



LEMOORE UNION HIGH SCHOOL DISTRICT

5 Powell Ave., Lemoore CA, 93245

To: Lemoore Union High School District Board of Trustees
From: Mark Howard
Date: April 25, 2019
Subject: Contract Approval - Mangini

Background:

Seeking the Governing Board's approval of the enclosed contracts with Mangini to provide architect services in support of the MODERNIZATION OF JAMISON ALTERNATIVE EDUCATION at Lemoore High School. There are two separate contracts representing phase #1 and phase #2 of the project. Phase #1 is planned to begin construction in Summer of 2019 and phase #2 is planned to begin construction in the Summer of 2020.

Financial Impact:

Architect fees are based on estimated construction costs and will be adjusted after receipt of actual construction costs:

Phase #1: \$73,428

Phase #2: \$128,100

Total: \$201,528

Services are to be funded by Local GO bond funds and Capital Outlay Special Reserve funds.

Recommendation:

Approve the Contract Agreements.

MANGINI

ARCHITECTURE
INGENUITY

McLAIN BARENG MORRELLI

MANGINI ASSOCIATES INC.

4320 West Mineral King Avenue
Visalia, California 93291

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Architect's Project No.: 1727

**AGREEMENT BETWEEN
OWNER AND ARCHITECT FOR**

**MODERNIZATION OF JAMISON ALTERNATIVE
EDUCATION AT LEMOORE HIGH SCHOOL**

(8) RELOCATABLES AND NEW HARCOURTS

AGREEMENT made as of April 11, 2019,

BETWEEN the **Owner** (hereafter referred to as Owner):

LEMOORE UNION HIGH SCHOOL DISTRICT

5 Powell Avenue
Lemoore, CA 93245

and the **Architect** (hereafter referred to as Architect):

MANGINI ASSOCIATES INC.

4320 W. Mineral King Avenue
Visalia, CA 93291

For the following **Project**:

MODERNIZATION OF JAMISON ALTERNATIVE EDUCATION AT LEMOORE HIGH SCHOOL

301 East Bush Street, Lemoore
Lemoore, CA 93245

The Owner and the Architect agree as follows:

ARTICLE 1 - INITIAL INFORMATION

1.1 This Agreement is based on the Initial Information set forth in this Article 1.

1.2 THE OWNER'S PROGRAM (EDUCATIONAL SPECIFICATION) FOR THE PROJECT

1.2.1 The Architect will assist the Owner in developing the educational specification as part of Basic Services.

1.3 THE PROJECT'S PHYSICAL CHARACTERISTICS

1.3.1 Relocation of (7) existing relocatable classroom buildings and new hardcourts.

1.4 FINANCIAL INFORMATION

1.4.1 The Owner's budget for the Project is \$1,700,000 based on the Architect's preliminary Project Budget Summary dated 04.11.19.

1.4.2 The initial Cost of the Work for the Project as defined in Section 6.1 is based on \$1,223,800.

1.4.3 The Owner will fund the Project.

1.5 SCHEDULE INFORMATION

1.5.1 The Owner intends to use the Project when completed.

1.6 PROCUREMENT INFORMATION

1.6.1 The Owner intends to procure the project in a manner to be determined later.

1.7 OTHER PROJECT INFORMATION

1.7.4 The Owner and the Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services, and the Architect's compensation.

ARTICLE 2 - ARCHITECT'S RESPONSIBILITIES

2.1 The Architect shall provide the professional services as set forth in this Agreement.

2.2 In providing services under this agreement, the Architect shall exercise that degree of professional skill and care ordinarily used by other reputable architects, practicing in the same or similar locality and under similar circumstances. Nothing in this agreement shall be interpreted to require Architect to meet any higher standard or have any obligation in excess of what is required by said standard and this paragraph shall control over any such contrary provision.

2.3 COMPLIANCE WITH LAW

2.3.1 The Architect shall use due professional care to provide services in accordance with applicable Federal, State, and local laws, regulations and directives.

2.3.2 With respect to Architect's employees, Architect shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

2.3.3 The Architect shall be properly licensed as an architect under the laws of the State of California during the term of this Agreement and shall be qualified to provide the services required by the Owner pursuant to this Agreement.

ARTICLE 3 - SCOPE OF ARCHITECT'S BASIC SERVICES

3.1 BASIC SERVICES

3.1.1 The Architect's Basic Services consist of those described in Article 3, and include usual and customary civil, plumbing, and electrical engineering services. Services not set forth in Article 3 are Additional Services.

3.1.2 The Architect represents that the Architect's drawings and specifications shall comply with the California Building Code and shall be submitted to the Division of the State Architect (DSA) and the California Department of Education (CDE) as required. The Architect shall assist the Owner and its consultants to apply for funding for the Project from OPSC and the Architect shall be responsible for all submittals required of the Architect by the DSA, OPSC and CDE in connection therewith.

3.1.3 The Architect shall mutually coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information. Upon the Owner's reasonable request, the Architect and the Architect's consultants shall cooperate with the Owner and the Owner's consultants in verifying that the Architect's plans, specifications, studies, drawings, estimates or other documents relating to the Project are constructible and otherwise comply with the Construction Documents. The Architect has no duty to discover errors, omissions or inconsistencies in the services provided by the Owner, the Owner's consultants or others.

3.1.4 The Architect shall not be liable for claims resulting from an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made without the Architect's approval.

3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for approval of governmental authorities having jurisdiction over the Project. The Architect shall be responsible for any design submittals which are required by said governmental authorities in connection with the Owner's filing of such documents.

3.2 SCHEMATIC DESIGN PHASE SERVICES

3.2.1 The Architect shall review the program and all other information furnished by the Owner to ascertain the requirements of the Project, and shall review the laws, codes, and regulations applicable to the Architect's services and shall arrive at a mutual understanding of such requirements with the Owner.

3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule and budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall promptly notify the Owner in writing of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project that may reduce the cost of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

3.2.4 Based on the Projects' requirements agreed upon with the Owner, the Architect shall prepare and present for Owner's approval a preliminary design illustrating the scale and relationship of Project components.

3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents, including a site plan, if appropriate, and preliminary building plans, sections, and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction material shall be noted on the drawings or described in writing.

3.2.6 The Architect shall submit to the Owner a preliminary Statement of the Probable Cost of the Work prepared in accordance with Section 6.3 and a written schedule for the performance of the Work.

3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request Owner's approval. If Owner incorporates any recommended changes, then Architect shall revise the Schematic Design Documents, including but not limited to the written statement of Probable Cost of the Work and written schedule for the performance of work, as necessary until Owner's governing board approves them. Architect shall attend, and present at, as many meetings of the Owner's governing board as may be necessary to obtain the board's approval of the Schematic Design Documents.

3.3 DESIGN DEVELOPMENT PHASE SERVICES

3.3.1. Following the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's review and approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including but not limited to site and floor plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and shall outline the specifications of the entire Project as to kind and quality of materials, and other elements as may be appropriate.

3.3.2. The Architect shall update the Statement of Probable Cost of the Work.

3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the Statement of Probable Cost of the Work, and request Owner's approval.

3.3.4 The Architect shall provide at no expense to the Owner one complete set of preliminary plans for the review and approval of the Owner and one set for each public agency having approval authority over such plans for their review and approval at no expense to the Owner.

3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

3.4.1 Following the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe further development of the approved Design Development Documents and shall consist of customary working drawings and specifications setting forth in detail sufficient for construction of the Work to be done and the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system, and other requirements for the construction of the Work. The Owner and the Architect acknowledge that in order to construct

the Work the Contractor will provide additional information, including shop drawings, product data, samples, and other submittals, which the Architect shall review in accordance with Section 3.6.4.

3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary, and other Conditions). The Architect shall also compile a project manual, which manual shall be subject to the Owner's review and approval, that includes the Conditions of the Contract for Construction and specifications that may include bidding requirements and sample forms.

3.4.4 The Architect shall update the Statement of Probable Cost of the Work.

3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the Statement of Probable Cost of the Work, take any action required under Section 6.5, and request Owner's approval.

3.5 AGENCY APPROVAL PHASE SERVICES

3.5.1 The Architect will submit the Construction Documents to DSA and local jurisdictions as may be required and make the necessary corrections to secure approval. The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for approval with CDE, OPSC, and other governmental authorities having jurisdiction over the Project.

3.6 BIDDING PHASE OR NEGOTIATION PHASE SERVICES

3.6.1 Following DSA and the Owner's written approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or proposals, as the owner shall direct; (2) confirming responsiveness of bids or proposals; (3) determining successful bid or proposal, if any; and (4) awarding and preparing contracts for construction.

3.6.1.2 If, in the Owner's discretion, the Owner will seek total or partial State funding for this Project, then if so requested by the Owner the Architect shall, in addition to the above, publish the invitation to bid in the appropriate regional trade papers and publications devoted to Disabled Veteran Business Enterprises. If so requested by the Owner, the Architect shall also prepare and submit the appropriate documentation to the OPSC.

3.6.1.3 If the Owner decides to seek competitive bids for construction of the Project, then Section 3.6.2 and following shall apply to Architect's services under the "Bidding Phase or Proposal Phase" of said services. However, if the Owner decides to seek proposals for construction of the Project, then Section 3.6.3 and following shall apply to Architect's services under the "Bidding Phase or Proposal Phase" of said services.

3.6.2 Competitive Bidding

3.6.2.1 Bidding Documents consist of bidding requirements and proposed Contract Documents.

3.6.2.2 The Architect shall assist the Owner in bidding the Project by (1) procuring the reproduction of Bidding Documents for distribution to prospective bidders; (2) distributing Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders; (3) organizing and conducting a pre-bid conference for prospective bidders; (4) preparing responses to questions from prospective bidders and

providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and (5) organizing and conducting the opening of the bids, and subsequently documenting and distributing bid results, as directed by the Owner.

3.6.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

3.6.3 Proposals

3.6.3.1 Proposal Documents consist of proposal requirements and proposed Contract Documents.

3.6.3.2 The Architect shall assist the Owner by (1) procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process; (2) organizing and participating in selection interviews with prospective contractors; and (3) participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

3.7 CONSTRUCTION PHASE SERVICES

3.7.1 General

3.7.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as forth below and in the General Conditions of the Contract for Construction. In the event of conflicts between this Agreement and the General Conditions of the Contract for Construction, this Agreement shall govern with respect to Architect's responsibilities. Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect.

3.7.1.2 All instructions to the Contractor shall be forwarded through the Architect. The Architect shall timely provide Owner with copies of all correspondence between the Architect and the Contractor. The Architect shall advise, consult with, and serve as the Owner's representative in the general administration of the Contract for Construction and in the Owner's dealings with the Contractor, however, the Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract for Construction. The Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents, unless such failure is caused by Architect's negligent acts or omissions in breach of this Agreement, the applicable standard of care, or law. The Architect shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor, or of any other persons performing portions of the Work.

3.7.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services shall commence on the date stated in the official Notice to Proceed and, solely for purposes of payment of the Architect, shall be deemed complete upon the Owner's written approval of the Architect's final Certificate for Payment to the Contractor, provided that such certification and payment shall not constitute an admission by Architect or Owner that the Project has been completed in accordance with the Contract Documents or in conformance with this Agreement.

3.7.2 Evaluations of the Work

3.7.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, both as the Architect deems necessary and as required by the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed will be in accordance with the Contract Documents. On the basis of the site visits, the Architect shall keep the Owner promptly informed of the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent

construction schedule submitted by the Contractor, (2) defects and deficiencies observed in the Work, and (3) any default by the Contractor in the orderly and timely prosecution of the Project.

3.7.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. The Architect shall also recommend substitution of materials or equipment when, in the Architect's reasonable judgment, such action is necessary to the accomplishment of the intent and purpose of the Contract Documents. Such actions as are described in this paragraph shall be taken with reasonable promptness. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

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

3.7.2.4 The Architect shall provide advice to the Owner on apparent deficiencies in construction during the construction phase.

3.7.2.5 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. The Owner will be the final interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by the Contractor. The Owner shall not disregard the Architect's interpretation without good cause.

3.7.2.6 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for the results of interpretations or decisions rendered in good faith.

3.7.2.7 The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

3.7.3 Certificates of Payment to Contractor

3.7.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certifications in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the site as provided in Section 3.7.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Notice of Completion, (2) to results of subsequent tests and inspections, (3) to minor deviations from the Contract Documents correctable prior to completion, and (4) to specific qualifications expressed by the Architect.

3.7.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work beyond the scope required by Section 3.7.2, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

3.7.4 Submittals

3.7.4.1 The Architect shall timely review and take appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of the Owner or of separate contractors, while allowing sufficient time to permit adequate review.

3.7.4.2 Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions, or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's review of a specific item shall not indicate approval of an assembly of which the item is a component.

3.7.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon such the accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

3.7.4.4 Subject to the provisions of Section 4.3, the Architect shall timely review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that includes the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within the time frames agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

3.7.5 Changes in the Work

3.7.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involving an adjustment in the Contract Sum or an extension of the Contract Time.

3.7.5.2 The Architect shall prepare change orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

3.7.6 Project Completion

3.7.6.1 The Architect shall conduct reviews to determine the date of Notice of Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties, guaranties, instruction books, diagram, chart, and related documents required by the Contract Documents and assembled by the Contractor; and shall issue a final Certificate for Payment based upon a final review indicating the Work complies with the requirements of the Contract Documents.

3.7.6.2 The Architect's reviews shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

3.7.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid to the Contract, including the amount to be retained from the Contract Sum,

if any, for final completion or correction of the Work. The Architect shall also forward to the Owner warranties, operation and maintenance manuals, record drawings and other closeout documents prepared by the Contractor.

3.7.7 Evaluation of Claims

3.7.7.1 Notwithstanding anything else in this Agreement, as a part of its Basic Services, the Architect shall assist the Owner in evaluating and responding to claims, disputes and other matters in question between the Contractor and the Owner, including but not limited to claims made against the Owner as a result of alleged or claimed wrongful acts or omissions, and shall in all instances provide such truthful testimonial assistance as may be required by the Owner.

ARTICLE 4 - ADDITIONAL SERVICES

4.1 The Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if authorized or confirmed in writing by the Owner prior to such services being rendered. Compensation for Additional Services shall be as provided in Section 11.3, in addition to compensation for Basic Services.

4.2 Additional Services may be provided after execution of this agreement, without invalidating the Agreement, provided that such Additional Services are approved by Owner prior to such services being rendered. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Article 4 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

4.2.1 Upon recognizing the need to perform Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide Additional Services until the Architect receives the Owner's written authorization.

4.3 Additional Services

4.3.1 Services necessitated by a material change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project, including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method.

4.3.2 Services necessitated by concealed or unknown conditions encountered during the progress of the Work.

4.3.3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws, or regulations or official interpretations subsequent to Owner's approval of the Contract Documents.

4.3.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner.

4.3.5 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique systems designs, in-depth material research, energy modeling, LEED or CHPS certification, or DSA HPI approved unless such alternatives were requested prior to the effective date of this Agreement.

4.3.6 Providing financial feasibility or other special studies.

4.3.7 Providing special surveys, environmental studies and submissions required for approval of governmental authorities having jurisdiction over the Project, other than those identified in Article 3.

4.3.8 Providing services relative to future facilities, systems or equipment.

- 4.3.9** Providing services to investigate existing conditions or facilities or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the Owner.
- 4.3.10** Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.
- 4.3.11** Providing planning surveys, site evaluations or comparative studies of prospective sites.
- 4.3.12** Providing services for planning tenant or rental spaces.
- 4.3.13** Providing services in connection with the work of a construction manager or separate consultants retained by the Owner, unless said manager or consultant was engaged prior to the effective date of this Agreement.
- 4.3.14** Providing detailed estimates (as defined by Section 6.3) of Construction Cost.
- 4.3.15** Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.
- 4.3.16** Providing analyses of owning and operating costs.
- 4.3.17** Providing coordination of Work performed by separate contractors or by the Owner's own forces.
- 4.3.18** Providing on-site project representation during construction beyond Basic Services.
- 4.3.19** Providing building commissioning services, including assistance in the utilization of equipment or systems, such as testing, adjustment and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
- 4.3.20** Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.
- 4.3.21** Providing detailed quantity surveys or inventories of material, equipment and labor.
- 4.3.22** Attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is a party thereto.
- 4.3.23** Preparing Drawings, Specifications and supporting data and providing other services in connection with change orders unless such change orders are required due to errors or omissions of the Architect.
- 4.3.24** Consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing services as may be required in connection with the replacement of such Work.
- 4.3.25** Providing services made necessary by the default of the Contractor, or by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.
- 4.3.26** Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than sixty days after the Date of Notice of Completion of the Work.
- 4.3.27** Providing services of consultants for other than the normal architectural, civil, structural, mechanical and electrical engineering services for the Project.

4.3.28 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 5 - OWNER'S RESPONSIBILITIES

5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints, and criteria, including space requirements and relationships, flexibility and expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, or such additional time as may be commercially reasonable under the circumstances, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and Architect shall thereafter meet and confer in an effort to modify the Project's scope and quality.

5.2.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects in writing an accelerated, phased, or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

5.3 The Owner shall identify a representative authorized to act in the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

5.4 The Owner shall furnish surveys reasonably necessary to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal description shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wet-lands; adjacent drainage; flood plain designations; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark.

5.5 The Owner shall furnish the services of geotechnical engineers and other such consultants when such services are reasonably required by the scope of the Project and are requested by the Architect. Such services may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluations, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance appropriate to the services provided.

5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials, which the Owner shall own.

5.8 The Owner shall furnish all legal, insurance, and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

5.10 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Architect's services and of the Work.

5.11 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 - COST OF THE WORK

6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct of all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary statement of the Probable Cost of the Work, and updated Statements of Probable Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or price proposals will not vary from the Project budget for the Cost of the Work or from any Statement of Probable Cost of the Work prepared by the Architect.

6.3 In preparing Statements of Probable Cost of the Work, the Architect 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 scope of the Project; and to include in the Contract Documents alternate bids to adjust the Probable Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's opinion of the Probable Cost of the Work shall be based on current area, volume, or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Owner approves the Construction Documents, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market, if applicable.

6.5 If at any time the Architect's opinion of the Probable Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner reasonably shall cooperate with the Architect in making such adjustments.

6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or price proposal, the Owner shall:

- .1** give written approval of an increase in the budget for the Cost of the Work;
- .2** authorize rebidding or renegotiating of the Project within a reasonable time;

- .3 terminate in accordance the terms of this Agreement;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

6.7 If the Owner's budget for the Cost of the Work is exceeded by the lowest bona fide bid or price proposal by more than 10%, and the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. Except for the cost of such modifications, Architect shall not be responsible for any increase in the Cost of the Work.

6.8 If the Owner's budget for the Cost of the Work is exceeded by the lowest bona fide bid or price proposal by less than 10%, and the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with said bid or proposal, or the budget as adjusted under Section 6.6.1 and be compensated for modifications to the Construction Documents as Additional Services as provided under Section 11.3.

ARTICLE 7 - OWNERSHIP AND USE OF DOCUMENTS

7.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project, except as otherwise provided in Section 7.2 below. The Architect's Instruments of Service shall be the property of the Owner as provided by Education Code Section 17316, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement.

7.2 This Agreement creates a non-exclusive and perpetual license for Owner to copy, use, modify, reuse, or sub-license any and all copyrights, designs, and other intellectual property embodied in the Architect's Instruments of Service, including drawings, specifications, studies, estimates, and other documents, or any other works of authorship fixed in any tangible medium of expression, including, but not limited to, physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by Architect pursuant to this Agreement. This transfer of rights pertains not only to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to other projects, provided that any invalidity of such license in relation to such other projects shall not affect the validity of such license in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project under Education Code Section 17316. This Agreement is an express transfer of rights as specified in Education Code Section 17316(b).

7.3 Architect represents and warrants that Architect has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Architect's Instruments of Service that Architect or its consultant's prepares or causes to be prepared pursuant to this Agreement. The Architect shall indemnify and hold the Owner harmless pursuant to Section 7.2 of this Agreement for any breach of this Article 7. The Architect makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates, or other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Architect and provided to Architect by the Owner.

7.4 The parties acknowledge the Architect's Instruments of Service are not represented to be appropriate for reuse without modification. Any reuse by Owner of documents prepared under this Agreement, without employing the services of Architect, shall be at Owner's own risk. In the event the Owner reuses or modifies the Architect's Instruments of Service developed by the Architect pursuant to this Contract for purposes other than that for which they are contemplated, the Owner shall indemnify, defend, and hold harmless the Architect, its employees and consultants for damages and expenses caused by the Owner's use or modification of the Architect's Instruments of

Service, and the parties agree that the provisions of this Article shall be the terms and conditions for the reuse as authorized by Education Code Section 17316(c).

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

ARTICLE 8 - CLAIMS AND DISPUTES

8.1 GENERAL

8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or relating to this Agreement within the period specified by applicable law.

8.1.2 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, with limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Article 9.

8.2 MEDIATION

8.2.1 If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be shared equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 60 days, either party may pursue litigation to resolve the dispute.

8.2.2 Demand for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for mediation shall be made within reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such a claim, dispute or other matter in question would be barred by California statutes of limitations.

ARTICLE 9 - TERMINATION OR SUSPENSION

9.1 The right to terminate this Agreement under this provision may be exercised without prejudice to any other right or remedy to which the terminating party may be entitled at law or under the Agreement.

9.2 TERMINATION WITHOUT CAUSE

9.2.1 The Owner may terminate this Agreement upon not less than 7 days' written notice to the Architect for Owner's convenience and without cause. Upon the Owner's request and authorization, the Architect shall perform any and all Basic Services and Additional Services reasonably necessary to wind up the work performed to the date of termination.

9.3 SUSPENSION OF THE PROJECT

9.3.1 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. If and when the Project is resumed, the Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

9.3.2 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect or the Architect's consultants, the Architect may terminate this Agreement by giving not less than 7 days' written notice.

9.4 TERMINATION WITH CAUSE

9.4.1 Either party may terminate this Agreement upon not less than 7 days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

9.4.2 Failure of the Owner to make payments to the Architect in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.

9.4.3 If the Owner fails to make payments to the Architect in accordance with this Agreement, other than those payments withheld pursuant to Section 11.7.1, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give 7 days' written notice to the Owner before suspending services. Before resuming services, the Architect shall be paid all sums due prior to suspension services and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fee for the remaining services and the time schedules shall be equitably adjusted.

9.5 EFFECTS OF TERMINATION

9.5.1 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

9.5.2 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

ARTICLE 10 - MISCELLANEOUS PROVISIONS

10.1 This Agreement shall be governed by the law of the State of California. If any action is instituted to enforce or interpret this Agreement, venue shall only be in the appropriate state or federal court having venue over matters arising in Kings County, California.

10.2 The Owner and the Architect, respectively, bind themselves, their partners, successors, permitted assigns and legal representatives to this Agreement. Neither the Owner nor Architect shall assign this Agreement without the written consent of the other.

10.3 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review within a reasonable period of time prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

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

10.5 Unless otherwise provided in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. Notwithstanding the foregoing, in the event the Owner or the Architect is or becomes aware of the presence of, or exposure of persons to hazardous materials or toxic substances, or the substantial risk thereof, each shall have a duty to immediately notify the other in writing.

10.6 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

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

10.8 The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties.

10.9 Each individual executing this Agreement on behalf of the Architect hereby represents and warrants that Architect is a duly formed and existing entity qualified to do business in the state in which the Project is located and that Architect has full right and authority to execute and deliver this Agreement and that each person signing on behalf of Architect is authorized to do so.

10.10 Owner recognizes that circumstances may occur beyond the reasonable control of either the Owner or the Architect and extensions for such delays shall be made to the schedule. Notwithstanding anything stated herein to the contrary, any time during which the Architect is delayed in the Architect's work by acts of Owner or its employees or those in a direct contractual relationship with Owner or by acts of nature or other occurrences which were not or could not have been reasonably foreseen and provided for, and which are not due to any wrongful acts or omissions, shall be added to the time for completion of any obligations of the Architect.

ARTICLE 11 - COMPENSATION

11.1 BASIC SERVICES

11.1.1 Initial Basic Services Compensation: For the Architect's Basic Services described in Article 3, the Owner shall compensate the Architect on the basis of a percentage of the Cost of the Work as follows:

$$6.0\% \times \$ 1,223,800 = \$ 73,428.00$$

11.1.3 Adjustments to Basic Services Compensation:

- .1** At the end of the Schematic Design, Design Development, Construction Documents, and Agency Approval phases, Initial Basic Services Compensation shall be adjusted to the latest Probable Cost of Construction.
- .2** Initial Basic Services Compensation shall be adjusted after receipt of bids to the amount of the Contract Sum of the awarded construction contract, which shall be the basis for calculating compensation during the construction phase.
- .3** Basic Services Compensation shall be finally adjusted at the completion of the Project to the final Contract Sum of the construction contract, as documented in approved change orders.
- .4** Change Orders items determined to be caused by Architect error or omission shall not increase the Architect's compensation.
- .5** Change Order items which reduce the Contract Sum shall not reduce Compensation.

- .6 When 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, in accordance with the schedule set forth in Section 11.2.1, based on (1) the lowest bona fide bid, or (2) if no such bid or proposal is received, the most recent Statement of Probable Construction Cost for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for services performed whether or not the Construction Phase is commenced.
- .7 When additive alternate bids are provided, and the Owner decides not to accept them after bidding, the Architect shall be compensated based on 75% of 8% of the actual awarded bidders bid for such alternate bids, thereby compensating the architect for design and preparation of the alternate item.
- .8 When deductive alternate bids are provided, and the Owner decides to accept them after bidding, the Architect shall be compensated based on 75% of 8% of the actual difference between the awarded bidder's bid for such alternate bids, thereby compensating the Architect for design and preparation of the alternate item.

11.2 PROGRESS PAYMENTS

11.2.1 Progress payments for each phase of Basic Services shall be as follows:

Schematic Design Phase:	10%
Design Development Phase:	20%
Construction Documents Phase:	35%
Agency Approval Phase:	5%
Bidding Phase:	5%
<u>Construction Phase:</u>	<u>25%</u>
Total Basic Compensation:	100%

11.3 ADDITIONAL SERVICES

11.3.1 For approved Additional Services that may arise during the course of the Project, the Owner shall compensate the Architect on the basis of a stipulated sum agreed to by the parties in advance of the services being performed, or on an hourly basis, plus compensation for reimbursable expenses.

11.3.2 When compensation for Additional Services is on an hourly basis, compensation for Additional Services of the Architect's consultants will be computed at a rate of 1.10 times the amount billed to the Architect for such services.

11.3.3 For Reimbursable Expenses incurred in the furnishing of Additional Services, compensation will be computed at a rate of 1.10 times the amount of expenses incurred by the Architect and the Architect's Consultants.

11.4 HOURLY BILLING RATES

11.4.1 The hourly billing rates for services of the Architect are set forth below:

Standard Hourly Billing Rates Schedule:

Principal Architect	\$	205.00
Architect III		165.00
Architect II		145.00
Architect I		130.00
Construction Administrator III		145.00
Construction Administrator II		120.00
Construction Administrator I		110.00
Business Manager		155.00
Project Manager		150.00
Interior Designer II		90.00
Interior Designer I		70.00
Drafting Technician IV		110.00
Drafting Technician III		100.00
Drafting Technician II		90.00
Drafting Technician I		70.00
Administrative Asst. II		90.00
Administrative Asst. I		50.00
Expert Witness		350.00

The above rates are effective through December 31, 2019. Work continuing beyond December 31, 2019, shall be subject to increases in the above noted schedule based on Engineering News Record's, "Cost of Living Index Adjustment", until this agreement is modified.

11.5 COMPENSATION FOR REIMBURSABLE EXPENSES

11.5.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include reasonable expenses incurred by the Architect and Architect's consultants directly related to the Project, as follows:

- .1 Transportation in connection with the project shall be compensated at the yearly established rate as permitted and published by the Internal Revenue Service for compensated mileage.
- .2 Expense of out of region meals and lodging in connection with the Project.
- .3 If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates for non-exempt employees.
- .4 Expense of renderings, models and mock-ups requested by the Owner.
- .5 Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of that required by Article 12.
- .6 Expense of reproductions, postage and handling of Drawings, Specifications, and other documents required for approval, bidding, and construction of the Project in the Owner's interest, excluding reproductions for the office use of the Architect and the Architect's consultants.

11.5.2 For Reimbursable Expenses, compensation will be computed at a rate of 1.10 times the amount of expenses incurred by the Architect and the Architect's Consultants.

11.6 PAYMENTS TO THE ARCHITECT

11.6.1 For services satisfactorily performed, payment for Basic Services, Additional Services and Reimbursable Expenses shall be made on a monthly basis after receipt and approval by the Owner of the Architect's properly documented and submitted invoices. To be "properly documented and submitted," an invoice shall be timely, be accompanied by all necessary documentation, list all activities performed, and for each activity performed list the person performing it and the person's billing rate. Architect's invoice shall be submitted within ten (10) days of the end

of the monthly billing period. Invoices, receipts and other documentation to establish the validity of all Reimbursable Expenses shall be a prerequisite to Owner payment of such expenses. If Owner disputes a portion of a properly submitted invoice, it shall notify Architect of the dispute and, upon Architect's request, arrange for a meeting to confer about, and potentially resolve, the dispute. Prior to this meeting, Architect shall provide all documentation requested to support disputed portions of a properly submitted invoice. Regardless of any such dispute about an invoice or payment, both parties shall continue to provide all services required by this Agreement and law until the end of the Project, even if Owner and Architect cannot resolve all such disputes. Payments of undisputed portions of a properly submitted invoice shall be made within 60 days of receipt of the invoice.

11.6.2 Amounts unpaid 30 calendar days after the 5th of the month shall bear interest at the rate of 1-1/2%.

11.7 PAYMENTS WITHHELD

11.7.1 The Architect's compensation shall be paid notwithstanding a Contractor-caused delay in completion of the project or reduction of final construction cost by reason of penalties, liquidated damages, or other amounts withheld from the Contractor. However, Owner may withhold from payments to Architect to the extent that Basic and Additional Services remain to be performed, including but not limited to those required for project closeout and payments to Contractor. If the total amount invoiced by Architect reaches the not-to-exceed Basic Services amount before Architect's Basic Services under this Agreement are complete, Architect must complete the Basic Services without submitting additional invoices, or receiving additional payment, for Basic Services.

11.8 ARCHITECT'S ACCOUNTING RECORDS

11.8.1 Architect shall maintain complete and accurate records showing all hours worked with respect to the services rendered and the costs incurred under this Agreement, including but not limited to Reimbursable Expenses and expenses pertaining to Additional Services. In addition, the Architect shall maintain complete and accurate records with respect to any payments to employees or subcontractors. Architect shall also be responsible for Architect's consultants keeping similar records. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, Architect shall make such records available within Fresno County to the Auditor of Owner and to its agents and representatives, for the purpose of auditing and/or copying such records for a period of 5 years from the date of final payment under this Agreement.

ARTICLE 12 - INSURANCE PROVISIONS

12.1 Insurance Requirements: Architect shall maintain at its own costs and expense the following minimum insurance coverage and shall provide a certificate of insurance and any required endorsements to Owner. The certificate of insurance and required endorsements shall be provided prior to commencement of any work and prior to the expiration of each renewal of the policy. Owner may request and Architect shall, upon request, provide a true and certified copy of each policy. No payment will be issued until Owner has received acceptable insurance documentation.

12.2 In addition to the requirements outlined below for each insurance policy, Architect agrees that it will have each insurance policy endorsed to provide:

1. The policy shall be endorsed to provide thirty (30) day notice of cancellation, except ten (10) day notice for nonpayment of premium to Owner.
2. When required, the Commercial General Liability, Automobile Liability, and Aviation Liability insurance policies shall be endorsed to include as additional insured for on-going operations, products completed operations and ownership, operation or use of automobiles and aircraft, Owner and any other person or organization which Architect is required to include as additional insured under an Agreement and their respective owners, directors, officers, employees, agents and volunteers.

3. When required, the Workers Compensation insurance policies shall be endorsed to provide a waiver of subrogation in favor of the Owner and any other person or organization to which Owner is required in a written agreement to provide a waiver of subrogation.
4. If any insurance policy includes a cross suits endorsement or an insured vs. insured exclusion endorsement, the endorsement may not exclude a claim by an additional insured against the named insured or a claim by an additional insured against another additional insured.

12.3 General Liability Insurance: Without limiting Architect's indemnification, Architect shall secure and maintain in full force and effect, at its sole cost and expense during the term of this Agreement, a comprehensive general liability insurance policy with combined single limits of \$2,000,000.00 per occurrence, with a General Aggregate limit of \$4,000,000.00.

12.3.1 The policy shall include contractual liability. The policy may not include any limitation, exclusion or coverage restriction for explosion, collapse or underground hazards. The policy shall not include an exclusion for job site safety or injury to employees of independent contractors. If the policy includes an exclusion of professional services, the exclusion shall not include job site safety as part of the definition of professional services. The certificate of insurance shall include a statement that the policy does not exclude claims alleging job site safety.

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

12.4 Worker's Compensation and Employer's Insurance: Architect shall furnish to the Owner satisfactory proof that the Architect and all engineers, experts, consultants and employees for the period of this Agreement, is providing workers' compensation insurance with \$1,000,000.00 coverage for all persons whom they may employ in carrying out the Work contemplated under this Agreement in accordance with the Workers' Compensation Laws of the State of California. If the Architect employs any engineer, expert consultant or subcontractor which it did not intend to employ prior to commencement of services, it must furnish such proof of insurance covering said engineer, expert, consultant or subcontractor to the Owner immediately upon their employment. Such insurance shall be maintained in full force and effect during the period covered by this Agreement including any extensions of time.

12.5 Professional Liability Insurance: Architect shall furnish to the Owner satisfactory proof that the Architect has Professional Liability Insurance (errors and omissions) with limits of \$1,000,000.00 per claim/\$2,000,000.00 annual aggregate. This insurance shall be maintained in force during the entire period of time the Architect renders service to the Owner under this Agreement. Each of the Architect's professional sub-contractors shall comply with this Section, and Architect shall include such provisions in its contracts with them.

12.6 Commercial Automobile Liability: Commercial Automobile Liability Insurance including coverage for all owned, non-owned and hired automobiles. The limit of liability shall not be less than \$2,000,000 each accident. The policy shall include contractual liability.

12.7 Aviation Liability: To the extent drones are used, Architect will carry liability insuring bodily injury and property damage arising out of the use of owned and non-owned unmanned aircraft.

ARTICLE 13 - SPECIAL PROVISIONS

13.1 INDEMNIFICATION

13.1.1 The Architect agrees, to the extent permitted by law, to hold harmless and indemnify but not defend the Owner, its Governing Board, each member of the Board, and their officers and employees harmless from any liability

for damages to the extent actually caused by the Architect's negligent acts, errors, omissions, or recklessness, or willful misconduct in the performance of professional services arising out of this Agreement and those of his or her officers, employees, consultants or sub-consultants or anyone for whom the Architect is legally responsible (collectively, the "Architect's Parties"). The Architect is not obligated to indemnify the Owner and employees or any other third party in any manner whatsoever for their own negligence.

13.1.2 This indemnification specifically includes any claims that may be made against Owner or against Architect by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement. The Architect specifically agrees to hold harmless and indemnify the Owner for any and all claims arising out of any injury, disability, or death of the Architect's employees or agents to the extent that the above are caused by the negligent acts, errors, or omissions of the Architect. This indemnification obligation shall continue beyond the term of this Agreement as to any negligent acts or omissions occurring under this Agreement or any extension of this Agreement, subject to the applicable statute of limitations.

13.2 FINGERPRINTING

13.2.1 Pursuant to California Education Code Section 45125.1, before any agents or employees of Architect may enter school grounds where they may have any contact with pupils, Architect shall submit fingerprints of its agents and employees in a manner authorized by the California Department of Justice, together with a fee determined by the Department of Justice. Architect shall not permit any of its agents or employees to come in contact with pupils of the Owner until the Department of Justice has ascertained that the Architect's agents or employees have not been convicted of a felony as defined in Education Code Section 45122.1.

13.2.2 Architect shall provide Owner with a written list of the names of its agents or employees who may come in contact with pupils before commencement of work. Architect shall certify, in a form provided by Owner, under penalty of perjury, that it has complied with the requirements of Education Code Section 45125.1, and that none of its agents or employees who may come in contact with pupils have been convicted of a felony as defined in Education Code Section 45122.1, based upon the information Architect has received from the Department of Justice.

13.2.3 If Architect believes that its agents or employees will have only limited contact with pupils and should therefore be exempted from these requirements, Architect must contact the Owner with its request for exemption within 15 days prior to the commencement of work. The request for exemption must specify the grounds for such proposed exemption, considering the totality of circumstances, including but not limited to the length of time Architect will be on school grounds, whether pupils will be in proximity to the site where the Architect's employees are working, and whether the Architect's employees will be working by themselves or with others. Whether to grant or deny the exemption is within the sole discretion of the Owner's governing board.

13.3 ASSURANCES OF NON-DISCRIMINATION

13.3.1 Architect expressly agrees that it will not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

13.4 INDEPENDENT CONTRACTOR STATUS

13.4.1 This Agreement is entered into by both parties with the express understanding that Architect will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute the Architect or any of its agents, employees or officers as an agent, employee or officer of Owner. Architect agrees to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees of Owner. Subject to any performance criteria contained in this Agreement, Architect shall be solely responsible for determining the means and methods of performing the specified services and Owner, except to the extent stated otherwise in this Agreement, shall have no right to control or exercise any supervision over Architect as to how the services will be performed. As Architect is not Owner's employee, Architect is responsible for paying all required state and federal taxes. In particular, Owner will not (1) withhold FICA (Social Security) from Architect payments, (2) make

state or federal unemployment insurance contributions on Architect's behalf, (3) withhold state or federal income tax from payments to Architect, (4) make disability insurance contributions on behalf of Architect, (5) obtain unemployment compensation insurance on behalf of Architect. Notwithstanding this independent contractor relationship, Owner shall have the right to monitor and evaluate the performance of Architect to assure compliance with this Agreement.

13.5 MANUFACTURER'S PRODUCT DATA

13.5.1 To the extent the Architect collects product manufacturer materials disclosing product contents; the Owner acknowledges that it is not relying on the Architect for any analysis of material composition or the human or environmental health impacts of specific material selections. Any assessments or evaluations of this kind should be conducted by a toxicologist or other trained professionals retained by the Owner.

13.6 NOTICE

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

Owner: Lemoore Union High School District
Attn: Mark Howard
5 Powell Avenue
Lemoore, CA 93245

Architect: Mangini Associates, Inc.
Attn: Gilbert Bareng
4320 W. Mineral King Avenue
Visalia, California 93291

ARTICLE 14 - SCOPE OF THE AGREEMENT

14.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the terms set and agreed upon as of the day and year first written above.

OWNER
LEMOORE UNION HIGH SCHOOL DISTRICT

ARCHITECT
MANGINI ASSOCIATES INC.

By: _____
Mark Howard, Director of Business Services

By:  _____
Gilbert M. Bareng, Vice President, C33544

A stylized graphic of a pencil or pen nib pointing to the right, with the word "MANGINI" written in a bold, sans-serif font across it.

MANGINI

ARCHITECTURE
INGENUITY

McLAIN BARENG MORRELLI

MANGINI ASSOCIATES INC.

4320 West Mineral King Avenue
Visalia, California 93291

www.mangini.us

(559) 627-0530 *Office*
(559) 627-1926 *Fax*

Architect's Project No.: 1925

**AGREEMENT BETWEEN
OWNER AND ARCHITECT FOR**

**MODERNIZATION OF JAMISON ALTERNATIVE
EDUCATION AT LEMOORE HIGH SCHOOL – PHASE 2**

(5) RELOCATED RELOCATABLES, (1) SHADE STRUCTURE AND (1) NEW MULTI-USE RELOCATABLE
AND (1) NEW ADMIN RELOCATABLE

AGREEMENT made as of April 11, 2019,

BETWEEN the **Owner** (hereafter referred to as Owner):

LEMOORE UNION HIGH SCHOOL DISTRICT

5 Powell Avenue
Lemoore, CA 93245

and the **Architect** (hereafter referred to as Architect):

MANGINI ASSOCIATES INC.

4320 W. Mineral King Avenue
Visalia, CA 93291

For the following **Project**:

MODERNIZATION OF JAMISON ALTERNATIVE EDUCATION AT LEMOORE HIGH SCHOOL – PHASE 2

301 East Bush Street, Lemoore
Lemoore, CA 93245

The Owner and the Architect agree as follows:

ARTICLE 1 - INITIAL INFORMATION

1.1 This Agreement is based on the Initial Information set forth in this Article 1.

1.2 THE OWNER'S PROGRAM (EDUCATIONAL SPECIFICATION) FOR THE PROJECT

1.2.1 The Architect will assist the Owner in developing the educational specification as part of Basic Services.

1.3 THE PROJECT'S PHYSICAL CHARACTERISTICS

1.3.1 Relocation of (4) existing 24'x40' relocatable classrooms, (1) relocatable toilet, (1) shade structure and (1) new 40'x60' multi-use relocatable and (1) new 40'x48' admin relocatable with associated site development.

1.4 FINANCIAL INFORMATION

1.4.1 The Owner's budget for the Project is \$2,600,000 based on the Architect's preliminary Project Budget Summary.

1.4.2 The initial Cost of the Work for the Project as defined in Section 6.1 is based on \$2,135,000.

1.4.3 The Owner will fund the Project.

1.5 SCHEDULE INFORMATION

1.5.1 The Owner intends to use the Project when completed.

1.6 PROCUREMENT INFORMATION

1.6.1 The Owner intends to procure the project in a manner to be determined later.

1.7 OTHER PROJECT INFORMATION

1.7.4 The Owner and the Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services, and the Architect's compensation.

ARTICLE 2 - ARCHITECT'S RESPONSIBILITIES

2.1 The Architect shall provide the professional services as set forth in this Agreement.

2.2 In providing services under this agreement, the Architect shall exercise that degree of professional skill and care ordinarily used by other reputable architects, practicing in the same or similar locality and under similar circumstances. Nothing in this agreement shall be interpreted to require Architect to meet any higher standard or have any obligation in excess of what is required by said standard and this paragraph shall control over any such contrary provision.

2.3 COMPLIANCE WITH LAW

2.3.1 The Architect shall use due professional care to provide services in accordance with applicable Federal, State, and local laws, regulations and directives.

2.3.2 With respect to Architect's employees, Architect shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

2.3.3 The Architect shall be properly licensed as an architect under the laws of the State of California during the term of this Agreement and shall be qualified to provide the services required by the Owner pursuant to this Agreement.

ARTICLE 3 - SCOPE OF ARCHITECT'S BASIC SERVICES

3.1 BASIC SERVICES

3.1.1 The Architect's Basic Services consist of those described in Article 3, and include usual and customary civil, plumbing, and electrical engineering services. Services not set forth in Article 3 are Additional Services.

3.1.2 The Architect represents that the Architect's drawings and specifications shall comply with the California Building Code and shall be submitted to the Division of the State Architect (DSA) and the California Department of Education (CDE) as required. The Architect shall assist the Owner and its consultants to apply for funding for the Project from OPSC and the Architect shall be responsible for all submittals required of the Architect by the DSA, OPSC and CDE in connection therewith.

3.1.3 The Architect shall mutually coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information. Upon the Owner's reasonable request, the Architect and the Architect's consultants shall cooperate with the Owner and the Owner's consultants in verifying that the Architect's plans, specifications, studies, drawings, estimates or other documents relating to the Project are constructible and otherwise comply with the Construction Documents. The Architect has no duty to discover errors, omissions or inconsistencies in the services provided by the Owner, the Owner's consultants or others.

3.1.4 The Architect shall not be liable for claims resulting from an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made without the Architect's approval.

3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for approval of governmental authorities having jurisdiction over the Project. The Architect shall be responsible for any design submittals which are required by said governmental authorities in connection with the Owner's filing of such documents.

3.2 SCHEMATIC DESIGN PHASE SERVICES

3.2.1 The Architect shall review the program and all other information furnished by the Owner to ascertain the requirements of the Project, and shall review the laws, codes, and regulations applicable to the Architect's services and shall arrive at a mutual understanding of such requirements with the Owner.

3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule and budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall promptly notify the Owner in writing of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project that may reduce the cost of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

3.2.4 Based on the Projects' requirements agreed upon with the Owner, the Architect shall prepare and present for Owner's approval a preliminary design illustrating the scale and relationship of Project components.

3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents, including a site plan, if appropriate, and preliminary building plans, sections, and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction material shall be noted on the drawings or described in writing.

3.2.6 The Architect shall submit to the Owner a preliminary Statement of the Probable Cost of the Work prepared in accordance with Section 6.3 and a written schedule for the performance of the Work.

3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request Owner's approval. If Owner incorporates any recommended changes, then Architect shall revise the Schematic Design Documents, including but not limited to the written statement of Probable Cost of the Work and written schedule for the performance of work, as necessary until Owner's governing board approves them. Architect shall attend, and present at, as many meetings of the Owner's governing board as may be necessary to obtain the board's approval of the Schematic Design Documents.

3.3 DESIGN DEVELOPMENT PHASE SERVICES

3.3.1. Following the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's review and approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including but not limited to site and floor plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and shall outline the specifications of the entire Project as to kind and quality of materials, and other elements as may be appropriate.

3.3.2. The Architect shall update the Statement of Probable Cost of the Work.

3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the Statement of Probable Cost of the Work, and request Owner's approval.

3.3.4 The Architect shall provide at no expense to the Owner one complete set of preliminary plans for the review and approval of the Owner and one set for each public agency having approval authority over such plans for their review and approval at no expense to the Owner.

3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

3.4.1 Following the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe further development of the approved Design Development Documents and shall consist of customary working drawings and specifications setting forth in detail sufficient for construction of the Work to be done and the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system, and other requirements for the construction of the Work. The Owner and the Architect acknowledge that in order to construct

the Work the Contractor will provide additional information, including shop drawings, product data, samples, and other submittals, which the Architect shall review in accordance with Section 3.6.4.

3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary, and other Conditions). The Architect shall also compile a project manual, which manual shall be subject to the Owner's review and approval, that includes the Conditions of the Contract for Construction and specifications that may include bidding requirements and sample forms.

3.4.4 The Architect shall update the Statement of Probable Cost of the Work.

3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the Statement of Probable Cost of the Work, take any action required under Section 6.5, and request Owner's approval.

3.5 AGENCY APPROVAL PHASE SERVICES

3.5.1 The Architect will submit the Construction Documents to DSA and local jurisdictions as may be required and make the necessary corrections to secure approval. The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for approval with CDE, OPSC, and other governmental authorities having jurisdiction over the Project.

3.6 BIDDING PHASE OR NEGOTIATION PHASE SERVICES

3.6.1 Following DSA and the Owner's written approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or proposals, as the owner shall direct; (2) confirming responsiveness of bids or proposals; (3) determining successful bid or proposal, if any; and (4) awarding and preparing contracts for construction.

3.6.1.2 If, in the Owner's discretion, the Owner will seek total or partial State funding for this Project, then if so requested by the Owner the Architect shall, in addition to the above, publish the invitation to bid in the appropriate regional trade papers and publications devoted to Disabled Veteran Business Enterprises. If so requested by the Owner, the Architect shall also prepare and submit the appropriate documentation to the OPSC.

3.6.1.3 If the Owner decides to seek competitive bids for construction of the Project, then Section 3.6.2 and following shall apply to Architect's services under the "Bidding Phase or Proposal Phase" of said services. However, if the Owner decides to seek proposals for construction of the Project, then Section 3.6.3 and following shall apply to Architect's services under the "Bidding Phase or Proposal Phase" of said services.

3.6.2 Competitive Bidding

3.6.2.1 Bidding Documents consist of bidding requirements and proposed Contract Documents.

3.6.2.2 The Architect shall assist the Owner in bidding the Project by (1) procuring the reproduction of Bidding Documents for distribution to prospective bidders; (2) distributing Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders; (3) organizing and conducting a pre-bid conference for prospective bidders; (4) preparing responses to questions from prospective bidders and

providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and (5) organizing and conducting the opening of the bids, and subsequently documenting and distributing bid results, as directed by the Owner.

3.6.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

3.6.3 Proposals

3.6.3.1 Proposal Documents consist of proposal requirements and proposed Contract Documents.

3.6.3.2 The Architect shall assist the Owner by (1) procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process; (2) organizing and participating in selection interviews with prospective contractors; and (3) participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

3.7 CONSTRUCTION PHASE SERVICES

3.7.1 General

3.7.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as forth below and in the General Conditions of the Contract for Construction. In the event of conflicts between this Agreement and the General Conditions of the Contract for Construction, this Agreement shall govern with respect to Architect's responsibilities. Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect.

3.7.1.2 All instructions to the Contractor shall be forwarded through the Architect. The Architect shall timely provide Owner with copies of all correspondence between the Architect and the Contractor. The Architect shall advise, consult with, and serve as the Owner's representative in the general administration of the Contract for Construction and in the Owner's dealings with the Contractor, however, the Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract for Construction. The Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents, unless such failure is caused by Architect's negligent acts or omissions in breach of this Agreement, the applicable standard of care, or law. The Architect shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor, or of any other persons performing portions of the Work.

3.7.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services shall commence on the date stated in the official Notice to Proceed and, solely for purposes of payment of the Architect, shall be deemed complete upon the Owner's written approval of the Architect's final Certificate for Payment to the Contractor, provided that such certification and payment shall not constitute an admission by Architect or Owner that the Project has been completed in accordance with the Contract Documents or in conformance with this Agreement.

3.7.2 Evaluations of the Work

3.7.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, both as the Architect deems necessary and as required by the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed will be in accordance with the Contract Documents. On the basis of the site visits, the Architect shall keep the Owner promptly informed of the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent

construction schedule submitted by the Contractor, (2) defects and deficiencies observed in the Work, and (3) any default by the Contractor in the orderly and timely prosecution of the Project.

3.7.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. The Architect shall also recommend substitution of materials or equipment when, in the Architect's reasonable judgment, such action is necessary to the accomplishment of the intent and purpose of the Contract Documents. Such actions as are described in this paragraph shall be taken with reasonable promptness. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

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

3.7.2.4 The Architect shall provide advice to the Owner on apparent deficiencies in construction during the construction phase.

3.7.2.5 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. The Owner will be the final interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by the Contractor. The Owner shall not disregard the Architect's interpretation without good cause.

3.7.2.6 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for the results of interpretations or decisions rendered in good faith.

3.7.2.7 The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

3.7.3 Certificates of Payment to Contractor

3.7.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certifications in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the site as provided in Section 3.7.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Notice of Completion, (2) to results of subsequent tests and inspections, (3) to minor deviations from the Contract Documents correctable prior to completion, and (4) to specific qualifications expressed by the Architect.

3.7.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work beyond the scope required by Section 3.7.2, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

3.7.4 Submittals

3.7.4.1 The Architect shall timely review and take appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of the Owner or of separate contractors, while allowing sufficient time to permit adequate review.

3.7.4.2 Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions, or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's review of a specific item shall not indicate approval of an assembly of which the item is a component.

3.7.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon such the accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

3.7.4.4 Subject to the provisions of Section 4.3, the Architect shall timely review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that includes the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within the time frames agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

3.7.5 Changes in the Work

3.7.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involving an adjustment in the Contract Sum or an extension of the Contract Time.

3.7.5.2 The Architect shall prepare change orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

3.7.6 Project Completion

3.7.6.1 The Architect shall conduct reviews to determine the date of Notice of Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties, guaranties, instruction books, diagram, chart, and related documents required by the Contract Documents and assembled by the Contractor; and shall issue a final Certificate for Payment based upon a final review indicating the Work complies with the requirements of the Contract Documents.

3.7.6.2 The Architect's reviews shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

3.7.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid to the Contract, including the amount to be retained from the Contract Sum,

if any, for final completion or correction of the Work. The Architect shall also forward to the Owner warranties, operation and maintenance manuals, record drawings and other closeout documents prepared by the Contractor.

3.7.7 Evaluation of Claims

3.7.7.1 Notwithstanding anything else in this Agreement, as a part of its Basic Services, the Architect shall assist the Owner in evaluating and responding to claims, disputes and other matters in question between the Contractor and the Owner, including but not limited to claims made against the Owner as a result of alleged or claimed wrongful acts or omissions, and shall in all instances provide such truthful testimonial assistance as may be required by the Owner.

ARTICLE 4 - ADDITIONAL SERVICES

4.1 The Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if authorized or confirmed in writing by the Owner prior to such services being rendered. Compensation for Additional Services shall be as provided in Section 11.3, in addition to compensation for Basic Services.

4.2 Additional Services may be provided after execution of this agreement, without invalidating the Agreement, provided that such Additional Services are approved by Owner prior to such services being rendered. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Article 4 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

4.2.1 Upon recognizing the need to perform Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide Additional Services until the Architect receives the Owner's written authorization.

4.3 Additional Services

4.3.1 Services necessitated by a material change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project, including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method.

4.3.2 Services necessitated by concealed or unknown conditions encountered during the progress of the Work.

4.3.3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws, or regulations or official interpretations subsequent to Owner's approval of the Contract Documents.

4.3.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner.

4.3.5 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique systems designs, in-depth material research, energy modeling, LEED or CHPS certification, or DSA HPI approved unless such alternatives were requested prior to the effective date of this Agreement.

4.3.6 Providing financial feasibility or other special studies.

4.3.7 Providing special surveys, environmental studies and submissions required for approval of governmental authorities having jurisdiction over the Project, other than those identified in Article 3.

4.3.8 Providing services relative to future facilities, systems or equipment.

- 4.3.9** Providing services to investigate existing conditions or facilities or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the Owner.
- 4.3.10** Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.
- 4.3.11** Providing planning surveys, site evaluations or comparative studies of prospective sites.
- 4.3.12** Providing services for planning tenant or rental spaces.
- 4.3.13** Providing services in connection with the work of a construction manager or separate consultants retained by the Owner, unless said manager or consultant was engaged prior to the effective date of this Agreement.
- 4.3.14** Providing detailed estimates (as defined by Section 6.3) of Construction Cost.
- 4.3.15** Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.
- 4.3.16** Providing analyses of owning and operating costs.
- 4.3.17** Providing coordination of Work performed by separate contractors or by the Owner's own forces.
- 4.3.18** Providing on-site project representation during construction beyond Basic Services.
- 4.3.19** Providing building commissioning services, including assistance in the utilization of equipment or systems, such as testing, adjustment and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
- 4.3.20** Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.
- 4.3.21** Providing detailed quantity surveys or inventories of material, equipment and labor.
- 4.3.22** Attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is a party thereto.
- 4.3.23** Preparing Drawings, Specifications and supporting data and providing other services in connection with change orders unless such change orders are required due to errors or omissions of the Architect.
- 4.3.24** Consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing services as may be required in connection with the replacement of such Work.
- 4.3.25** Providing services made necessary by the default of the Contractor, or by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.
- 4.3.26** Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than sixty days after the Date of Notice of Completion of the Work.
- 4.3.27** Providing services of consultants for other than the normal architectural, civil, structural, mechanical and electrical engineering services for the Project.

4.3.28 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 5 - OWNER'S RESPONSIBILITIES

5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints, and criteria, including space requirements and relationships, flexibility and expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, or such additional time as may be commercially reasonable under the circumstances, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and Architect shall thereafter meet and confer in an effort to modify the Project's scope and quality.

5.2.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects in writing an accelerated, phased, or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

5.3 The Owner shall identify a representative authorized to act in the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

5.4 The Owner shall furnish surveys reasonably necessary to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal description shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wet-lands; adjacent drainage; flood plain designations; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark.

5.5 The Owner shall furnish the services of geotechnical engineers and other such consultants when such services are reasonably required by the scope of the Project and are requested by the Architect. Such services may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluations, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance appropriate to the services provided.

5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials, which the Owner shall own.

5.8 The Owner shall furnish all legal, insurance, and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

5.10 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Architect's services and of the Work.

5.11 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 - COST OF THE WORK

6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct of all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary statement of the Probable Cost of the Work, and updated Statements of Probable Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or price proposals will not vary from the Project budget for the Cost of the Work or from any Statement of Probable Cost of the Work prepared by the Architect.

6.3 In preparing Statements of Probable Cost of the Work, the Architect 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 scope of the Project; and to include in the Contract Documents alternate bids to adjust the Probable Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's opinion of the Probable Cost of the Work shall be based on current area, volume, or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Owner approves the Construction Documents, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market, if applicable.

6.5 If at any time the Architect's opinion of the Probable Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner reasonably shall cooperate with the Architect in making such adjustments.

6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or price proposal, the Owner shall:

- .1** give written approval of an increase in the budget for the Cost of the Work;
- .2** authorize rebidding or renegotiating of the Project within a reasonable time;

- .3 terminate in accordance the terms of this Agreement;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

6.7 If the Owner's budget for the Cost of the Work is exceeded by the lowest bona fide bid or price proposal by more than 10%, and the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. Except for the cost of such modifications, Architect shall not be responsible for any increase in the Cost of the Work.

6.8 If the Owner's budget for the Cost of the Work is exceeded by the lowest bona fide bid or price proposal by less than 10%, and the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with said bid or proposal, or the budget as adjusted under Section 6.6.1 and be compensated for modifications to the Construction Documents as Additional Services as provided under Section 11.3.

ARTICLE 7 - OWNERSHIP AND USE OF DOCUMENTS

7.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project, except as otherwise provided in Section 7.2 below. The Architect's Instruments of Service shall be the property of the Owner as provided by Education Code Section 17316, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement.

7.2 This Agreement creates a non-exclusive and perpetual license for Owner to copy, use, modify, reuse, or sub-license any and all copyrights, designs, and other intellectual property embodied in the Architect's Instruments of Service, including drawings, specifications, studies, estimates, and other documents, or any other works of authorship fixed in any tangible medium of expression, including, but not limited to, physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by Architect pursuant to this Agreement. This transfer of rights pertains not only to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to other projects, provided that any invalidity of such license in relation to such other projects shall not affect the validity of such license in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project under Education Code Section 17316. This Agreement is an express transfer of rights as specified in Education Code Section 17316(b).

7.3 Architect represents and warrants that Architect has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Architect's Instruments of Service that Architect or its consultant's prepares or causes to be prepared pursuant to this Agreement. The Architect shall indemnify and hold the Owner harmless pursuant to Section 7.2 of this Agreement for any breach of this Article 7. The Architect makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates, or other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Architect and provided to Architect by the Owner.

7.4 The parties acknowledge the Architect's Instruments of Service are not represented to be appropriate for reuse without modification. Any reuse by Owner of documents prepared under this Agreement, without employing the services of Architect, shall be at Owner's own risk. In the event the Owner reuses or modifies the Architect's Instruments of Service developed by the Architect pursuant to this Contract for purposes other than that for which they are contemplated, the Owner shall indemnify, defend, and hold harmless the Architect, its employees and consultants for damages and expenses caused by the Owner's use or modification of the Architect's Instruments of

Service, and the parties agree that the provisions of this Article shall be the terms and conditions for the reuse as authorized by Education Code Section 17316(c).

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

ARTICLE 8 - CLAIMS AND DISPUTES

8.1 GENERAL

8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or relating to this Agreement within the period specified by applicable law.

8.1.2 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, with limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Article 9.

8.2 MEDIATION

8.2.1 If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be shared equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 60 days, either party may pursue litigation to resolve the dispute.

8.2.2 Demand for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for mediation shall be made within reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such a claim, dispute or other matter in question would be barred by California statutes of limitations.

ARTICLE 9 - TERMINATION OR SUSPENSION

9.1 The right to terminate this Agreement under this provision may be exercised without prejudice to any other right or remedy to which the terminating party may be entitled at law or under the Agreement.

9.2 TERMINATION WITHOUT CAUSE

9.2.1 The Owner may terminate this Agreement upon not less than 7 days' written notice to the Architect for Owner's convenience and without cause. Upon the Owner's request and authorization, the Architect shall perform any and all Basic Services and Additional Services reasonably necessary to wind up the work performed to the date of termination.

9.3 SUSPENSION OF THE PROJECT

9.3.1 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. If and when the Project is resumed, the Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

9.3.2 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect or the Architect's consultants, the Architect may terminate this Agreement by giving not less than 7 days' written notice.

9.4 TERMINATION WITH CAUSE

9.4.1 Either party may terminate this Agreement upon not less than 7 days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

9.4.2 Failure of the Owner to make payments to the Architect in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.

9.4.3 If the Owner fails to make payments to the Architect in accordance with this Agreement, other than those payments withheld pursuant to Section 11.7.1, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give 7 days' written notice to the Owner before suspending services. Before resuming services, the Architect shall be paid all sums due prior to suspension services and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fee for the remaining services and the time schedules shall be equitably adjusted.

9.5 EFFECTS OF TERMINATION

9.5.1 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

9.5.2 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

ARTICLE 10 - MISCELLANEOUS PROVISIONS

10.1 This Agreement shall be governed by the law of the State of California. If any action is instituted to enforce or interpret this Agreement, venue shall only be in the appropriate state or federal court having venue over matters arising in Kings County, California.

10.2 The Owner and the Architect, respectively, bind themselves, their partners, successors, permitted assigns and legal representatives to this Agreement. Neither the Owner nor Architect shall assign this Agreement without the written consent of the other.

10.3 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review within a reasonable period of time prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

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

10.5 Unless otherwise provided in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. Notwithstanding the foregoing, in the event the Owner or the Architect is or becomes aware of the presence of, or exposure of persons to hazardous materials or toxic substances, or the substantial risk thereof, each shall have a duty to immediately notify the other in writing.

10.6 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

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

10.8 The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties.

10.9 Each individual executing this Agreement on behalf of the Architect hereby represents and warrants that Architect is a duly formed and existing entity qualified to do business in the state in which the Project is located and that Architect has full right and authority to execute and deliver this Agreement and that each person signing on behalf of Architect is authorized to do so.

10.10 Owner recognizes that circumstances may occur beyond the reasonable control of either the Owner or the Architect and extensions for such delays shall be made to the schedule. Notwithstanding anything stated herein to the contrary, any time during which the Architect is delayed in the Architect's work by acts of Owner or its employees or those in a direct contractual relationship with Owner or by acts of nature or other occurrences which were not or could not have been reasonably foreseen and provided for, and which are not due to any wrongful acts or omissions, shall be added to the time for completion of any obligations of the Architect.

ARTICLE 11 - COMPENSATION

11.1 BASIC SERVICES

11.1.1 Initial Basic Services Compensation: For the Architect's Basic Services described in Article 3, the Owner shall compensate the Architect on the basis of a percentage of the Cost of the Work as follows:

$$6.0\% \times \$ 2,135,000 = \$ 128,100.00$$

11.1.3 Adjustments to Basic Services Compensation:

- .1** At the end of the Schematic Design, Design Development, Construction Documents, and Agency Approval phases, Initial Basic Services Compensation shall be adjusted to the latest Probable Cost of Construction.
- .2** Initial Basic Services Compensation shall be adjusted after receipt of bids to the amount of the Contract Sum of the awarded construction contract, which shall be the basis for calculating compensation during the construction phase.
- .3** Basic Services Compensation shall be finally adjusted at the completion of the Project to the final Contract Sum of the construction contract, as documented in approved change orders.
- .4** Change Orders items determined to be caused by Architect error or omission shall not increase the Architect's compensation.
- .5** Change Order items which reduce the Contract Sum shall not reduce Compensation.

- .6 When 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, in accordance with the schedule set forth in Section 11.2.1, based on (1) the lowest bona fide bid, or (2) if no such bid or proposal is received, the most recent Statement of Probable Construction Cost for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for services performed whether or not the Construction Phase is commenced.
- .7 When additive alternate bids are provided, and the Owner decides not to accept them after bidding, the Architect shall be compensated based on 75% of 8% of the actual awarded bidders bid for such alternate bids, thereby compensating the architect for design and preparation of the alternate item.
- .8 When deductive alternate bids are provided, and the Owner decides to accept them after bidding, the Architect shall be compensated based on 75% of 8% of the actual difference between the awarded bidder's bid for such alternate bids, thereby compensating the Architect for design and preparation of the alternate item.

11.2 PROGRESS PAYMENTS

11.2.1 Progress payments for each phase of Basic Services shall be as follows:

Schematic Design Phase:	10%
Design Development Phase:	20%
Construction Documents Phase:	35%
Agency Approval Phase:	5%
Bidding Phase:	5%
<u>Construction Phase:</u>	<u>25%</u>
Total Basic Compensation:	100%

11.3 ADDITIONAL SERVICES

11.3.1 For approved Additional Services that may arise during the course of the Project, the Owner shall compensate the Architect on the basis of a stipulated sum agreed to by the parties in advance of the services being performed, or on an hourly basis, plus compensation for reimbursable expenses.

11.3.2 When compensation for Additional Services is on an hourly basis, compensation for Additional Services of the Architect's consultants will be computed at a rate of 1.10 times the amount billed to the Architect for such services.

11.3.3 For Reimbursable Expenses incurred in the furnishing of Additional Services, compensation will be computed at a rate of 1.10 times the amount of expenses incurred by the Architect and the Architect's Consultants.

11.4 HOURLY BILLING RATES

11.4.1 The hourly billing rates for services of the Architect are set forth below:

Standard Hourly Billing Rates Schedule:

Principal Architect	\$	205.00
Architect III		165.00
Architect II		145.00
Architect I		130.00
Construction Administrator III		145.00
Construction Administrator II		120.00
Construction Administrator I		110.00
Business Manager		155.00
Project Manager		150.00
Interior Designer II		90.00
Interior Designer I		70.00
Drafting Technician IV		110.00
Drafting Technician III		100.00
Drafting Technician II		90.00
Drafting Technician I		70.00
Administrative Asst. II		90.00
Administrative Asst. I		50.00
Expert Witness		350.00

The above rates are effective through December 31, 2019. Work continuing beyond December 31, 2019, shall be subject to increases in the above noted schedule based on Engineering News Record's, "Cost of Living Index Adjustment", until this agreement is modified.

11.5 COMPENSATION FOR REIMBURSABLE EXPENSES

11.5.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include reasonable expenses incurred by the Architect and Architect's consultants directly related to the Project, as follows:

- .1 Transportation in connection with the project shall be compensated at the yearly established rate as permitted and published by the Internal Revenue Service for compensated mileage.
- .2 Expense of out of region meals and lodging in connection with the Project.
- .3 If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates for non-exempt employees.
- .4 Expense of renderings, models and mock-ups requested by the Owner.
- .5 Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of that required by Article 12.
- .6 Expense of reproductions, postage and handling of Drawings, Specifications, and other documents required for approval, bidding, and construction of the Project in the Owner's interest, excluding reproductions for the office use of the Architect and the Architect's consultants.

11.5.2 For Reimbursable Expenses, compensation will be computed at a rate of 1.10 times the amount of expenses incurred by the Architect and the Architect's Consultants.

11.6 PAYMENTS TO THE ARCHITECT

11.6.1 For services satisfactorily performed, payment for Basic Services, Additional Services and Reimbursable Expenses shall be made on a monthly basis after receipt and approval by the Owner of the Architect's properly documented and submitted invoices. To be "properly documented and submitted," an invoice shall be timely, be accompanied by all necessary documentation, list all activities performed, and for each activity performed list the person performing it and the person's billing rate. Architect's invoice shall be submitted within ten (10) days of the end

of the monthly billing period. Invoices, receipts and other documentation to establish the validity of all Reimbursable Expenses shall be a prerequisite to Owner payment of such expenses. If Owner disputes a portion of a properly submitted invoice, it shall notify Architect of the dispute and, upon Architect's request, arrange for a meeting to confer about, and potentially resolve, the dispute. Prior to this meeting, Architect shall provide all documentation requested to support disputed portions of a properly submitted invoice. Regardless of any such dispute about an invoice or payment, both parties shall continue to provide all services required by this Agreement and law until the end of the Project, even if Owner and Architect cannot resolve all such disputes. Payments of undisputed portions of a properly submitted invoice shall be made within 60 days of receipt of the invoice.

11.6.2 Amounts unpaid 30 calendar days after the 5th of the month shall bear interest at the rate of 1-1/2%.

11.7 PAYMENTS WITHHELD

11.7.1 The Architect's compensation shall be paid notwithstanding a Contractor-caused delay in completion of the project or reduction of final construction cost by reason of penalties, liquidated damages, or other amounts withheld from the Contractor. However, Owner may withhold from payments to Architect to the extent that Basic and Additional Services remain to be performed, including but not limited to those required for project closeout and payments to Contractor. If the total amount invoiced by Architect reaches the not-to-exceed Basic Services amount before Architect's Basic Services under this Agreement are complete, Architect must complete the Basic Services without submitting additional invoices, or receiving additional payment, for Basic Services.

11.8 ARCHITECT'S ACCOUNTING RECORDS

11.8.1 Architect shall maintain complete and accurate records showing all hours worked with respect to the services rendered and the costs incurred under this Agreement, including but not limited to Reimbursable Expenses and expenses pertaining to Additional Services. In addition, the Architect shall maintain complete and accurate records with respect to any payments to employees or subcontractors. Architect shall also be responsible for Architect's consultants keeping similar records. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, Architect shall make such records available within Fresno County to the Auditor of Owner and to its agents and representatives, for the purpose of auditing and/or copying such records for a period of 5 years from the date of final payment under this Agreement.

ARTICLE 12 - INSURANCE PROVISIONS

12.1 Insurance Requirements: Architect shall maintain at its own costs and expense the following minimum insurance coverage and shall provide a certificate of insurance and any required endorsements to Owner. The certificate of insurance and required endorsements shall be provided prior to commencement of any work and prior to the expiration of each renewal of the policy. Owner may request and Architect shall, upon request, provide a true and certified copy of each policy. No payment will be issued until Owner has received acceptable insurance documentation.

12.2 In addition to the requirements outlined below for each insurance policy, Architect agrees that it will have each insurance policy endorsed to provide:

1. The policy shall be endorsed to provide thirty (30) day notice of cancellation, except ten (10) day notice for nonpayment of premium to Owner.
2. When required, the Commercial General Liability, Automobile Liability, and Aviation Liability insurance policies shall be endorsed to include as additional insured for on-going operations, products completed operations and ownership, operation or use of automobiles and aircraft, Owner and any other person or organization which Architect is required to include as additional insured under an Agreement and their respective owners, directors, officers, employees, agents and volunteers.

3. When required, the Workers Compensation insurance policies shall be endorsed to provide a waiver of subrogation in favor of the Owner and any other person or organization to which Owner is required in a written agreement to provide a waiver of subrogation.
4. If any insurance policy includes a cross suits endorsement or an insured vs. insured exclusion endorsement, the endorsement may not exclude a claim by an additional insured against the named insured or a claim by an additional insured against another additional insured.

12.3 General Liability Insurance: Without limiting Architect's indemnification, Architect shall secure and maintain in full force and effect, at its sole cost and expense during the term of this Agreement, a comprehensive general liability insurance policy with combined single limits of \$2,000,000.00 per occurrence, with a General Aggregate limit of \$4,000,000.00.

12.3.1 The policy shall include contractual liability. The policy may not include any limitation, exclusion or coverage restriction for explosion, collapse or underground hazards. The policy shall not include an exclusion for job site safety or injury to employees of independent contractors. If the policy includes an exclusion of professional services, the exclusion shall not include job site safety as part of the definition of professional services. The certificate of insurance shall include a statement that the policy does not exclude claims alleging job site safety.

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

12.4 Worker's Compensation and Employer's Insurance: Architect shall furnish to the Owner satisfactory proof that the Architect and all engineers, experts, consultants and employees for the period of this Agreement, is providing workers' compensation insurance with \$1,000,000.00 coverage for all persons whom they may employ in carrying out the Work contemplated under this Agreement in accordance with the Workers' Compensation Laws of the State of California. If the Architect employs any engineer, expert consultant or subcontractor which it did not intend to employ prior to commencement of services, it must furnish such proof of insurance covering said engineer, expert, consultant or subcontractor to the Owner immediately upon their employment. Such insurance shall be maintained in full force and effect during the period covered by this Agreement including any extensions of time.

12.5 Professional Liability Insurance: Architect shall furnish to the Owner satisfactory proof that the Architect has Professional Liability Insurance (errors and omissions) with limits of \$1,000,000.00 per claim/\$2,000,000.00 annual aggregate. This insurance shall be maintained in force during the entire period of time the Architect renders service to the Owner under this Agreement. Each of the Architect's professional sub-contractors shall comply with this Section, and Architect shall include such provisions in its contracts with them.

12.6 Commercial Automobile Liability: Commercial Automobile Liability Insurance including coverage for all owned, non-owned and hired automobiles. The limit of liability shall not be less than \$2,000,000 each accident. The policy shall include contractual liability.

12.7 Aviation Liability: To the extent drones are used, Architect will carry liability insuring bodily injury and property damage arising out of the use of owned and non-owned unmanned aircraft.

ARTICLE 13 - SPECIAL PROVISIONS

13.1 INDEMNIFICATION

13.1.1 The Architect agrees, to the extent permitted by law, to hold harmless and indemnify but not defend the Owner, its Governing Board, each member of the Board, and their officers and employees harmless from any liability

for damages to the extent actually caused by the Architect's negligent acts, errors, omissions, or recklessness, or willful misconduct in the performance of professional services arising out of this Agreement and those of his or her officers, employees, consultants or sub-consultants or anyone for whom the Architect is legally responsible (collectively, the "Architect's Parties"). The Architect is not obligated to indemnify the Owner and employees or any other third party in any manner whatsoever for their own negligence.

13.1.2 This indemnification specifically includes any claims that may be made against Owner or against Architect by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement. The Architect specifically agrees to hold harmless and indemnify the Owner for any and all claims arising out of any injury, disability, or death of the Architect's employees or agents to the extent that the above are caused by the negligent acts, errors, or omissions of the Architect. This indemnification obligation shall continue beyond the term of this Agreement as to any negligent acts or omissions occurring under this Agreement or any extension of this Agreement, subject to the applicable statute of limitations.

13.2 FINGERPRINTING

13.2.1 Pursuant to California Education Code Section 45125.1, before any agents or employees of Architect may enter school grounds where they may have any contact with pupils, Architect shall submit fingerprints of its agents and employees in a manner authorized by the California Department of Justice, together with a fee determined by the Department of Justice. Architect shall not permit any of its agents or employees to come in contact with pupils of the Owner until the Department of Justice has ascertained that the Architect's agents or employees have not been convicted of a felony as defined in Education Code Section 45122.1.

13.2.2 Architect shall provide Owner with a written list of the names of its agents or employees who may come in contact with pupils before commencement of work. Architect shall certify, in a form provided by Owner, under penalty of perjury, that it has complied with the requirements of Education Code Section 45125.1, and that none of its agents or employees who may come in contact with pupils have been convicted of a felony as defined in Education Code Section 45122.1, based upon the information Architect has received from the Department of Justice.

13.2.3 If Architect believes that its agents or employees will have only limited contact with pupils and should therefore be exempted from these requirements, Architect must contact the Owner with its request for exemption within 15 days prior to the commencement of work. The request for exemption must specify the grounds for such proposed exemption, considering the totality of circumstances, including but not limited to the length of time Architect will be on school grounds, whether pupils will be in proximity to the site where the Architect's employees are working, and whether the Architect's employees will be working by themselves or with others. Whether to grant or deny the exemption is within the sole discretion of the Owner's governing board.

13.3 ASSURANCES OF NON-DISCRIMINATION

13.3.1 Architect expressly agrees that it will not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

13.4 INDEPENDENT CONTRACTOR STATUS

13.4.1 This Agreement is entered into by both parties with the express understanding that Architect will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute the Architect or any of its agents, employees or officers as an agent, employee or officer of Owner. Architect agrees to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees of Owner. Subject to any performance criteria contained in this Agreement, Architect shall be solely responsible for determining the means and methods of performing the specified services and Owner, except to the extent stated otherwise in this Agreement, shall have no right to control or exercise any supervision over Architect as to how the services will be performed. As Architect is not Owner's employee, Architect is responsible for paying all required state and federal taxes. In particular, Owner will not (1) withhold FICA (Social Security) from Architect payments, (2) make

state or federal unemployment insurance contributions on Architect's behalf, (3) withhold state or federal income tax from payments to Architect, (4) make disability insurance contributions on behalf of Architect, (5) obtain unemployment compensation insurance on behalf of Architect. Notwithstanding this independent contractor relationship, Owner shall have the right to monitor and evaluate the performance of Architect to assure compliance with this Agreement.

13.5 MANUFACTURER'S PRODUCT DATA

13.5.1 To the extent the Architect collects product manufacturer materials disclosing product contents; the Owner acknowledges that it is not relying on the Architect for any analysis of material composition or the human or environmental health impacts of specific material selections. Any assessments or evaluations of this kind should be conducted by a toxicologist or other trained professionals retained by the Owner.

13.6 NOTICE

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

Owner: Lemoore Union High School District
Attn: Mark Howard
5 Powell Avenue
Lemoore, CA 93245

Architect: Mangini Associates, Inc.
Attn: Gilbert Bareng
4320 W. Mineral King Avenue
Visalia, California 93291

ARTICLE 14 - SCOPE OF THE AGREEMENT

14.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the terms set and agreed upon as of the day and year first written above.

OWNER
LEMOORE UNION HIGH SCHOOL DISTRICT

ARCHITECT
MANGINI ASSOCIATES INC.

By: _____
Mark Howard, Director of Business Services

By:  _____
Gilbert M. Bareng, Vice President, C33544