole discretion. If any of the Project Documents are reused or modified by any person, firm or legal entity other than the Architect or the Architect Consultant that originally prepared such Project Documents, the District shall indemnify, defend and hold-harmless the Architect, any such Architect Consultant, and their agents and employees, with respect to any claims, damages, losses, or expenses (including attorneys' fees) arising from such reuse or modification. In the event of such reuse or modification of any Project Documents, the District shall cause the person or entity modifying or preparing the Project Documents for reuse to remove the Architect's name and seal and/or the Architect Consultant's name and seal from those Project Documents.

Section 9.4 Use of Third-Party Documents. The District may request in connection with the performance of Architectural Services that the Architect use the 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 by design professionals other than Architect (herein, "Third-Party Documents"). Upon receipt of any such request, the Architect shall review the Third-Party Documents and affirmatively advise the District as to issues potentially arising from use thereof, including, without limitation, any design viability, constructability or coordination issues, and any copyright or similar issues. The District shall indemnify and hold the Architect its employees and consultants harmless against any copyright infringement claims arising out of Architect's completion, use or reuse of Third-Party Documents as requested by the District, provided that the Architect has diligently complied with its obligations pursuant to this Section.

Section 9.5 District Documents. All Third-Party Documents, site surveys, testing and inspection reports, soils, geologic and environmental analyses, studies and reports, title and other property-related reports, and other documents, in whatever form, provided to Architect by the District, prepared by Architect, or paid for by the District, in connection with the performance of this Agreement shall be and shall remain the sole property of the District. The Architect shall return each of such documents to the District within a reasonable time after Architect's need for the documents has ended. The Architect may retain copies of any such documents as reasonably necessary to document the Architectural Services, but the Architect shall not disclose any such documents to any third party without the express written consent of the District.

Section 9.6 Use of Project Documents Upon Termination. If this Agreement and the Architectural Services are terminated in their entirety pursuant to Article X herein, the Architect shall not be held responsible for the accuracy, completeness or constructability of the Project Documents prepared by the Architect when the termination or abandonment occurs prior to the completion of the

design documents and prior to the final approval of the Project Documents by the DSA. However, notwithstanding anything to the contrary, and with respect to all Architectural Services performed prior to such termination, the Architect shall retain any and all responsibility for performance of such Architectural Services in accordance with this Agreement, including, without limitation, preparation of the Project Documents. If the District decides to complete the Project through the use of another design professional and uses the uncompleted and unapproved Project Documents prepared by the Architect, then:

- (i) The District shall require that such other design professional assume full responsibility for the design of the Project and the general responsible charge of the Project;
- (ii) Subject to the other provisions of this Section and the Agreement, the District shall be deemed to have waived any and all claims against the Architect related to the use and/or modification of the uncompleted and unapproved Project Documents;
- (iii) The District shall defend, indemnify and hold harmless the Architect with respect to any claims or other liabilities that are within the scope of clause (ii) of this Section; and
- (iv) The District shall pay all amounts due the Architect in accordance with Article X herein.

ARTICLE X TERMINATION AND SUSPENSION OF SERVICES

Section 10.1 Termination By District.

(a) At any time and without need for cause, the District may terminate this Agreement or some or all of the Architectural Services by giving written notice to the Architect ("District Termination Notice"). A District Termination Notice shall be effective immediately upon receipt by the Architect or on such other date as specified therein. Except as provided below, the Architect shall permanently cease all work to the extent specified in the District Termination Notice as of the effective date of the termination. In the event the District terminates the Architectural Services in part only, the Architect shall continue to perform the Architectural Services not terminated, and the Basic Architect Fee for the Project, if necessary, shall be adjusted on an equitable basis or as agreed in writing by the Parties. Upon request of the District, the Architect shall perform any and all Additional Architectural Services necessary to wind-up the Architectural Services commenced prior to the effective date of termination.

(b) Within ten days after such effective date of any termination pursuant to this Section, the Architect shall deliver to the District any and all Project Documents related to the portion of the Architectural Services terminated, whether such materials are completed or in progress. The Architect shall not refuse to provide such Project Documents for any reason whatsoever, including, but not limited to, any possessory-interest lien for any claim the Architect may have against the District or

any claim by the Architect to an ownership interest in the intellectual property embodied in the Project Documents.

(c) In the event the District terminates this Agreement, in whole or in part, as a result of any material breach by Architect of its obligations pursuant to this Agreement, the District Termination Notice shall describe such breach in reasonable detail. The District's remedies for the Architect's breach shall in no event be limited, except as provided by law.

Section 10.2 Compensation After Termination By District. If the District terminates this Agreement or some or all of the Architectural Services, the District, subject to all other provisions of this Agreement, shall compensate the Architect in accordance with Article VI for all Architectural Services satisfactorily performed prior to the effective date of the termination. If the District Termination Notice in any such case does not specify that the termination is the result of a breach by the Architect, then, and only then, the District shall also pay for Architectural Services in progress by the Architect and any Architect Consultants at such time, but such compensation shall not include any past or future profits or overhead attributable to such work in progress. In no event shall the Architect be entitled to recover any past or future overhead, profit, consequential damages or other costs attributable to any terminated Architectural Services or the termination of same. Within fourteen days after the effective date of any termination by the District, the Architect shall provide documentation reasonably, specifically and adequately evidencing the costs that the Architect believes are payable by District after termination. In the event the termination is not effective with respect to all Architectural Services for the Project in its entirety, the District shall continue to compensate the Architect in the manner set forth in Article VI for those Architectural Services not terminated.

Section 10.3 Suspension By District.

(a) The District, without incurring any additional charges by the Architect, may at any time require that the Architect temporarily suspend performance of some or all of the Architectural Services by giving written notice to the Architect ("District Suspension Notice"). A District Suspension Notice shall be effective immediately upon receipt by the Architect or on such other date as specified therein. The Architect shall temporarily cease all work to the extent specified in the District Suspension Notice as of the effective date of the suspension. In the event the District suspends the Architectural Services in part only, the Architect shall continue to perform the Architectural Services not suspended.

(b) In its discretion, the District may provide written notice to the Architect that the Architect is to resume some or all of the suspended Architectural Services or the District may terminate any or all suspended Architectural Services in accordance with Section 10.1. Except to the extent the scope of the Architectural Services has been reduced (whether due to termination in accordance with Section 10.1 or only partial resumption of suspended Architectural Service), upon resumption of any suspended Architectural Services, the Architect shall dedicate such personnel and other resources to performance of the Architectural Services as necessary to achieve performance in accordance with this Agreement. In such event, the Architect shall make a good faith attempt to dedicate to the performance of the Architectural Services as many of the personnel previously assigned thereto as is then practical. If individuals who were assigned to the Project at the time of suspension are not reasonably available at the time work on the Project is resumed, the Architect shall assign other

personnel having requisite skill and experience.

(c) Unless agreed otherwise by the Parties in writing, the time permitted for performance by the Architect of any Architectural Services that were suspended, but then resumed, as provided in this Section shall be extended by a number of days equal to the number of days the Architectural Services were suspended.

Section 10.4 Compensation After Suspension By District. During any suspension of any Architectural Services as provided in Section 10.3, the Architect shall be entitled to payment of only the portion of the Basic Architect Fee attributable to Architectural Services not suspended and Architectural Services satisfactorily completed prior to the suspension. If the District requires the Architect to resume any or all suspended Architectural Services, the District shall also resume paying the Architect in accordance with this Agreement for the portion resumed. The District may during any suspension request that the Architect provide Additional Architectural Services, for which the District shall compensate the Architect as provided in this Agreement. In no event shall the Architect be entitled to past or future overhead, profit, consequential damages or other costs attributable to any suspended Architectural Services, or the suspension of same, and accruing during or as a result of the suspension.

Section 10.5 Termination by Architect.

(a) The Architect may terminate this Agreement only for sufficient cause, by giving written notice to the District setting forth in reasonable detail the basis or bases for such sufficient cause ("Architect Termination Notice"). Except as provided in Subsection (c) of this Section, a termination by the Architect shall be effective thirty days after the District's receipt of the Architect Termination Notice. Notwithstanding that it may have given an Architect Termination Notice to the District, the Architect shall continue providing all Architectural Services required for the Project pursuant to this Agreement, unless all work has been suspended, until the effective date of the termination by Architect or such earlier date as specified by the District.

(b) Within ten days after such effective date of any such termination, the Architect shall deliver to the District any and all Project Documents prepared or obtained by the Architect in the performance of the Architectural Services, whether such materials are completed or in progress. The Architect shall not refuse to provide such Project Documents for any reason whatsoever, including, but not limited to, any possessory-interest lien for any claim the Architect may have against the District or any claim by the Architect to an ownership interest in the intellectual property embodied in the Project Documents.

(c) Sufficient cause for termination of this Agreement by the Architect may be shown only by one or more of the following: (i) the District has failed to pay to Architect, within ninety days of when due, any undisputed amounts payable pursuant to this Agreement; (ii) the District has breached any other significant, material obligation owed to Architect pursuant to this Agreement and failed to cure such breach in accordance with this Agreement; (iii) as a result of circumstances not within the control of either Party, all work on the Project ceases and does not recommence within a period of one hundred and twenty days; or (iv) the District suspends all Architectural Services and does not order work to recommence within a period of one hundred and twenty days. Any dispute regarding the Architect's right to terminate this Agreement and/or whether sufficient cause for termination exists

shall be resolved as provided in this Agreement and applicable law.

(d) Notwithstanding anything to the contrary, if, within thirty days after receipt of an Architect Termination Notice, the District cures the reason for termination stated therein, this Agreement shall continue in full force and effect and the Architect shall continue to provide the Architectural Services as required pursuant to this Agreement. At any time after the receipt of an Architect Termination Notice, the District may earlier terminate this Agreement by providing written notice to the Architect to terminate the Architectural Services on a specific date that is prior to the effective date of termination pursuant to the Architect Termination Notice.

Section 10.6 Compensation After Termination By Architect. If the Architect terminates this Agreement in accordance with Section 10.5, subject to all other provisions of this Agreement, the District shall compensate the Architect in accordance with this Agreement: (i) for all Architectural Services satisfactorily performed prior to the effective date of the termination and (ii) for Architectural Services in progress by the Architect and any Architect Consultants at such time, but not including any past or future profits or overhead attributable to such work in progress. In no event shall the Architect be entitled to any overhead, profit, consequential damages or other costs attributable to the Architectural Services or the termination of same. Within fourteen days after the effective date of any termination by the District, the Architect shall provide documentation reasonably, specifically and adequately evidencing the costs that the Architect believes are payable by District after termination.

Section 10.7 Suspension by Architect. If the District fails to pay any undisputed amount due to the Architect within thirty days after written notice from the Architect that such amount has not been paid when due pursuant to this Agreement, the Architect may immediately suspend performance of the Architectural Services to be performed pursuant to this Agreement by giving written notice to that effect to the District. As a condition to resuming the performance of the Architectural Services, the District must pay all undisputed amounts due to the Architect that were unpaid prior to the suspension. In the event of any such suspension, the Architect shall have no liability to the District for delay or damages incurred by the District as a result of the suspension. In connection with payment by the District and lifting of any such suspension, the Parties shall equitably adjust and set forth in an Architectural Change Order the time for performance of the Architectural Services to be performed after the suspension has been lifted. If the District fails to pay any amount in accordance with this Section, the Architect may terminate this Agreement to the extent permitted by and in accordance with Section 10.5 herein.

Section 10.8 Procurement of Similar Services. The District may procure, upon such terms and in such manner as it deems appropriate, services similar to and/or in replacement of any Architectural Services terminated in accordance with this Agreement. The District shall in such event have the right to use as it may determine, and to provide to the person or entity providing such similar and/or replacement services, any and all Project Documents prepared or obtained by the Architect pursuant to this Agreement.

**ARTICLE XI
INTERPRETATION AND DISPUTE RESOLUTION**

Section 11.1 Incorporation of Exhibits. All Exhibits referenced herein and attached hereto are hereby incorporated as operative and effective provisions of this Agreement.

Section 11.2 Captions and References. The captions or headings set forth in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any Article, Section, Subsection, or other provision of this Agreement. Any reference in this Agreement to an Article, Section or Subsection, unless specified otherwise, shall be a reference to an Article, Section or Subsection of this Agreement.

Section 11.3 Drafting of Agreement. In interpreting this Agreement, it shall be deemed to have been prepared by the Parties jointly and no ambiguity shall be resolved against either Party on the premise that it or its attorneys were responsible for drafting this Agreement or any particular provision hereof.

Section 11.4 Amendment. This Agreement may be amended or modified only by means of a writing duly approved and executed by the Parties.

Section 11.5 Entire Agreement. This Agreement sets forth the entire agreement and understanding concerning the provision by the Architect of the Architectural Services on the specific Project only, and supersedes and replaces all prior discussions and agreements, written or oral. Each Party acknowledges that neither the other Party nor any of the other Party's agents, attorneys and other representatives have made any promise, representation, or warranty whatsoever, express or implied, other than those contained herein, to induce the execution of this Agreement, and each Party acknowledges that this Agreement has not been executed in reliance upon any promise, representation, or warranty not contained herein. Each Party acknowledges, by execution of this Agreement, that such Party has read this Agreement, has had the opportunity to seek counsel from its attorneys in regard to this Agreement, understands this Agreement, and agrees to be bound by the terms and conditions set forth in this Agreement.

Section 11.6 No Third-Party Beneficiaries. The Parties have entered into this Agreement solely for their own benefit, and no third-party shall be entitled, directly or indirectly, to base any claim or to have any right arising from, or related to, this Agreement.

Section 11.7 Governing Law and Venue. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Any arbitration, litigation or other proceeding arising out of or related to this Agreement shall be initiated and conducted only in the County of Riverside.

Section 11.8 Dispute Resolution. The Parties desire to quickly and cost-effectively resolve any disputes related to the interpretation or enforcement of this Agreement. Therefore, upon written notice from one Party, both Parties shall commence good-faith reasonable efforts to informally resolve any such dispute. If the Parties are able to agree on the terms and procedures therefor, the Parties

may agree that the informal resolution attempts will include mediation of any such dispute. Not sooner than thirty calendar days after receipt of the notice specified in this Section (or, if applicable, not sooner than upon termination or completion of mediation), if the attempts to informally resolve the dispute have been unsuccessful, either Party may initiate litigation or other proceedings as deemed appropriate by such Party.

Section 11.9 Continuation of Services During Disputes. Except to the extent that either Party terminates or suspends performance by the other Party of any obligations pursuant to this Agreement, each party shall continue to perform their respective obligations required pursuant to this Agreement regardless of any dispute(s) between the Parties related to or arising from this Agreement and regardless of the status of any proposed or pending attempts to resolve such dispute(s).

Section 11.10 No Implied Waiver. Neither the review or approval of any Architectural Services, nor payment by the District for any Architectural Services, shall be deemed or construed to constitute a waiver of any rights the District may have pursuant to this Agreement or as a waiver by the District of any cause of action arising out of the Architect's performance of this Agreement. Nothing in this Agreement shall be deemed or construed as a waiver by the District of any applicable immunity to suit.

Section 11.11 Waivers Must Be In Writing. In order to be valid, the waiver by a Party of any breach or requirement of this Agreement must be in writing signed by that Party, and no waiver shall be deemed or construed to constitute a waiver of any preceding or subsequent breach of the same or any other requirement of this Agreement unless so specified in the signed writing. Absent a valid waiver, the failure of a Party at any time to require or enforce the performance of any requirement of this Agreement shall not be deemed or construed to preclude or limit the right of such Party to require performance of the same or other requirement at any time thereafter.

Section 11.12 Severability. If any Article, Section, Subsection, paragraph, sentence, clause or other provision of this Agreement is held by a court of competent jurisdiction to be, or for any other reason becomes, illegal, null or void, including, but not limited to, because the provision violates public policy, the remaining provisions of this Agreement shall not be affected thereby and shall continue in force and effect to the extent possible in light of the illegal, null or void language.

Section 11.13 Survival of Terms. All representations and warranties of each Party, all obligations of a Party to indemnify, defend and hold-harmless the other Party with respect to acts or incidents occurring prior to completion of the Architectural Services required pursuant to this Agreement or earlier termination of this Agreement, and any other provisions herein which by their context and meaning are intended to so survive, shall survive completion of the Architectural Services and/or termination of this Agreement.

ARTICLE XII MISCELLANEOUS

Section 12.1 Time of Essence. Time is of the essence with respect to this Agreement and each and every provision herein, including, without limitation, provision by the Architect of the

Architectural Services and completion of the construction of the Project. The performance by Architect when due of each of the Architect's obligations pursuant to this Agreement, regardless of relative importance, shall be deemed and construed to be part of the material consideration owed to the District in exchange for entering into this Agreement. Nevertheless, the Parties understand that factors outside the Architect's control may affect the Architect's ability to complete the services to be provided pursuant to this Agreement. In any case, except as provided in Section 12.2 herein, the Architect shall perform all Architectural Services with such reasonable diligence and expediency consistent with sound professional practices as necessary for the District to achieve full completion of the construction of the Project by the completion date and within the budgets established for the Project.

Section 12.2 Force Majeure. Notwithstanding Section 12.1, if the performance by the Architect of the Architectural Services is delayed due to: (i) unreasonable and unanticipated acts of any governmental entity having jurisdiction over some or all of the Architectural Services, the products thereof, or the construction of the Project; (ii) acts of nature, including, but not limited to, earthquakes, severe inclement weather, wildfires, and floods not caused or resulting from the acts of any person; or (iii) other causes reasonably not within the control of the Architect and not due to the fault or negligence of the Architect; then the time for performance of the affected Architectural Services shall be extended by the number of days of delay. The Architect shall bear the burden of establishing reasonable justification for any requested extension of time.

Section 12.3 Notices. Each notice, demand, or other communication sent by one Party to the other Party for purposes of asserting any right or obligation pursuant to this Agreement, or related to the interpretation of this Agreement, must be addressed as provided in Exhibit D hereto and delivered to such other Party by one of the means specified in this Section. This Section shall not be construed as applying to day-to-day communications between the Parties for purposes of administering the Architectural Services or the Project. Each such notice, demand, or other communication must be sent to the primary (first) designated representative of the receiving Party specified in Exhibit D hereto, with copies sent to each other designated representative of the receiving Party. Any communication sent pursuant to this Section may be sent by: (i) personal delivery (signature on delivery receipt requested); (ii) registered or certified U. S. Mail (postage prepaid and return receipt requested); (iii) FedEx, UPS or other reliable private express delivery company (recipient signature or electronic-tracking receipt by delivery company required); or (iv) by facsimile transmission (with transmission confirmation retained in sender's records and original of communication deposited into the U. S. Mail within twenty-four hours after transmission, first-class postage prepaid). For purposes of this Section, a communication shall be deemed received, given, or served only upon actual receipt by the Party to which it is addressed. Facsimile transmissions shall be deemed to have been actually received by the addressee upon printing of the transmission confirmation by the sending machine, except that: (i) any facsimile transmission sent later than 4:00 p.m. on a Thursday that is a holiday or on any Friday shall be deemed and construed as having been actually received as of 9:00 a.m. the following Monday or, if that Monday is a holiday, the next subsequent business day that is not a holiday; and (ii) except as provided in the foregoing clause, any facsimile transmission sent on any day that is a holiday shall be deemed and construed as having been actually received as of 9:00 a.m. the next subsequent business day that is not a holiday. A Party may change its contact information as set forth in Exhibit D hereto by giving notice as specified in this Section.

Section 12.4 Limitation on Recourse. Except as provided in this Section, nothing in this Agreement shall be deemed or construed to subject, as applicable, the individual shareholders, board members, trustees, employees, officers or directors of either Party to any personal legal exposure for the risks associated with this Agreement or the Architectural Services. Therefore, except as provided in this Section, a Party's sole and exclusive remedy against the other Party in connection with any claim, demand or action arising from this Agreement or the Architectural Services shall be directed and/or asserted only against the entities that are the parties to this Agreement and not against, as applicable, any of their individual shareholders, board members, trustees, employees, officers or directors. Notwithstanding anything to the contrary, the limitations on recourse specified in this Section shall not apply: (i) with respect to any intentional misrepresentation, fraud, or other intentional misconduct of a person or entity; (ii) with respect to any guarantee, insurance, or surety provided by a person or entity to any other person or entity; or (iii) to the extent contrary to any applicable law.

Section 12.5 Waiver of Consequential Damages. Except as may be provided elsewhere in this Agreement, each Party hereby waives any and all rights it may have to recover consequential damages arising out of this Agreement. For purposes of this Section, consequential damages shall not be deemed or construed to include any damages that directly result from any breach of an obligation set forth in this Agreement. Consequential damages may include, but are not limited to, loss of use and loss of profit, loss of business, loss of income, and loss of reputation. The waiver set forth in this Section shall be applicable, without limitation, to all consequential damages attributable to termination of this Agreement by a Party pursuant to Article X herein.

EXHIBIT "A"
DESCRIPTION OF PROJECT

Project Name and Designation: ***Paloma Valley Career Technical Education Building Addition***

Type of Facility and Grade levels: ***Paloma Valley High School Grades K-12***

Anticipated Capacity: ---

Facility Uses and Areas: ***2400 square foot multi use classroom/shop***

Site Location: ***Paloma Valley High School 31375 Bradley rd. Menifee 92584***

Site Assessor Parcel No.: ---

Site Shape and Net Useable Area: ***CTE Building to be placed on the Eastern edge of campus, adjacent to B Building/ east of C Building***

CDE Site Approval Obtained?: ---

DTSC Site Approval Obtained?: ---

CEQA Complete?: ---

Mitigation Measures Required?: ---

Known or Possible Site Limitations and Restrictions: ---

Anticipated/Desired Funding Program(s): --

Anticipated Construction Delivery Method: ***CM Multi-prime***

Contract Construction Manager?: ***Neff Construction***

Construction Phasing: None

Required Project Milestone Dates:

Architectural Services Notice to Proceed: ***February 2017***

First Submittal to DSA: ***TBD***

DSA Final Approval: ***TBD***

State Allocation Board Funding Approval: ---

Notices Inviting Bids Issue ***TBD***

Construction Notice to Proceed ***TBD***

Construction Completion/Beneficial Occupancy: ***January 1, 2018***

Commence Operations of Facility: ***January 9, 2018***

DSA Close-Out Complete: **TBD**

Total Construction Budget: \$753,654

Total Project Budget: **\$1.100,00**

Other Detailed Project Information: The project includes the architectural planning for the addition of a 2400 square foot modular building, which the District is purchasing from American Modular, on the Paloma Valley High School campus.

EXHIBIT "B"
SCOPE OF ARCHITECTURAL SERVICES

A. GENERAL REQUIREMENTS

In addition to any other requirements set forth in this Agreement, the Architect shall comply with all of the following requirements during, unless specified otherwise, all phases of the Architectural Services:

- (1) Determine which governmental agencies have jurisdiction over the Project or any portion thereof and document same in writing to the District; coordinate with and implement the requirements of such agencies, e.g., California Department of Education ("CDE"), OPSC, DSA, State Fire Marshal, et cetera.
- (2) Review subsoil data, chemical, mechanical and other data logs of borings, etc., furnished to Architect pursuant to this Agreement and advise the District whether such data are sufficient for purposes of design, or whether additional data are necessary.
- (3) Obtain, from the District, a title report for Project site and determine scope and extent of any easements or other site limitations.
- (4) Be responsible for the coordination of the design and the layout of the technology backbone system with the District's technology consultant. The coordination effort shall include location and routing of raceways, conduits, and outlets and required spaces to accommodate electrical, data and communication wiring.
- (5) Provide services required to obtain local agencies approval for off-site work required in connection with the Project, including review by governmental agencies having jurisdiction over the Project.
- (6) Develop a grading and drainage plan and a site plan from architectural information showing a final development of the site, this drawing will also include a horizontal and vertical control plan and a utility infrastructure plan. The services described in this Subparagraph shall be provided by a professional civil engineer who is to subcontract with the Architect.
- (7) Architect to document the location of existing utility lines, telephone, water and sewage, etc., within the limits of all on-site and off-site work. This information shall be provided by the District. Architect shall verify the capacity of all existing project utilities.
- (8) Chair, conduct and take minutes of weekly coordination meetings during each design phase with its consultants. Invite the District and the District's consultants to participate in these meetings. Keep a separate log to document design/coordination comments generated in these meetings. The form of Comment Tracking Document to be used by Architect is attached as Exhibit "G" to this Agreement.

(9) Maintain a log of all meetings, site visits or discussions held in conjunction with the work of this Project (with documentation of major discussion points, observations, decisions, questions or comments) and furnish to the District for inclusion in the overall Project documentation.

(10) Utilize the standardized filing system as established by the District.

(11) Provide interior design and other similar services required for or in connection with color coordination including furnishing. Coordinate the placement of furniture, and equipment layout and consult with District to ensure proper placement of required furniture and equipment. The District shall procure furnishing and moveable equipment.

(12) Prepare necessary documents for and oversee the processing of District's application for and obtaining of required approvals from the DSA, the OPSC, State Allocation Board ("SAB"), the CDE, the State Fire Marshall and all other agencies exercising jurisdiction over the Project. Prepare and submit any required applications, notices or certificates to public agencies as required by law. Provide copies of all such documents to the District.

(13) Prepare all documentation performed pursuant to this Agreement with the assistance of Computer Aided Design Drafting (CADD) Technology. Deliver to the District, on request, the tape and/or his disc format and the name of the supplier of the software/hardware necessary to use the design file. Architect and District shall each sign a "hard" copy of reproducible documents that depict this information at the time provided to the District.

(14) Observe existing conditions or facilities and review drawings of such conditions or facilities, and other information, requirements, reports, data, and instructions regarding existing conditions as may be provided by the District. The Architect shall review such drawings, information, requirements, reports, data, surveys and instructions to determine whether there is any reason to doubt its accuracy, completeness and correctness. Subject to the foregoing, the Architect may use such information and instructions in performing the Architectural Services, in addition to its own visual observation of the existing structure, and the Architect may rely, to the extent reasonable and subject to any limitations or qualifications therein or otherwise made apparent by the District or others, on the accuracy and completeness of any such information provided by the District. The Architect shall not be responsible for errors in reports or existing conditions in documents or reports that were not prepared by Architect or its consultants, if the Architect reasonably cannot visually, physically, or otherwise confirm the correctness of the matter in question. The Architect shall notify the District of any materially significant assumption it makes with respect to the Architectural Services that conflicts with the information provided by the District or that is based on information as to which the Architect was reasonably unable to confirm its

accuracy, completeness and correctness. Furthermore, to the extent any portion of the Project involves the remodeling, rehabilitation of or tie-in with an existing structure, and there is any reasonable concern about mold, moisture or mildew, the District shall, as Additional Architectural Services, authorize the Architect to retain moisture and mold consultant(s) as may be reasonably required for the discovery, evaluation and remediation of existing water intrusion, moisture and/or mold conditions.

B. ESTIMATES AND COSTS GENERALLY

In addition to any other requirements set forth in this Agreement, the Architect shall comply with all of the following requirements during, unless specified otherwise, all phases of the Architectural Services:

- (1) For purposes of estimating the construction cost of the Project, not determining any fee amount to be paid to the Architect, the term "construction cost" shall mean the total of any and all costs of the construction, equipping, and furnishing of the Project, including, without limitation, costs of site preparation, removal or demolition of existing structures, storm-water compliance and erosion control, construction of school buildings and ancillary facilities and improvements, and all other work, supplies, materials, services or other things of any nature whatsoever incidental or necessary work in connection with construction of the Project, construction management and job supervisor fees and other costs directly allocable to the Project, all costs and expenses including any application and processing fees, taxes or insurance premiums paid by the District for the Project, and administrative and other expenses necessary or incident to the Project. The term construction cost also includes all of costs associated with preparing, generating or reproducing copies of any plans, specifications or other construction documents, including, without limitation, additional copies for any subcontractors prepared at District expense. The term construction cost excludes property and similar taxes attributable to the Project site.
- (2) The Architect shall review construction cost and total Project cost estimates at each phase of the Architectural Services. If such estimates are in excess of the construction and total Project budgets, the Architect, in consultation with the District and without additional cost to the District, shall revise the type, quantity or quality of construction to come within the budgeted limits. The District, in its sole discretion, may, but in no event shall be required to, increase the construction budget for the Project.
- (3) The Architect shall at all times include in each estimate of construction cost a contingency for construction change orders, in such amount as agreed by the District.
- (4) The Architect shall at all times notify the District if adjustments to previous estimates of the total construction costs will be necessary due to market fluctuations or approved changes in scope or requirements.

(5) The Architect must ensure that all plans, specifications, studies, drawings, estimates or other documents relating to the Project are constructible and otherwise comply with provisions of this Agreement, law and District standards and policies, regardless of any revisions necessary to keep construction costs within the construction budget.

(6) The District understands that, in developing estimates of the Project construction cost, the Architect will have no control over the cost or availability of labor, equipment or materials, or over market conditions or the construction contractor's method of pricing, and that the Architect's estimates are made on the basis of the Architect's professional judgment and experience. Except for the requirement to design the Project within the applicable budget amount as provided in Section 2.4 of this Agreement, the Architect makes no warranty, express or implied, that the bids or the negotiated cost of the Work will not vary from the Architect's estimates of the construction cost.

(7) Except as provided in this paragraph (7), if the District has approved both the design and the estimate at the end of the Design Development phase, the Architect shall, as an Additional Architectural Services, provide further revisions to the construction documents for elements of the Project that previously had been approved by the District. Notwithstanding the foregoing, the Architect shall, without additional cost to the District, perform any such revisions as are necessary to bring the Project into compliance with the budget as provided in Article II of this Agreement or are necessary as the result of an error or omission by the Architect or any Architect Consultant. If the Architect introduces a new element to the design and documentation of the Project that previously had not been approved by the District, or if the Architect expands or modifies an existing element to the design and documentation of the Project that results in increased construction cost, and any such element must be deleted or revised to conform to the previously approved budget, the Architect shall make such revisions at no additional cost to the District.

(8) If the District retains the services of a Value Engineer ("VE"), whether it be a cost estimator, the contractor or otherwise, to review the construction documents prepared by the Architect, it shall be at the District's sole expense and, subject to cooperation by the Architect as provided in Section 2.5 of this Agreement, shall be performed in a timely manner so as not to delay the orderly progress of the Architect's services. The District shall promptly notify the Architect of the identity of the VE and shall define for the Architect the VE's scope of services and responsibilities. The Architect shall promptly respond to any and all value-engineering recommendations provided by the VE and/or the District. If the Architect objects to any such value-engineering recommendation on the basis that the change would violate applicable law (including, without limitation, any building code) or engineering standard, or otherwise would result in an unsafe, illegal or other inappropriate condition, the Architect shall so state in writing to the District, along with the reasons for the objection. If the District nonetheless requires the incorporation into the construction

documents of design changes to which the Architect has so objected and not subsequently withdrawn its objection, the District shall, to the fullest extent permitted by law, waive all claims against the Architect and shall indemnify and hold harmless the Architect from any damages, liabilities or costs, including reasonable attorneys' fees and costs of defense, that arise in connection with or as a result of the incorporation of such design changes. Unless value-engineering efforts are required to implement the Architect's obligations pursuant to Article II of this Agreement, the Architect shall be compensated for services necessary to incorporate recommended value engineering changes and District requested changes into reports, drawings, specifications, bidding or other documents, in which case such compensation must be established in advance by means of an applicable Architectural Change Order.

C. PROJECT INITIATION PHASE

Within thirty days after receipt from the District of the notice to proceed with Architectural Services, the Architect shall complete all of the following:

(1) Meet with the District and its representatives to prepare a detailed task analysis and work plan for documentation in a computer generated project schedule. The District will produce the final scheduling format based on data furnished by Architect.

This task analysis and work plan will identify specific tasks including, but not limited to: interviews, data collection, required District filing standards, analysis, report preparation, planning, Architectural programming, concepts and schematic design preparation and estimating that are part of the work of the Project. Also identified will be milestone activities or dates, specific task responsibilities, required times for completion and additional definition of deliverables.

(2) Review the developed work plan with the District and its representatives to familiarize them with the proposed tasks and schedule and develop necessary modifications.

(3) Participate in a general Project kick-off meeting to include the Architect's appropriate consultants, and District staff.

(i) The project kick-off meeting will introduce key team members from the District and the Architect to each other defining roles and responsibilities relative to the Project.

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

(iii) Review and explain the overall project goals, general approach, tasks, work plan and procedures and deliverable products of the Project.

(iv) Review and explain the task analysis and project work plan for all parties present; determine any adjustments or fine tuning that needs to be made to the work plan.

(v) Review documentation of the project kick-off meeting prepared by the District and/or its representatives and comment prior to distribution.

(4) Prepare a preliminary analysis of feasibility of constructing the Project within construction budget and total Project budget, based on best available information and recent trends in construction industry costs, provide preliminary analysis to District, and consult with District as to results of preliminary analysis. District, in its sole discretion may, but in no event shall be required to, adjust the construction and or total Project budgets based on the Architect's preliminary analysis.

D. DEVELOPMENT OF ARCHITECTURAL PROGRAM

Upon receipt from the District of the notice to proceed with Architectural Services, the Architect shall perform pre-design investigations to establish appropriate guidelines around which and within which the Project is to be designed; identify design issues relating to functional need, directives and constraints imposed by applicable law and regulatory requirements; and complete Design checklist as provided by the District; and take all other necessary actions in accordance with the following:

(1) Complete the District's design information check list identifying critical issues affecting project completion and certification; significant site considerations; applicable planning and zoning requirements; applicable code requirements; applicable fire and life safety requirements; sanitary and storm sewer service requirements; electrical power service and requirements; heating, ventilating and air conditioning requirements; natural gas availability and requirements; and domestic and fire water service requirements.

(2) Hold one initial community information/PTA meeting at a location designated by the District.

(3) Conduct Architectural program meeting with the District selected project committee.

(4) The Architect shall review with the District alternative approaches to the design and construction of the Project, and shall include alternatives that may reduce the cost of the Project or increase the efficiency and/or functionality of the Project.

(5) Develop an estimate of probable construction cost for the Project and reconcile the estimate with the Construction Manager; estimates are to be based on the developed functional Architectural programs as approved by the District.

(6) Estimates prepared by Architect:

(i) All costs are to be based on current bid prices, with escalation rate and duration clearly identified as a separate line item; rate of cost escalation and projected bid and construction dates are to be as approved by the District and its representatives.

(ii) Contingencies for design, bidding or construction, if included in the estimate, are to be included as individual line items, with the percentage and base of calculation clearly identified.

(iii) All construction cost estimates developed per the above should additionally be presented in a building systems format (e.g., foundations, substructure, structural system, exterior wall enclosure, window systems, etc.) for new buildings, and summarized by the Construction Specification Institute (CSI) category for buildings being modernized. Detailed cost estimates to be provided by a consultant to the Architect shall be approved in advance by the District as an Additional Architectural Service.

(iv) One week prior to submittal of documents, Architect's proposed cost format must be submitted to the District for review and approval.

(v) Architect shall submit a unit cost breakdown for three types of new building cost models ranging from a low end per square foot cost for the District's consideration, to high end per square foot cost the unit cost shall not include the site work, the general contractor's overhead and profit, and general condition. (Include separate columns for additional upgrades / condition assessment scope and possible condition assessment reduction credits). In addition, Architect shall provide a cost estimate for a permanent modular if appropriate/applicable.

(vi) Mechanical, electrical, civil, landscaping and estimating sub-consultants shall participate in the progress meeting as appropriate and shall provide input and feedback into the development of the cost estimate.

E. SITE MASTER PLANNING

Upon receipt from the District of the notice to proceed with Architectural Services, the Architect shall review the District's Master Plan Study for either New Construction or Modernization Projects; prepare a new Master Site Plan configuration for the proposed facility based upon the existing plan study and the District's educational specifications; and take all other necessary actions in accordance with the following:

- (1) Assist the District conducting initial, intermediate and final parent meetings to solicit feedback, comments, and concerns from the community.

- (2) Document and take into consideration existing physical characteristics of the proposed site such as topography, drainage, plant coverage, views to and from the proposed site, current site usage and potential for future development and facility expansion. In addition, Architect shall design the foundation of the Project in accordance with recommendations of the District's soil engineer as provided by the District. Architect must notify the District in time to prepare this soil report for Architect's use.
- (3) Review the existing conditions of the school. Compare to the District's condition assessment and provide recommendations of possible additional or deductive condition assessment work for District review and approval.
- (4) Analyze the proposed site existing conditions relative to potential effect on master planning circulation, access, parking, constructability, facility expansion and future development potential.
- (5) Develop a Master Site Plan showing in detail the elements of the proposed facility and its supporting elements of site development, including the appropriate accommodations of projected parking, resolution of access and on-site circulation, and existing or proposed commitments of land to other uses.
- (6) Traffic Engineering and/or Signalization required by the District and provided by a consultant to the Architect shall be approved in advance by the District as an Additional Architectural Service.

F. SCHEMATIC DESIGN PHASE

Upon written authorization from the District to proceed with the Schematic Design Phase, the Architect shall prepare for the District's review a Schematic Design Study and take other necessary actions in accordance with the following:

- (1) Architectural:
 - (i) Scaled floor plans showing overall dimensions, identifying the various major areas and their relationship.

Include circulation and room-by-room tabulation of all net usable floor areas and a summary of gross floor area. Also, provide typical layouts of major equipment or operational layout.
 - (ii) Preliminary building exterior elevations and sections in sufficient detail to demonstrate design concept indicating location and size of fenestration.

(iii) Identify proposed roof system, deck, insulation system and drainage technique.

(iv) Site plan with building located and minimum one (1) foot contour grade intervals. All major site development, such as paving, utilities and outside facilities shall be shown, including property lines, adjacent existing structures, walls and fences fifty (50) feet beyond the property line.

(v) Building design shall conform to all adopted energy regulations.

(vi) Identify minimum finish requirements, including ceiling, floors, walls, doors, windows, and types of hardware.

(viii) Identify code requirements, include occupancy classification(s) and type of construction.

(2) Structural:

(i) Layout structural systems with dimensions and floor elevations. Identify structural systems (pre-cast, structural steel with composite deck, structural steel bar joists, etc.); with preliminary sizing identified.

(ii) Identify foundation systems (fill requirements, piles, caissons, spread footings, etc.); with preliminary sizing identified.

(3) Mechanical:

(i) Calculate block heating, ventilation and cooling loads including skin versus internal loading.

(ii) Select a minimum of two (2) HVAC systems that appear compatible with loading conditions for subsequent life cycle costing.

(iii) Show selected system on drawings as follows:

(a) Single line drawing(s) of all mechanical equipment spaces, ductwork and pipe chases.

(b) Location and preliminary sizing of all major equipment and duct work in allocated spaces.

(c) Schematic piping

(d) Temperature control zoning.

- (4) Electrical:
- (i) Calculate overall approximate electrical loads.
 - (ii) Identify proposed electrical system for service, power, lighting, low voltage and communication loads.
 - (iii) Show system(s) selected on drawings as follows:
 - (a) Single line drawing(s) showing major distribution system.
 - (b) Location and preliminary sizing of all major electrical systems and components including:
 - (1) Load centers
 - (2) Main panels
 - (3) Switch gear
 - (iv) Identify and define the scope of the technology backbone system.
- (5) Civil:
- (i) Development of on and off site utility systems such as sewer, water, storm drain, firewater lines and fire hydrants.
 - (ii) Identify surface improvements including roadways, parking (with assumed wheel weights) preliminary finish grades and drainage.
 - (iii) Coordinate finish floor elevations with architectural site plan.
- (6) Landscaping:
- Development and coordination of landscape design concepts entailing analysis of existing conditions, proposed components and how the occupants will use the facility. Include location and description of planting, ground improvements and visual barriers.
- (7) Specifications:
- Outline specifications of proposed architectural, structural, mechanical and electrical materials, system and equipment and their criteria and quality standards. Architect is to use District's standardized equipment/material list for new construction and modernization in development of the project design and specifications.

(8) Estimates:

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

General conditions shall be applied separately. This estimate shall be prepared by specification section and summarized by the Construction Specification Institute (CSI) category.

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

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

(9) Meetings:

(i) The District and the Architect will meet to address specific design issues and to facilitate the decision making process. Such meetings shall be held in Perris. Documented decisions made at such meetings and subsequently approved by the District shall be binding. Any revisions or reconsideration of such decisions shall constitute a change in the scope of services of the Architects.

(ii) During the Schematic Design Phase it is anticipated that the Architect will attend (3) design meetings, Structural, Electrical, Mechanical and Plumbing Engineer will attend (2) design meetings, Acoustician, Audiovisual, and Theatre Design Architects (if any) will attend (3) meetings, and Civil and Landscape engineer will attend (1) design meeting.

(10) Deliverables and No. of Copies:

(i) Schematic Design Submittal Package - 10 copies

(ii) Cost estimates - 4 copies

(iii) Design Checklist - 2 copies

(11) Presentation:

Architect and applicable Architect Consultants shall present and review with the District the detailed Schematic Design.

The schematic design studies shall be revised within the program parameters until a final concept has been accepted and approved by the District at no additional cost to the District.

(12) Project Cessation Provisions:

Upon completion of the schematic design study, the District shall have the right to terminate this Agreement upon written notice of such termination to Architect.

The District shall pay the Architect only the fee associated with the services provided under the Schematic Design Phase.

G. DESIGN DEVELOPMENT PHASE

Upon written authorization by the District to proceed with the Design Development Phase, Architect shall prepare Design Development Phase documents based on Schematic Design Phase documents approved by the District and take other necessary actions in accordance with the following:

(1) Architectural:

(i) Scaled, dimensioned floor plans with final room locations including all openings.

(ii) 1/8" scale building sections showing dimensional relationships, materials and component relationships.

(iii) Identification of all fixed equipment to be installed in contract.

(iv) Site plan completely drawn with beginning notes and dimensions including grading and paving.

(v) Preliminary development of details and large scale blow-ups.

(vi) Legend showing all symbols used on drawings.

(vii) Floor plans identifying all fixed and major movable equipment and furniture.

(viii) Further refinement of schematic design outline specification for architectural, structural, mechanical, electrical, civil and landscape manuals,

systems and equipment.

(ix) Typical reflected ceiling development including ceiling grid and heights for each ceiling to be used, showing:

- (a) Light fixtures
- (b) Ceiling registers or diffusers
- (c) Access Panels

(x) A tabulation of both the net and gross assignable floor areas, and a comparison to the initial program area requirements.

(2) Structural:

- (i) Structural drawing with all major members located and sized.
- (ii) Establish final building and floor elevations.
- (iii) Preliminary specifications.
- (iv) Identify foundation requirement (fill requirement, piles, etc.) with associated soil pressure, water table and seismic center.

(3) Mechanical:

- (i) Heating and cooling load calculations as required and major duct or pipe runs sized to interface with structural.
- (ii) Major mechanical equipment should be scheduled indicating size and capacity.
- (iii) Ductwork and piping should be substantially located and sized.
- (iv) Devices in ceiling should be located.
- (v) Legend showing all symbols used on drawings.
- (vi) More developed outline specifications indicating quality level and manufacture.

(4) Electrical:

- (i) All lighting fixtures should be located and scheduled showing all

types and quantities of fixtures to be used, including proposed lighting levels for each usable space(s).

(ii) All major electrical equipment should be scheduled indicating size and capacity.

(iii) Complete electrical distribution including a one line diagram indicating final location of switchboards, communications, controls; (high and low voltage) motor control centers, panels, transformers and emergency generators, if required.

(iv) Legend showing all symbols used on drawings.

(v) More developed outline specifications indicating quality level and manufacture.

(vi) Identify and coordinate the layout of the technology backbone system and coordinate the development with the District's technology Architect.

(5) Civil:

(i) Further refinement of schematic design drawings of on and off site utility systems for sewer, water, storm drain and fire water. Includes pipe sizes, materials, invert elevation location and description of manholes, clean outs, hookups, bedding and installation details.

(ii) Further refinement of schematic design drawings of roadways, parking and storm drainage improvements; including but not limited to: details and large scale drawings of curb and gutter, manhole, thrust blocks, paved parking and roadway sections.

(6) Landscape:

(i) Further refinement of schematic design concepts, includes coordination of hardscape, landscape planting, ground cover and irrigation main distribution lines.

(7) District to provide general condition specification and supplementary conditions.

(8) Estimate:

Design Development Estimate: This estimate shall be prepared by specification section, summarized by CSI category. The estimate shall include individual

item unit costs of materials, labor and equipment. Sales tax, contractor's mark-ups. Construction management fee, and general conditions shall be listed separately.

(9) Meetings:

The District and the Architect will meet to address specific design issues and to facilitate the decision making process. Such meetings shall be held in Perris. Documented decisions made at such meetings and subsequently approved by the District shall be binding. Any revisions or reconsideration of such decisions shall constitute a change in the scope of services of the Architects.

During the Design Development Phase it is anticipated that the Architect will attend (5) design meetings, Structural, Electrical, Mechanical and Plumbing Engineer will attend (1) design meetings, Acoustician, Audiovisual, and Theatre Design Architects (if any) will attend (3) meetings, and Civil and Landscape engineer will attend (1) design meeting.

(10) Deliverables and No. of Copies:

- (i) Rendered perspective drawings - 6 copies
- (ii) Color/Material Boards - 2 copies
- (iii) Design Development drawing submittal - 4 copies
- (iv) Outline Specifications - 4 copies
- (v) Cost Estimate - 4 copies
- (vi) Design Checklist - 4 copies

(11) Presentation:

Architect and applicable Architect Consultants shall present and review with the District the detailed design development drawings and concepts.

The design development design studies shall be revised within the program parameters until a final concept has been accepted and approved by the District at no additional cost to the District.

(12) Project Cessation Provisions:

Upon completion of the design development phase, the District shall have the right to terminate this Agreement upon written notice of such termination to Architect.

The District shall pay the Architect only the fee associated with the services provided under the Design Development Phase.

H. CONSTRUCTION DOCUMENTS PHASE

Upon written authorization from the District to proceed with the Construction Documents Phase, Architect shall prepare construction documents based on the Design Development Phase Documents approved by the District and take other necessary actions in accordance with the following:

- (1) Prepare construction documents in compliance with the appropriate applicable building codes, ordinances and other regulatory authorities.
- (2) Construction Documents (C/D) 50% stage:
 - (i) Architectural:
 - (a) Site plan developed to show building location, all topographical elements and existing/proposed contour lines.
 - (b) Elevations, (exterior and interior) sections and floor plans corrected to reflect design development review comments.
 - (c) Architectural details and large blow-ups started.
 - (d) Well developed finish, door, and hardware schedules.
 - (e) Site utility plans started.
 - (f) Fixed equipment details and identification started.
 - (g) Reflected ceiling plans coordinated with floor plans and mechanical and electrical systems.
 - (ii) Structural:
 - (a) Structural floor plans and sections with detailing well advanced.
 - (b) Structural footing and foundation plans, floor and roof framing plans with detailing well advanced.
 - (c) Completed cover sheet with general notes, symbols and legends.

(iii) Mechanical:

(a) Mechanical calculations virtually completed with all piping and ductwork sized.

(b) Large scale mechanical details should be started.

(c) Mechanical schedule for equipment substantially developed.

(iv) Electrical:

(a) Lighting, power, signal and communication plans should show all switching and controls. Fixture schedule and lighting details development should be started.

(b) Distribution information on all power consuming equipment; lighting and device branch wiring development should be well started.

(c) All electrical equipment schedules should be started.

(d) Special system components should be approximately located on plans.

(e) Completely develop the layout of the technology backbone system, including equipment room layouts, raceway and conduit routing and outlet locations.

(v) Civil:

All site plans, site utilities, parking and roadway systems updated to reflect update revisions from Design Document.

(vi) Landscape:

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

(vii) Estimate:

Update and refine the Design Development Phase Estimate.

Also provide an estimate sorted by District's bid packages.

(viii) Specifications:

(a) Virtually complete development and preparation of technical specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.

Where articles, materials and equipment are identified by brand names, at least two names shall be used, and such names shall be followed by the words "or approved equal" in accordance with Public Contract Code, Section 3400.

Specifications shall not contain restrictions that will limit competitive bids other than those required for maintenance convenience by the District.

At one hundred percent (100%) review, specifications shall be reviewed by the District and corrections made as directed at no cost to the District.

(b) Coordination of the development of specifications by other disciplines.

(c) Specification shall be in CSI format.

(3) Construction Documents 75% stage:

(i) Architectural:

(a) Virtually complete site plan.

(b) Virtually complete floor plan, elevations and sections.

(c) Architectural details and large blow-ups near completion.

(d) Finish door, and hardware schedules virtually complete, including most details.

(e) Site utility plan virtually complete.

(f) Fixed equipment details and identification virtually complete.

(g) Reflected ceiling plan virtually complete.

(h) Provide Finish Schedule (with the exceptions of colors) identifying type of material and textures on walls, floors, doors, etc. Architect to recommend color selection for approval by the District.

(i) All equipment catalog cuts.

(ii) Structural:

Completed structural floor plans and sections with detailing well advanced.

(iii) Mechanical:

(a) Mechanical load calculations complete and all piping and ductwork sized.

(b) Large scale mechanical details should be substantially complete.

(c) Mechanical schedule for equipment substantially complete.

(iv) Electrical:

(a) Lighting, power, signal and communication plan(s) should reflect all switching and controls. Fixture schedule(s) should be virtually complete.

(b) Distribution information on all power consuming equipment; lighting and device branch wiring should be virtually complete.

(c) All electrical equipment schedules should be virtually complete.

(d) Special system components should be located on plans.

(v) Civil:

All site plans, site utilities, parking and roadway systems updated to reflect update revisions from 50% CD's.

(vi) Landscape:

All landscape, hardscape and irrigation plans updated to reflect update revisions from 50% CD's and completed.

(4) Construction Documents - Substantial Completion Stage:

(i) Architectural:

(a) Completed site plan.

(b) Completed floor plans, elevations and sections.

(c) Architectural details and large blow-ups completed.

(d) Finish, door and hardware schedules completed, including all details.

(e) Site utility plans completed.

(f) Fixed equipment details and identification completed.

(g) Reflected ceiling plans completed.

(ii) Structural:

(a) Structural floor plans and sections with detailing completed.

(b) Structural calculations completed.

(iii) Mechanical:

(a) Large scale mechanical details complete.

(b) Mechanical schedules for equipment completed.

(c) Completed electrical schematic for environmental cooling and exhaust equipment.

(d) Complete energy conservation calculations and report.

(iv) Electrical:

(a) Lighting and power plan should show all switching and controls. Fixture schedule and lighting details should be completed.

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

(c) All electrical equipment schedules completed.

(d) Special system components plans completed.

(e) Electrical load calculations completed.

(v) Civil:

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

(vi) Estimate:

Update and refine the 50% Construction Document Estimate.

(vii) Specifications:

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

Where articles, materials and equipment are identified by brand names, they shall be followed by the words "or approved equal" in accordance with Public Contract Code, Section 3400.

Specifications shall not contain restrictions that will limit competitive bids other than those necessary for District maintenance requirements.

At one hundred percent (100%) review, specifications shall be reviewed by the District and corrections made as directed at no cost to the District.

(b) Coordination of the development of specifications by other disciplines.

(c) Specifications shall be in CSI format.

(5) Construction Documents Final Stage:

(i) The construction document final stage shall be for the purpose of the Architect incorporating all governmental agencies' comments into the drawings, specifications, and estimate. All corrections made by the Architect in response to such governmental agency comments shall be at no additional cost to the District.

(ii) The contract documents delivered to the District upon completion by Architect shall include, but not limited to, the following:

(a) Drawings: Original tracings of all drawings on Architect's tracing paper with Architect's and/or Architect Consultants' State license stamp(s).

(b) Specifications: Original typed technical specifications on reproducible masters in CSI format.

(c) Update and refine the Architect Consultant's completed construction documents.

(6) Construction Documents Final Back-Check Stage:

(i) Make corrections as required, to reflect governmental agencies' final back-check comments into the drawings, specifications and estimate. All such corrections will be made at no cost to the District.

(ii) Upon written approval by the District that the documents are complete, Architect shall provide to the District completed original tracing and a complete set of typed specifications on reproducible masters. Reproduction of the contract documents for distribution to bidders will be provided by the District.

(7) Contract Documents:

(i) The Architect shall prepare and submit to the District for written approval the "contract documents" for the Project, which shall include all those documents necessary and convenient to provide for the contracting for construction of the Project, including, but not limited to, the construction contract, complete working drawings and specifications setting forth in detail sufficient for construction the work to be done and the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work. The Architect shall conform for use in the contract documents the form(s) of such documents as are provided by the District, e.g., form of agreement, general conditions, et cetera.

(ii) The Architect shall submit the contract documents to the District for review by facilities, maintenance and operations, and other staff of the District, and Architect shall respond to, and shall revise the contract documents as necessary in response to, any comments, suggestions and/or updates provided through such review.

(iii) To the extent required, the Architect shall submit the contract documents to DSA for plan check, and make all revisions and corrections as necessary to secure DSA approval of the contract documents. Upon receipt of DSA approval of the contract documents, the Architect shall provide to the District a final estimate of total construction costs for the Project.

(iv) Unless the District informs Architect that District will be responsible for preparing bid documents, the Architect shall prepare all bid documents during the contract documents Phase of the Project, and forward them to the District for written approval not less than three weeks prior to the anticipated first advertisement date for bids as established by the District.

(8) Meetings:

(i) During the Construction Document Phase it is anticipated that the Architect will attend (2) design meetings; the structural, electrical, mechanical, and plumbing engineer will attend (1) design meeting; the acoustician, audiovisual, and theatre design architects (if any) will attend (1) meeting; and the civil and landscape engineer will attend (1) meeting

(ii) Such meetings shall not exceed one (1) day in duration and will normally be held in Perris. Documented decisions made at such meetings and subsequently approved by the District shall be binding. Any revisions or reconsiderations of such decisions affecting program, master plan, schematic design and design development shall constitute a change in the Scope of

Services of the Architect.

(9) Deliverables and No. of Copies:

(i) Fifty percent (50%) submittal - 4 copies

one (1) reproducible and three (3) prints of the fifty percent (50%) working drawings, three (3) specifications, and three (3) cost estimates.

(ii) Seventy five percent (75%) submittal - 4 copies

one (1) reproducible and three (3) prints of the seventy five percent (75%) working drawings, and three (3) equipment cut sheets.

(iii) Statement of requirements for testing and inspection of service for compliance with construction documents and applicable codes -2

(Submit with 75% CD submittal)

(iv) One hundred percent (100%) submittal - 4 copies

one (1) reproducible and three (3) prints of the one hundred percent (100%) working drawings, three (3) specifications, one (1) engineering calculation and three (3) cost estimates.

(v) Electronic file copy of 100% CD drawings and specifications on CD- 1 copy

(vi) Design Checklist - 2 copies

(vii) A statement at each stage of CD review indicating any authorized changes made to the program from the last submittal and the cost impact of such changes on the previously approved Construction Budget - 2 copies

If no program changes occur but shifts of costs occur between disciplines, identify for District review. (Submit with all submittals, 50, 75, 100%)

I. BIDDING OR PROPOSAL PHASE

Upon written authorization from the District to proceed with the Bidding or Proposal Phase, the Architect shall assist the District in accordance with the following:

(1) The Architect shall review and provide comments regarding the bidding

procedures to be implemented by the District and the general provisions of the construction contract.

(2) The District shall compile and print the bid documents from documents provided by the Architect and the District, distribute the bid documents to contractors interested in bidding on the Project, and direct the obtaining of bids.

(3) The District shall publish the invitation(s) to bid in the appropriate regional trade papers and publications targeting Disabled Veterans Business Enterprises ("DVBE") and shall prepare and submit the appropriate documentation to the OPSC evidencing compliance with the DVBE requirements of Education Code Section 17076.11.

(4) All questions concerning the intent or interpretation of the bidding and construction documents shall be referred to the District for screening and subsequent processing through Architect.

(5) In the event any matter is identified that requires interpretation of the drawings or specifications, including, without limitation, by means of any Request for Information submitted by a prospective bidder, the Architect shall analyze the matter for decision by the District as to substantive and procedural requirements and, as necessary for corrections or clarifications, prepare one or more addenda for issuance by the District. The Architect must respond and issue each such addendum in a timely and expeditious manner so as to not adversely impact or delay the bidding process.

(6) The Architect shall assist the District in evaluating all bids and contract proposals, evaluating substitutions proposed by bidders, and awarding the bids. The Architect shall review the qualifications of all bidders and make recommendations to the District as to whether, in the Architect's professional opinion, bidders are qualified and meet minimum requirements for performance of the work.

(7) If at any time the total of the lowest responsible and responsive bid(s) for the Project, together with all other estimated and/or actual costs included within the construction cost, exceed the construction budget approved by the District for the Project, the Architect, in consultation with the District and at no additional expense to the District, shall revise the plans and specifications as necessary so that rebidding of some or all of the Project will result in a construction cost not in excess of the construction budget. In so revising the plans and specifications, the Architect shall exercise its professional judgment in determining the balance between the type, quality and other characteristics of the Project necessary to result in a Project satisfactory to the District. If acceptable to the District, the Architect may, as an alternative, include in the contract documents one or more deductive alternatives so that Architect and District may evaluate different means to achieve a satisfactory Project within the construction budget.

(8) If the Project will be completed using the lease-leaseback construction delivery method, then the foregoing requirements of the Bidding or Proposal Phase shall be deemed and construed to apply to whatever bidding or proposal process, if any, the District requires in connection with the Project.

J. CONSTRUCTION PHASE

The Architect shall commence providing Construction Phase services upon award of the first contract for construction and until the earlier of the issuance to the District of the final Certificate for Payment or sixty (60) days after final completion of construction, including, without limitation, completion of all punch list items.

(1) During construction, the Architect shall furnish all necessary additional drawings for supplementing, clarifying and/or correcting purposes and for change orders required. Such drawings shall be requested in writing from the Architect by the District and shall be at no additional cost to the District unless designated as an Additional Architectural Service. The original tracing(s) of the drawings and contract wording for change orders shall be submitted to the District for duplication and distribution.

(2) The Architect will receive written notification of the award of a construction contract. Upon receiving such written notification, the Architect will proceed with the services required by the Construction Phase of this Agreement.

(3) District shall require that the Contractor review and approve any submittal prior to submitting the same to the Architect. Architect shall review and approve or take other appropriate action upon contractor's submittals such as: shop drawings, project data, samples and change orders, but only for the limited purpose of checking for conformance with the design concept expressed in the contract documents.

The Architect's action shall be taken promptly and within a reasonable time, to avoid any unreasonable delay in the work or in the construction of the District or of separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. In no event shall the time for the Architect to respond to any submittal exceed twenty-one calendar days.

(4) During the course of construction, all Requests for Clarification must be responded to in an expeditious manner so as not to unreasonably delay the construction progress.

(5) Drawings or change orders required due to actions of the District which are beyond the scope of the Architect's responsibilities, shall be considered extra services.

(6) Architect shall schedule and undertake such number of visits to the job site for on-site review of the construction of the Project as is appropriate for the Architect to

fulfill its obligations pursuant to applicable law and this Agreement. The schedule of these visits shall be coordinated and approved in advance by the District and its representative(s). The purpose of these visits includes, among other things, to resolve discrepancies in the contract documents and to monitor the progress of the Project.

Architect shall bring to the attention of the District, in writing to guard the District against, but does not assure against, any defects or deficiencies in the work by the District's construction contractor which the Architect may observe.

(7) The Architect shall visit the site at intervals appropriate to the stage of construction or as otherwise agreed by the District and Architect in writing to become generally familiar with the progress and quality of the work completed and to determine in general that the work is being performed in a manner that the work when completed will be in accordance with the contract documents.

However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. On the basis of on-site observations as an architect, the Architect shall keep the District informed of the progress and the quality of the work, and shall endeavor to guard the District against defects and deficiencies in the work. However, the Architect shall not be a guarantor of the contractor's performance.

(8) Prepare "Record Drawings" on the original tracings to record changes made during the construction project based upon information provided by the District's construction contractor and changes by change orders. These "Record Drawings" either originals or mylar reproducibles along with three copies of blueprints shall be delivered to the District at completion of the construction and shall be a condition precedent to the District's approval of the Architect's final payment. The Architect does not warrant the reliability of such Record Drawings to the extent those are based on information provided by others; provided that the Architect shall be responsible for reviewing such information for apparent errors.

(9) The Architect shall not be responsible for, nor have control or charge of, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Project, and shall not be responsible for contractors' failure to carry out work in accordance with the contract documents. The Architect shall not be responsible for, nor have control over, the acts or omissions of the contractors, subcontractors, any of their agents or employees, or any other persons performing any work.

(10) Architect shall review equipment and maintenance manuals and a complete set of warranty documents for all equipment and installed systems.

(11) Architect shall also provide at the District's request, architectural/engineering advice to the District on start-up, break-in and debugging of facility systems and

equipment; and apparent deficiencies in construction following the acceptance of the contractor's work.

K. PROJECT CLOSE-OUT PHASE

As a condition to final payment to the Architect pursuant to this Agreement, the Architect shall complete all actions necessary for close-out of the Project in accordance with the following:

- (1) Architect shall perform all actions necessary for District to obtain final close-out approval from DSA and any other governmental agencies with jurisdiction over the Project or any portion thereof.
- (2) Architect shall provide to the District any and all documentation required pursuant to this Agreement not already provided during prior phases of the Architectural Services.

L. MATTERS NOT WITHIN SCOPE OF ARCHITECTURAL SERVICES

The Architect is not responsible for providing, as part of the Architectural Services, any of the following:

- (1) Ground contamination or hazardous material analysis.
- (2) Any asbestos testing, design or abatement.
- (3) Environmental impact report.
- (4) Historical significance report.
- (5) Soils investigation.
- (6) Geotechnical hazard report.
- (7) Topographic survey.
- (8) Underground Utility Survey
- (9) Fire Suppression System Design and/or Approval. (However, this does not include Architect's responsibility for processing plans with and securing approval of the Division of State Architect.
- (10) SWPPP Plans
- (11) WQMP Plans

(12) Environmental documents

(13) Traffic Engineer, Signalization Engineer, Acoustician, Audiovisual, Theatre Designer, and Pool Consultant.

EXHIBIT "C"
FORM OF ARCHITECTURAL CHANGE ORDER

PROJECT:

DATE:

DCO NO:

PROJECT STAGE: _____ MP _____ SD _____ DD _____ CD _____ CA

CHANGE INITIATED BY:

Description of Change:

Justification for Change (state impact if change is not approved and/or implemented):

Design Impact:

Original A/E Fee: _____

Total previous A/E fee changes: _____

A/E Fee adjustment for this change: _____

Total adjustment A/E fee: _____

Revised Design completion date due to this change: _____

Construction Impact:

Original construction budget: _____

Total previous construction budget changes: _____

Current approved construction budget: _____

Estimated construction cost for this change: _____

Total adjusted construction budget: _____

Recommended for Acceptance:

By: _____ Date _____
Consultant

By: _____ Date _____
Approved/Agreed to by the
Perris Union High School District

EXHIBIT "D"
PARTY CONTACT INFORMATION AND
LISTING OF DESIGNATED REPRESENTATIVES

Architect Contact Information:

Baker Nowicki Design Studio, LLP{
Attn: **Jon Alan Baker, FAIA**
731 Ninth Ave, A
San Diego CA. 92101

Designated Architect Representatives (not more than three):

1. Name (Primary Contract): Jon Alan Baker FAIA
Title: Architect, Partner
Limitation(s) on Authority: None

2. Name: Buddy Gessel, AIA,

Title: Principal

Limitation(s) on Authority: Has full project authority and is a secondary Architect Contact Person for purposes of this Agreement and the Project.

3. Name:
Title:
Limitation(s) on Authority:

District Contact Information:

Perris Union High School District
Attn: Candace Reines
155 East 4th Street
Perris, CA 92570
Fax No. (951) 940-5301

Designated District Representatives (not more than three):

1. Name: Hector Gonzalez
Title: Director of Facilities
Limitation(s) on Authority: Full project authority, subject only to District Board approval of agreements, change orders, et cetera

2. Name: Art Fritz
Title: Director of Facilities Services
Limitation(s) on Authority: Authorized to manage day-to-day construction operations, subject only to District Board approval of agreements, change orders, et cetera

3. Name:
Title:
Limitation(s) on Authority: Authorized to administer this Agreement in all aspects, including, without limitation, processing of applications for payment, claims, et cetera

EXHIBIT "E"
ARCHITECT COMPENSATION

Lump-Sum Basic Architect Fee: ***Fee proposal as outlined in BNds Fee Proposal dated December 5, 2016, #16045***

FEE PROPOSAL For the above stated services, BNds proposes the following fixed fee structure:

Construction Documents: \$ 19,375.00

DSA Approval \$ 3,875.00

Bidding \$ 3,875.00

Construction Administration \$ 11,625.00

TOTAL \$ 38,750.00

Sliding-Scale Basic Architect Fee: **N/A**

New Construction Sliding Scale:

1. Nine percent (9%) of the first five hundred thousand dollars (\$500,000.00) of Construction Cost.
2. Eight and one-half percent (8 1/2%) of the next five hundred thousand dollars (\$500,000.00) of Construction Cost.
3. Eight percent (8%) of the next one million dollars (\$1,000,000.00) of Construction Cost.
4. Seven percent (7%) of the next four million dollars (\$4,000,000.00) of Construction Cost.
5. Six percent (6%) of the next four million dollars (\$4,000,000.00) of Construction Cost.
6. Five percent (5%) of Construction Cost in excess of ten million dollars (\$10,000,000.00).

Modernization Sliding Scale

1. Twelve percent (12%) of the first five hundred thousand dollars (\$500,000.00) of

Construction Cost.

2. Eleven and one-half percent (11 1/2%) of the next five hundred thousand dollars (\$500,000.00) of Construction Cost.
3. Eleven percent (11%) of the next one million dollars (\$1,000,000.00) of Construction Cost.
4. Ten percent (10%) of the next four million dollars (\$4,000,000.00) of Construction Cost.
5. Nine percent (9%) of the next four million dollars (\$4,000,000.00) of Construction Cost.
6. Eight percent (8%) of the Construction Cost in excess of ten million dollars (\$10,000,000.00).

Maximum Not-To-Exceed or Estimated Basic Architect Fee: ***\$38,750.00***

(Exhibit E continues on following page.)

Schedule of Hourly Rates for Architectural Services:

The following rate schedule shall apply with respect to Architectural Services provided on an hourly-rate basis in accordance with this Agreement. Such hourly rates may be equitably adjusted after a period of two years from the Effective Date as agreed by written amendment to this Agreement. Not all categories of hourly rates need apply to the Project.

Category	Hourly Rate
Principal	\$200.00
Architect	\$160.00
Project Manager	\$135.00
Interior Designer	\$135.00
Construction Administrator	\$135.00
Graphic Designer	\$110.00
CAD Drafter	\$100.00
DSA Coordinator	\$100.00
Construction Administration Assistant	\$80.00
Clerical	\$60.00

EXHIBIT "F"
REQUIRED INSURANCE COVERAGES

The insurance policies that the Architect, as a minimum, must obtain and maintain pursuant to this Agreement include the following:

(1) Liability Insurance. The Architect shall obtain and maintain until at least sixty days after final payment to the Architect pursuant to this Agreement a policy or policies of broad-form commercial general liability and property insurance for the Project, written on an "occurrence" basis, each providing coverage with a combined single limit of not less than two million dollars (\$2,000,000) for all activities conducted by Architect pursuant to this Agreement ("Liability Policy"). If any aggregate limit applies (whether products/completed operations or all other loss), not less than four million dollars (\$4,000,000) shall apply specifically to this Agreement. Any self-insured retention shall be permitted only with the express written consent of the District. The Liability Policy shall contain a cross-liability endorsement and a waiver of the insurer's rights of subrogation against the District. The Liability Policy shall name the District and each of the District Agents as an additional insured and shall include coverage as appropriate to protect the interests of the District, the District Agents and the Architect, which, at a minimum, shall include coverage for property damage, injury to any person (including death), contractual liability assumed by the Architect pursuant to Section 7.1, premises, operations, and products and completed operations liability.

(2) Vehicle Liability Insurance. The Architect shall obtain and maintain until at least sixty days after final payment to the Architect pursuant to this Agreement a policy of business vehicle liability insurance with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence ("Vehicle Liability Policy"). If any aggregate limit applies, not less than one million dollars (\$1,000,000) shall apply specifically to this Agreement. The Vehicle Liability Policy shall name the District and each of the District Agents as an additional insured, and shall contain a cross-liability endorsement and a waiver of the insurer's rights of subrogation against the District and the District Agents. Such insurance shall include coverage for owned, hired, rented, borrowed, and non-owned vehicles.

(3) Workers' Compensation Insurance. The Architect shall at all times required by law maintain workers' compensation insurance in accordance with Section 3700 et seq. of the Labor Code. The Architect shall also obtain and maintain during the Agreement Term a policy of employers' liability insurance with limits of not less than one million dollars (\$1,000,000) per incident.

(4) Professional Liability Insurance. The Architect shall obtain and maintain during the Agreement Term a policy of professional liability insurance for the Project with a combined single limit of not less than one million dollars (\$1,000,000) per claim ("Professional Liability Policy"). The Professional Liability Policy (including pollution liability) shall provide coverage for claims arising out of the performance of the Architectural Services pursuant to this Agreement. If an aggregate limit applies, not less than one million dollars (\$1,000,000) shall apply specifically to this Agreement.

December 5, 2016

Hector Gonzalez, Director of Facilities
Perris Union High School District
155 East 4th Street
Perris, CA 92570

RE: Proposal for Architectural Services
CTE Portable Building at Paloma High School
BNds #16045

Dear Hector,

On behalf of BakerNowicki Design Studio, we are pleased to offer our proposal for the addition of a Portable building at Paloma High School to support the school's Career Technical Education (CTE) program. Our understanding of the project scope and professional services needed to complete this work is outlined below.

SCOPE OF WORK

1. The unit will be placed in the open space on the East side of existing classroom building "C". Based on initial observations, it is assumed, for the purposes of the proposal, that sufficient utilities (Sewer, Water, Power, Signal, Data) are available to accommodate the added building.
2. Portable building will be a DSA pre- approved model by American Modular Systems (AMS) and placed on permanent underground foundations so the floor has level access to the sidewalk entry.
3. Minor grading anticipated to site for surface drainage and paving around building.
4. Irrigation and landscaping improvements will be provided by District forces.
5. ADA compliant toilet rooms and path-of-travel is presumed to exist to serve the proposed new building and that no additional improvements are necessary.
6. The unit will include base cabinet and sink.

SCOPE OF SERVICES

1. Preliminary Planning.
 - a. Site field assessment of current site conditions
 - b. Review of as-built documents
2. Coordination of portable building with site design
 - a. Review of approved PC plans for preferred building.
 - b. Coordination of utility services and building connections.
3. Construction / Bid Documents and DSA approval
 - a. Final documents for DSA approval of site improvements and PC approved portable building installation
 - b. Bid documents for bidding of site improvements, and PC building installation.
 - c. Processing of final documents for DSA approval.
4. Bidding and Construction Administration

- a. Assist District and CM with bidding of the site work.
- b. Attend pre-construction conference
- c. Provide construction administration services
- d. Attend job-site meetings as required
- e. Prepare document clarifications, change requests, change orders, etc.
- f. Review contractor payment applications
- g. Prepare preliminary punch-list and project close-out

EXCLUSIONS/OWNER PROVIDED ITEMS

- 1. Reproduction of documents for Agency approval, bidding and construction can be paid by the District or provided as a reimbursable expense by BNds to the District.
- 2. District will provide existing campus as-built documents, site survey, and soils report.
- 3. District will provide PC drawings for selected portable building.
- 4. Utilities, infrastructure, and public improvements serving this site are assumed to be adequate to accommodate this project and that no off-site work or campus-wide infrastructure will be required.
- 5. All agency fees will be paid directly by the District.
- 6. Cost estimating will be provided by the District's construction manager.
- 7. Reimbursable expenses approved by the District will be billed at cost x 1.1

FEE PROPOSAL

For the above stated services, BNds proposes the following fixed fee structure:

Construction Documents:	\$ 19,375.00
DSA Approval	\$ 3,875.00
Bidding	\$ 3,875.00
<u>Construction Administration</u>	<u>\$ 11,625.00</u>
TOTAL	\$ 38,750.00

We hope that this proposal is satisfactory to your needs and would be pleased to answer any questions that you may have. If satisfactory, please return one signed copy of this proposal. We are prepared to begin work immediately. We appreciate the opportunity to be of continued service to the District.

Sincerely,

Jon Alan Baker, FAIA, LEED AP
Partner

On behalf of Perris Union High School District

By: _____
Title: _____