

AGREEMENT FOR ARCHITECTURAL SERVICES

BETWEEN

HUNTINGTON BEACH CITY SCHOOL DISTRICT

AND

_____ **ARCHITECTS**

PHASE 2 AND PHASE 3 CAPITAL IMPROVEMENT PROJECTS

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AGREEMENT FOR ARCHITECTURAL SERVICES

This Agreement for Architectural Services (“Agreement”) is made by and between the Huntington Beach City School District (“District”) and _____ (“Architect”).

RECITALS

WHEREAS, District is a public school district organized under the laws of the State of California, with power to contract for the services provided for herein pursuant to California Government Code Section 4525-4529 and Section 53060; and

WHEREAS, District intends to perform new construction, modernization, alteration, addition and/or other miscellaneous projects comprising Phase 2 and Phase 3 of its Capital Improvement Projects at the District's school sites listed in Exhibit 1, attached hereto and incorporated herein by reference (referred to herein individually as “Project” and collectively as “Projects”); and

WHEREAS, District, in its sole discretion, may utilize Architect for one or more of the Projects; and

WHEREAS, District requires the services of a duly qualified and licensed architect to perform the services required by this Agreement, and Architect represents that it is aware of District’s plans with respect to the Projects; and

WHEREAS, Architect warrants it is fully licensed, qualified, and willing to perform the services required by this Agreement, provided, however, that if Architect is a corporation or other organization, the Project Architect designated pursuant to Article I, Section B, and not Architect itself, shall be fully licensed to practice as an architect in the State of California; and

WHEREAS, District desires to engage Architect to render the services as provided herein.

NOW, THEREFORE, in consideration of the above recitals and the terms and conditions set forth hereinafter, the parties hereto agree as follows:

ARTICLE I. GENERAL TERMS.

A. Employment of Architect.

Architect promises and agrees to furnish to District all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional architectural and related services necessary for the full and adequate completion of the Projects consistent with the provisions of this Agreement (“Services”). All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules, and regulations. All Services performed by Architect shall be subject to the sole and discretionary approval of District, which approval shall not be unreasonably withheld.

B. Project Architect; Key Personnel.

Architect shall name a specific person to act as Project Architect, subject to the approval of District. Architect hereby designates _____ (License No. _____) to act as the Project Architect for the Projects. The Project Architect shall: (1) maintain oversight of the Projects at all times; (2) have full authority to represent and act on

behalf of Architect for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences, and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with District and all contractors, consultants, engineers, and inspectors on the Projects. Any change in the Project Architect shall be subject to District's prior written approval, which approval shall not be unreasonably withheld. The new Project Architect shall be of at least equal competence as the prior Project Architect. In the event that District and Architect cannot agree as to the substitution of a new Project Architect, District shall be entitled to terminate this Agreement for cause.

In addition to the Project Architect, Architect has represented to District that certain additional key personnel, engineers, and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers, or consultants become unavailable, Architect may substitute others of at least equal competence upon written approval of District. In the event that District and Architect cannot agree as to the substitution of key personnel, engineers, or consultants, District shall be entitled to terminate this Agreement for cause. As discussed below, any personnel, engineers, or consultants who fail or refuse to perform the Services in a manner acceptable to District, or who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of any Project, or a threat to the safety of persons or property, shall be promptly removed from the Projects by Architect at the request of District. The key additional personnel, engineers, and consultants for performance of this Agreement are as follows:

C. Hiring of Consultants and Personnel.

1. Right to Hire or Employ.

Architect shall have the option, unless District objects in writing after notice, to employ at its expense as part of the basic services under this Agreement consultants to the extent necessary who are qualified and licensed by the State of California to render services in connection with the planning and/or administration of the Projects, including, but not limited to, architects, mechanical, electrical, structural and civil engineers, landscapers, and interior designers, and to delegate to them such duties as Architect may delegate without relieving Architect from administrative or other responsibility under this Agreement. Architect shall be responsible for the coordination and cooperation of all Architect's consultants. Architect shall notify District of the identity of all consultants in sufficient time prior to their commencement of work to allow District to review their qualifications and object to their participation on the Projects, if necessary.

2. Coordination with Consultants.

Architect shall coordinate with District personnel or its designated representatives as may be requested and desirable, including with other professionals employed by District for the design, coordination, or management of other work related to the Projects. This shall include, without limitation, any lease-leaseback contractor under a Preliminary Services Agreement, and persons responsible for operation of District's Labor Compliance Program (LCP) and Storm Water Pollution Prevention Plan (SWPPP). Architect further agrees to cooperatively work with and assist any such lease-leaseback contractor as part of any

constructability review, value analysis of plans and specifications, and/or any other pre-construction service which may be performed for the Projects, and shall reasonably consider and incorporate mutually agreed upon suggestions and/or recommendations into the final plans and specifications.

3. Qualification and License.

As discussed below, all architects, engineers, experts, and other consultants retained by Architect in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

4. Standards and Insurance.

All architects, engineers, experts, and other consultants hired by Architect shall be required to meet the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved in advance by District in writing. Unless changes are approved in writing by District, Architect's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

5. Assignments or Staff Changes.

Architect shall promptly obtain written District approval of any assignment, reassignment, or replacement of such architects, engineers, experts, and consultants, or of other staff changes of key personnel working on the Project. In the event District and Architect cannot agree as to the assignment, reassignment, or replacement, District shall be entitled to terminate this Agreement for cause.

6. Draftsmen and Clerical Support.

Draftsmen and clerical personnel shall be retained by Architect at Architect's sole expense.

D. Standard of Care.

Architect shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized and employed by professionals qualified to perform the Services in the same discipline in the State of California, and shall be fully responsible to District for any damages to District and delays to the Projects, as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Architect shall be fully responsible to District for any increased costs incurred by District as a result of any such direct damages relating to the design or construction of the Projects. Architect represents and maintains that it is skilled in the professional calling necessary to perform the Services. Architect warrants that all of its employees, architects, engineers, and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Architect represents that it, its employees, architects, engineers, and other consultants have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them, and that such licenses, permits, qualifications, and approvals shall be maintained throughout the term of this Agreement. Any employee or consultant who is determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Projects, or a threat to the safety of persons or property, or any employee or consultant who fails or refuses to

perform the Services in a manner acceptable to District, shall be promptly removed from the Projects by Architect and shall not be re-employed to perform any of the Services or to work on the Projects.

E. Laws and Regulations.

1. Knowledge and Compliance.

Architect shall keep itself fully informed of and in compliance with all applicable local, state, and federal laws, rules, and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of Architect by law. Architect shall be liable, pursuant to the indemnification provision of this Agreement, for all violations of such laws and regulations in connection with the Services. If Architect performs any work knowing it to be contrary to such laws, rules, and regulations and without giving written notice to District, Architect shall be solely responsible for all costs arising therefrom. Architect shall indemnify District, and hold District, its officials, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules, or regulations.

2. Drawings and Specifications.

Architect shall cause all drawings and specifications to conform to any applicable requirements of federal, state, and local laws, rules, and regulations, including the Uniform Building Code, the California Education Code, Titles 19, 21, and 24 of the California Code of Regulations, the Division of the State Architect (including structural safety, fire/life safety, and access compliance section), the State Department of Education, and the California Department of General Services, in effect as of the time the drawings and specifications are prepared or revised. Any significant revisions made necessary by changes in such laws, rules, and regulations after this time may be compensated as Additional Services. Architect shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in this Agreement.

3. Americans with Disabilities Act.

Architect will use its professional efforts to interpret all applicable federal, state, and local laws, rules, and regulations with respect to access, including those of the Americans with Disabilities Act (“ADA”). Architect shall inform District of its interpretations of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules, and regulations, as well as any other issues which are subject to conflicting interpretations of the law. Unless Architect brings such inconsistencies and conflicting interpretations to the attention of District in writing and requests District’s direction on how to proceed, Architect’s interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Architect, and Architect shall correct all plans, specifications, and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. If Architect brings such inconsistencies and conflicting interpretations to the attention of District in writing and requests District’s direction on how to proceed, Architect shall not be responsible to District pursuant to the indemnification provision of this Agreement if Architect proceeds in accordance with District’s direction.

F. Independent Contractor.

District retains Architect on an independent contractor basis and Architect is not an employee of District. Architect is not an employee for state tax, federal tax, or any other purpose, and is not entitled to the rights or benefits afforded to District's employees. Any additional personnel performing the Services under this Agreement on behalf of Architect shall also not be employees of District, and shall at all times be under Architect's exclusive direction and control. Architect shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Architect shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

G. Schedule of Services.

1. Timely Performance Standard.

Architect shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Projects' work, so as not to be the cause, in whole or in part, of delays in the completion of the Projects or in the achievement of any Project milestones, as provided herein. Specifically, Architect shall perform its Services so as to allow for the full and adequate completion of the Projects within the time required by District and within any completion schedules adopted for each Project. Architect agrees to coordinate with District's staff, contractors, and consultants in the performance of the Services, and shall be available to District's staff, contractors, and consultants at all reasonable times.

2. Performance Schedule.

Within ten (10) calendar days from the award of the contract, Architect shall prepare an estimated schedule for the performance of Architect's Services, to be adjusted as each Project proceeds. Such schedule(s) shall be subject to District's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for District's review and approval of submissions, and for approvals of authorities having jurisdiction over the Project approval and funding. If District and Architect cannot mutually agree on a performance schedule, District shall have the authority to immediately terminate this Agreement as to the affected Project. The schedule shall not be exceeded by Architect, without the prior written approval of District. If Architect's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged, and agreed that District may suffer damage for which Architect will be responsible pursuant to the indemnification provision of this Agreement.

3. Excusable Delays.

Any delays in Architect's work caused by the following shall be added to the time for completion of any obligations of Architect: (a) the actions of District or its employees; (b) the actions of those in direct contractual relationship with District; (c) the actions of any governmental agency having jurisdiction over the Projects; (d) the actions of any parties not within the reasonable control of Architect; and (e) any act of God or other unforeseen occurrence not due to any fault or negligence on the part of Architect. Neither District nor Architect shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

4. Request for Excusable Delay Credit.

Architect shall, within ten (10) calendar days of the beginning of any excusable delay (unless District grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement), notify District in writing of the causes of delay. District will ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. District's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Architect for extensions of time shall be an extension of the performance time at no cost to District. If additional Services are required as a result of an excusable delay, the parties shall mutually agree thereto pursuant to the Additional Architect Services provision in Subsection 6. below. Should Architect make an application for an extension of time, Architect shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

5. Architect Services.

Architect shall fully and adequately complete the Services described in this Agreement.

6. Additional Architect Services.

At District's request, Architect may be asked to perform services not otherwise included in this Agreement, not included within the basic services listed in Article II of this Agreement, and/or not customarily furnished in accordance with generally accepted architectural practice. As used herein, "Additional Services" means any work which is determined by District to be necessary for the proper completion of the Projects, but which the parties did not reasonably anticipate would be necessary for Architect to perform at the execution of this Agreement. Architect shall not perform, nor be compensated for, Additional Services without prior written authorization from District and without an agreement between District and Architect as to the compensation to be paid for such services. District shall pay Architect for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Architect pursuant to the indemnification provision of this Agreement. Such Additional Services shall not include any redesign or revisions to drawings, specifications, or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations, or codes of which Architect was aware or should have been aware pursuant to the Laws and Regulations provision of this Agreement, above. Such Additional Services may include, but shall not be limited to:

a. Separately Bid Portions of Projects. Plan preparation and/or administration of work on portions of the Projects separately bid.

b. Furniture and Interior Design. Assistance to District, if requested, for the selection of movable furniture, equipment, or articles which are not included in the Construction Documents.

c. Fault of Contractor. Services caused by delinquency, default, or insolvency of Contractor, or by major defects in the work of the Contractor, provided that any such

services made necessary by the failure of Architect to detect and report such matters when it reasonably should have done so shall not be compensated.

d. Inconsistent Approvals or Instructions. Revisions in drawings, specifications, or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Architect.

e. Legal Proceedings. Serving as an expert witness on District's behalf or attending legal proceedings to which Architect is not a party.

f. Damage Repair. Supervision of repair of damages to any structure, so long as such damages are not due to the fault of Architect.

g. Extra Environmental Services. Additional work required for environmental conditions (e.g., asbestos or site conditions) not already contemplated within Architect's Services for the Projects.

h. Post Completion. Providing services after the original scheduled completion date not due to the fault of the Architect.

i. Consultants. Providing services of consultants other than those specified in the Agreement.

j. Hold. If the Project is placed on hold by the District for more than ninety (90) calendar days due to circumstances beyond the direct control of the Architect.

k. Change Orders. Preparing drawings, specifications or other documents in connection with the Change Orders not resulting from the errors or omissions of the Architect.

l. Other. Providing any other service not otherwise included as part of this Agreement.

ARTICLE II. ARCHITECT'S SERVICES.

Architect's Services shall consist of those Services performed by Architect, Architect's employees, and Architect's consultants as enumerated in this Agreement, including, but not limited to, the following:

A. General Responsibilities of Architect.

The Services and responsibilities set forth in Subsections A.1. through A.7. below shall be accomplished by Architect as a part of its Basic Services under this Agreement without additional compensation.

1. Consistent with Article I, Subsection C.3. and Section D of this Agreement, Architect shall maintain all required professional certifications in accordance with all applicable federal and California statutes throughout the period of this Agreement.

2. All Services to be performed by Architect hereunder shall conform to all technical design and construction requirements of all local, state, and federal agencies having jurisdiction over the Project, including, but not limited to, all applicable zoning, building, occupancy, environmental, and land use laws, and with all the applicable requirements of servicing utilities.

3. Architect shall be responsible for the professional quality, technical accuracy, and coordination of all space programs, designs, drawings, calculations, specifications, and other professional services furnished pursuant to this Agreement, and represents that all Construction Documents (as defined in Subsection B.4., below), including all drawings, designs, calculations, and specifications, will conform to all applicable Building Codes, regulations, and laws and that the Projects, when completed, will be complete and properly functioning facilities suitable for the purposes for which they are intended. Architect shall be responsible for the correction or revision of any errors, omissions, or deficiencies in the Construction Documents, including, without limiting the generality of the foregoing, the failure to conform to all applicable Building Codes and all governmental regulations and requirements in the preparation of all Construction Documents, including drawings, designs, calculations, and specifications, or in the discharge of any of its professional services to be furnished by or on its behalf under this Agreement.

4. All drawings, calculations, specifications, and Construction Documents furnished hereunder by or on behalf of Architect shall be in sufficient detail to enable the Contractor to satisfactorily complete each Project without delay, correction, clarification, or amplification.

5. Consistent with Article I, Subsection C.1. of this Agreement, Architect shall submit to District a list of all consultants Architect proposes to use on the Projects. This list shall include such supporting information respecting the consultants' qualifications as may be required by District. District reserves the right to review and approve each of these consultants, and Architect shall not retain a consultant to which District has reasonable objection.

6. Consistent with Article I, Section B and Subsection C.5., above, Architect shall provide to District a list of its key personnel who will be assigned to the Projects and the time commitment for each of the same, which list shall include such information on the background of the personnel as may be required by District. District specifically reserves the right to approve such personnel, and Architect shall not assign or permit the assignment of any such personnel to which District has a reasonable objection to the Projects.

7. Architect shall make, sign, and submit to District the following written statement in connection with all documents prepared by or for it for submission to District during the course of this Agreement and in the performance of its responsibilities hereunder:

The drawings, specifications, designs, calculations, and any other documents submitted herewith fulfill the requirements of the Projects as approved by District, and will provide a complete and properly functioning facility suitable for the purposes for which it is intended, and meet all applicable Building Codes, regulations, and laws. All documents, when used in conjunction with the completed Construction Documents, are in sufficient and correct detail to permit satisfactory and economic construction of the facility without delay, correction, clarification, or amplification.

B. Design and Construction Phases.

For each of the school facility Projects listed in Exhibit 1 ("School Facility"), District shall give Architect separate written notices to proceed with Services (i.e., a separate written notice to proceed is required for each School Facility). The following phases are applicable for each School Facility:

1. Schematic Design Phase.

Upon written notice from District to proceed with regard to a particular School Facility, Architect shall complete the following services for the schematic design phase for such School Facility:

a. Schematic Drawings. Architect shall perform all services required to prepare preliminary studies, schematic drawings, and site utilization plans which are necessary for such School Facility, incorporating the educational and functional requirements of District. The schematic drawings and site utilization plans shall show the ultimate development at the site, including, but not limited to, landscape design concepts, including location and description of irrigation, planting, ground improvements, and visual barriers, and shall show that the proposed architectural concept of the buildings, shall show in single line drawings all rooms incorporated in each building in the School Facility, and shall include any revisions that are required by District. In addition, Architect shall prepare Educational Specifications required for submittal to the California Department of Education.

b. Presentation of Drawings. Architect shall perform all services required to prepare architectural representation drawings for the School Facility that are suitable for reproduction. Two sets of blue and white prints and two sets of specifications shall be submitted to District for checking; one copy will be returned to Architect marked for desired corrections. After corrections have been made, the drawings and specifications shall be submitted for District's final approval.

c. Revised Opinion of Probable Cost. Architect has prepared for District an Opinion of Probable Cost, as defined in Article IV, Section A of this Agreement, for the construction and/or modernization costs of each School Facility, a copy of which is attached hereto and incorporated herein as Exhibit 2. Architect, in cooperation with and subject to the approval of District, shall prepare a revised list of proposed improvements for each School Facility to fit within District's budget for such School Facility and a Revised Opinion of Probable Cost for a particular School Facility, if the Opinion of Probable Cost needs to be revised based upon the preliminary studies, schematic drawings, and site utilization plans completed pursuant to the schematic design phase, in order that said construction and/or modernization costs are within the budget requirements of District.

2. Design Development Phase (Preliminary Plans).

Upon written approval by District of the schematic design drawings for a particular School Facility and following written notice from District, Architect shall complete the following services for the design development phase for such School Facility:

a. Site Survey. Architect shall cause a qualified civil engineer or licensed surveyor to prepare a field topographic survey of the Site to verify the existing topography of the Site as well as the location of existing buildings, grades around existing buildings, grades and lines of streets and pavements, boundaries of adjoining properties, and contour of the Site, and information as to existing sewer, water, gas, and electrical services of record.

b. Design Drawings. Architect shall prepare preliminary drawings and specifications to fix and describe the size and character of such School Facility, including, but not limited to, landscaping, structural, mechanical, and electrical systems and materials, including

architectural presentation drawings, to assist in presentation to District for approval. In addition, Architect shall monitor approval of Educational Specifications with the California Department of Education.

c. Drawings for Approval. Architect shall furnish two complete sets of preliminary drawings in accordance with the concepts of the approved schematic drawings and site utilization plans, or modifications approved by District, including outline specifications, plans, sections, and elevations, or perspective sketches to District for approval, one set of which will be returned to Architect with changes and corrections noted by District. When final corrections are completed, Architect shall furnish District with two corrected copies of the preliminary drawings.

d. Agreed Design Estimate. In cooperation with and subject to the approval of District, Architect shall prepare for each School Facility an Agreed Design Estimate, as defined in Article IV, Section C of this Agreement, based upon the Opinion of Probable Cost, or the Revised Opinion of Probable Cost, if applicable.

3. Construction Documents Phase.

Upon written approval by District of the design development drawings for a particular School Facility and following written notice from District, Architect shall complete the following services for the Construction Documents Phase for such School Facility:

a. Working Drawings and Specifications. Architect shall prepare contract documents commonly referred to as working drawings and specifications, setting forth in detail and prescribing the work to be done, and the materials, workmanship, and finishes required for the School Facility. This shall be an amplification of the preliminary drawings and outline specifications approved by District and shall be in such form as will enable District to: (1) secure any required approvals and permits for construction and/or modernization of the School Facility; (2) obtain, by open competitive bidding, a responsible bid that does not exceed the Revised Agreed Estimate, as defined in Article IV, Section D, by more than ten percent; and (3) permit any qualified, licensed contractor to perform the construction and/or modernization of the School Facility. Architect shall work with site and community groups as necessary. Architect shall also prepare reproducible working drawings and prepare specifications by an acceptable photo reproduction process.

Architect shall file with District a copy of all calculations, including, but not limited to, drainage, structural, mechanical, electrical, acoustical, and sanitary design calculations, prior to final District approval of working drawings. The final drawings shall be drawn legibly and be of such quality and workmanship that clear and legible duplicate transparencies or prints, uniform in size, may be obtained. Final specifications shall be typed using paper 8 1/2 x 11 inches in size and shall be reproduced using a clearly legible duplicating process. Before delivery to District, two sets of specifications shall be assembled with heavy stock covers or comparable form, and shall be checked by Architect.

b. Phasing of Work. As part of the preparation of Contract Documents and if so directed by District in writing, final working drawings and specifications shall be prepared so that portions of the work may be deferred and performed at a later date under subsequent construction and/or modernization contracts.

c. District Approval. When, in the opinion of Architect, final drawings and specifications are complete, two complete sets of prints of working drawings and specifications shall be submitted to District for review, study, checking, and approval by District. Architect shall make all changes, additions, and/or corrections in the final working drawings and specifications requested by District, State, or other public agency so long as they are not in conflict with the requirements of the applicable Building Codes, local, State, and/or Federal governmental regulations, and requirements of public agencies having jurisdiction or that have provided previous approval.

d. Revised Agreed Estimate. At the time the final working drawings and specifications are submitted to District, Architect shall furnish District with a revised estimated cost of construction and/or modernization, including a breakdown of costs by major division of work. In the event that this revised estimated cost for the School Facility exceeds cost and budget limitations set by District, Architect agrees that it will, at no additional fee or cost to District, make revisions to the drawings and specifications as District may direct to bring the estimated cost for the School Facility within District's cost and budget limitations. The resulting estimate, upon approval by District, shall be known as the Revised Agreed Estimate, as defined in Article IV, Section D of this Agreement.

e. Progress Reports. When requested by District, Architect shall make written reports as to the progress of the work on the drawings and specifications.

f. Approval of Documents. When drawings, specifications, and other contract documents are completed, Architect shall present them to District for final approval. It is understood and agreed that the final working drawings and specifications prepared by Architect shall meet with the approval of District.

g. Bidding Documents and Application.

(i) Bid Forms. Architect shall furnish all services required to enable District to receive bids for the construction and/or modernization of a School Facility, including, but not limited to, preparation, under District's direction, of bidder prequalification if required by Public Contract Code sections 20111.5 and 20111.6, and/or Education Code section 17406, bid proposals, instructions to bidders, construction agreement, general and supplementary conditions, advertisement for bids, bonds, and bid tabulation forms. Prints shall be of the same size as the tracings from which the prints are made. Architect shall, upon approval, assist in obtaining bids from qualified contractors, and, during the period of bidding, Architect shall interpret the drawings and specifications and prepare any addenda required before bids are received. After bids are taken, Architect shall help in the interpretation of bids received, including the various alternates, if any. Architect shall aid in investigating the competency and responsibility of the bidders, and make to District a recommendation of award of contract. Architect shall prepare bid tabulations and bid analysis as required by District.

(ii) Alternate Bids. When approved by District, Architect shall provide working drawings and specifications which include alternate bids as deemed advisable by District to bring the construction and/or modernization of the School Facility within allowable cost and budget limits.

(iii) Applications. If requested by District, Architect shall furnish and process all architectural and engineering information required to prepare and process

applications to applicable governmental agencies for the securing of priorities, approvals, materials, or funds, or as an aid in the planning and construction and/or modernization of the School Facility.

h. Revision of Drawings. If required by District, after competitive bids based on the working drawings and specifications have been received and in the event the total of the lowest responsible bid or bids exceeds the Revised Agreed Estimate by more than ten percent, Architect shall revise the working drawings and specifications in a manner that will permit the securing of new bids which do not exceed the cost and budget limitations of the Revised Agreed Estimate.

4. Preparation of Documents.

For each School Facility, Architect shall prepare all drawings and specifications, including those required for the presentation to all local, State, and/or Federal agencies (the Construction Documents). All drawings and specifications are to be in compliance with applicable codes, ordinances, and other lawful regulations. The drawings and specifications shall be developed in such form and condition as will enable District to secure any required approvals of public agencies, and in such form and condition as will enable District to comply with the requirements of and secure the required permits for the construction of the School Facility from Federal, State, and local agencies having jurisdiction. All prints of documents required for development and coordination by Architect will be furnished by Architect at no cost to District. All prints for Federal, State, or local approval and bidding, and Construction Documents will be paid for by District. Architect shall provide District with one set of Construction Documents for use by District at no cost to District.

5. Construction/Modernization Phase.

During the construction/modernization phase for each School Facility, Architect shall perform the following services:

a. Administration. Architect shall provide general administration of the construction and/or modernization contract for all work based on the drawings and specifications prepared by Architect, and in doing so shall comply with all requirements of Title 21 and Title 24 of the California Code of Regulations, with respect to that administration. Architect shall visit the site to observe the work at all times necessary to determine the quality of the Contractor's performance as the work progresses in order to advise District as to the progress, and shall visit the work at least once each week and promptly whenever requested to do so by District Representative, as specified in Article III, Section A, or District Inspector, as defined in Article III, Section F of this Agreement. The administration by Architect shall be in addition to the continuous inspection of District Inspector. Architect shall provide technical direction to District Inspector when requested to do so by District Representative or by District Inspector.

Architect shall take reasonable precautions to secure compliance by the Contractor and the Subcontractors with the Construction Documents. Architect shall have the authority to reject work which does not conform to the Construction Documents. Whenever Architect considers it necessary or advisable to ensure the proper implementation of the intent of the Construction Documents, Architect shall request that District require that the Contractor arrange for additional inspection or testing of any work, whether or not such work be partially or completely fabricated or partially or completely installed. When Architect is to observe tests or inspections or to issue approvals as required by the Construction Documents, Architect shall cooperate with the

personnel responsible for such testing at the normal place where such testing is conducted or performed.

b. District Inspector and Reports. Architect shall aid in the selection of, and approval of, full-time inspectors as required by law, and provide technical direction to the inspectors during the construction process. Architect shall receive and check District Inspector's reports, and prepare and submit reports to applicable agencies as required by law.

c. Schedule Observation and Records. The Contractor will be contractually required to submit to District Representative and to Architect before construction commences a schedule of the planned construction activities including the sequence, timing, and relationship of construction activities. On a periodic basis thereafter, the Contractor will be contractually required to submit to District Representative and to Architect schedules of the actual and planned progress of the work which accurately reflect the status of the work performed and the anticipated schedule of the work to be performed. Architect shall review and approve the Contractor's schedules. Architect shall immediately notify both District Representative and the Contractor in writing of any and all instances in which the schedules submitted by the Contractor do not accurately reflect the actual progress of the work, correspond to the Contractor's application for payments, or reflect other necessary changes in the scheduled progress of work activities.

d. Construction Delays. Architect will attempt to expedite the progress of the construction work by means of verbal and written communication and reference to agreed and accepted schedules.

e. Progress Reports. Architect shall submit verified progress reports, as required, to District and to the Division of the State Architect in compliance with Title 21 and Title 24 of the California Code of Regulations.

f. Problem Reports. During construction, Architect shall make written reports to District stating any problems arising during construction, the changes contemplated in the work as a result of the problem, and the progress of the work.

g. Tests. Architect shall check and process all required material and test reports and report to District and any applicable agencies any deficiencies in material as reflected by those reports, and shall make recommendations for correction of those deficiencies.

h. Color Selection. With the aid of and in cooperation with District, Architect shall prepare and submit to District for review and approval or disapproval drawings and sketches as are needed, and provide selections of colors, textures, finishes, and other matters involving an aesthetic decision, for all required items included in the work for the School Facility. These shall be submitted in sufficient time to prevent delay in the work and in no case less than thirty (30) days prior to the time that work requiring such selections commences.

i. Shop Drawings and Equipment Lists. Architect shall promptly review and approve all Shop Drawings, Equipment Lists, product data, specifications, addenda, change orders and other modifications, schedule of submittals, and samples required by the Construction Documents to be submitted to it for approval. Architect shall submit all such drawings, addenda, and change orders and other modifications to District upon completion of the work. Such review by Architect shall not relieve the Contractor of any of its responsibilities under the construction contract. Architect shall complete its review within ten (10) working days after

receipt of the documents, so as not to unnecessarily disrupt the orderly progress of the work or delay completion of construction. Architect shall advise District and the Contractor of its approval or disapproval in writing and, in the case of any disapproval, the reasons therefor, which shall identify any defect, discrepancy, or deficiency which Architect discovers in the documents. In addition, Architect shall assist District in the determination of alternate acceptable materials and/or equipment. No major changes in or deviations from the requirements of the Contract Documents will be permitted at any time without prior written approval from District. Architect shall submit one set of all reviewed shop drawings for District's file and advise District of the results of such review.

j. Substitution of Materials and Products. Architect shall investigate, review, advise, and recommend for acceptance or rejection any substitution of materials and products where requested or required by the terms of the specifications and shall record all substitutions of items in the final as-built specifications provided for in Subsection B.5.t., below.

k. Changes. Architect shall carefully and promptly review and approve in writing the Contractor's requests for all change orders, time extensions, substitutions to specified products, materials, equipment, or systems, and other departures from the Construction Documents. Architect shall complete its review within five (5) working days after receipt of the request, so as not to unnecessarily disrupt the orderly progress of the work or delay completion of construction. Architect shall provide District and the Contractor a copy of its written analysis of each such request, indicating whether the same is approved or disapproved and, in all cases of disapproval, the reasons therefor. Architect shall discuss with the Contractor and District any proposed changes required during construction when the changes alter the function, quality, appearance, or cost of the finished item of work, and Architect shall check all items of cost occasioned by the changes. Architect shall not permit the Contractor to commence work on any changes without first obtaining the written approval of District. Changes shall not be commenced until Architect has received a written change order approved by District and signed by the Contractor.

l. Information for As-Built Drawings. Architect shall consult with District Inspector and/or the Contractor in the compilation of information necessary for the preparation of the as-built drawings required by Subsection B.5.t., below.

m. Plans and Reports to State. Architect shall furnish all prints, specifications, and other necessary papers and, as required, make reports to the governmental entities having jurisdiction.

n. Certificate of Payment. Before authorizing any payments to the Contractor, Architect shall carefully and promptly review and approve the most recent schedule of values submitted by the Contractor and shall require sufficient data to substantiate the Contractor's right to payment as District or Architect may require. Architect shall carefully determine the proper amount owing to the Contractor and shall, within five (5) working days after receipt of the Contractor's application for payment, issue a Certificate for Payment for such amounts as may be due to the Contractor. If Architect does not approve the schedule of values as submitted by the Contractor within said five (5)-day period, Architect shall advise District and the Contractor within said five (5)-day period in writing of Architect's reasons for withholding the certification in whole or in part. The issuance of a Certificate for Payment shall constitute a representation by Architect to District that the work has satisfactorily progressed to the point indicated; complies with and is in

accordance with all Building Codes, all government rules and regulations, and the Construction Documents (subject to an evaluation of the work as a functioning whole upon completion, and to the results of any subsequent tests required by the Construction Documents, and to minor deviations from the Construction Documents which are correctable prior to completion); and that the Contractor is entitled to the payment in the amount certified.

o. Description Drawings and Interpretations. Architect shall furnish all details or incidental services necessary for the proper execution of the work, including all large scale or full size supplemental drawings required to describe the work for the School Facility. Architect shall complete these details and deliver them to the Contractor to prevent delay to the Contractor's operations. Tracings of all supplemental drawings shall be furnished to District and shall bear the approvals required of public agencies having jurisdiction. If, during the construction, any dispute shall arise regarding the true meaning of the drawings and/or specifications, Architect shall render a prompt interpretation.

p. Pre-Final Inspection. In cooperation with District, Architect shall make a pre-final review at such time as Architect or District shall determine that the School Facility is substantially completed. On the basis of the pre-final review, Architect, in cooperation with District, shall prepare and forward to the Contractor and to District a list of all deficiencies, including a list of those of a minor nature, commonly called a "punch list," and notify the Contractor in a written notice accompanying the list that all of the deficiencies must be corrected prior to acceptance of the School Facility.

q. Certificate of Completion. Architect shall conduct observations of the School Facility and consult with the Contractor and District Representative to determine the dates of substantial completion and final completion; shall review written warranties and guarantees and related documents; shall cooperate with District in the preparation of a punch list; and shall issue a final certificate for payment. Architect shall issue a final certificate for payment only after it has made a review to determine whether the work or the designated portion thereof is substantially complete and conforms to the requirements of the Construction Documents. The final certificate for payment shall state that, to the best of Architect's knowledge, as personal knowledge is defined in Section 33(b), Title 21 of the California Code of Regulations and Education Code Section 17309, and on the basis of Architect's observations, the work has been completed in accordance with the terms and conditions of the Construction Documents and that the entire balance found to be due the Contractor is due and payable. Furthermore, when the work or the designated portion thereof is substantially complete, Architect shall prepare a certificate of substantial completion which shall establish the date of substantial completion, shall establish the responsibilities of District and the Contractor with respect to security, maintenance, heat, and utilities, and any damage to work, and shall fix the time within which the Contractor shall finish all the items needed to be completed or corrected to conform the work to the Construction Documents.

During the period of construction, Architect shall cause its consulting engineers to make or cause to be made all respective tests and observations necessary to secure the completion of various types of work falling under their division of the work, and upon completion of the School Facility, Architect shall cause each consulting engineer to issue or cause to be issued a certificate stating that the work falling under his or her administration has been performed in accordance with the drawings and specifications and contract requirements.

Architect shall not be responsible for those acts or omissions which are solely the responsibility of the Contractor or any Subcontractor, or any of the Contractor's or Subcontractor's agents or employees, or any persons performing any of the work on their behalf. The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, schedules, sequences or procedures, fabrication, procurement, shipment, delivery, receipt or installation, or for safety precautions and programs in connection with the work, since these are solely the Contractor's responsibility under the Contract for Construction.

r. Completion of Lien Time. At the expiration of the period in which to file and serve a Stop Notice, Architect shall approve the final certificate for payment of the Contractor.

s. Guarantees. Architect shall secure in proper form and transmit to District the necessary guarantees, instruction books, diagrams, operating manuals, and documents required of the Contractor.

t. As-Built Drawings.

(i) Not later than sixty (60) days after completion of construction, and before receipt of final payment, Architect shall review and forward the final working drawings and specifications, indicating on them all changes made by change orders or otherwise under the construction contract and all information called for on the specifications, producing an "as-built" set of final working drawings which will show, among other things, the location of all concealed pipe, buried conduit runs, and other similar service elements within the School Facility, if applicable. Architect shall review and certify that the drawings are a correct representation of the information supplied to it by District Inspector and the Contractor and shall obtain the certificate of District Inspector and the Contractor that the drawings are correct.

(ii) On approval by District of the completed "as-built" drawings, Architect shall forward to District the complete set of original drawings corrected to "as-built" condition or a complete set of reproducible duplicate drawings. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

(iii) Prior to the receipt of Architect's final payment, Architect shall forward to District one clear and legible set of reproductions of the computations, the original copy of the specifications, the "as-built" drawings, the final verified progress report pursuant to Title 21 of the California Code of Regulations, all Division of the State Architect's required documentation, and Architect's Certificate of Completion.

u. Documents for Project Close-Out. Architect shall cause all other architects, engineers, and other consultants, as may be hired by Architect, to file any and all required documentation with the District, the Division of the State Architect, and other governmental authorities necessary to close out the Project. Architect shall assist District in obtaining such documentation from all other architects, engineers, or consultants.

6. Public Agency Approvals.

Architect shall assist District in applying for and obtaining the required approvals from all public agencies having jurisdiction over a School Facility. To the extent approvals of documents or drawings are required for a School Facility, Architect shall submit such copies to such agency as are required and shall make corrections or revisions as may be

necessary or required by such agency in order to secure approvals or funding. District shall reimburse Architect for any plan check fees paid by Architect on District's behalf.

C. Additional Architect's Duties.

1. Consultations.

Architect shall participate in all consultations and conferences with authorized representatives of District and/or other public agencies having jurisdiction over the construction of any School Facility.

2. Employees and Consultants.

Architect shall employ, at its sole cost and expense, employees, technicians, consultants, engineers, and personnel properly skilled in the various aspects of the design and construction of the School Facility, including, but not limited to, civil, structural, mechanical (inclusive of both HVAC and plumbing), electrical, and other specialized engineering or consulting services required for the School Facility. Architect shall confer and cooperate with professional consultants employed directly by District within the scope of work covered by this Agreement. Any final reports, recommendations, working drawings, and specifications shall bear the signature of Architect's consultants or engineers, as applicable, in addition to the signature of Architect, and shall become the property of District. Architect agrees to have all consultants or engineers employed on a School Facility execute a declaration that they have no financial interest in the sale or use of any materials or equipment required for the School Facility.

3. Guarantee Period.

Architect shall, upon request of District, recommend action to be taken should defects in workmanship or materials be discovered after acceptance of the School Facility and prior to expiration of the guarantee period.

4. Scheduling.

Architect understands that District may request that Architect proceed with Services for more than one School Facility at any given time and that Architect agrees that Architect can provide such Services as may be required by District at any given time at no additional cost to District. Architect further understands that District may choose to postpone or abandon any phase of a School Facility at District's discretion and that District may give notice to restart such phase at a later date subject to potential adjustment of fees or costs for architectural Services.

5. Errors and Omissions.

Should any errors, omissions, defects, or deficiencies be discovered in the Construction Documents prepared by Architect, Architect will prepare such amendments or supplementary documents as are necessary to correct or remedy the same, and will provide such consultation, as may be required, without additional compensation or cost to District.

6. Additional Duties.

Architect's compensation for these additional Architect's duties, as described in Article II, Subsections C.1. through C.5., is included in its basic fee, as set forth in Article VI, Section A.

ARTICLE III. DUTIES OF DISTRICT.

A. District Representative.

The District names Gregory Haulk as District Representative to act on behalf of District in all matters pertaining to the Services to be rendered under this Agreement. All requirements of District pertaining to Services to be rendered shall be given through District Representative. District Representative shall cooperate with Architect in all matters relative to this Agreement in order to permit the performance of the work without undue delay.

B. Statement Project, and Budget and Scheduling for School Facility.

District shall provide full information as to the requirements and educational program regarding each Project. District shall establish a construction budget and a schedule for completion of each School Facility.

C. Surveys and Tests.

1. Site Survey.

When requested and reasonably required, District shall furnish Architect with any survey in its known possession of the building site, prepared by a licensed surveyor indicating where relevant, among other matters, the location of existing buildings, grades around existing buildings, grades and lines of street, pavements, boundaries of adjoining properties and contour of site, information as to existing sewer, water, gas, and electrical services of record. District makes no representation or warranty regarding the accuracy or completeness of any such survey. It shall be the responsibility of Architect to independently verify the accuracy and completeness of any such survey which may be provided by District.

2. Soil Tests.

If requested and reasonably required, District shall furnish results of soil tests conducted by a qualified testing laboratory or soil engineer.

3. Geological Hazards Investigation Survey.

District shall perform any geological hazards investigation survey required by State authorities having jurisdiction and make copies available to Architect for distribution, as necessary.

D. Fees.

District shall pay or cause to be paid all fees required in connection with any particular School Facility to public agencies having jurisdiction.

E. Bidding and Contract Documents.

District shall assist Architect in the distribution of plans to bidders.

F. District Inspector.

District shall furnish and provide an inspector, or inspectors ("District Inspector"), as required during the entire course of construction of a School Facility. District Inspector shall be qualified and approved by the appropriate Federal, State, and local agencies; shall be satisfactory to, responsible to, and under the direction of Architect; and shall also be responsible to and act in

accordance with the policies of District. The cost of employment of District Inspector will be borne by District and paid directly to District Inspector. The administration by Architect and its engineers and consultants shall be in addition to the continuous personal supervision of District's Inspector.

G. Communications and Inspections.

1. Relationship with Contractors.

If, during the course of construction, any questions, recommendations, requests for changes, or substitutions are initiated by District staff, they shall be directed only through District Representative. Orders to the Contractor shall be issued through Architect unless such orders are not being properly transmitted by Architect.

2. Pre-Final inspection.

District shall assist Architect in making the pre-final inspection and the preparation of the list of deficiencies with regard to any School Facility.

3. Final Inspection.

When District has been notified by Architect that the punch list items have been corrected, District shall accompany Architect and the Contractor on the final inspection with regard to any School Facility.

H. Notice of Completion.

When all items are completed with regard to any School Facility to the satisfaction of District and Architect, and upon recommendation of Architect, District staff shall recommend to District that it accept such School Facility and authorize Architect to record a Notice of Completion. During the Contractor's guarantee period, District shall notify Architect in writing of any apparent deficiencies in materials or workmanship.

ARTICLE IV. SCHOOL FACILITY COST ESTIMATES.

A. Opinion of Probable Cost.

The Opinion of Probable Cost for each School Facility is set forth on Exhibit 2, attached hereto and incorporated herein by reference. Such amounts represent the estimate by Architect, based upon the Master Plan completed by Architect, of the construction costs for completing a particular School Facility.

B. Revised Opinion of Probable Cost.

The Revised Opinion of Probable Cost shall be subject to District approval and shall consist of the estimate of construction costs with revisions, if any, as indicated by the preliminary studies, schematic drawings, and site utilization plans completed pursuant to the Schematic Design Phase for a particular School Facility.

C. Agreed Design Estimate.

The Agreed Design Estimate shall include an estimate of all work to be done as shown on the preliminary drawings completed pursuant to the Design Development Phase, and shall be established by agreement between Architect and District.

D. Revised Agreed Estimate.

The Revised Agreed Estimate shall include an estimate of all work shown on the final working drawings and specifications completed pursuant to the Construction Documents Phase, and shall be established by agreement between Architect and District. It shall be based upon prevailing construction and market conditions for the purpose, among others, of ascertaining that the cost of the proposed construction falls within the budget and cost limitations established by District.

After approval by District of the Revised Agreed Estimate, and until such time as the actual cost of the particular School Facility or unit of work is determined by receipt by District of competitive bids based upon the working drawings and specifications, the Revised Agreed Estimate of construction costs shall be the agreed construction cost of that School Facility.

ARTICLE V. PROJECT SCHEDULE.

A. Time for Completion.

It is understood that time is of the essence with respect to this Agreement and that the completion times set forth below are binding, unless extended in writing by District.

1. Schematic Design Phase.

All obligations set forth in Subsection B.1. of Article II shall be completed within ten (10) calendar days after written notice to proceed for such phase has been given by District to Architect.

2. Design Development Phase.

All obligations set forth in Subsection B.2. of Article II shall be completed within thirty-five (35) calendar days after written notice to proceed for such phase has been given by District to Architect.

3. Construction Documents Phase.

All obligations set forth in Subsection B.3. of Article II shall be completed within one hundred thirty-five (135) calendar days after written notice to proceed for such phase has been given by District to Architect.

ARTICLE VI. ARCHITECT'S COMPENSATION.

A. Basic Fee.

1. In exchange for Architect providing the Services required pursuant to and in accordance with this Agreement, District, in accordance with this Article, shall pay to Architect compensation based either on the lump-sum amount specified in Exhibit 3 attached hereto or determined on an hourly basis with a not-to-exceed limit as specified in Exhibit 3 (in either case, the "Basic Architect Fee").

2. The Basic Architect Fee shall be deemed and construed to include compensation to Architect for any and all out-of-pocket expenses incurred by Architect in the performance of the 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, and District pre-approved travel expenses and related meal expenses. Notwithstanding the foregoing, District

shall also reimburse Architect Reimbursable Expenses incurred by Architect as specified in Section A.3. of this Article.

3. Reimbursable Expenses.

a. For purposes of this Agreement, “Reimbursable Expenses” shall mean only those out-of-pocket expenses expressly stated in this Agreement as being reimbursable to Architect.

b. Reimbursable Expenses shall include only those costs that: (1) are for an item not expressly or implicitly the responsibility of Architect pursuant to this Agreement, (2) are directly related to provision of the Services, and (3) are approved by District in advance of such costs being incurred by Architect.

c. Architect shall take all reasonable steps necessary to obtain the most competitive prices available for such Reimbursable Expenses and shall invoice Reimbursable Expenses to District only at the actual cost incurred by Architect, without markup for any overhead, profit, or other purposes.

d. Architect shall not incur any Reimbursable Expenses without the prior written approval of District, and District shall not be obligated to pay any expense or cost incurred by Architect prior to obtaining such approval.

4. Final Payment. Upon full and final completion of all Services, including the receipt of final project Certificate of Compliance from the Division of the State Architect and all required approvals from other governmental agencies with approval authority over the School Facility, Architect may submit a final invoice to District for the balance of the Basic Architect Fee for that School Facility.

B. Additional Compensation.

Other than for Additional Services performed pursuant to Article I, Subsection G.6. of this Agreement, Architect shall not be entitled to additional compensation unless there are unusual and unanticipated circumstances and only when requested by Architect in writing and approved in writing by District and/or the State Allocation Board, if necessary, in advance of such services being provided. In the event additional compensation is approved, additional compensation shall be computed on a time and material basis using the following hourly rate schedule for Architect services and/or cost to Architect by Architect’s consultants.

Principal	\$ _____
Project Architect/Manager	\$ _____
Project Designer	\$ _____
Draftsperson	\$ _____
Clerical	\$ _____

ARTICLE VII. PAYMENTS SCHEDULE.

A. Progress Payments.

The fees set forth in Article VI shall be paid monthly, in arrears, in proportion to Services performed, not to exceed the following:

1. Schematic Design Phase.

Following completion of the Schematic Design Phase described in Subsection B.1. of Article II for a School Facility, and within thirty (30) days after the approval by District, a sum equal to ten percent (10%) of the Basic Architect Fee.

2. Design Development Phase.

Following completion of the Design Development Phase as set forth in Subsection B.2. of Article II, and within thirty (30) days after approval by District, a sum sufficient to increase the total amounts paid to Architect on the basic fee for the School Facility to twenty-five percent (25%) of the Basic Architect Fee.

3. Construction Documents Phase.

a. Intermediate Working Drawings. Following completion of the working drawings and specifications to an intermediate state which shall not be less than fifty percent (50%) of completion and to a stage where the drawings can be reviewed and checked by District for design, conformity, and compliance with District standards, District criteria for school construction, and adopted policies, and within thirty (30) days after approval by District of said intermediate drawings, a sum sufficient to increase the total amount paid to Architect on the basic fee for the School Facility to fifty percent (50%) of the Basic Architect Fee.

b. Completion of Working Drawings. Following the completion of the working drawings and specifications, and within thirty (30) days after approval of them by District and the submission of them to the Division of the State Architect, Department of General Services of the State of California, the California State Department of Education, Office of Public School Construction, and other Federal, State, or local agencies as may be required for the necessary approvals for the construction of the School Facility, a sum sufficient to increase the total amount paid to Architect on the basic fee for the School Facility to seventy percent (70%) of the Basic Architect Fee.

c. Approval and Adoption of Working Drawings. Upon receipt of approval from the Division of the State Architect and the receipt of other necessary approvals and relevant permits, and within thirty (30) days following the written approval of the working drawings and specifications by District, a sum sufficient to increase the total amount paid to Architect on the basic fee for the School Facility to seventy-five percent (75%) of the Basic Architect Fee.

4. Bidding and Negotiation Phase.

Upon the award of the construction contract or contracts for a School Facility, a sum sufficient to adjust the total amounts paid to Architect on the basic fee to eighty percent (80%) of the Basic Architect Fee.

5. Construction Phase.

a. Construction Fifty Percent Completed. Upon completion of at least fifty percent (50%) of the construction work required by the awarded construction contract or contracts, a sum sufficient to increase the total amounts paid to Architect on the basic fee for a School Facility to ninety (90%) of the Basic Architect Fee.

b. Construction Contract Completed. Upon completion of the School Facility and inspection of the School Facility by Architect and District, acceptance by District of all work required by the corrections of all deficiencies, including those commonly referred to as punch list items, and the receipt by District of as-built drawings and other items required by Article II, Subsection B.5.t., a sum sufficient to increase the total amount paid to Architect to one hundred percent (100%) of the Basic Architect Fee.

ARTICLE VIII. TERMINATION, ABANDONMENT, OR SUSPENSION OF WORK ON A SCHOOL FACILITY.

A. Termination of Architect's Services.

District may suspend or terminate Architect's Services under this Agreement following fifteen (15) days written notice to Architect as to one or more School Facility Projects awarded to Architect because of the failure of Architect to satisfactorily perform or provide prompt, efficient, or thorough service or if Architect fails to complete its Services or otherwise comply with the terms of this Agreement. District shall also have the right, in its absolute discretion, to terminate this Agreement as to one or more School Facility Projects awarded to Architect in the event District is not satisfied with the working relationship with Architect and without cause following fifteen (15) days prior written notice from District to Architect. Failure of District to make undisputed payments to Architect in accordance with this Agreement may be considered substantial nonperformance and cause for termination by Architect.

B. Suspension or Abandonment of Work on a School Facility.

District has the absolute discretion to suspend or abandon all or any portion of the work on a School Facility and may do so upon written notice to Architect. Upon notice of suspension or abandonment, Architect shall discontinue any further action on a School Facility. If the entire work to be performed on a School Facility is suspended or abandoned, the parties shall each be relieved of the remaining executory obligations of the Agreement as it relates to that School Facility, but shall not be relieved of any obligations arising prior to said abandonment or of obligations related to any other School Facility.

C. Compensation in the Event of Termination, Abandonment, or Suspension.

In the event District terminates, abandons, or suspends the work on a School Facility, there shall be due and payable within thirty (30) days following the date of termination, abandonment, or suspension the total amount to be paid to said Architect on the basic fee, in an amount which bears the same proportion to the total basic fee as the amount of services performed or provided by Architect prior to the time of such termination, suspension, or abandonment of this Agreement and the remaining amounts due for those authorized additional services performed and remaining reimbursable expenses. For purposes of determining the ratio of the Services actually rendered to the total Services necessary for the full performance of this Agreement, the division of work set forth in the payment schedule in Article VII shall be conclusively deemed to have the values corresponding to the amounts required to be paid by said progress payment schedule. In the event of termination due to a breach of this Agreement by Architect, the compensation due Architect upon termination shall be reduced by the amount of damages sustained by District due to such breach.

D. Delivery of Documents.

Upon termination, abandonment, or suspension, Architect shall deliver to District all preliminary studies, sketches, working drawings, specifications, and computations, and all other documents and matters completed by Architect to which District would have been entitled at the completion of Architect's Services.

E. Architect Obligations.

Upon Architect's receipt from District of notice of District's exercise of any of its rights provided by Sections A or B of this Article, Architect shall, unless the notice directs otherwise, do the following:

1. Immediately discontinue the performance of Services to the extent specified in the notice;
2. Provide to District a description, in writing, no later than seven (7) days after receipt of the notice of termination, of all contracts with consultants that are outstanding, including, without limitation, with respect to each such contract separately, the terms of the original price, payments made to date, the balance owing, the status of the services performed, and any outstanding withholding of funds or default, and a copy of the contract and any written changes, amendments, or modifications thereto, together with such other information as District may determine necessary in order to decide whether it is in District's best interests to accept assignment of, or request Architect to terminate, the contract; and
3. Thereafter only perform such services as may be necessary to complete the portion of the Services not terminated, taken over, or discontinued.

ARTICLE IX. INDEMNIFICATION.

Architect shall indemnify, and hold District, its officials, officers, employees, and agents ("Indemnitee(s)"), free and harmless from and against all claims, demands, causes of action, costs, expenses, liability, loss, damage, or injury of any kind, in law or equity, to property or persons, including wrongful death (collectively, "Losses"), in any manner arising out of or pertain to the professional negligence, recklessness, or willful misconduct of Architect, its officials, officers, employees, subcontractors, consultants, or agents in the performance of the Services, the Projects, or this Agreement, including, without limitation, the payment of all reasonable attorneys' fees, expert witness fees, and other related costs and expenses of defense. Architect's obligation to indemnify for claims based upon professional negligence, recklessness, or willful misconduct does not include the obligation to defend actions or proceedings brought against District but rather to reimburse District for reasonable attorney's fees and costs incurred by District in defending such actions or proceedings brought against District to the extent caused by the professional negligence, recklessness, or willful misconduct of Architect on a comparative fault basis, but not for any Losses caused by the negligence, recklessness, or willful misconduct of District or of other third parties for which Architect is not legally liable. Architect shall pay and satisfy any judgment, award, or decree that may be rendered against District and Indemnitees in any such suits, actions, or legal proceedings proportionate to the legal liability of Architect on a comparative fault basis. Architect shall also reimburse District for the cost of any settlement paid by District arising out of any such Losses, proportionate to the legal liability of Architect on a comparative fault basis. Architect shall reimburse Indemnitees for any and all legal expenses and costs, including expert witness fees,

incurred by each of them in connection herewith or in enforcing the indemnity herein provided, proportionate to the legal liability of Architect on a comparative fault basis. Architect's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by District and Indemnitees. Without affecting the rights of District under any other provision of this Agreement, Architect shall not be required to indemnify or hold harmless an Indemnitee for any Loss due to that Indemnitee's negligence, recklessness, or willful misconduct, provided, however, that such negligence, recklessness, or willful misconduct has been determined by agreement of Architect and Indemnitee or has been adjudged by the findings of a court of competent jurisdiction.

ARTICLE X. STANDARDIZED MANUFACTURED ITEMS.

Architect shall consult and cooperate with District in the use and selection of manufactured items to be used in the School Facility. Manufactured items, including, but not limited to, paint, finish hardware, plumbing fixtures and fittings, mechanical equipment, electrical fixtures and equipment, roofing materials, and floor covering shall be standardized to District's criteria so long as those criteria do not seriously interfere with building design.

Architect agrees that the specifications for a School Facility will provide that no asbestos or asbestos-containing materials will be used or substituted in conjunction with the School Facility. Architect agrees that upon completion of all work for a School Facility, Architect will provide a written statement to District to the best of Architect's knowledge, certifying that no asbestos or asbestos-containing materials were used in the construction of the School Facility under this Agreement.

ARTICLE XI. OWNERSHIP OF DOCUMENTS PREPARED FOR A SCHOOL FACILITY.

Pursuant to Section 17316 of the Education Code, all plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, architectural presentation drawings, structural computations, estimates, and other documents prepared by Architect pursuant to this Agreement are and shall remain the property of District for purposes of repair, maintenance, renovation, modernization, or other purposes, only as they relate to the particular Project. Nothing in this Agreement shall preclude District from using the plans, record drawings, specifications, or estimates related to the Project for the purposes of additions, alignments, or other development on the School Facility.

This Agreement shall not be construed to transfer or waive Architect's copyrights over the documents specified in the paragraph above, including, but not limited to, all common law, statutory, and other reserved rights, unless Architect expressly transfers or waives these rights through this Agreement, including, but not limited to, a written addendum or amendment.

ARTICLE XII. REUSE OF DOCUMENTS PREPARED FOR THE PROJECT.

District, as the sole owner of all documents prepared for a School Facility, reserves the right to reuse all or part of those documents at its sole discretion for the construction of all or part of another school construction project constructed for District at the project site. District is not bound by this Agreement to employ the services of Architect, who prepared these documents, in the event they are reused on another project. District shall indemnify and hold harmless the Architect and its consultants, agents, employees, and officers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees and costs of defense) arising out of or resulting from,

in whole or in part, the re-use or modification of the aforementioned project documents by any person, firm, or legal entity that lawfully acquires or obtains Architect's project documents from or through the District and, further, the names and seals of Architect and its consultants shall be removed from Architect's drawings, specifications, and other project documents.

In the event District elects to reuse documents prepared for a School Facility on another project without employing the services of Architect, who prepared those documents, District agrees to require the new architect to assume any and all obligations for the reuse of the documents and process the same through the Division of the State Architect as the project architect.

ARTICLE XIII. INSURANCE.

A. Coverages.

Prior to commencing performance under this Agreement, and continuing until all Services to be performed under this Agreement have been completed, Architect shall, at its sole cost and expense, carry and maintain the insurance coverages set forth below. Evidence of such insurance shall be provided to District by delivering copies of the policies or certificates of insurance setting forth the required coverage. The insurance required hereunder shall provide for the following coverages and limits with companies properly licensed and satisfactory to District:

1. Worker's Compensation as statutorily required and Employers Liability Insurance in Architect's name with limits of liability under the Employers Liability of not less than \$1,000,000.00 per employee for bodily injury by accident and \$1,000,000.00 per employee for bodily injury by disease.

2. Commercial General Liability Insurance in Architect's name, with bodily injury limits of not less than \$1,000,000.00 for each occurrence, and \$2,000,000.00 in the aggregate, and property damage limit of not less than \$500,000.00. Such Commercial General Liability Insurance shall include the following liability "hazards:" premises and operations liability; personal injury liability; personal/advertising, independent contractors, and broad form property damage liability; and completed operations liability.

3. Automobile Liability Insurance with an Employer's Non-Ownership Liability Endorsement in Architect's name. Limits of liability shall not be less than \$1,000,000.00 per person and \$1,000,000.00 per accident for bodily injury, and \$1,000,000.00 for property damage.

4. Professional Liability Insurance covering errors and omissions, with limits of liability of not less than \$1,000,000.00.

B. Additional Requirements.

The following additional specifications and stipulations shall apply to the policies providing the insurance coverages required of Architect hereunder:

1. Architect shall submit proof of the required insurance coverages at the time of the execution of this Agreement.

2. Architect shall assure that all such coverages are in full force and effect during the time intervals hereafter stipulated. The initial inception date of all such coverages shall be the date on which this Agreement is executed. The Professional Liability and all other coverages

(except for the Automobile Liability coverage) shall remain in effect for at least one (1) year after the date of final completion of the Projects and acceptance thereof by District. The Automobile Liability policy shall remain in effect until at least the date on which Architect is paid in full under this Agreement. Architect shall not take action, or omit to take any action, that would suspend or invalidate any of the required coverages during the time period they are required to be in effect.

3. With respect to all Workers' Compensation and Employee Liability coverages required under this Article, Architect shall cause such coverages to be provided on a "primary" basis, regardless of the requirement that District be named, for some purposes, as an additional insured on the policies of Architect and regardless of any other insurance District may elect to purchase and maintain. Accordingly, no Workers' Compensation or Employee Liability coverage required of Architect shall be subject to an "excess" or "pro rata" type of other insurance clause, nor shall any such coverage be subject to any clause which would be contrary to the aforesaid intent of the parties.

4. No act or omission of any insurance agent or broker shall relieve Architect of any of its obligations under this Agreement. In the event that Architect fails to acquire and maintain the insurance coverages as provided herein, District may procure the same and pay the premium therefor, in which case the cost shall be charged to Architect or deducted from payments due Architect hereunder.

C. Notice of Change in Status.

Each policy required of Architect hereunder shall be endorsed to require the insurer to give District at least thirty (30) days' advance written notice of the insurer's intention to cancel, refuse to renew, or otherwise terminate the policy; suspend or terminate any coverage under the policy; or otherwise alter any terms or conditions of the policy or of any renewal policy issued by the same insurer.

D. Additional Insurance.

In addition, District may, at its option, require Architect to provide additional Project insurance, provided the premiums for such insurance are reimbursed by District and District approves, in advance, such additional insurance, the company issuing the same, the scope of the coverage thereof, and the premiums therefor.

E. Waiver.

Architect waives all its rights to subrogation against District to the extent of any insurance recoveries that may be obtained by Architect for damages caused by fire or other perils covered by insurance, except such rights as Architect may have to proceeds of insurance held by District or any other person as trustee on behalf of Architect.

ARTICLE XIV. MISCELLANEOUS.

A. Merger, Successor, and Assignments.

This Agreement is binding upon and inures to the benefit of the successors, executors, administrators, and assigns of each party to this Agreement, provided, however, that Architect shall not assign or transfer by operation of law or otherwise any or all rights, burdens, duties, or obligations without prior written consent of District. Any attempted assignment without such consent shall be invalid.

B. Asbestos and Other Hazardous Materials Certification.

Architect shall certify to District, in writing and under penalty of perjury, that, to the best of its knowledge, information, and belief, no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any contract document that Architect prepared for the Projects. Architect shall also assist the District in ensuring that the Contractors provide District with certification, in writing and under penalty of perjury, that, to the best of their knowledge, information, and belief, no material furnished, installed, or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government.

C. Disabled Veteran Business Enterprise Certification.

If required for a particular Project, Architect shall provide proof of Disabled Veteran Business Enterprise compliance in accordance with any applicable policies of District or of the State Allocation Board, within thirty (30) days of the execution of this Agreement. If Architect fails to comply with this requirement, this Agreement shall be deemed canceled.

D. No Third Party Rights.

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

E. Governing Law.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in Orange County.

F. Entire Agreement.

This Agreement, with its exhibits, contains the entire agreement of the parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings, and oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises, or agreements have been made by any person which is not incorporated herein, and that any prior agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing and signed by all parties hereto.

G. Severability.

Should any provision in this Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

H. Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

I. Safety.

Architect shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out the Services, Architect shall at all times be in compliance with all applicable local, state, and federal laws, rules, and regulations, and shall exercise all necessary precautions for the safety of its employees, consultants, and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

J. Delivery of Notices.

All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Architect: _____

Attn: _____

District: Huntington Beach City School District
8750 Dorsett Drive
Huntington Beach, California 92646
Attn: Gregory Haulk, Superintendent

Such notice shall be deemed given when personally delivered or, when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid, and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

K. Time of Essence.

Time is of the essence for each and every provision of this Agreement.

L. District’s Right to Employ Other Consultants.

District reserves the right to employ other consultants, including architects, in connection with the Projects.

M. Prohibited Interests.

1. Solicitation.

Architect maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Architect, to solicit or secure this Agreement. Further, Architect warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Architect, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, District shall have the right to rescind this Agreement without liability.

2. Conflict of Interest.

For the term of this Agreement, no director, official, officer, or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

N. Equal Opportunity Employment.

Architect represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color,

national origin, ancestry, sex, age, or any other classification protected by federal or state law. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, promotion, demotion, transfer, recruitment, or recruitment advertising, layoff, or termination.

O. Labor Certification.

By its signature hereunder, Architect certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

P. Fingerprinting Requirements.

Unless exempted, Architect shall comply with the requirements of Education Code section 45125.1 with respect to fingerprinting of employees who may have contact with the District's pupils. Architect shall also ensure that its consultants on each Project also comply with the requirements of Section 45125.1. To this end, Architect and its consultants must provide for the completion of the certification form attached as Exhibit E to the Request for Qualifications and Request for Proposals for Architectural Services and as Exhibit 4 to this Agreement and incorporated herein by reference prior to any of Architect's employees, or those of any other consultants, coming into contact with District's pupils.

Q. Subcontracting.

Architect shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of District. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.

R. Supplemental Conditions.

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

S. State Audit.

Pursuant to and in accordance with the provisions of Government Code section 8546.7, or any amendments thereto, all books, records, and files of District and Architect connected with the performance of this Agreement shall be subject to the examination and audit of the State Auditor of the State of California, at the request of District or as part of any audit of District, for a period of three (3) years after final payment is made under this Agreement. Architect shall preserve and cause to be preserved such books, records, and files for the audit period.

The parties, through their authorized representatives, have executed this Agreement on the dates opposite their signatures.

HUNTINGTON BEACH CITY SCHOOL DISTRICT

DATE: _____

By: _____
Superintendent

_____ ARCHITECTS

DATE: _____

By: _____

By: _____

EXHIBIT 1

LIST OF SCHOOL FACILITIES COMPRISING PHASE 2 AND PHASE 3 PROJECTS

Phase 2 (Series B) Bond Sale – 2018+

- Dwyer Middle School, 1502 Palm Avenue, Huntington Beach, CA 92648
- Smith Elementary School, 770 17th Street, Huntington Beach, CA 92648
- Seacliff Elementary School, 6701 Garfield Avenue, Huntington Beach, CA 92648

Phase 3 (Series C) Bond Sale – 2020+

- Sowers Middle School, 9300 Indianapolis Avenue, Huntington Beach, CA 92646
- Eader Elementary School, 9291 Banning Avenue, Huntington Beach, CA 92646
- Perry Elementary School, 19231 Harding Lane, Huntington Beach, CA 92646
- Peterson Elementary School, 20661 Farnsworth Lane, Huntington Beach, CA 92646

EXHIBIT 2

CONSTRUCTION COSTS OF EACH SCHOOL FACILITY

EXHIBIT 3

ARCHITECT'S FEE SCHEDULE

Calculation of Basic Fee

TBD

EXHIBIT 4

**CRIMINAL RECORDS CHECK CERTIFICATION
(Fingerprinting Requirements)**

ARCHITECT'S CERTIFICATION

With respect to the Contract dated _____ 2019 by and between the Huntington Beach City School District ("District") and _____ ("Architect") for the provision of architectural services, Architect hereby certifies to the District's governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with District pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Architect's Representative

Date

ARCHITECT'S EXEMPTION

Pursuant to Education Code section 45125.1, the Huntington Beach City School District ("District") has determined that _____ ("Architect") is exempt from the criminal background check certification requirements for the Contract dated _____, 2019 by and between the District and Architect ("Contract") because:

- The Architect's employees will have limited contact with District students during the course of the Contract; or
- Emergency or exceptional circumstances exist.

District Official

Date

ARCHITECT CONSULTANT’S CERTIFICATION

The Huntington Beach City School District (“District”) entered into a contract for architectural services with _____ (“Architect”) on or about _____, 2019 (“Contract”). This certification is submitted by _____, a consultant to the Architect for purposes of that Contract (“Consultant”). Consultant hereby certifies to the District’s governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with District pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Consultant’s Representative

Date

ARCHITECT CONSULTANT’S EXEMPTION

The Huntington Beach City School District (“District”) entered into a contract for architectural services with _____ (“Architect”) on or about _____, 2019 (“Contract”). Pursuant to Education Code section 45125.1, the District has determined that _____, a consultant to the Architect for purposes of that Contract (“Consultant”), is exempt from the criminal background check certification requirements for the Contract because:

- The Consultant’s employees will have limited contact with District students during the course of the Contract; or
- Emergency or exceptional circumstances exist.

District Official

Date