

DESIGN CONSULTANT SERVICES MASTER AGREEMENT FOR VARIOUS SCHOOL PROJECTS

This Design Consultant Services Agreement ("Agreement") is entered into this **[Insert Date]**, ("Effective Date") by and between **COTATI-ROHNERT PARK UNIFIED SCHOOL DISTRICT** ("District") and **[[ARCHITECT NAME]]** ("Design Consultant"). District and/or Design Consultant may be referred to individually herein as a "Party," or collectively as the "Parties."

RECITALS

A. The District is a California school district duly organized and validly existing under the laws of the State of California.

B. The Design Consultant is a professional services firm duly organized under the laws of the State of California. The Design Consultant represents it has the background, knowledge, licensing, experience and expertise necessary to provide the services set forth in this Agreement.

C. The District and Design Consultant desire to enter into an agreement for the Design Consultant to provide the District with professional services consisting of architectural and engineering services on selected projects (each hereinafter referred to as a "Project") as requested and authorized by specific authorization prepared and submitted by the Design Consultant for approval by the District, each hereinafter referred to as the "Project Authorization."

D. It is the intention of the parties that the Design Consultant provide the District, pursuant to each executed Project Authorization, architectural and engineering services under the management and oversight of the District's staff for the Project, that will enable the Project to be designed and constructed without burdening District staff.

E. As required by applicable law, personnel of the Design Consultant and its Sub consultants are duly licensed as architects and/or registered as engineers under the laws of the State of California and are otherwise qualified and capable of providing and performing the Basic Services and its other obligations under this Agreement in accordance with the terms hereof.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

ARTICLE 1. GENERAL PROVISIONS

1.1. SCOPE OF SERVICES

A. The District shall authorize the Design Consultant to proceed on each Project with a written Project Authorization which:

1. Provides a description of the type, size and scope of the Project;
2. States the Project Budget;
3. Specifies the Basic Services and/or Additional Services required of the Design Consultant;
4. Identifies the services and responsibilities of the District or others for the Project;
5. States method and/or amount of compensation to be paid the Design Consultant for its services;
6. Identifies the key Personnel to be used for the project;
7. Identifies the specific Sub consultants to be used for the project;
8. States the Preliminary Project Schedule;
9. Indicates additional or special provisions related to the Project and/or modifications to the Agreement that may pertain to the Project.

- B. A Project Authorization, when signed by the District and the Design Consultant, shall become an effective and integral part of this Agreement with each and all of the provisions of one such document applying to the other as to the applicable Project, except as specifically modified or set forth to the contrary in the Project Authorization.
- C. The District and Design Consultant have endeavored to delineate the scope of the Basic Services to be provided by Design Consultant in Article 2, below. Such descriptions are not intended to be comprehensive, it being understood that Design Consultant shall be required, without adjustment or addition to the fixed rates or maximum compensation agreed to herein, to provide any services, whether or not listed in Article 2, that are within the scope of its field of professional practice and that are reasonably inferable as being necessary, or that would be customarily furnished by other providers of professional services of the type and nature provided for in this Agreement, to accomplish the Basic Services set forth in Article 2. Should the District proceed to perform the Project in multiple phases, such Scope of Services, as further described herein, shall be applicable to all phases of the Project. To the extent there are any ambiguities and/or conflicting terms and provisions as between the Design Consultant's Proposal and this Agreement, this Agreement shall control and govern.

1.2. PERFORMANCE STANDARDS

All services performed under this Agreement shall be performed by the Design Consultant and its Sub-Consultants in a manner consistent with: (a) the standard of care under California law applicable to those who provide similar services for projects of the type, scope and complexity of the Project subject to this Agreement in the locality of the Project; (b) the Applicable Laws; (c) the terms of this Agreement; and (d) using their professional skill and judgment (hereinafter "Standard of Care").

1.3. AUTHORITY OF THE DESIGN CONSULTANT

Design Consultant's authority to act on behalf of District is limited to its scope of authority set forth in this Agreement. Notwithstanding anything else stated in this Agreement or any Contract Documents, Design Consultant does not have the express or implied authority to obligate District to any expenditure of money or extension of contractual time periods, including, without limitation, any adjustment to the price or time of performance of any contract between District and its Contractors, Separate Contractors, Specialty Consultants, or other third persons or parties. The Design Consultant shall be liable to the District and third parties for the consequences of the Design Consultant's actions or conduct exceeding the limited scope of the Design Consultant's authority to act on behalf of the District.

1.4. KEY PERSONNEL

1.4.1. Of Essence. The services to be provided by Design Consultant under this Agreement shall be performed or directed by the Key Personnel, as identified in the Project Authorization.

1.4.2. Commitment, Cooperation. Recognizing the necessity of a close working relationship with the District, the Design Consultant's principals and employees shall furnish the skill, efforts and judgment of its organization in the performance of their duties and responsibilities under this Agreement, subject at all times to District's discretion, and provide their knowledge, ideas, experience and abilities relating to the efficient design and construction of the Project and to cooperate fully with all members of the Project Team.

1.4.3. Additions, Removals, Replacements.

- .1 Additions.** It is contemplated that from time to time individuals will be added to the list of Key Personnel as necessary and appropriate to the stages of planning, programming, designing and constructing of the Project. Design Consultant shall anticipate the need for such additions by submitting to the District no later than seven (7) Days prior to the need therefore, a proposed amendment to the list of Key Personnel setting forth the Design Consultant's proposed additions and the reasons for such additions. The Program Manager and District shall promptly review the proposed additions and either approve or disapprove thereof in writing, along with a statement of the reasons for any disapproval.

Design Consultant shall not employ any individual to perform the functions as Key Personnel without the advance approval of the District, which approval may be granted or withheld in their sole discretion.

- .2 **Removals.** Design Consultant shall not, for so long as any person serving as Key Personnel is employed by Design Consultant, remove, substitute or reduce the level of effort of such person without the District's prior written approval, which may be granted or withheld in its reasonable discretion after discussion regarding Design Consultant's reasons for wanting to move Key Personnel. If District is dissatisfied with the services rendered by any Key Personnel, Design Consultant shall promptly recommend a substitute person.
- .3 **Replacements.** If any Key Personnel ceases employment with Design Consultant or is requested to be removed pursuant to Paragraph 1.4.3.2 above, then Design Consultant shall promptly notify District of a proposed substitute person of at least equal qualifications to perform the same functions to be approved by District, which approval may be granted or withheld in their reasonable discretion after discussion regarding Design Consultant's reasons for wanting to using a replacement. Design Consultant shall bear, at its own expense and without reimbursement by District, all costs associated with replacing, for any reason, any Key Personnel.

1.4.4. Engagement by District. In the event Design Consultant ceases its business operations altogether or this Agreement is terminated by District for cause, District shall have the right, but not the obligation, without liability or obligation to Design Consultant or any other person or entity, to directly engage the services of any of the Key Personnel in accordance with the provisions of this Paragraph 1.4.4. In the event that Design Consultant learns that any of the Key Personnel will be leaving the employ of Design Consultant, Design Consultant shall promptly notify District. District shall then have the rights described in this Paragraph 1.4.4 to engage directly the services of such persons.

1.4.5. Project Representative. The Design Consultant's designated project representative has the authority to act on behalf of the Design Consultant in respect to all matters that are the subject of this Agreement, including, without limitation, the power and authority to enter into agreements or modifications to agreements that contractually bind Design Consultant. Authority to enter into agreements or modifications to agreements that contractually bind and/or change the terms and conditions of the contract with the District shall remain with the District's Assistant Superintendent of Business Services or his/her designee.

1.4.6. Design Consultant's Employees. All persons employed by Design Consultant shall be the employees of Design Consultant and not of District. Design Consultant shall be solely responsible for any workers' compensation obligations, withholding taxes, unemployment insurance and any other employer obligations with respect to all employees working for Design Consultant.

1.5. SUBCONSULTANTS

For Sub consultants other than those designated and included in the Agreement, Design Consultant may, with prior approval by District, enter into written contracts with Sub consultants to perform portions of the services provided for in this Agreement. Design Consultant's request for hiring of a Sub consultant shall be submitted in a writing that describes the scope of services to be contracted, the name of the proposed Sub consultant and the estimated total cost and/or hourly rates for the Sub consultant's services. District shall have reasonable discretion in approving any Sub consultant and such approval must be in writing to be effective. District shall use its best efforts to approve or disapprove of proposed Sub consultants within seven (7) Days of Design Consultant's request. Design Consultant shall remain responsible to District for the quality and performance of all Sub consultants' services. Design Consultant may, upon advance written notice to District, terminate and replace the services of any Sub consultant, subject in all cases to the prior written approval of District, not to be unreasonably withheld. Every subcontract or agreement of any kind entered into between Design Consultant and Sub consultant (or between any Sub consultant and other

independent contractor Sub consultants) shall contain appropriate language whereby Sub consultant, without creating any contractual obligation on the part of the District to the Sub consultant or anyone working under contract to Sub consultant, accepts and agrees to be bound by all of the obligations of this Agreement, including, without limitation, those obligations pertaining to indemnification, insurance, accounting records, audit and ownership of documents, and agrees to include in its contracts with its Sub consultants a contingent assignment of those contracts to District or its designee, effective only upon written acceptance by District or its designee.

1.6. OWNERSHIP OF DESIGN DOCUMENTS

1.6.1. Property of District. All materials, including CAD and BIM files, images, presentations, reports, media, documents, specifications, records, calculations and digital and analog files and materials employed in the creation of same (collectively, "Design Documents") prepared by the Design Consultant and its Sub-consultants, the designs depicted in them, and any presentation materials, shall become, upon their creation and services paid, the property of the District whether the Project for which they are made is executed or not. Without limitation to the foregoing, District shall hold, and Design Consultant shall be deemed to have been irrevocably assigned to District in perpetuity with no reserved or retained rights in any other persons or entities, all copyrights or other intellectual property rights relating to the Design Documents. The District hereby grants to Design Consultant and its Sub consultants a license, revocable at will of District, to use and copy such documents during the term of this Agreement for the sole purpose of performing the services required under this Agreement. With the exception of standard and generic details in the Drawings, the Design Documents shall not be used as a whole, or in substantial part, by the Design Consultant on other projects without prior agreement.

1.6.2. Use of Design Documents. The District may use the Design Documents, without the Design Consultant's consent, in connection with the Project, including, without limitation, future additions, alterations, connections, repairs, information, reference, use or occupancy of a Project. District may reuse the Design Documents for other Projects at no additional cost, provided however, that District shall hold harmless the Design Consultant against any losses arising from District's use of the Design Documents for any other purpose, including use of the Design Documents on other projects.

1.6.3. Bidding. The Design Consultant, upon request, shall provide copies of the Design Documents in the number required by the District for bidding and construction purposes in connection with the Project as part of its Basic Services. The District reserves the right to select the type of document reproduction and to establish where the reproduction will be accomplished.

1.6.4. Termination. In the event of termination of this Agreement by either party for any reason, the District reserves the right to receive, and the Design Consultant shall promptly provide to the District upon payment of all undisputed monies due, all Drawings, Specifications, models, and other Design Documents prepared under this Agreement prior to the date of termination by the Design Consultant and its Sub consultants for this Project. The foregoing shall include without limitation, all drafts and all electronic files of the Design Documents. Unless otherwise agreed to by the District, the Design Consultant shall deliver all such Design Documents to the District within fifteen (15) Days of the date of the exercise of the termination rights under this Agreement. Design Consultant shall be permitted, at its sole cost and expense to retain copies, including reproducible copies, of the Design Documents for information and reference purposes only. Any dispute regarding the amount of any payment to be made by District under this Agreement shall be resolved per Article 6.3 of the Agreement.

1.7. COMPLIANCE WITH APPLICABLE LAWS

Design Consultant shall, at all times in its performance of its obligations under this Agreement, be responsible to comply with the Standard of Care in the application of Applicable Laws, including, without limitation, those rules or regulations enacted or issued by the District.

1.8. TIME OF ESSENCE

All time limits set forth in this Agreement pertaining to the performance of any obligation or act are of the essence to this Agreement.

**ARTICLE 2.
BASIC SERVICES**

The Design Consultant's professional services relative to a Project, as specifically identified and authorized on a Project Authorization, shall be performed within certain Phases of Work. The Phases, generally described below, outline the possible services contained within the Phases. These general Phase descriptions are intended to be solely for the convenience of reference and not as a determinative of the services to be actually performed or authorized for a specific project.

The Basic Services shall include but may not be limited to Basic Planning Services, Schematic Design, Design Development, Construction Documents, Construction Administration and the Project Closeout Phases. Such services may include but may not be limited to the following disciplines: Civil, Architectural, Structural, Mechanical including HVAC, Plumbing, Fire Protection, Electrical, Acoustical, Audio Visual and Hardware. The required deliverables may include but may not be limited to Drawings, Specifications, Basis of Design Report and Cost Estimating Report. Design Consultant shall perform the following Basic Services as set forth below for a Project. Should the District proceed to perform the Project in multiple phases, Design Consultant may be required to provide Basic Services, as specified in this Article 2, for each of the identified phases, as is necessary to complete the Project.

2.1. GENERAL

2.1.1. Project Construction Budgets. It is the obligation of the Design Consultant to design the Project in a manner that will enable each Project to be constructed for a Construction Cost that does not exceed the Project Construction Budget for the Project. Should the District proceed to perform a Project in multiple phases, Design Consultant may be required to provide a Project Construction Budget for each phase of the Project. No adjustments shall be made to a Project Construction Budget except for (i) significant fluctuations in general levels of prices in the construction industry as reflected by the ENR Index after the Project Budget is prepared; or (ii) material changes requested in writing by District to a Project's Schedule or scope; or (iii) other adjustments increasing the Project Construction Budget that the District determines, in good faith and reasonable discretion, are appropriate or necessary. Design Consultant shall notify the District promptly upon becoming aware of any circumstance that Design Consultant knows or should have known in the exercise of the standard of care required by this Agreement, may require an adjustment in a Project Construction Budget. Failure by Design Consultant to provide such timely written notice may result in its waiving the right to an adjustment of a Project Construction Budget on account of such circumstance. Wherever it is stated in this Agreement that District has the right to direct that Design Consultant, at its own expense, furnish design services to reduce the scope of the Project while maintaining the District Design Standards, to meet the requirements of the agreed-upon Project Construction Budget, such right shall not be interpreted as creating an obligation on the part of District to extend such opportunity for redesign to Design Consultant nor as a waiver of, or limitation on, the District's right, in lieu of requesting the performance of such redesign services, to exercise its other rights provided for at law or under this Agreement, including, without limitation, the right to terminate this Agreement for cause or for convenience. The District's initial **Project Construction Budget** shall be set forth in each project assignment.

- .1 In preparing estimates of the Cost of Work, the Design Professional shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the District's Project Construction Budget.

The Design Consultant's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques.

- 2.1.2. Review of Work Product.** Design Consultant shall use its skills and experience to review the work product and information furnished by the District and Design and Construction Project Team members for errors or omissions and to report its findings to District, with an appropriate recommendation; provided, however, that failure by Design Consultant to give such notice shall not relieve the District and Design and Construction Project Team members of their liability or responsibility therefore. Notwithstanding the foregoing, the Design Consultant shall have no liability to the District or any other party arising out of the Design Consultant's failure to identify errors or omission in the information furnished to the Design Consultant.
- 2.1.3. Selection of Specialty Consultants.** Design Consultant shall advise District on the appropriate time for retention of Specialty Consultants whose services are necessary for the Project, being certain to allow sufficient time in advance for prequalification and selection of Specialty Consultants in accordance with Applicable Laws and the guidelines, practices and procedures of District, and Design Consultant and, at points in time appropriate to the stage and status of the Project, and shall assist the District with the following: (i) preparation of prequalification criteria; (ii) preparation of requests for qualifications; (iii) conduct of pre-qualification award conferences and responses to questions by proposers; (iv) evaluation of proposers; (v) establishment of a list of pre-qualified professionals; and (vi) preparation of a definitive scope of services.
- 2.1.4. Project Schedules and General Deliverables.** Design Consultant shall, promptly after execution of this Agreement, prepare and continuously update a Project Schedule for this Project, and for the Project overall, which integrates the activities of District, Design Consultant, and other Project Team members, depicting the detailed activities necessary to complete the design and construct each applicable Project, and the Project overall. Each such Project Schedule shall, without limitation: (i) coordinate and integrate the planning, programming and design activities in appropriate detail to the District's satisfaction; (ii) show estimated commencement, duration, responsible parties and sequence for planning, programming, design and bidding, and displacement of operations activities; (iii) be prepared and presented in a critical path for (CPM) format or using Microsoft Project, showing the interdependencies of the activities and a clearly highlighted critical path; and (iv) deadlines and estimates of time for a review and receipt of all approvals, decisions and other information to be provided by District. Design Consultant shall, no less frequently than monthly, update and expand the level of detail as the Project progresses, indicating current status of scheduled activities, projections of potential completion of major tasks, if significant variance from planned activities occurs, Design Consultant shall recommend recovery plans to District and, upon obtaining District's approval thereto, modify the Project Schedule to incorporate such recovery plans. Should the District proceed to perform the Project in multiple phases, Design Consultant may be required to provide a Project Schedule for each phase of the Project, as further described in this Section 2.1.4. The Project Schedule shall include the following deadlines, which shall not be thereafter adjusted except as permitted by Article 3 of this Agreement with the understanding the District and other necessary parties shall maintain schedule and deadlines per agreement:

Design Consultant shall include a general schedule of the Project progress with key milestones as part of the Project Authorization. The Project Schedule will be updated with increased detail at each phase of construction, critical milestones or when scope changes occur that impact the schedule. Each such Project Schedule shall, without limitation: (i) coordinate and integrate the planning, programming and design activities in appropriate detail to the District's satisfaction; (ii) show estimated commencement, duration, responsible parties and sequence for planning, programming, design and bidding, and displacement of operations activities; (iii) be prepared and presented in a critical path (CPM) format or using software acceptable to the District showing the interdependencies of the activities and a clearly highlighted critical path; and (iv) deadlines and estimates of time for a review and receipt of all approvals, decisions and other information to be provided by District.

- 2.1.5. Communications.** The Design Consultant shall comply with all written procedures issued by the District for conduct of communications among the Design and Construction Project Team members to deal with administrative matters relating to the planning, programming, design and construction of the Project.
- 2.1.6. Meetings.** Design Consultant shall attend regularly scheduled meetings with the District, and/or other Project Team members and shall respond promptly with respect to matters assigned to Design Consultant for action or resolution. Design Consultant to produce and distribute meeting minutes of each meeting and shall promptly review and provide any requests for corrections to meeting minutes no later than five (5) Days after receipt. All such meetings shall be deemed to be part of Basic Services.
- .1 Meeting Agendas:** For any meeting that Design Consultant organizes, schedules and/or intends to conduct with the District, other Project Team members and/or any other persons connected with a Project or the District, the Design Consultant shall provide a meeting agenda two (2) days prior to the meeting.
- 2.1.7. Summarizations.** Except as otherwise directed by District, Design Consultant shall receive, review and take appropriate action with respect to all information, reports, notices, requests and other materials provided or available to Design Consultant by or from Sub consultants and when requested shall prepare summaries of such materials for presentation to District, together with the materials summarized and Design Consultant's recommendations and advice with respect to the matters to which such materials relate.
- 2.1.8. Overlapping, Duplicative Services.** Design Consultant shall promptly advise the District if there appears to be an overlap or duplication of services being provided by or among Project Team members, along with Design Consultant's recommendations for eliminating such duplication or overlapping of services.
- 2.1.9. Sustainable Designs and Energy Standards.** Design Consultant shall prepare its designs in accordance with the Sustainable Building Principles, Standards and Processes. Those Sustainable Design and Energy Standards services associated with projects that are determined to be eligible for LEED™ certification shall be undertaken only as authorized in accordance with the provisions of Article 3, Additional Services. The Design Consultant acknowledges that it is the District's goal to achieve a high level of energy efficiency and sustainability to be defined for each project. The Design Consultant shall work with the District to balance functional, sustainable and financial design parameters toward meeting the District's goal.
- 2.1.10. District Committees.** Design Consultant shall, when requested by District: (i) attend meetings of District Committees; (ii) assist District in preparing design presentations to and responding to questioning by District Committees; and (iii) provide necessary follow-up so that recommendations or directions of District Committees related to design matters are appropriately addressed.
- 2.1.11. Compliance with California Code of Regulations.** Design Consultant shall, in connection with its services performed during all Phases of Basic Services and, if applicable, any Additional Services, be responsible to comply with the Standard of Care in the application of the California Code of Regulations, including, without limitation Title 24, California Code of Regulations, relating to design and construction generally and construction of public schools specifically and shall fully cooperate with the Project Inspector assigned to the Project pursuant to said provisions of the California Code of Regulations and other Applicable Laws.
- 2.1.12. Design Safety.** Design Consultant is responsible for the safety of the design of the Project and for the interpretation of and any necessary amplification of the Drawings and Specifications prepared by it or its Sub consultants for the Project. The Design Consultant shall neither have control over or charge of, nor be responsible for, the construction means, methods techniques, sequences or procedure, or for safety in, on or about the site, or safety precautions and programs in connection

with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

2.1.13. Prevailing Wages. Design Consultant and its Sub consultants shall, to the extent applicable to work or services performed under this Agreement, comply with the provisions of the California Labor Code (including, without limitation, California Labor Code Section 1720, 1735, 1775, 1777.5 and 1776.6) applicable to persons performing services or work for "construction", including but not limited to inspection and land surveying work, as defined in California Labor Code Section 1720. Pursuant to California Labor Code Section 1773, the Department of Industrial Relations has determined the general prevailing rates of wages per diem, and for holiday and overtime work, in the locality in which this Agreement is to be performed, for persons performing such work or services and said rates are on file with the District at its principal office and available to any interested party upon request.

2.2. SCHEMATIC DESIGN PHASE

2.2.1. Project Program. The Design Consultant shall, in conjunction with the District and any of District's other Specialty Consultants in the areas of planning and programming, familiarize itself with the District's plans and goals for any Project assigned and make any recommendations for revisions that, based on Design Consultant's professional judgment, will produce the Project that is designed in a manner that is in conformance with the requirements of the Project Construction Budget and Project Schedule. The Project Construction Budget and Project schedule will be adjusted as necessary to accommodate the changes upon mutual agreement.

2.2.2. Alternate Approaches. The Design Consultant shall review and recommend to the District alternative approaches to the design of each Project assigned, and recommend alternative contracting modes for the District to evaluate which is best suited to the Project, the Project Schedule, Applicable Laws and Project Construction Budget for the Project assigned. The selection of a lease-leaseback, multi-prime, or design-bid-build method shall not affect the compensation due to the Design Consultant for the Project.

2.2.3. Schematic Documents. The Design Consultant shall prepare for review and approval by the District, Schematic Design Documents for each Project including site plans, floor plans, elevations, sections, 3-dimensional perspective views, and other sketches or graphic materials needed to describe the Project in three dimensions. Schematic Design Documents shall be consistent with the Project Construction Budget and Project Schedule for the Project and shall be submitted upon 50% completion for review and again upon 100% completion for final revisions and review and approval by the District.

2.2.3.1. Schematic Design Phase Deliverables.

- .1 **Site Documentation:** scaled preliminary Civil grading plan(s) including cut/fill calculations, and topographic contours; Landscape Architecture plan(s) including proposed plant species and materials; plans. Architectural site plan(s) illustrating major built site features.
- .2 **Architectural Building Plans:** scaled floor plan(s) of all buildings including room names, general dimensions, and net square footage
- .3 **Interior Design:** preliminary finish plans and materials palettes; reflected ceiling plans including anticipated finishes and materials; three-dimensional perspective views of selected spaces indicating materials and lighting; furniture and equipment plans; interior elevations of selected spaces.
- .4 **Engineering and Systems Disciplines:** Mechanical systems diagrams; Electrical systems diagrams; Structural floor plan(s) and design diagrams including locations and rough sizing of columns, braced frames, trusses and other distinct structural elements; Acoustic design narrative; Audio/Visual design narrative; Data systems design narrative; Kitchen design plan(s) including equipment layouts and preliminary equipment list(s); Architectural design narrative.

- .5 **Cost Estimate:** preliminary cost estimate, including mark-ups for contractor fees, O&P, insurance, bonds, contingencies, escalation and the like, coordinated and reconciled with the District.

2.2.4. Estimated Project Construction Cost. The Design Consultant shall submit a preliminary written Estimated Project Construction Cost for the Project based on the Schematic Phase Design Documents submitted to the District for review and approval. The estimate shall address separately site work with utilities and building structures. The site work utilities estimate shall be itemized into major cost components. The building structure estimate shall be based on square foot cost reflective of the type of structure and systems involved. If the preliminary Estimated Project Construction Cost for the Project exceeds the Project Construction Budget for such Project, the District may, at its sole discretion and without limitation to any of the District's other rights or remedies for default that may exist at law or under this Agreement, either: (i) give written approval of an adjustment in the Project Construction Budget, or (ii) require the Design Consultant, at its own cost and without additional compensation or reimbursement by District, to revise the Schematic Design Documents in cooperation with the District so as to revise the Estimated Project Construction Cost to an amount that is within the Project Construction Budget, in which case the District agrees to accept the Design Consultant's reasonable revisions in the Project to lower the Estimated Project Construction Cost so long as the proposed revisions do not, in the District's sole and reasonable judgment, materially compromise the objectives of the Project.

2.3. DESIGN DEVELOPMENT PHASE

2.3.1. Design Development Documents. Upon the District's written authorization to proceed and based on Schematic Design Documents approved in writing by the District, the Design Consultant shall prepare, for review and approval by the District, Design Development Documents for the Project consisting of Models, Drawings, outline Specifications and narratives as needed to establish and describe the function, size and character of the Project, elaborating and further developing the previously approved Schematic Design Documents. The Design Development Documents shall be submitted upon 50% completion for review and again upon 100% completion for final revisions and review and approval by the District. The Design Consultant shall incorporate into the Design Development Documents architectural, civil, landscape, structural, mechanical, plumbing, electrical, audio/visual, security, communication and information technology, fire and life safety, and access control systems, materials, and such other elements and other systems appropriate to the Project. The Design Development Phase Documents shall be consistent with and conform to any existing or approved District Standards during the term of the Project and shall be consistent with the Project Construction Budget and the Project Schedule. Should the District proceed to perform the Project in multiple phases, Design Consultant may be required to provide Design Development Documents, and all related deliverables as further described herein, for each phase of the Project.

2.3.1.1. Design Development Phase Deliverables.

- .1 **Site Documentation.** scaled Civil rough and fine grading plan(s) including cut/fill calculations and topographic contours, vehicle and pedestrian circulation and parking; Landscape Architecture plan(s) including proposed plant species and materials, hardscape; plans; irrigation plans; site utility plans; Architectural site plan(s) illustrating major built site features and buildings.
- .2 **Architectural Building Plans.** overall, partial, and enlarged floor plan(s), reflected ceiling plan(s)
- .3 **Building Envelope.** building sections; typical wall sections and related details; exterior elevations.
- .4 **Interior Design.** finish floor plans; interior partition plans and key details; interior elevations; sections and elevations.
- .5 **Vertical Circulation.** enlarged floor plans and sections for stairs and elevators.

- .6 **Engineering and Systems Disciplines:** Mechanical systems plans; Plumbing systems plans; Electrical systems plans; Structural floor plan(s) and calculations; Acoustic design narrative; Audio/Visual design narrative; Data systems design narrative; Kitchen design plan(s) including equipment layouts and preliminary equipment list(s); Architectural design narrative; Security and Access Control systems narrative and plans.
- .7 **Cost Estimates:** updated cost estimates organized by specification section/trade/discipline, including mark-ups for contractor fees, O&P, insurance, bonds, contingencies, escalation and the like, coordinated and reconciled the District.

2.3.2. Systems Criteria. The Design Consultant shall submit documentation supporting the design criteria for the structural elements (including structural loading); HVAC, plumbing, electrical, lighting and communication systems; and other specialized building systems.

2.3.3. Certification Re Financial Relationships Disclosure. In accordance with Public Contract Code § 3000, *et seq.*, Design Consultant and/or any of its Sub consultants including, without limitation, engineers or roofing consultants, who provide professional services related to the roofing portion of the Project shall prior to engaging in such professional services, complete, sign and deliver to the District the Certification Re Financial Relationships Disclosure, attached as **Exhibit "B"** to this Agreement. Any person who knowingly provides false information or fails to disclose a financial relationship shall be subject to civil liability and penalties as set forth in Public Contract Code 3006.

2.3.4. Estimated Project Construction Cost. The Design Consultant shall submit a written Estimated Project Construction Cost for each Project based on the Design Development Phase Documents submitted to the District for review and approval. Including, if so required, a separate Estimated Project Construction Cost for each phase of the Project. If the Estimated Project Construction Cost for the Project exceeds the Project Construction Budget for such Project, the District may, at its discretion and without limitation to any of the District's other rights or remedies for default that may exist at law or under this Agreement, either: (i) give written approval of an increase in that Project Construction Budget, or (ii) require the Design Consultant, at its own cost, and without additional compensation or reimbursement by District, to revise the Design Development Phase documents in cooperation with the District so as to reduce the Estimated Project Construction Cost to an amount that is within the Project Construction Budget, in which case the District agrees to accept the Design Consultant's reasonable revisions in the Project to lower the Estimated Project Construction Cost so long as the proposed revisions do not, in the District's sole and reasonable judgment, materially compromise the objectives of the Project.

2.4. CONSTRUCTION DOCUMENTS PHASE

2.4.1. Construction Documents. Upon the District's written authorization to proceed and based on Design Development Documents reviewed and approved in writing by the District, the Design Consultant shall prepare Construction Documents for the Project consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project suitable for review and approval by all authorities having jurisdiction, bidding, and construction. Should the District proceed to perform the Project in multiple phases, Design Consultant may be required to provide Construction Documents, and all related deliverables as further described herein, for each phase of the Project. The Construction Documents shall describe the quality, configuration, size, location and relationships of all components to be incorporated into the Project. The Construction Documents shall be consistent with the Project Construction Budget and Project Schedule for the Project. Upon 50%, and 95% completion of the Construction Documents, Design Consultant shall provide, in addition to the Construction Documents, a statement of the basis of the design, which includes the following: (i) an outline of Applicable Laws that apply to the Project; (ii) an outline of the criteria used as a basis of the design, including criteria for sustainability, civil, landscaping, architectural, structural, mechanical, plumbing and fire protection and electrical.

2.4.1.1. Construction Documents Phase Deliverables.

- .1 **Site Documentation.** civil plans, Landscape Architecture and irrigation plans; site utility plans; Architectural site plans; signage and wayfinding plans and details; fire and emergency access plans.
- .2 **Architectural Building Plans.** overall, partial, and enlarged floor plans, code analysis plans; reflected ceiling plans; all related and required Architectural details.
- .3 **Building Envelope.** building sections; wall sections and related details; exterior elevations; roof plans and details.
- .4 **Interior Design.** finish floor plans; interior partition plans and typical details, including Acoustic requirements; interior elevations; typical interior details; typical and specific millwork plans, sections and elevations; FF&E plans and specifications.
- .5 **Vertical Circulation.** enlarged floor plans, sections, and details for stairs and elevators.
- .6 **Engineering and Systems Disciplines:** mechanical systems plans and details; Plumbing systems plans and details; Electrical systems plans and details; Lighting system and controls plans and details; Structural floor plans, details, and calculations; Acoustic design integrated into Architectural plans; Audio/Visual system plans and details; Data systems plans and details; Kitchen design plans including equipment layouts and equipment lists with associated details; Security and Access Control systems plans and details; Fire alarm systems plans and specifications; Fire sprinkler system plans, details and specifications
- .7 **Standard Building Elements:** door schedules; hardware schedules; window schedules
- .8 **Cost Estimates:** updated cost estimates organized by CSI specification section/trade/discipline, including mark-ups for contractor fees, O&P, insurance, bonds, contingencies, escalation and the like, coordinated and reconciled with the District.
- .9 **Project Manual:** CSI-format specifications including Division 1, integrated with District front-end project manual documents.

2.4.2. Review. The Design Consultant shall submit Construction Documents to District for review and approval by the District upon 50% completion, 95% completion and 100% completion. Such submittal shall be in electronic format and shall include, the Construction Documents, a summary of the calculations for the structural, HVAC, electrical, plumbing, communications and other specialized building system calculations. Unless directed otherwise in writing by the District, the Construction Document Phase shall not be considered 100% complete until all approvals by Review Agencies have been received by the Design Consultant.

2.4.3. Content, Coordination, Completeness. The Design Consultant shall be responsible for the content of all Construction Documents prepared by it and its Sub consultants. All final Construction Documents prepared and signed by the Design Consultant or its Sub consultants shall be complete, coordinated and contain directions as will (i) enable a competent contractor to carry them out; (ii) require a minimum of corrections by Review Agencies; and (iii) be sufficiently complete and free of conflicts so as to be capable of definitive pricing by Contractor with a minimum of further clarifications or detailing by Design Consultant or its Sub consultants.

2.4.4. Corrections. Construction Document submittals shall either incorporate any corrections required by the District or Review Agencies or be accompanied by a written statement as to why such changes were not incorporated. The District may, in its sole and reasonable discretion, reject or challenge the Design Consultant's explanation and require the Design Consultant to make the changes or corrections and/or provide additional supporting documentation regarding the Design Consultant's determination not to incorporate the changes to the Construction Documents as previously requested by the District or Review Agencies. Except with respect to a change in Program or a change in law, where such change could not have been reasonably foreseen by Design Consultant, such corrections shall not constitute grounds for adjustment of any Project Construction Budget or Project Schedule.

2.4.5. Constructability and Design Review; Value Engineering. The District reserves the right to conduct, or cause to be conducted, constructability reviews and/or value engineering of the Construction Documents. If applicable, such constructability reviews and/or value engineering may

be required at each phase of the Project. If the District elects to conduct either constructability reviews or value engineering, the District shall notify the Design Consultant of the same and the Design Consultant shall submit Construction Documents to the District for such constructability reviews and/or value engineering. The District and Design Consultant will confer and consult with each other to arrive at mutual understandings and agreements as to which of the constructability review and/or value engineering comments are to be incorporated into the Construction Documents. The Construction Documents shall incorporate mutually agreed upon comments and the Design Consultant shall submit revised Construction Documents to the District for approval. Design Consultant shall revise Construction Documents as necessary to obtain the District's reasonable approval thereof.

2.4.6. Final Approval. When all District and Review Agency required corrections have been incorporated by the Design Consultant, the corrected, 100% complete Construction Documents approved by the Review Agency will be deemed to be final and ready for competitive pricing. The Design Consultant shall provide to the District three (3) full sized printed sets (or other mutually agreed upon quantity) of approved (stamped/signed) prints. The Drawings and Specifications shall also be submitted by the Design Consultant to the District in an electronic form acceptable to the District.

2.4.7. Estimated Project Construction Costs.

- .1 Upon 50%, 95% DSA Submittal set and final 100% completion of the Construction Documents, the Design Consultant shall prepare and submit for District's review and approval, the Design Consultant's then-current Estimated Project Construction Cost for the Project, including, if so required, a separate Estimated Project Construction Cost, as detailed herein, for each phase of the Project.
- .2 If the Estimated Project Construction Cost of the Project upon 50% completion of Construction Documents for such Project exceeds the Project Construction Budget for such Project, either the District may, in its sole discretion and without limitation to any of the District's other rights or remedies for default that may exist at law or under this Agreement, either: (i) give written approval of an adjustment in the Project Construction Budget, or (ii) require the Design Consultant, at its own cost and without any additional compensation or reimbursement by District, to revise the Construction Documents in cooperation with the District so as to reduce the Estimated Project Construction Cost to within the Project Construction Budget, in which case the District agrees to accept the Design Consultant's reasonable revisions in the Project to lower the Estimated Project Construction Costs, so long as the proposed revisions do not, in the District's sole and reasonable judgment, materially compromise the aesthetic, structural or functional elements of the Project.
- .3 If the Estimated Project Construction Cost for the 95% Construction Documents for the Project exceeds the Project Construction Budget for such Project, District may, in their sole discretion and without limitation to any of the District's other rights or remedies for default that may exist at law or under this Agreement, either: (i) give written approval of an adjustment in the Project Construction Budget, (ii) authorize the solicitation of bids, (iii) require the Design Consultant, at its own cost and without additional compensation or reimbursement by the District, to revise the Construction Documents in cooperation with the District so as to reduce the Estimated Project Construction Cost to within the Project Construction Budget, in which case the District agrees to accept the Design Consultant's reasonable revisions in the Project to lower the Estimated Project Construction Costs, so long as the proposed revisions are consistent with Building Program for that Project and do not, in the District's sole and reasonable judgment, materially compromise the aesthetic, structural or functional elements of the Project or the overall Project.

2.4.8. Permits, Governmental Approvals. The Design Consultant shall assist the District in obtaining all necessary approvals or permits for the Construction Documents from governmental agencies

with jurisdiction therefor as necessary for the bidding and construction of the Work including without limitation, approvals by DSA. Without adjustment of the Compensation, Design Consultant shall revise Working Drawings as required by DSA or other governmental agencies with jurisdiction over the Project to obtain their respective approval(s) or permit issuance. Design Consultant shall notify the District in writing upon receipt of such approvals or permits specifying in detail the scope of Work covered thereby and recommend to the District whether and when all approvals and permits that Design Consultant is aware are required by Applicable Laws have been obtained such that the District may proceed to let contracts for the Work. Design Consultant shall notify District ninety (90) Days prior to the date that any approval or permit by a Government Authority may expire.

2.5. BIDDING PHASE

- 2.5.1. Prequalification.** If prequalification of bidders for construction of the Project is required by the District, the Design Consultant shall assist in preparation of the prequalification documents. If requested, the Design Consultant shall participate with the District in evaluation of prequalification submittals by proposed bidders.
- 2.5.2. Bidder Inquiries; Bid Addenda, Site Visits.** The Design Consultant shall review bidder inquiries, participate in discussions relating to responses to bidders inquiries, participate in development of necessary modifications to the Design Documents to respond to bidder inquiries and assist in development and issuance of addenda during the bidding process. The Design Consultant and its Sub consultants, as appropriate, shall attend all scheduled pre-bid conferences and Site visits. The District shall be responsible for the scheduling of all pre-bid conferences and Site visits as well as the recordation, preparation and distribution of minutes.
- 2.5.3. Bid Evaluations.** The Design Consultant shall assist the District in the review and evaluation of bids.
- 2.5.4. Project Construction Budget Overrun.** If the lowest price received from a responsible and responsive bidder (as the terms "responsible" and "responsive" bidder are interpreted under Applicable Laws) for the Project exceeds the Project Construction Budget for such Project by more than 5%, the District may, at its sole discretion and without limitation to any of the District's other rights or remedies for default that may exist at law or under this Agreement, do any of the following: (i) give written approval of an increase in the Project Construction Budget, (ii) authorize rebidding within a reasonable period of time, (iii) require the Design Consultant to modify the Construction Documents in order to reduce the Estimated Project Construction Cost to a level that falls within the Project Construction Budget, or (iv) abandon the Project. If the District requires the Design Consultant to revise the approved Construction Documents pursuant to Clause (iii) above, revisions proposed by the Design Consultant shall be consistent with the District's objectives for such Project, and shall not, as determined by District in District's sole and reasonable judgment, materially compromise the aesthetic, structural or functional elements of the Project. Compensation to the Design Consultant, if any, for such revisions shall be determined as follows: District shall obtain an independent estimate of the Construction Cost. If such independent estimate is within the Project Construction Budget, and if the lowest responsible and responsive bid price nevertheless exceeds the Project Construction Budget, then Design Consultant shall be entitled to receive compensation for executing such revisions in an amount not exceeding 100% of the total Additional Services. If the District's independent estimate exceeds the Project Construction Budget prior to bid, and if the lowest responsible and responsive bid price exceeds the Project Construction Budget and if the District elects to require the Design Consultant to revise the Construction Documents, the Design Consultant shall perform any such revisions at its own expense and without additional compensation or reimbursement by the District.
- 2.5.5. Basic Services Fee.** If the lowest bid or proposal meets or exceeds 105% of the amount designated as the Project Construction Budget at the time of bid, the "Computed Cost" for Design Consultant's Fee for Basic Services shall be based on such Project Construction Budget amount,

plus any additive alternates not taken, plus any change orders for additional scope of work, unless Design Consultant can demonstrate good cause to the District.

- 2.5.6.** Should the District proceed to perform the Project in multiple phases, Design Consultant may be required to provide all services related to the Bidding Phase as set forth in this Section 2.5, and any and all related deliverables as further described herein, for each phase of the Project.

2.6. CONSTRUCTION PHASE

- 2.6.1. Duration.** For the Project that is let to a Contractor the Construction Phase will commence on the date the Construction Contract is signed by the District and will terminate upon Final Completion of the Work covered by such Construction Contract.
- 2.6.2. Administration.** The Design Consultant's responsibilities shall include, without limitation, as outlined in section 2.6.8 below, interpretation of the design requirements of the Contract Documents; periodic Site observations; review of Submittals; responding to requests for information or clarification by Contractors and Separate Contractors; preparation of documents for Change Orders; general consultation on design matters; and administration of the Construction Contract as provided in the General Conditions. Design Consultant shall maintain, and furnish to the District upon request, written digital logs documenting the status of project correspondence related to the above-described responsibilities.
- 2.6.3. Notices.** Design Consultant shall provide such notices as may be required by Applicable Laws to Governmental Authorities and are customarily provided by Design Professionals on behalf of clients, including, without limitation DSA, that Work is being, or is about to be, carried on at the Site and any required information concerning the identity of the Contractor and other required information concerning performance of the Work.
- 2.6.4. Attendance at Meetings.** The Design Consultant shall attend all necessary pre-construction and regular construction meetings with the Contractor. Attendees shall be the Project Design Consultant, its Sub consultants, Contractor, the District, and others as deemed necessary by the Design Consultant. The regular construction meetings shall, unless otherwise directed by the District, occur weekly. The Design Consultant shall prepare and distribute construction meeting notes.
- 2.6.5. Communications.** The District will furnish the Design Consultant with copies of written communications from the District to a Contractor. With respect to matters relating to design that may be addressed in such communications, unless the Design Consultant, within ten (10) Days of receipt of a written communication to the Contractor provides written notification to the District that the Design Consultant disagrees with the content of the written communication, specifying the reason for the disagreement, the Design Consultant shall be deemed to agree with the content of such communication. The Design Consultant shall advise and consult with the District and shall keep them informed of the observed progress of the Work. Design Consultant shall render written or graphic interpretations and decisions that are consistent with the intent of, and reasonably inferable from, the Contract Documents; review and recommend any action to be taken regarding Submittals; and evaluate and advise the District on the equivalence of proposed substitutions for materials, products, or services specified by brand or trade names in the Contract Documents and recommend either approval or rejection of the substitutions as being equal in quality, utility and appearance.
- 2.6.6. No Delay.** The Design Consultant shall not delay its interpretations, decisions, reviews or other functions pursuant to this Agreement or otherwise cause or contribute to a disruption of construction or a delay to the Project, consistent with the applicable standard of care. Toward this end, Contractor's Request(s) for Information (RFI) shall be responded to within a maximum of ten (10) Days from receipt of the RFI, and Contractor's submittals of shop drawings and product data shall be reviewed and returned within a maximum of twenty-one (21) Days from submittal. In accordance

with the approved submittal schedule, the Design Professional shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but for the purpose of checking for general conformance with information given and the design concept expressed in the Contract Documents. Design Professional shall only be responsible for a review that complies with the applicable standard of care, and an approval by the Design Professional shall not relieve the Contractor from its responsibility to comply with the Contract Documents. The Design Professional's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Professional, of any construction means, methods, techniques, sequences, or procedures. The Design Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

- 2.6.7. Corrections.** The Design Consultant shall, at no cost to the District, promptly and satisfactorily correct any and all errors, omissions, deficiencies, ambiguities, conflicts or violations of Applicable Laws in the Construction Documents prepared by the Design Consultant or its Sub consultants.
- 2.6.8. Site Observations.** Subject to the limitations of Paragraph 2.6.13 below, the Design Consultant, and its Sub consultants as appropriate to the stage of the Work of the Project, shall not less frequently than weekly (i) observe construction at the Site as it progresses, (ii) conduct Site observations in connection with occupancy and completion, and (iii) check fabricated materials and equipment located on or outside the Site when such checks are specified in the Contract Documents. All such observations shall be conducted in accordance with the Standard of Care. Such observations shall address matters relating to: the progress, character, and complexity of the Work; design issues or questions of concern to the Design Consultant or its Sub consultants, or as noted in any inspection reports furnished to the Design Consultant; the observed quality of Contractor's performance during previous visits; the review of construction of crucial components of the Work; and the results of specified or directed tests significant to the acceptability of crucial components of the Work. Such observations shall be performed by Design Consultant and its Sub consultants when reasonably requested by the District or as appropriate to the stage of the Project. Without limitation to the foregoing, observations shall be for the purpose of ascertaining the progress of the Work and that the character, scope, quality and detail of construction (including workmanship and materials) generally comply with the Contract Documents, approved Submittals and clarifications. Observations shall be separate from any inspections which may be provided by others and such inspections by others shall not relieve the Design Consultant of its responsibilities under this Agreement. Any Sub consultant who has prepared designs or specifications shall be responsible to observe in accordance with the provisions of this Agreement those portions of the Work that he/she has so designed or specified. However, neither the Design Consultant nor any Sub consultant shall be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design Consultant shall be responsible for its negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.
- 2.6.9. Defective Work.** The Design Consultant shall recommend to the District and the Project Inspector, in writing, the rejection of observed Defective Work.
- 2.6.10. Testing, Inspection.** The Design Consultant shall recommend in writing special inspection or testing of the Work in accordance with the provisions of the Contract Documents if, in the Design Consultant's professional judgment, such inspection or testing is necessary or advisable for the implementation of the Contract Documents or required by Applicable Laws, regardless of the status of the Work. The Design Consultant shall review inspection reports, laboratory reports and test data to determine conformity of such data with the design requirements expressed in or implied by the Contract Documents and approved Submittals. The Design Consultant shall recommend to the District, in writing, actions that need to be taken, as determined by Design Consultant from Site visits, inspections, observations, reports, laboratory reports and test data, or from Contractor proposals, schedules or other relevant documents.

- 2.6.11. Substantial, Final Completion.** The Design Consultant shall accompany and assist the District to evaluate Substantial Completion, Final Completion, and preparation of a “punch list” of minor items of work to be completed or corrected for Final Completion. The Design Consultant shall review the punch list, advise the District and Project Inspector whether items listed thereon have been completed in accordance with the requirements of the Contract Documents and issue such recommendations of Substantial Completion and Final Completion as may be requested by the District. The Design Consultant shall review for conformance with the Contract Documents all Record Documents and other items required by the Contract Documents to be delivered by Contractor as a condition of the final payment to such Contractor. In addition to the foregoing, Design Consultant shall, based on its evaluations of the Work, notify the District and Project Inspector when the Work is completed to the point that, in the opinion of the Design Consultant, a notice of completion required by Section 4-339, Part 1, Title 24 of the California Code of Regulations may be filed.
- 2.6.12. Interpretations.** The Design Consultant shall, upon request by the District, issue interpretations and clarifications of the requirements of the design requirements of the Contract Documents. Such clarifications and interpretations shall be transmitted to the District in writing.
- 2.6.13. Construction Means, Methods, Safety.** The Design Consultant in the course of performing its other obligations under this Agreement shall report to District any observed material or substantive conditions that render any portion of the Work unsafe; provided, however, that the foregoing obligation shall not relieve Contractors of their sole responsibility for construction means, methods, techniques, sequences, procedures or safety precautions and programs in connection with the Work nor create an affirmative obligation on the part of the Design Consultant to discover safety issues.
- 2.6.14. Change Orders.** The Design Consultant shall prepare Drawings and Specifications as specifically requested by the District in connection with the issuance of Field Instructions and Construction Change Documents and secure approvals thereof by the applicable Governmental Authorities, including, but not limited to, DSA, in accordance with Applicable Laws prior to the commencement of the Work thereof. When requested or when necessary to maintain progress of the construction, Design Consultant shall prepare, submit and obtain approval by DSA of Construction Change Documents, followed promptly by submittal of a formal Change Order. Design Consultant shall be entitled to compensation for the preparation of Drawings and Specifications in connection with the issuance of Field Instructions and Change Orders to the extent allowed by Article 3 of this Agreement. The Design Consultant shall not be entitled to compensation for the preparation of Drawings and Specifications necessitated by errors, omissions, deficiencies, ambiguities, conflicts or violations of Applicable Laws caused or created by the Design Consultant or its Sub consultants.
- 2.6.15. Record Documents.**
- .1 The Design Consultant shall review As-Builts prepared and certified by the Contractor and reviewed by the Project Inspector in a format acceptable to the District. If significant discrepancies are noted by the Design Consultant in the course of its review, the Design Consultant shall return the As-Built to the Contractor, and, following corrections by the Contractor, return the As-Built to the Design Consultant and District for further review.
 - .2 Within six (6) weeks after receipt of Contractor’s complete and corrected As-Built, the Design Consultant shall, at no additional cost, draft and furnish to the District Record Documents showing the as-built condition of all portions of the Work (including without limitation the location of electrical, HVAC, plumbing and other lines that may be diagrammatically represented in the Contract Documents), and one (1) annotated hard copy of the Specifications and one (1) flash (thumb) drive in software format acceptable to the District. The revisions and changes reflected in the As-Built shall be coordinated and accurately annotated and cross-referenced by the Design Consultant from the Contractor

prepared As-Built. Each page of the Drawings and the coverage page of the annotated Specification shall prominently bear the words "Record Documents."

- .3 Record Drawings shall be submitted by the Architect to the District in both hard copy and an electronic form acceptable to the District.

2.6.16. Title 24 Reports. Design Consultant and its Sub consultants who are in charge of general observation of the Work shall, in accordance with the provisions of Part 1, Title 24 of the California Code of Regulations, prepare and file periodic verified reports on forms prescribed by DSA affirming that of his/her own personal knowledge (as defined in California Education Code § 81141, *Reports required of architects, engineers and/or inspectors; information required*) the Work performed during the period of time covered by the report has been performed and materials have been used and installed in general compliance with the Drawings and Specifications approved by the DSA for the Project, together with such other detailed statements of fact as DSA may require.

2.6.17. Should the District proceed to perform the Project in multiple phases, Design Consultant may be required to provide all services related to the Construction Phase as set forth in this Section 2.6, and any and all related deliverables as further described herein, for each phase of the Project.

2.7. PROJECT CLOSE-OUT PHASE

2.7.1. Close-Out Documents. The Design Consultant shall compile and assemble the Contractor's Close-Out Documents for delivery to the District, including without limitation, As-Built Drawings, Operations and Maintenance manuals, key schedules, warranties, and all Record Documents required at Close-Out as referenced in Article 2.6.15 herein. The Consultant shall prepare and submit for processing such documentation as required by governmental agencies, including DSA, in connection with completion of the Work of the Project.

2.7.2. Warranty Observation. The Design Consultant shall conduct a review of the Work one month prior to the warranty expiration for the purpose of observing the condition in the Work. Design Consultant shall make written recommendations to the District for the correction of any Defective Work discovered in the course of the Design Consultant's review within fifteen (15) Days after the date of such review. The Design Consultant shall be accompanied by the District during its review of the Work. The number of work hours to complete such review and preparation of written recommendations shall not exceed fifty (50) hours for any single Project, excluding review and preparation necessitated in whole or in part by errors and omissions in the services performed by the Design Consultant or its Sub consultants. Hours in excess thereof shall be compensated as Additional Service only if approved in advance in writing by District.

2.8. INDEPENDENT REVIEWS

2.8.1. This Project is subject to independent design reviews conducted by the District and at the District's expense. The Design Consultant shall participate in these design reviews including without limitation: Constructability Review and/or Value Engineering of the Design Documents.

2.8.2. The Design Consultant shall have an obligation to incorporate into the Design Documents any and all Value Engineering and Constructability Review comments into the Project Design Documents that are approved and accepted by the District, unless doing so would result in a violation of Applicable Laws or the Standard of Care. Except as set forth in Article 3, such changes shall be made with no additional compensation or reimbursement. Should the Design Consultant deem changes would be a violation of Applicable Laws, they shall immediately notify the District in writing citing the code section number and violation.

2.8.3. District shall have the right, but not the obligation, to have an independent cost estimate conducted by an estimator designated by the District and at the District's expense. The Design Consultant shall be available to answer the estimator's questions regarding the design and to attend meetings

with the estimator as reasonably necessary to reconcile the Design Consultant's estimate with the independent estimate.

2.9. PROJECT SCHEDULE

- 2.9.1.** The Design Consultant shall meet the requirements of the Project Schedule, including without limitation the dates for completion of each Phase of the Design Consultant's Basic Services for the Project.
- 2.9.2.** The Design Consultant shall be entitled to an adjustment to the Project Schedule for unavoidable Delays that are: (i) beyond the Design Consultant's control or its responsibility under this Agreement and/or (ii) not caused by the fault, negligence or violation of a provision of this Agreement by Design Consultant or its Sub consultants; provided, however, that as a condition precedent to its right to an adjustment of a Project Schedule, Design Consultant shall have given written notice to the District of the circumstances of such delay within fourteen (14) Days after such circumstances were first observed by Design Consultant or its Sub consultants. Failure to provide such written notice may result in a waiver by Design Consultant of any right to an adjustment to that Project Schedule on account of such circumstances.

ARTICLE 3. ADDITIONAL SERVICES

3.1. LIST OF ADDITIONAL SERVICES

Unless otherwise agreed by District, the following constitutes the list of Additional Services for which Design Consultant is entitled to Additional Services compensation pursuant to Section 5.1.2 of this Agreement. The Additional Services described in this Article 3 are not included in the scope of Design Consultant's Basic Services for the Project. Design Consultant shall notify the District prior to providing any such Additional Services and in no event not later than fifteen (15) Days after it learns of any circumstance (including, without limitation, any direction or request by District) that Design Consultant believes may give rise to performance of Additional Services. The District may in its sole discretion direct the Design Consultant to proceed or not proceed with all or any portion of Additional Services described in Design Consultant's written notice.

- 3.1.1.** Except as set forth in Articles 1 or 2 as part of Basic Services, providing planning surveys, Site evaluations, or environmental studies.
- 3.1.2.** Providing services beyond those provided for in Articles 1 or 2 of this Agreement to investigate existing conditions or facilities, to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the District.
- 3.1.3.** Providing planning, programming and/or educational specification services.
- 3.1.4.** Providing financial feasibility studies or other special studies.
- 3.1.5.** Preparing revisions to the documents during the Schematic Design, Design Development or Construction Documents Phases, when these revisions are (i) necessary to implement changes, additions or deletions to a Project that are requested and approved by the District in writing; (ii) the result of issuance by District of written directives or instructions that conflict with prior written directives or instructions by District (iii) necessitated by the enactment or revision of codes, laws or regulations where such enactment or revision could not have been reasonably foreseen by Design Consultant; or (iv) due to the District's failure to render decisions in a timely manner; provided, however, that under no circumstances shall the Design Consultant be paid Additional Services compensation to the extent due to (a) its or its Sub consultant's errors, omissions, conflicts, ambiguities or violation of applicable laws; or (b) modifications to the Drawings, Specifications or other Design Documents prepared by Design Consultant or its Sub consultants in accordance with

Paragraphs 2.2.4, 2.3.4, 2.4.7 or 2.5.4 to bring the Construction Cost within the Project Construction Budget.

- 3.1.6.** Providing services related to future facilities, systems and equipment that are not intended to be constructed during the Construction Phase.
- 3.1.7.** Providing detailed quantity surveys or inventories of material, equipment and labor.
- 3.1.8.** Making investigations or taking inventories of materials or equipment, or making valuations and detailed appraisals of existing facilities.
- 3.1.9.** Providing analyses of owning and operating costs (except as needed to prepare energy calculations, which are deemed part of Basic Services).
- 3.1.10.** Providing perspective drawings, models and mock-ups, including slides thereof.
- 3.1.11.** Providing services as necessary to correct Defective Work not caused or created by any errors, omissions, conflicts, ambiguities, or violations of Applicable Laws in the Design Documents prepared by Design Consultant or its Sub consultants.
- 3.1.12.** Providing extensive assistance in the selection or utilization of any equipment or system; preparing operation and maintenance manuals; and training personnel for operation and maintenance.
- 3.1.13.** Providing services for the Project after Final Completion of such Project, except as such services that relate to the Warranty Observation Phase described in Section 2.7 of this Agreement.
- 3.1.14.** Providing services in connection with a pending public hearing, mediation, arbitration proceeding, or legal proceeding, except where (i) the Design Consultant is party thereto, or (ii) the Design Consultant is a party to any related proceeding in which Design Consultant is alleged to be responsible for a Loss that is the subject of such pending public hearing, mediation, arbitration proceeding or legal proceeding, or (iii) the Design Consultant is a percipient witness (in which case the Design Consultant shall be entitled to witness fees and costs as allowed by law), or (iv) it is alleged by one or more parties to the pending public hearing, mediation, arbitration proceeding, or legal proceeding that the negligent, reckless or willful acts, omissions or other conduct of Design Consultant or its employees, agents, Sub consultants or representatives have caused or contributed to the claims, damages, and/or demands asserted in the pending public hearing, mediation, arbitration proceeding, for legal proceeding, then such services shall be provided to the District at no cost.
- 3.1.15.** Providing Expert Witness services in connection with a pending public hearing, mediation, arbitration or legal proceeding where Design Consultant is not a named party.
- 3.1.16.** Providing services made necessary by the termination of a Contractor, but only to the extent such services exceed the level of service that would have been provided in the absence of such termination.
- 3.1.17.** Providing services to make revisions in approved Schematic Design, Design Development or Construction Documents due to inaccuracy in any surveys, test data or other information provided by District pursuant to Section 4.2 of this Agreement.
- 3.1.18.** Performance of any design service expressly excluded from a Project Authorization.
- 3.1.19.** Services for the Warranty Observation Phase in excess of those provided for in Section 2.7, above.
- 3.1.20.** Master Planning services regarding the District Projects defined in this Agreement.

- 3.1.21. Preparation of design and documentation for alternate bid or proposal requests proposed by the District.
- 3.1.22. Providing the services of special inspectors unless included in a Project Authorization.
- 3.1.23. Providing contract administration services after the construction contract time has been exceeded through no fault of the Architect.

3.2. DISPUTES

- 3.2.1. **Notice and Waiver of Compensation by Design Consultant.** Except as provided in Paragraph 3.2.2 below, Design Consultant's failure to notify District in writing and secure District's approval of said Additional Services prior to performing Additional Services shall be deemed a waiver of Design Consultant's right to compensation for such Additional Services performed without written authorization.
- 3.2.2. **Disputed Additional Services.** If a dispute arises as to whether any service constitutes an Additional Service or a Basic Service, the Design Consultant will nevertheless promptly perform such services, if requested to do so in writing by the District, in which case neither District's request, Design Consultant's performance nor the acceptance of such disputed services by the District will constitute or be deemed to be a waiver on the part of the District or the Design Consultant of its rights with respect to the appropriate classification of the services rendered.

ARTICLE 4. DISTRICT RIGHTS AND RESPONSIBILITIES

4.1. ADMINISTRATION

- 4.1.1. **Responses.** District shall promptly respond to Design Consultant's submittals and requests for decisions, approvals or information; provided, however, that no failure by District to respond shall entitle Design Consultant to an adjustment of a Project Schedule unless District has failed to respond within seven (7) Days to a written notice by Design Consultant to District expressly stating that a response is overdue and specifically informing District that a response is necessary in order to avoid a delay to a Project Schedule.
- 4.1.2. **Specialty Consultants.** The District shall furnish the services of Specialty Consultants for design reviews and other services which the Design Consultant is not required to provide pursuant to Article 2 of this Agreement.
- 4.1.3. **Revisions by District.** District reserves the right exercised in its sole discretion to revise the Project Budget, Project Construction Budget and Project Schedule. Design Consultant's sole and exclusive right to additional compensation and/or extension of time for such revisions shall be as set forth in this Agreement.

4.2. SURVEYS AND REPORTS

- 4.2.1. **General.** The District shall furnish such structural, mechanical, electrical, chemical, hazardous materials, soils and other tests, inspections and reports as required by Applicable Laws or by the Contract Documents and which are not required to be furnished by the Design Consultant under this Agreement or by the Contractor under the Contract Documents.
- 4.2.2. **Surveys, Legal Restrictions.** If required for the performance of the Design Consultant's services, the District shall furnish a land survey of the Site, giving (as applicable) grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Site; locations, dimensions and floor

elevations pertaining to existing buildings, other improvements and trees; and information in the District's possession concerning available service and utility lines, both public and private.

- 4.2.3. Geotechnical.** The District shall furnish geotechnical data and reports, or employ Specialty Consultants to provide such data or reports, when reasonably deemed necessary by the Design Consultant, including test logs, soil classifications, soil bearing values and other data and information necessary to define subsoil conditions.
- 4.2.4. District Expense.** The services, information, surveys and reports required by this Article 4 shall be furnished at the District's expense.
- 4.2.5. Reliance on Documents Provided by District.** Design Consultant shall be entitled to rely upon the accuracy and sufficiency of the documents provided by District in performing its obligations under this Agreement. In the event that the information contained in such documents is found to be inaccurate, incomplete or insufficient, or in the event that other surveys, data, reports or information, known or unknown, although available to District, were not provided, even if such information if disclosed, would have been material to Design Consultant's performance of this Agreement, District shall have no liability to Design Consultant, other than for payment for authorized Additional Services necessary to correct Design Documents. Design Consultant shall not be entitled to damages for breach of contract.
- 4.2.6. District Consultants.** Except for the Design Consultants retained by the Design Professional, the District shall furnish all legal, accounting, insurance and other consulting services as may be necessary to meet District's needs for the Project.

ARTICLE 5. COMPENSATION

5.1. COMPENSATION.

- 5.1.1.** For designated services, compensation shall be determined in advance by the Design Consultant and District and set forth in an executed Project Authorization.
- 5.1.2.** For Additional Services, unless otherwise agreed upon by the Parties, Design Consultant shall bill based upon the rates as stated on the Design Consultant's Hourly Rate schedule which shall be attached to the Project Authorization. The rates shall remain the same for the duration of each project. Design Consultant shall, if requested by the District prepare a proposal for any additional services and/or adhere to any not-to-exceed limit reasonably requested by the District.

- 5.2. CONSTRUCTION PHASE CHANGES.** The Compensation for the Basic Services for the Project is not subject to adjustment unless there are Changes authorized by the District during the Construction Phase of the Project which are not the result of errors, omissions or other defects in the Design Documents or failures of the Design Consultant or its Sub consultants to timely and completely perform the Basic Services. If services of the Design Consultant or its Sub consultants are required in connection with Changes during the Construction Phase of the Project which do not result from errors, omissions or other defects in the Design Documents or failures of the Design Consultant or its Sub consultants to timely and completely perform the Basic Services, the Compensation will be equitably adjusted by an amount equal to the lesser of eight percent (8%) of the Construction Costs of such Changes or the time of the Design Consultant and/or its Sub consultants reasonably necessary to provide design and related support services for such Changes multiplied by the applicable hourly rate(s) set forth in the Rate Schedule included in the Project Authorization. If a Change during the Construction Phase of the Project is the result of errors, omissions or other defects in the Design Documents or failures of the Design Consultant or its Sub consultants to timely and completely perform the Basic Services, services required of the Design Consultant or its Sub consultants in connection with such Change shall not result in adjustment of the Compensation.

- 5.3. REIMBURSABLE EXPENSES.** The Compensation for Design Consultant's Basic Services for the Project includes all costs and expenses of a non-capital nature reasonably and necessarily incurred by Design Consultant to perform the Basic Services including without limitation expenses for postage, delivery, office supplies, reproduction of plans and prints, photographic film and development and travel to and from the offices of the Design Consultant and its Sub consultants to the Site, the District's Administrative offices and within the counties noted above. Unless expressly authorized in advance by the District, no payment will be made by the District for expenses or costs of any kind, type or nature.
- 5.4. RECORDS.** Accurate and detailed records of Reimbursable Expenses pertaining to the Project shall be maintained in an orderly manner on the basis of generally accepted accounting practices and shall be available at Design Consultant's office and at District's request, shall be brought by Design Consultant for inspection, auditing and/or copying by District and its representatives pursuant to Article 7 of this Agreement.

ARTICLE 6. PAYMENTS

6.1. APPLICATIONS FOR PAYMENT

- 6.1.1. Monthly Applications.** Design Consultant shall submit an invoice, monthly to the District, accompanied by such documentation as required by this Agreement, setting forth in detail the: (i) invoices, shall be based upon the percentage of work performed in the previous month and shall not exceed the total portion of the Compensation apportioned set forth in paragraph 5.1, above; (ii) Progress payments for Basic Services shall be based on the percentage of Basic Services performed in the previous month and shall not exceed the allocated percentage for each phase of the Basic Services set forth in paragraph 6.2.1, below; (iii) compensation for authorized Additional Services rendered; and (iv) authorized Reimbursable Expenses incurred and paid during the previous month.
- 6.1.2. Accompanying Documentation.** Invoices submitted for payment shall be accompanied by a detailed summary description of the progress of performance to date, (a) a description of the status of completion of Basic Services by percent complete; (b) a description of the percent complete of any Additional Services and summary of hours worked; (c) Reimbursable Expenses incurred during the previous 60-Day period of time accompanied with backup documentation, invoices, receipts and other documentation reasonably requested, by the District to verify the amounts of Reimbursable Expenses for which reimbursement is sought for the Invoice submitted for payment.

6.2. PAYMENTS

Payments of undisputed sums due shall be made by District monthly within thirty (30) Days after receipt by the District of a proper and timely Invoice.

6.3. PAYMENT DISPUTES

Notwithstanding any provision of this Agreement to the contrary, if the District shall, in good faith, dispute the amount due the Design Consultant under any billing invoice submitted by the Design Consultant under this agreement, pursuant to Civil Code § 3320(a), (*Contracts for public works of improvement; progress and final retention payments to prime design professionals; dispute; penalty; nature and application*), the District may withhold from payment to the Design Consultant an amount not to exceed one hundred and fifty percent (150%) of the disputed amount.

In the event of any good faith dispute as to whether a particular payment or a portion of a particular payment is owed or not owed by District to Design Consultant under this Agreement, District shall have the right to do either of the following: (i) make all or part of such disputed payment to Design Consultant without prejudice to District's right to contest the amount so paid; or (ii) withhold from payment to the Design Consultant an amount not to exceed one hundred and fifty percent (150%) of the disputed amount. Pursuant to Civil Code § 3320(a), should District withhold all or a portion of any payment invoiced by Design Consultant, District shall so notify Design Consultant in writing of the reasons therefore. From and after

Design Consultant's receipt of such notice, District and Design Consultant shall use their good faith efforts to resolve their dispute within 60 Days, provided however, that if the dispute is not resolved, District may continue to hold amounts in dispute and Design Consultant shall not be entitled to terminate this Agreement or suspend its services hereunder on account of such nonpayment. If District chooses to withhold payments under Clause (ii) of this Section 6.3 and if it is subsequently determined that District owes an additional payment to Design Consultant, District shall pay such amount to Design Consultant plus a penalty of 1 1/2 percent for the improperly withheld amount, in lieu of any interest otherwise due, per month for every month that payment is not made. In any action for the collection of amounts withheld in violation of this section, the prevailing party is entitled to his or her reasonable attorney's fees and costs. If District chooses to proceed under Clause (i) of this Section 6.3 and it is subsequently determined that District overpaid Design Consultant, Design Consultant shall refund to District the amount of such payment plus 1 1/2 percent of the amount of the overpayment in lieu of any interest otherwise due, per month from the date of such overpayment and for every month until refunded.

ARTICLE 7. DESIGN CONSULTANT'S RECORDS AND FILES

7.1. RECORDS

- 7.1.1. Maintenance of Project Books and Records.** Design Consultant and its Sub consultants shall maintain complete and accurate books and records with respect to services, costs, expenses, receipts and other information required by the District to verify the scope or charges for any services provided under this Agreement. Design Consultant and its Sub consultants shall maintain such records in sufficient detail to permit the District, District's independent auditors, or a designee of any of them, to thoroughly evaluate and verify the nature, scope, value and charges for services performed under this Agreement. All such books and records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Such records shall be kept separate from other documents and records unrelated to the Project for a period of four (4) years after the later of termination of this Agreement or Final Completion of the Project.
- 7.1.2. Audit of Records.** The District, District's independent auditors, or their designees shall have the right to examine and to audit books, records, documents, and other evidence sufficient to reflect properly all costs and expenses claimed to have been incurred in Design Consultant's and its Sub consultants' performance of this Agreement, including, without limitation, verification of the amounts and tasks performed for all time expended that is charged to District on an hourly basis. Such right to audit shall include inspection at all reasonable times at the Design Consultant's offices or facilities. In addition, Design Consultant shall, at no cost or expense to the District, furnish facilities and cooperate fully with the audit. Upon request, Design Consultant shall provide reproducible copies of books, records and other documents in the possession of Design Consultant and its Sub consultants that are applicable to this Agreement for reproduction by the District, or their designee.
- 7.1.3. Audit Reimbursement.** To the extent that an audit by the District, District's independent auditors, or their designees disclose excess charges inaccurately or improperly attributed to this Project by the Design Consultant and such audit is subsequently determined to be correct, Design Consultant agrees to remit the amount of the overpayment to the District, together with interest thereon at a rate that is the lesser of ten percent (10%) per annum or the maximum rate allowable by law, within thirty (30) Days after demand. If such audit discloses an overcharge of five percent (5%) or more of the total amount invoiced to District for any year audited, and such audit is subsequently determined to be correct, Design Consultant shall pay the actual cost of such audit, which cost, in the case of audits conducted by District using in house staff, shall be computed on the basis of two (2) times the direct payroll of the audit staff completing the audit and audit report.

- 7.1.4. Privileged Communications.** Design Consultant acknowledges that in the course of its services under this Agreement it will be necessary for Design Consultant or its Sub consultants to communicate with the District's attorneys, including special legal counsel, or receive or perform work at the request of District's counsel, and that such work product and communications shall be protected by the attorney-client and attorney work product privileges and shall be maintained in confidence by Design Consultant and its Sub consultants, except as authorized in writing by District's counsel, or designee.
- 7.1.5. Sub consultants.** Design Consultant shall include the provisions of this Section 7.1 in all contracts it enters into with Sub consultants.

ARTICLE 8. TERM; TERMINATION OF AGREEMENT

8.1. TERM.

The Term of this Agreement shall commence upon the District and the Design Consultant each executing a counterpart copy hereof, delivery of an executed counterpart copy hereof to the other and ratification of this agreement by the District's Board of Trustees ("Term"). This Agreement shall be in effect unless terminated prior thereto under the provisions of this Article 8. In the event that Project construction is not completed or the District shall not have issued Final Payment to the Contractor as of the Termination Date through no fault or neglect of Design Consultant, or its Sub consultants, the Termination Date shall be extended and Basic Services provided by Design Consultant following the Termination Date shall be in accordance with the Rate Schedule attached to the Project Authorization. If Project construction is not completed by the Termination Date and delayed completion of Project construction is caused in whole or in part by: (a) the acts, omissions or other conduct of the Design Consultant or any Sub consultant; (b) delayed review and/or approval by DSA or other government authorities; or (c) acts of God, the Termination Date shall be extended commensurate with the number of calendar Days attributed to (a), (b) and/or (c) above ("the Extended Duration"). During the Extended Duration, the Design Consultant shall continue to provide or perform the Basic Services without adjustment of the Compensation.

8.2. TERMINATION BY DISTRICT

- 8.2.1. For Cause.** If District determines that Design Consultant has failed to perform in accordance with the terms and conditions of this Agreement, District may terminate all or part of the Agreement (or of any Project) for cause. This termination shall be effective if Design Consultant does not begin to cure its failure to perform within ten (10) Days (or longer, if authorized in writing by District) after receipt of a notice of intention to terminate from District specifying the failure in performance. If a termination for cause does occur, District will have the right to withhold monies otherwise payable to Design Consultant resulting from the Design Consultant's cited failure to perform. If the District incurs additional costs, expenses or other damages due to the negligent failure of Design Consultant to properly perform pursuant to this Agreement, these costs, expenses or other damages shall be deducted from the amounts withheld. Should the amounts withheld exceed the amounts deducted; the balance will be paid to Design Consultant upon Final Completion of the Project. If the costs, expenses or other damages incurred by District exceed the amounts withheld, Design Consultant shall be liable to District for the difference. The provisions of this Paragraph 8.2.1 are in addition to, and not a limitation upon, any other rights and remedies of District under law or in equity.
- 8.2.2. For Convenience.** District may terminate or suspend performance of all or part of this Agreement (or of any Project) for convenience and without cause at any time upon ten (10) Days' written notice to Design Consultant, in which case District will pay Design Consultant as provided in Article 5 for all Basic Services and authorized Additional Services performed, and all authorized Reimbursable Expenses incurred and paid (excepting any disputed amounts), under and in accordance with this Agreement up to and including the date of termination. Such payment shall be Design Consultant's sole and exclusive compensation and District shall have no liability to Design Consultant for any

other compensation or damages, including without limitation, anticipated profit, prospective losses or consequential damages, of any kind.

8.2.3. Deletion of Services. In the event of termination by District, for cause or convenience, of a portion of the Project, then the Design Consultant's fixed or maximum compensation for Basic Services for the portions of Project or services not so terminated shall be equitably adjusted to reflect the resulting reduction in Design Consultant's scope of Basic Services.

8.3. TERMINATION BY DESIGN CONSULTANT

8.3.1. Termination of the Agreement. Design Consultant may terminate this Agreement:

- .1 If District fails to make any undisputed payment to Design Consultant when due in accordance with this Agreement and such failure remains uncured for thirty (30) Days after written notice to District of such default and of Design Consultant's intent to terminate; or
- .2 If the Project is abandoned by District for more than sixty (60) consecutive Days, Design Consultant may terminate this Agreement upon thirty (30) Days' notice to District, provided District does not reactivate the Project within such thirty (30) Day period. If the Project is reactivated and this Agreement is still in full force and effect, Design Consultant's compensation and time for performance shall be equitably adjusted to provide for reasonable expenses incurred by Design Consultant and delays which are directly attributable to the interruption and resumption of service.

8.3.2. Payment for Services. In the event of a termination of this Agreement by Design Consultant in accordance with this Section 8.3, District's obligation shall be to pay Design Consultant an amount for its Basic Services, Additional Services and Reimbursable Expenses calculated in accordance with Paragraph 8.2.2 of this Agreement. Such payment shall be Design Consultant's sole and exclusive compensation and District shall have no further liability or obligation to Design Consultant for any other compensation or damages, including, without limitation, anticipated profit, prospective losses or consequential damages, of any kind.

ARTICLE 9. INDEMNIFICATION AND INSURANCE

9.1. INDEMNIFICATION

To the fullest extent permitted by law, Design Consultant agrees to defend, indemnify and hold harmless, District, its Board of Trustees, and each of their respective members, officers, employees, agents and volunteers ["Indemnitee(s)"], through legal counsel reasonably acceptable to District, from any and all losses, liabilities, claims, damages and costs to the extent that the claims against Indemnitee(s) arise out of or are attributable, in whole or in part, to the negligence, recklessness, or willful acts or omissions of Design Consultant or its Sub consultants, or their respective employees, agents, representatives or independent contractors. The Design Consultant's obligation to pay the Indemnitees' attorneys' fees and costs shall be limited to the reimbursements for attorney fees and costs incurred by Indemnitees in defending actions after a final determination of and to the extent the claims arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the Design Consultant and/or its Sub Consultants. The foregoing notwithstanding, the limitation to Design Consultant's reimbursement of attorney fees and costs to the Indemnitees shall not act as a limitation of California Civil Code § 2778 or § 2782.8 which are incorporated herein by reference in their entirety. Further, the limitation to Design Consultant's reimbursement of attorney fees and costs to the Indemnitees shall not act as a limitation of the Design Consultant's obligation to provide services pursuant to Paragraph 3.1.15, above. The Design Consultant's obligations hereunder shall survive the Design Consultant's completion of services and obligations hereunder or the earlier termination of the Agreement until any such claim, demand, loss, responsibility or liability covered by the provisions hereof is barred by the applicable Statute of Limitations.

The Indemnitees shall be entitled to the defense and indemnification provided for hereunder except to the extent the loss, liability, claim, damage or cost is in part caused or contributed to by the acts or omissions of an Indemnitee; provided, however, that nothing contained herein shall be construed as obligating Design Consultant to indemnify any Indemnitee for any loss, liability, claim, damage or cost to the extent resulting from that Indemnitee's negligence or willful misconduct.

To the fullest extent permitted by law, the District agrees to defend, indemnify and hold harmless, the Design Consultant, from any and all losses, liabilities, claims, damages and costs arising out of or attributable, in whole or in part, to the negligent or willful acts, omissions, errors and/or other conduct of the District, and those of the District's Trustees, officers, employees, agents and volunteers arising from the Project that is subject to this Agreement; provided, however, that nothing contained herein shall be construed as obligating District to indemnify any Design Consultant for any loss, liability, claim, damage or cost to the extent resulting from that Design Consultant's, or its Sub consultants', or their respective employees', agents', representatives' or independent contractors', negligence or willful misconduct, omissions, errors and/or other conduct. The District's obligation to pay Design Consultant's attorneys' fees and costs shall be limited to the reimbursements for attorney fees and costs incurred by the Design Consultant in defending actions to the extent caused by the negligence, recklessness or the willful misconduct of the District.

9.2. INSURANCE

9.2.1. Basic Insurance Requirements. Prior to commencing Work, Design Consultant and each of its Sub consultants shall procure and maintain insurance at Design Consultant's and its Sub consultant's, as applicable, own cost and expense against claims for injuries to persons or damages to property which may arise from or in connection with the performance of services by Design Consultant, its agents, representatives, employees, or Sub consultants. Contractor engaged for a Project referenced in this Agreement shall be responsible for obtaining and maintaining Builder's Risk insurance to remain in place throughout the construction phase.

- .1 Without in any way affecting the indemnity provided in or by Section 9.1, Design Consultant shall secure before commencement of the Work the types and amounts of insurance specified in this Section 9.2.
- .2 Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII unless otherwise approved by District.
- .3 Each insurance coverage required by this Section 9.2 shall be endorsed to state that coverage shall not be canceled except after thirty (30) Days prior written notice has been given to District in accordance with the notice provisions of this Agreement.

9.2.2. Minimum Limits of Insurance. Design Consultant and each of its Sub consultants (unless District shall agree in writing for a different Limit of Insurance for certain Sub consultants) shall obtain insurance of the types and in the amounts described below:

- .1 Commercial General Liability Insurance (CGL) with a limit of not less than \$1,000,000 each occurrence/\$2,000,000 in the annual aggregate.
- .2 Any Automobile Liability Insurance with a limit of not less than \$2,000,000 each accident.
- .3 Professional Liability (Errors and Omissions) Insurance with a limit not less than \$2,000,000 per claim/\$4,000,000 in the annual aggregate.
- .4 Workers' Compensation Insurance as required by the State of California.
- .5 Employer's Liability Insurance in the amount of \$1,000,000 per accident for bodily injury or disease.

9.2.2.1. Minimum Scope of Insurance.

- .1 CGL insurance shall be written on Insurance Services Office form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and explosion, collapse and underground hazards.
- .2 Business Automobile Insurance shall cover liability arising out of any automobiles (including owned (if any), hired and non-owned automobiles). Coverage shall be written on Insurance Services Office form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. Unless waived by the District in writing, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.
- .3 If the Professional Liability Insurance policy is written on a claims made basis, it shall be maintained continuously for a period of no less than three (3) years after Final Completion of the Project, and two (2) additional years if such coverage is available to Design Consultant. The "retro date" must be shown and must be before the date of execution of this Agreement by District and Design Consultant.

9.2.3. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions in excess of One Hundred Thousand dollars/no cents (\$100,000.00) must be declared to and approved by District, which approval may be granted or withheld in the sole discretion to District. In the event that District does not approve of such deductible or self-insured retentions, then at the option of District, exercised in its sole discretion, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects District, its officers, officials, employees or volunteers or (ii) Design Consultant shall provide a financial guarantee satisfactory to District guaranteeing payment of any losses and related investigation, claim administration and defense expenses.

9.2.4. Other Insurance Provisions. The Commercial General Liability and Automobile Liability policies required by this Agreement are to contain, or be endorsed to contain, the following provisions:

- .1 District, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to (i) liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the insured, (ii) liability arising out of services, work or operations performed by or on behalf of Design Consultant and its Sub consultants including materials, parts or equipment furnished in connection with such services, work or operations and (iii) liability for occurrences, acts or events covered by the Design Consultant's CGL policy, using the Insurance Services Office additional insured endorsement form CG 20 10 or a substitute providing equivalent coverage. District and other additional insureds mentioned in this Paragraph 9.2.4.1 shall not, by reason of their inclusion as additional insured, become liable for any payment of premiums to carriers for such coverage.
- .2 For any claims related to this Project, insurance coverage shall be primary as it respects to District, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by District, its officers, officials, employees or volunteers shall be in excess of insurance required by this Agreement and shall not contribute with it.

9.2.5. Waiver of Subrogation. For Commercial General Liability, Workers' Compensation, and Employer's Liability insurance the insurer shall agree to waive all rights of subrogation against District, its officers, officials, employees, and volunteers for and losses arising from activities and operations of an insured in the performance of services under this Agreement.

- 9.2.6. Lapse in Coverage.** If Design Consultant or any Sub consultant, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. District, at its sole option, may terminate this Agreement and obtain damages from Design Consultant resulting from said breach. Alternatively, District may purchase such coverage (but has no obligation to do so), and without further notice to Design Consultant, District may deduct from sums due to Design Consultant any premium costs advanced by District for such insurance.
- 9.2.7. Verification of Insurance.** Design Consultant shall furnish District with original certificates and amendatory endorsements effecting coverage required by this Section 9.2. The certificates and endorsements for each policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements shall be on the District's forms or forms approved by the District or reasonably commercially available. All certificates and endorsements are to be received and approved by District before work under this Agreement commences. District reserves the right to require complete, certified copies of all required insurance policies at any time, including endorsements affecting the coverage required by these specifications. District shall have the right to retain a copy of such policy provided that, reasonable steps will be taken by District to restrict review of such policies to representatives of District.
- 9.2.8. Duration of Coverage.** The insurance coverage required herein shall be maintained without interruption, for a period of three (3) years after Final Completion of the Work of the Project.
- 9.2.9. Sub consultants.** Sub consultants shall be required by their sub consulting agreements to maintain insurance on the same terms and under the same coverage as required of Design Consultant under this Agreement.

ARTICLE 10.

DISPUTE RESOLUTION

- 10.1. RESOLUTION OF CLAIMS.** All claims, disputes or other matters in controversy between the Design Consultant and the District arising out of or pertaining to the Project or this Agreement (hereinafter "Claims") shall be resolved by the Parties in accordance with the provisions of this Article 10, in lieu of any and all rights under the law that either Party may have to have its rights adjudged by a trial court or jury. All Claims shall be subject to the Claims Dispute Resolution Process set forth in this Article 10, which shall be the exclusive recourse of Design Consultant and District for determination and resolution of Claims.
- 10.2. RESOLUTION OF OTHER DISPUTES.** Disputes between District and Design Consultant that do not constitute Claims shall be resolved by way of an action filed in the Superior Court of the State of California, County Sacramento, and shall not be subject to the Claims Dispute Resolution Process.
- 10.3. CLAIMS DISPUTE RESOLUTION PROCESS**
- 10.3.1. Continuation of Design Consultant Services.** Except in the event of the District's failure to make undisputed payment of the Compensation due Design Consultant for the Project, notwithstanding any disputes between District and Design Consultant hereunder or in connection with the Project, Design Consultant and District shall each continue to perform their respective obligations hereunder; including the obligation of the Design Consultant to continue to provide and perform services hereunder pending a subsequent resolution of such disputes.
- 10.3.2. Direct Negotiation.** Designated representatives of District and Design Consultant shall meet as soon as possible (but not later than ten (10) Days after receipt of a written Claim) in a good faith effort to negotiate a resolution to the Claim. Each party shall be represented in such negotiations by an authorized representative with full knowledge of the details of the Claim or defenses being asserted by such party, and with full authority to resolve such Claim then and there, subject only to the District's right and obligation to obtain Board of Trustees' approval of any agreed settlement or

resolution. If the Claim involves an assertion of a right or claim by a Sub consultant against Design Consultant that is in turn being asserted by Design Consultant against District, then such Sub consultant shall also have a representative attend such negotiations, with the same authority and knowledge as just described. Upon completion of the meeting, if the Claim is not resolved, the parties may either continue the negotiations or either party may declare negotiations ended. All discussions that occur during such negotiation and all documents prepared solely for the purpose of such negotiations shall be confidential and privileged pursuant to California Evidence Code §§ 1119 and 1152.

10.3.3. Mandatory Mediation. If the Claim remains unresolved after direct negotiations, all claims, disputes and other matters in controversy between the Design Consultant and the District arising out of or pertaining to this Agreement shall be submitted for resolution by non-binding mediation. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the District or the Design Consultant commencing arbitration proceedings pursuant to Paragraph 10.3.4 below.

10.3.4. Government Code Claim Requirements. Pursuant to Government Code § 930.6, any claim, demand, dispute, disagreement or other matter in controversy asserted by the Design Consultant against the District for money or damages, including, without limitation, a Demand for Arbitration, shall be deemed a "suit for money or damages" and shall be subject to the provisions of Government Code §§ 945.4, 945.6 and 946. Notwithstanding the resolution of disputes pursuant to the arbitration provisions set forth in this Paragraph 10.3.4, any claim, demand, dispute, disagreement or other matter in controversy between the Design Consultant and the District shall first be presented to the District and acted upon or deemed rejected by the District in accordance with Government Code § 900, *et seq.*, as an express jurisdictional condition precedent to the Design Consultant's commencement of arbitration proceedings or litigation in any other forum.

10.3.5. Arbitration. All claims, disputes or other matters in controversy between Design Consultant and District arising out of or pertaining to this Agreement which are not fully resolved through the mandatory mediation set forth in Paragraph 10.3.3 above shall be settled and resolved by binding arbitration conducted under the auspices of the AAA Construction Industry Arbitration Rules in effect at the time of the filing of a Demand for Arbitration, as modified herein. The award rendered by the Arbitrator(s) shall be final and binding upon the District and the Contractor and shall be supported by law and substantial evidence pursuant to California Code of Civil Procedure § 1296. Any written arbitration award that does not include findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296 and Rule R-47 of the AAA Construction Industry Arbitration Rules shall be invalid and unenforceable. The District and Contractor hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§ 1286.4 and 1296, vacate the award if, after review of the award, the Court determines either that the award is not supported by substantial evidence or that it is based on an error of law. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure § 1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference. If any claim or dispute is asserted by the Contractor, the Construction Manager or the District relating to the Project and arising in whole or in part out of this Agreement, the services provided by or through the Design Consultant hereunder or the Instruments of Service prepared by or through the Design Consultant, Design Consultant and District agree that any arbitration proceedings initiated between Design Consultant and District hereunder shall be consolidated with any arbitration proceedings initiated in connection with such other claim or dispute with the Design Consultant, or the Contractor, the Construction Manager. Any arbitration hereunder shall be conducted in the AAA Regional Office closest to the Site.

ARTICLE 11. MISCELLANEOUS

11.1. NON-DISCRIMINATION IN SERVICES

11.1.1. Design Consultant shall not discriminate in the provision of services hereunder because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability in accordance with the requirements of Applicable Laws. For the purpose of this Section 11.1, discrimination in the provision of services may include, but is not limited to the following:

- .1 Denying any person any service or benefit or the availability of a facility.
- .2 Providing any service or benefit to any person which is not equivalent, or in a non-equivalent manner or at a non-equivalent time, from that provided to others.
- .3 Subjecting any person to segregation or separate treatment in any manner related to the receipt of any service.
- .4 Restricting any person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit.
- .5 Treating any person differently from others in determining admission, enrollment, eligibility, membership, or any other requirement or condition which persons must meet in order to be provided any service or benefit.

11.1.2. Design Consultant shall ensure that intended beneficiaries of this Agreement are provided services without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability.

11.1.3. Design Consultant shall establish and maintain written procedures under which any person, applying for or receiving services hereunder, may seek resolution from Design Consultant of a complaint with respect to any alleged discrimination in the provisions of services by Design Consultant's personnel. At any time any person applies for services under this Agreement, he or she shall be advised by Design Consultant of these procedures. A copy of such procedures shall be posted by Design Consultant in a conspicuous place, available and open to the public, in each of Design Consultant's facilities where services are provided hereunder.

11.2. NOTICE FORM AND DELIVERY All notices, demands, or requests to be given under this Agreement shall be given in writing and conclusively shall be deemed received when received in any of the following ways:

- (i) on the date delivered if delivered personally;
- (ii) on the third (3rd) business Day after the deposit thereof in the United States mail, first class postage prepaid, and addressed as hereinafter provided;
- (iii) on the date it is accepted or rejected if sent by certified mail.
- (iv) by email if agreed upon by the Parties in writing.

11.3. Notice Recipients. All notices, demands or requests shall include the Contract Number, Project name, and date of this Agreement, and shall be addressed to the parties as follows:

If to District:

Cotati-Rohnert Park Unified School District
 Attention: Josh Savage, Executive Director
 of Facilities, Maintenance and Operations
 7165 Burton Ave
 Rohnert Park, CA 94928

If to Design Consultant:

[[to be inserted]]

- 11.4. GOVERNING LAW; INTERPRETATION.** This Agreement shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against the District or Design Consultant.
- 11.5. NUISANCE.** Design Consultant shall not maintain, commit or permit the maintenance or commission by its personnel of any nuisance in connection with the performance of services under this Agreement.
- 11.6. HAZARDOUS SUBSTANCES.** If Design Consultant becomes aware that a Hazardous Substance is on Site, or on a campus related to the Project that has not been previously identified as requiring remediation or other action, the Design Consultant shall immediately notify the District in writing describing in detail the conditions encountered. Design Consultant's obligation hereunder shall be limited to reporting Hazardous Substances of which Design Consultant or its Sub consultants acquire actual knowledge. Design Consultant shall not have an affirmative duty to identify or locate any Hazardous Substance.
- 11.7. WAIVER.** Provisions of this Agreement may be waived by District only in writing and signed by the Superintendent or designee stating expressly that it is intended as a waiver of specified provisions of the Agreement. A waiver by either party to this Agreement of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein whether of the same or a different character.
- 11.8. NO THIRD PARTY RIGHTS.** Except for the indemnity and insurance requirements of Article 9 herein, nothing contained in this Agreement is intended to make any person or entity who is not a signatory to this Agreement a third party beneficiary of any right, obligation or cause of action created by this Agreement, by operation of law, or conduct of the parties.
- 11.9. CUMULATIVE RIGHTS; NO WAIVER.** Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by District or Design Consultant hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default by the other.
- 11.10. ENTIRE AGREEMENT.** This Agreement represents the entire Agreement with District and Design Consultant for furnishing of services to the Project and supersedes all prior negotiations, representations or agreements, either written or oral, and may be amended only by written instrument signed by both District and Design Consultant, and formally approved or ratified by the Board of Trustees.
- 11.11. SEVERABILITY.** In case any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of all remaining provisions shall not be affected.
- 11.12. SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon District and Design Consultant and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any monies due or to become due hereunder, nor any claim hereunder, may be assigned by Design Consultant without the prior written consent and approval of District, which may be granted or withheld in District's sole discretion.
- 11.13. CONFIDENTIALITY.** Design Consultant shall treat all confidential information and data identified as confidential and furnished to it by District or any other Project Team member or otherwise obtained or prepared by Design Consultant concerning the Project as strictly confidential and shall not disclose any of the same to any other person or entity unless required to do so in connection with Design Consultant's performance of this Agreement or any governmental filings or applications. Design Consultant shall not engage in or permit any public references or statements to the Project, District or Design Consultant's services hereunder, including, without limitation, referring to the same in advertising or promotional brochures or materials or granting interviews to broadcast, print or other media, without the prior written

consent of District, which may be granted or withheld in the sole discretion of the District. The provisions of this Article 11.13 shall survive any termination of this Agreement.

- 11.14. INDEPENDENT CONTRACTOR.** Design Consultant is and shall at all times remain as to the District a wholly independent contractor. Neither the District nor any of its agents shall have control over the conduct of Design Consultant or any of Design Consultant's officers, agents or employees, except as herein set forth. Design Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the District.
- 11.15. FAIR EMPLOYMENT PRACTICES/EQUAL OPPORTUNITY ACTS.** In the performance of this Agreement, Design Consultant shall comply with all applicable provisions of the California Fair Employment Practices Act (California Government Code §§ 12940-48) and the applicable equal employment provisions of the Civil Rights Act of 1964 (42 U.S. C. 200e -217), whichever is more restrictive.
- 11.16. PERMITS AND LICENSES.** Design Consultant, at its sole expense, shall obtain and maintain during the term of this Agreement, all required business and professional permits, licenses and certificates necessary for Design Consultant to perform its services.
- 11.17. CONFLICTS OF INTEREST.** Design Consultant agrees not to accept any employment or representation during the term of this Agreement which is or may likely make Design Consultant "financially interested" (as provided in California Government Code §§ 1090 and 87100) in any decision made by the District on any matter in connection with which Design Consultant has been retained pursuant to this Agreement.
- 11.18. MARGINAL HEADINGS; CAPTIONS. MARGINAL HEADINGS; CAPTIONS.** The titles of the various Paragraphs of the Agreement are for convenience of reference only and are not intended to and shall in no way enlarge or diminish the rights or obligations of Design Consultant and District hereunder.
- 11.19. EXHIBITS.** The following Exhibits are attached hereto and incorporated herein by this reference
- Exhibit "A" - Sample Project Authorization
Exhibit "B" - Certification Re Financial Relationship Disclosure (Design Consultant)
Exhibit "C" – Iran Contracting Certification

11.20. DEFINITIONS

- 11.20.1. Acceptance.** The point that the Work is accepted by the Board of Trustees. Acceptance shall not constitute evidence or confirmation of Substantial Completion or Final Completion if in fact the Work is not Substantially Complete or Finally Complete on the date of such Acceptance.
- 11.20.2. Addendum, Addenda.** Written or graphic information (including, without limitation, Drawings or Specifications) prepared and issued prior to the receipt of the Contractor's Bid for the Project, which modify or interpret the Bid Documents by additions, deletions, clarifications or corrections.
- 11.20.3. Applicable Laws.** All applicable federal, state and municipal laws, statutes, building codes, ordinances and regulations of Governmental Authorities having jurisdiction over the Project, Work, Site, District, Design Consultant, including, without limitation, Environmental Laws and all ordinances, rules and regulations enacted by the District.
- 11.20.4. As-Built.** The documents prepared by Contractor, and subject to review and reasonable verification and approval by Design Consultant, showing the condition of the Work of the Project as actually built, including, without limitation, the locations of mechanical, electrical, plumbing, HVAC or similar portions of the Work that are shown diagrammatically in the Contract Documents.

- 11.20.5. Bid Documents.** The collection of documents prepared and issued for the purpose of soliciting Bids or proposals for construction of Work.
- 11.20.6. Change Order.** A written instrument signed in accordance with the requirements of the General Conditions of a construction contract, describing an adjustment in the Contract Sum or Contract Time, or both. The term "Change Order" encompasses both mutually executed and unilaterally issued Change Orders.
- 11.20.7. Construction Contract.** A written contract executed between District and Contractor for construction of a portion or all of the Work of the Project or a collection of Projects.
- 11.20.8. Construction Costs.** The total costs to construct those elements of the Project designed or specified by Design Consultant. Construction Costs do not include any of the following: (i) the cost of professional services to be rendered by Design Consultant, Sub consultants, Specialty Consultants, Construction Manager (ii) land acquisition costs; (iii) finance costs; (iv) District's administrative costs; and (v) legal fees and costs.
- 11.20.9. Contract Documents.** Without limitation, the collection of documents that are to be the Contract Documents governing a Contractor's performance of the Work of the Project.
- 11.20.10. Contract Time.** The total number of Days set forth in a Construction Contract within which Substantial and/or Final Completion of the Work of the Project must be achieved by Contractor, including approved extensions of time permitted under the terms of the Contract Documents.
- 11.20.11. Contractor.** An individual or firm under contract with District to serve as the general contractor for construction of all or a portion of the Work of the Project; may also be referred to as "Separate Contractor" where multiple trade contracts will be utilized for the completion of the Project.
- 11.20.12. Day.** Whether capitalized or not, unless otherwise specifically provided, means calendar Day, including weekends and legal holidays.
- 11.20.13. Defective Work.** Work by a Contractor that is unsatisfactory, faulty, omitted, incomplete, deficient or does not conform to Applicable Laws, the Contract Documents, the directives of District, Design Consultant or the Project Inspector or the requirements of any inspection, reference standard, test, code or approval specified in the Contract Documents.
- 11.20.14. Delay.** Whether capitalized or not, includes any circumstances involving disruption, hindrance or interference in the performance of the Work of the Project.
- 11.20.15. Design and Construction Project Team.** The following Project Team members: District, Project Inspectors, Contractors, Subcontractors, Design Consultants, Sub-consultants, Specialty Consultants and Separate Contractors.
- 11.20.16. Design Costs.** The costs to District for conceptual, schematic, design development, construction documents and construction administration services required for completed design, engineering, administration and management by Design Consultant and Specialty Consultants.
- 11.20.17. Design Documents.** All plans, drawings, tracings, specifications, programs, reports, calculations, models and other material containing designs, specifications or engineering information prepared by Design Consultant and Specialty Consultants including, without limitation, computer aided design materials, electronic data files, files and paper copies.
- 11.20.18. Drawings.** The graphic and pictorial portions of the Contract Documents prepared by Design Consultant and other Specialty Consultants showing the design, location and dimensions of the Work, including plans, elevations, details, schedules and diagrams. The term "Drawings" may be used interchangeably with "Plans."

- 11.20.19. Environmental Laws.** Without limitation, any applicable federal, state or local laws, ordinances or regulations relating to the environment, health and safety, Hazardous Substances (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof) or to industrial hygiene or the environmental conditions on, under or about the Site, including, without limitation, soil, groundwater and indoor and ambient air conditions, including, without limitation, the following: Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601-9675), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901-6992k), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251-1307), the Clean Air Act, as amended (42 U.S.C. §§ 7401-7671 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601-2692), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), 15 U.S.C. §§ 2681-2692 and also 42 U.S.C. §§ 4851-4856, the Lead Based Paint Poisoning Prevention Act, 42 U.S.C. §§ 4821-4846, the Indoor Radon Abatement Act, 15 U.S.C. §§ 2661-2671, and the Safe Drinking Water Act Amendments of 1996, Pub L. No. 104-182, 110 Stat. 1613 (1996) and all similar federal, state and local statutes and regulations.
- 11.20.20. ENR Index.** The construction cost index as published in the Engineering News-Record by the McGraw-Hill Publishing Company or its successors.
- 11.20.21. Estimate of Project Construction Costs.** Design Consultant's written estimate of the Construction Costs for the Project.
- 11.20.22. Field Order.** A written instrument signed in accordance with the requirements of the General Conditions that directs a Contractor's performance of Work in one of the following categories: (i) over which there is a dispute as to whether the Work is or is not extra work; or (ii) involving extra work which is to be performed without adjustment to the Contract Sum or Contract Time or before agreement on all terms of a Change Order.
- 11.20.23. Final Completion, Finally Complete.** The terms "Final Completion" and "Finally Complete" refer, with respect to the Work of the Project or a portion of the Work designated by District, to the point at which: (i) the entirety of such Work is fully completed, including all minor corrective, or "punch list," items; (ii) all documents required to be submitted by Contractor as a condition of Substantial or Final Completion of such Work have been submitted, (including, without limitation, warranties, guarantees and other Record Documents); (iii) the entirety of such Work and related areas of the Site have been thoroughly cleared of all construction debris and cleaned in accordance with the requirements of the Contract Documents, including, but not necessarily limited to, the following: removal of temporary protections; removal of marks, stains, fingerprints and other soil and dirt from painted, decorated and natural-finished woodwork and other Work; removal of spots, plaster, soil and paint from ceramic tile, marble and other finished materials; all surfaces, fixtures, cabinet work and equipment are wiped and washed clean and in an undamaged, new condition; all aluminum and other metal surfaces are cleaned in accordance with recommendations of the manufacturer; and all stone, tile and resilient floors are cleaned thoroughly in accordance with manufacturer's recommendations and buff dried by machine to bring the surfaces to sheen; and (iv) all conditions set forth in the Contract Documents for Substantial and Final Completion of such Work have been, and continue to be, fully satisfied.
- 11.20.24. Hazardous Substance.** The term "Hazardous Substance" refers to, without limitation, the following: (i) any chemical, material or other substance defined as or included within the definition of "hazardous substances," "hazardous wastes," "extremely hazardous substances," "toxic substances," "toxic material," "restricted hazardous waste," "special waste" or words of similar import under any Environmental Law, including, without limitation, the following: petroleum (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs") and PCB-containing materials, whether or not occurring naturally, or (ii) any substance that because of its quantity, concentration or physical or chemical

characteristics poses a significant present or potential hazard to human health and safety or to the environment, and which has been determined by any Governmental Authority to be a hazardous waste or hazardous substance.

- 11.20.25. Project Inspector.** A Division of State Architect certified inspector for the Project pursuant to the Field Act (California Education Code §§ 81130.3, *et seq.*) and California Code of Regulations.
- 11.20.26. Key Personnel.** Those individuals listed in the Project Authorization, and any additions or replacements thereto whose personal performance of services is considered of the essence to the Project.
- 11.20.27. Plans.** The graphic and pictorial portions of the Contract Documents prepared by Design Consultant and its Specialty Consultants showing the design, location and dimensions of the Work, including drawings, elevations, details, schedules and diagrams. The term "Plans" may be used interchangeably with "Drawings."
- 11.20.28. Project Budget.** The District's written statement of funds available to pay for Project Costs, as developed by District.
- 11.20.29. Project Construction Budget.** That portion of a Project Budget that sets forth the District's budget for Construction Costs.
- 11.20.30. Project Costs.** The total of all Design Costs, Construction Costs, Specialty Consultants Costs, and other Project-related costs (such as, but not limited to, personnel relocation and temporary facilities costs, fixtures, furniture and equipment (if required)). Project Costs do not include (i) land acquisition costs; (ii) finance costs; (iii) District administrative costs; or (iv) legal fees and court costs.
- 11.20.31. Project Schedule.** A detailed schedule prepared by Design Consultant pursuant to Paragraph 2.1.4 of this Agreement depicting in detail the Design Consultant's proposed schedule for performance of its Basic Services.
- 11.20.32. Schedule of Values.** A detailed, itemized breakdown of the Construction Contract Sum, which provides for a fair and reasonable allocation of the dollar values to each of the various parts of the Work of the Project.
- 11.20.33. Sub consultant.** A person or firm that has a contract with Design Consultant to perform a portion of the services covered by this Agreement.
- 11.20.34. Submittal.** Shop drawings, detailed designs, samples, exemplars, product data, fabrication and installation drawings, lists, graphs, operating instructions, and other similar documents required to be submitted by a Contractor under the Contract Documents.
- 11.20.35. Substantial Completion, Substantially Complete.** The terms "Substantial Completion" and "Substantially Complete" refer to the point at which the Work of the Project, or any portion thereof designated by District, is: (i) sufficiently and entirely complete in accordance with Contract Documents so that such Work can be fully enjoyed and beneficially occupied and utilized for its intended purpose (except for minor items which do not impair the ability to so occupy and use such Work); (ii) receipt by District of all permits and certificates (such as, but not necessarily limited to, a certificate of occupancy) required to occupy and use the Project; and (iii) all systems included in the Work of the Project are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted and instruction of District's personnel in the operation of the systems has been completed.

11.20.36. Sustainable Building Guidelines. Guidelines for sustainable building principles, standards and processes, and related design procedures, criteria and standards developed for the District as set forth in the Program Design Standards.

11.20.37. Work. All labor, materials, equipment, services, permits, licenses and taxes and all other things necessary for a Contractor to perform its obligations under the Contract Documents, including, without limitation, any changes, additions or deletions requested by District, in accordance with the Contract Documents and all Applicable Laws. The Work may constitute the whole or a part of the Project or the Project.

11.21. APPLICATION OF DEFINITIONS

Definitions of terms that are phrased in the singular shall be deemed to include the plural, and vice versa, where appropriate to the context or circumstances.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement, on the Day and year first above written.

COTATI-ROHNERT PARK UNIFIED SCHOOL DISTRICT **[[INSERT ARCHITECT INFORMATION]]**
7165 Burton Ave
Rohnert Park, CA 94928

Exhibit "A"

SAMPLE PROJECT AUTHORIZATION

**PROJECT ASSIGNMENT
(EXHIBIT A TO AGREEMENT FOR ARCHITECTURAL SERVICES)**

This Project Assignment is executed between Cotati-Rohnert Park Unified School District ("District") and [redacted] ("Architect") pursuant to the Master Agreement for Architectural Services ("Agreement") between the Architect and the District dated [redacted], 20 [redacted]. By this reference, the Agreement is incorporated herein as if set forth in full.

1. Description of Work To Be Performed By Design Consultant

[[Insert detailed description of Construction Project, and/or other services to be provided by Architect]]

2. Project Budget (District's written statement of funds available to pay for all Project Costs)

[redacted] Dollars (\$ [redacted])

3. Basic Services. The Architect will provide the following Basic Services noted below for the above-described Project.

Basic Services Phases

- Schematic Design
- Design Development
 - Preliminary Plans Value Engineering
 - Preliminary Plans Phase Constructability Review
- Construction Documents
 - Construction Drawings Value Engineering
 - Construction Drawings Constructability Review
- Bidding
- Construction
- Post-Construction

Design Consultants Included in Basic Services

- Structural
- Civil
 - On-Site
 - Off-Site
- Mechanical
- Plumbing
- Electrical
- Telecommunications/Data
- Landscaping
- Other: _____

Basic Services Submittal Schedule:

	START DATE	FINISH DATE
Schematic Design Phase		
Initial Design Development Phase		
Final Design Development Phase		
Preliminary Plans Value Engineering; Constructability Review	Value Engineering: _____ Constructability Review: _____	Value Engineering: _____ Constructability Review: _____
Initial Construction Documents Phase		
Final Construction Documents Phase		
Construction Drawings Value Engineering; Constructability Review	Value Engineering: _____ Constructability Review: _____	Value Engineering: _____ Constructability Review: _____
Bidding		
Construction		
Post-Construction		

4. Architect Compensation:

A. Payment Method:

- Method A: Percentage of Computed Cost for New Construction and Additions**

Architect shall provide all the services identified as Basic Services as indicated above using the following fee schedule. To determine the Architect’s Fee using this method, the computed cost of the project shall be multiplied by the applicable percentages below. The term “computed cost” is equal to the bid amount or Guaranteed Maximum Price plus any additive alternates not taken plus any change orders for additional scope of work.

- a. Nine percent (9%) of the first five hundred thousand dollars (\$500,000) of computed cost;
- b. Eight and one-half percent (8 ½ %) of the next five hundred thousand dollars (\$500,000) of computed cost;
- c. Eight percent (8%) of the next One Million Dollars (\$1,000,000) of computed cost;
- d. Seven percent (7%) of the next Four Million Dollars (\$4,000,000) of computed cost;
- e. Six percent (6%) of the next Four Million Dollars (\$4,000,000) of computed cost;
- f. Five percent (5%) of the computed cost in excess of (\$10,000,000).

Factory Built Portables. Four percent (4%) of the first Thirty-Five thousand Dollars (\$35,000) of the cost of factory built portables (Building cost only, all non-building costs and building costs beyond Thirty-Five Thousand Dollars shall be calculated per items a-f above).

(Reuse of Plans) Compensation for Re-use of Plans for new construction and addition projects shall be reduced from the full fee calculation to reflect savings due to re-use of existing documents as follows:

- a. 35% fee reduction for buildings only during Schematic Design Phase.
- b. 35% fee reduction for buildings only during Design Development Phase.
- c. 35% fee reduction for buildings only during Construction Document Phase.
- d. All other fees for buildings (DSA approval, Bidding and Construction Administration) shall be full fee.
- e. All fees related to the site development work shall be full fee.
- f. Design and engineering modifications due to program changes as required by the District, or code changes enacted subsequent to original plan approval, shall be billed as additional services or Re-use Fee reduction shall be adjusted to a mutually agreeable percentage to account for such changes.

Timeline of Payments under Method A

<u>Schematic Design (100% Completion):</u>	10% of Architect Fee
<u>Design Development (100% Completion):</u>	15% of Architect Fee
<u>Construction Documents (90% Completion):</u>	40% of Architect Fee, to be paid monthly based on actual level of completion.
<u>DSA Approval of Construction Drawings:</u>	5% of estimated Architect Fee

<u>Procurement Phase:</u>	5% of estimated Architect Fee as set forth on Attachment "A", when procurement is completed
<u>Construction Administration:</u>	25% of estimated Architect Fee, to be paid as follows: Procurement complete: 5% Construction 25% complete: 4% Construction 50% complete: 4% Construction 75% complete: 5% Construction 100% complete: 5% Submittal of final records: 2%

Method B: Percentage of Computed Cost for Modernization, Renovation & Rehabilitation:

- a. Twelve percent (12%) of the first five hundred thousand dollars (\$500,000) of computed cost;
- b. Eleven and one-half percent (11 ½ %) of the next five hundred thousand dollars (\$500,000) of computed cost;
- c. Eleven percent (11%) of the next One Million Dollars (\$1,000,000) of computed cost;
- d. Ten percent (10%) of the next Four Million Dollars (\$4,000,000) of computed cost;
- e. Nine percent (9%) of the next Four Million Dollars (\$4,000,000) of computed cost;
- f. Eight percent (8%) of the computed cost in excess of (\$10,000,000).

Billing shall proceed on the same timeline as payments for Method A.

Method C Stipulated Sum: The parties agree to a Stipulated Sum for all basic services and design consultants included in basic services. Billing shall proceed on the same timeline as payments for Method A [*or include other payment timeline*].

Method D - Hourly Billing Rates: Compensation for services rendered by principals and employees shall be based upon the rates as stated on the Design Consultant's Hourly Rate schedule which shall be attached hereto. The rates shall remain the same for the duration of each project. The total cost for the work shall not exceed [*insert not to exceed figure if desired*].

C. Additional Provisions

1. Architect shall receive one hundred and ten percent (110%) of all Reimbursable Expenses, expressly authorized in advance by the District in writing, except as specifically excluded, incurred by the Architect, the Architect's employees, and consultants in the interest of the Project.
2. If specialty consultants are required who are not included as part of Basic Services, then the District shall reimburse the Architect one hundred and ten percent (110%) of their actual cost.

3. If any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions.
4. Architect shall receive reimbursement at cost for:
 - a. Reproduction of drawings and specifications in excess of the copies provided by this Agreement.
 - b. Architect shall receive reimbursement at cost for fees advanced for securing approval of authorities having jurisdiction over the Project.

Dated: _____

COTATI-ROHNERT PARK UNIFIED SCHOOL DISTRICT

By: _____

Title: _____

ARCHITECT

By: _____

Title: _____

EXHIBIT "B"

**CERTIFICATION REGARDING
FINANCIAL RELATIONSHIP DISCLOSURE
(Public Contract Code §3006(b))**

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

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

I, _____, _____, have the following
(Name) (Name of Employer)
financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract:

Name and Address of Building, Contract Date and Number

Name and Address of Building, Contract Date and Number

Name and Address of Building, Contract Date and Number

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

Signature

Date

Print Name

Print Name of Employer

**EXHIBIT “C”
IRAN CONTRACTING CERTIFICATION**

As required by California Public Contract Code Section 2204, the Bidder certifies subject to penalty for perjury that the option checked below relating to the Bidder’s status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 et seq.) is true and correct:

- The Bidder is not:
 - (i) identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or
 - (ii) a financial institution that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.

- The District has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, Agency will be unable to obtain the goods and/or services to be provided pursuant to the Contract.

- The amount of the Contract payable to the Contractor for the Project does not exceed \$1,000,000.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature Date

Name Title

Name of Firm