

SUMMERVILLE UNION HIGH SCHOOL DISTRICT

Board Reference Material

Subject: Consideration of agreement for architectural services with BCA Architects

Date Submitted: February 13, 2013

Background: The District passed Measure H, an \$8 million bond extension.

Discussion: The negotiated contract with BCA Architects is attached. The superintendent and District counsel negotiated the agreement with BCA for a period of three weeks.

**Alternative/Identified
Opposition:** None. BCA Architects is the Board selected architect.

Financial Implications: Approximately \$750,000 in bond fund costs for basic architectural services.

Recommendation: The superintendent recommends the Board approve the attached agreement with BCA Architects.

**AGREEMENT
FOR
ARCHITECTURAL SERVICES**

February 1, 2013
Summerville Union High School District
17555 Tuolumne Road
Tuolumne, CA 95379

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AGREEMENT
FOR
ARCHITECTURAL SERVICES

This Agreement for Architectural Services ("Agreement") is made and entered into by and between the Summerville Union High School District, a school district duly organized and existing under the laws of the State of California (the "District"), and BCA Architects (the "Architect"), with respect to the following recitals:

- A. District proposes to undertake the construction of improvement projects which require the services of a duly qualified and licensed architect.
- B. Architect represents that it is licensed to provide architectural/engineering services in the State of California and is specially qualified to provide the services required by District, specifically the design and construction oversight of public school(s).
- C. The parties have negotiated the terms pursuant to which Architect will provide such services and reduce such terms to writing by this Agreement.

In consideration of the covenants and conditions contained in this Agreement, the parties agree as follows:

Article 1

DEFINITIONS

- 1.1 **Additional Services.** "Additional Services" shall mean those services in addition to the Basic Services that are provided by Architect and authorized in writing by District, and as further defined in Article 6 herein.
- 1.2 **Agreement.** "Agreement" shall mean this Agreement for Architectural Services.
- 1.3 **Architect.** "Architect" shall mean BCA Architects, and its officers, shareholders, owners, partners, employees, agents and authorized representatives.
- 1.4 **Basic Services.** Architect's Basic Services consist of the architectural design services, structural, mechanical, and electrical engineering services required to complete the Project, as further defined in Article 5.
- 1.5 **Contract Documents.** "Contract Documents" shall mean those documents which are required for the actual construction of the Project, including but not limited to the Agreement between Owner and Contractor, complete working drawings and specifications setting forth in detail sufficient for construction the work to be done and the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment, and site work.

1.6 **Contractor.** "Contractor" shall mean one or more contractors ultimately selected to perform work on the Project or any replacement.

1.7 **District.** "District" shall mean Summerville Union High School District, its governing board members, employees, agents, volunteers, and authorized representatives. Unless otherwise specified, the terms "District" and "Governing Board" are interchangeable.

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

1.9 **Project Construction Cost.** "Project Construction Cost" shall mean the estimate of total construction costs to District as initially submitted by Architect pursuant to this Agreement and accepted by District, as subsequently revised by changes to the Project Construction Cost under Article 5 of this Agreement, and as subsequently revised at the time District enters a construction contract to equal the construction contract amount.

1.10 **Wrongful Acts or Omissions.** The phrase "Wrongful Acts or Omissions," as used in this Agreement, shall mean such acts which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Architect, its employees, its agents, its consultants, or its volunteers in the performance of the duties set forth in this Agreement, the applicable standard of care, or law.

1.11 **Direct Project Expenses.** Direct Project Expenses shall be 10% of the Basic Service fee amount and shall be paid based upon the percentage of completion. Such expenses shall include travel, mileage, printing for deliverables to District, and submittals to outside governmental agencies, in house reproductions, shipping, long distance telephone calls, and postage.

1.12 **Reimbursable Expenses.** Reimbursable Expenses shall be limited to (a) printing of DSA approved plans for bidding and construction by a print vendor and (b) plan review, permit, or utility service fees paid by Architect on behalf of District when requested by District.

1.13 **Construction Manager (CM).** Construction Manager shall mean the firm hired by District, if any, to manage construction of the project as defined by a separate contract.

1.14 **Project Budget.** "Project Budget" shall mean the total budget for the Project which includes not only the items in the Project Construction Budget but also such items as architectural fees, geotechnical fees, survey fees, costs of permits and other fees, etc.

1.15 **Division of the State Architect (DSA).** "Division of the State Architect" or "DSA" shall mean the Division of the State Architect, California Department of General Services, which shall be responsible for the regulation of school facilities planning and construction for this Project.

1.16 **Office of Public School Construction (OPSC).** "Office of Public School Construction" or "OPSC" shall mean the Office of Public School Construction, California Department of General Services.

Article 2

RETENTION OF ARCHITECT; STANDARD OF CARE

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

Article 3

DESCRIPTION OF PROJECT

The Project concerning which such architectural services shall be provided is described as:

The implementation of District Master Plan for Summerville Union High School dated October 10, 2012, to include District selected modernization projects constructed in 3 increments.

Article 4

COMPENSATION

4.1 Basic Services

For the Basic Services provided pursuant to this Agreement, Architect's total compensation for its Basic Services shall be calculated as follows: Lump Sum basis equal to 12% of the final construction cost.

Architect will not be compensated for any Basic Services required as a result of its Wrongful Acts or Omissions.

4.1.1: Architect's payment schedule is as follows:

Schematic Design Phase:	15% of the Projected Construction Costs
Design Development Phase:	23% of the Projected Construction Costs
Contract Documents Phase:	30% of the Projected Construction Costs
Agency Approvals:	5% of the Projected Construction Costs
Bid and Negotiations Phase:	5% of the Selected Bid Amount
Construction Phase:	20% of the Selected Bid Amount
<u>DSA Close Out:</u>	<u>2% ** of the Final Construction Cost</u>
Total Basic Service Fee:	100%

** (1% due when all close documents have been submitted to DSA; final 1% due when project is certified by DSA)

4.2 Additional Services

Architect may invoice separately for Additional Services if provided by Architect pursuant to Article 6. However, Architect will not be compensated for any Additional Services required as a result of its Wrongful Acts or Omissions.

4.3 Expenses

4.3.1 In addition to the basic service compensation, Architect shall be compensated as listed below for Direct Project Expenses for this project, to include costs for phase deliverables as set forth in this agreement, fax, expense for reproductions for office use by Architect and its consultants, postage, messenger, transportation, long distance communications, mileage, transportation and/or travel costs for site meetings. Direct Project Expenses shall be 10% of the basic service fee amount and shall be paid based upon the percentage of completion basis. The direct project expenses do not include bid set and construction phase printing.

4.4 For services satisfactorily performed, payment for Direct Project Expenses and Additional Services, which are agreed upon in writing, shall be made on a monthly basis after receipt and approval by District of Architect's properly documented and submitted invoices. To be "properly documented and submitted," an invoice shall be accompanied by all necessary documentation. Architect's invoice shall be submitted within ten (10) days of the end of the monthly billing period. If District disputes a portion of a properly submitted invoice, it shall notify Architect of the dispute and, upon Architect's request, arrange for a meeting to confer about, and potentially resolve, the dispute. Prior to this meeting, Architect shall provide all documentation requested to support the disputed portions of the properly submitted invoice. Regardless of any such dispute about an invoice or payment, Architect shall continue to provide all services required by this Agreement and law until the end of the Project, even if District and Architect cannot resolve all such disputes. Payments of undisputed portions of a properly submitted invoice shall be made within 30 calendar days of receipt of the invoice; Architect otherwise waives all rights and remedies under law related to receipt of payment.

4.5 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, District may withhold from payments to Architect to the extent that (i) Basic and Additional Services remain to be performed,

including but not limited to those required for project closeout and payments to Contractor, and (ii) Architect's Wrongful Acts or Omissions caused District to incur damages, losses, liabilities, or costs, including but not limited to withholding any amounts for which Architect is responsible.

4.5.1 Prior to the beginning of each phase as described in Section 4.1.1, the Parties shall, in writing, agree upon:

4.5.1.1 The applicable Projected Construction Costs, Bid amount, or Construction Cost for the current phase.

4.5.1.2 The Architect's estimated fee for the current phase based on Section 4.5.1.1.

4.5.1.3 The estimated period of time it will take to complete the current phase.

4.5.1.4 An agreed upon monthly billing amount for the Architect during the current phase.

4.5.2 Once the Parties agree upon the items set forth above, the Architect may commence its monthly billing. The Architect's monthly billing for each phase shall not exceed seventy-five percent (75%) of the amount set forth in Section 4.5.1.2 until the Architect's work for the current phase has been completed and accepted by the Governing Board.

4.5.3 If the applicable costs as defined in Section 4.5.1.1 change during a phase, the Parties agree to redo the process described in Sections 4.5.1.1 through and including 4.5.1.4.

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

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

4.8 Architect's hourly rate schedule for additional services is attached as Exhibit A.

4.9 Architect shall not accept compensation or other benefits from other persons related to the Project, including payments from manufacturers of construction materials that are specified in the design.

Article 5

BASIC SERVICES TO BE RENDERED BY ARCHITECT

5.1 General

5.1.1 Architect's Basic Services consist of the architectural design services, structural, mechanical, and electrical engineering services, normally required to complete the Project. The Basic Services also include the services described in this Article 5, below, including but not limited to preparation of a single set of bid documents (plans and specifications, to include project increments), bid handling, review and approval of change orders, requests for information, and other contract administration duties. District shall have the right to add or delete from Architect's scope of services as it may determine is necessary for the best interests of the Project and/or District at no additional cost to District unless such deletion or addition is considered an "Additional Service" as that term is defined in Section 6.2. Architect shall expeditiously and diligently perform all of its work and obligations under this Agreement. Architect may not cease, delay, reduce, or threaten to cease, delay or reduce, its performance based on a payment dispute with District under Section 4.4, above. Architect acknowledges that its priority is to complete the Project and Architect's services, and that any payment disputes with District under Section 4.4, if not resolved during the Project, must wait for resolution after the Project.

5.1.2 Architect shall review the estimate described more fully hereinafter at each phase of Architect's services, also as defined hereinafter. If such estimates are in excess of the project budget, Architect shall revise the type or quality of construction to come within the budgeted limit.

5.1.3 Whenever Architect's services include the presentation to District of Project Construction Cost, Architect shall include, in the Project Construction Costs estimate, a reasonable amount for contingency costs arising from, among other things, higher bids than anticipated, future increase in construction costs, and change orders.

5.1.4 Architect shall notify District, at the conclusion of each phase, if there are any indicated adjustments in previously provided Project Construction Cost arising from market fluctuations or approved changes in scope or requirements based upon a mutually agreed upon index.

5.1.5 At District's request, Architect and Architect's consultants shall cooperate with District and District's consultants in verifying that Architect's plans, specifications, studies, drawings, estimates or other documents relating to the Project are constructible and otherwise comply with the Contract Documents. If there are project meetings during the design and construction phases, Architect shall attend those meetings.

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

5.1.7 All personnel provided by Architect shall be qualified to perform the services for which they are provided. Architect shall obtain District's approval of each employee of

Architect who provides services under this Agreement, and approval of each change of employees who are providing such services. District may, upon ten (10) days written notice, cause Architect to remove a person from the Project if he/she has failed to perform to District's satisfaction. Should additional employees be required to timely perform all of the services required under this Agreement and/or to avoid delay, Architect shall provide them immediately at no additional cost to District.

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

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

5.2 Consultants

5.2.1 Architect's Consultants. Architect shall employ or retain at Architect's own expense, basic service engineers and other specialty consultants necessary to Architect's performance of this Agreement and licensed to practice in their respective professions in the State of California. Engineers and consultants employed by Architect for this Project shall be approved by District prior to their commencement of work. Architect's consultants shall be employed to provide assistance during all aspects of the Project and will include, in addition to design services, review of schedules, shop drawings, samples, submittals, request for information, the final inspections, and development of any "punch list" items. Architect's Consultants shall (1) visit the site on a regular and ongoing basis while work is in progress for the purpose of reviewing the work to determine conformance with the Project design and specifications and (2) participate in site meetings when deemed appropriate by the Inspector of Record ("IOR"), the Construction Manager (if so hired by District), Architect, or District Superintendent. Architect must disclose to District all such consultants retained, and the compensation paid to them.

5.2.2 District's Consultants. Architect shall confer and cooperate with consultants retained by District as may be requested by District or as reasonably necessary.

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

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

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

5.3 Schematic Design Phase

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

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

5.3.3 Architect shall review with District and its consultants, alternative approaches to the design and construction of the Project, and shall include alternatives that may reduce the cost of the Project.

5.3.4 Based on a mutual understanding of District's budget and scope of work requirements, Architect shall prepare for District's written approval, schematic design documents, which include but are not limited to, schematic design studies, site utilization plans, a description of the Project showing, among other things, the scale and relationship of the components of the Project, preparation of a written estimated statement of Project Construction Cost and a written schedule for the performance of the work that itemizes constraints and critical path issues. The Project Construction Cost shall be based on current area, volume and other unit costs, shall conform to District's total construction cost budget, and shall include reasonable contingencies for all construction and construction management work. The written schedule shall conform to District's milestone and completion deadline requirements. Nevertheless, Architect is encouraged to make recommendations to District and its consultants regarding additional benefits that could be realized by increasing District's total construction cost budget, or by altering District's completion deadlines. If District incorporates any recommended changes, then Architect shall revise the schematic design documents, including but not limited to the written statement of Project Construction Cost and written schedule for the performance of work, as necessary until District approval in writing is obtained.

5.3.5 Architect shall submit to District a preliminary Project Construction Cost based on current area, volume and other unit costs. Architect shall provide at no expense to District one complete set of schematic design plans (1 hard copy + 1 disc of PDF's) for the review and written approval of District and its consultants.

5.3.6 Following District's written approval of the schematic design documents, Architect shall provide to District, for its review and approval, a Projected Construction Cost estimate for the Design Development Phase.

5.3.7 Upon the District's approval of the Projected Construction Cost estimate for the Design Development Phase, the Parties shall commence the process described in Sections 4.5.1 through and including 4.5.3. District shall pay the monthly invoices in accordance with the process set forth in Section 4.4.

5.4 Design Development Phase

5.4.1 Following District's written approval of the schematic design documents, including the estimate of Project Construction Cost and schedule at the end of the Schematic Design phase, Architect shall provide all necessary architectural and engineering services to prepare design development documents for District's written approval, which fix and describe the size and character of the project and which shall include, but are not limited to, site and floor plans, elevations and other approved drawings and shall outline the specifications of the entire Project as to kind and quality of materials, categories of proposed work such as architectural, structural, mechanical and electrical systems, types of structures and all such other work as may be required. During the design development phase, Architect will keep the Project within all budget and scope constraints set by District and its consultants. Architect is encouraged to make recommendations to District and its consultants regarding additional benefits that could be realized by altering District's total construction cost budget or completion deadlines. If District incorporates any recommended changes or otherwise does not approve the submitted design development documents, then Architect, as part of Architect's basic services, shall revise the design development documents, including but not limited to the written statement of Project Construction Cost and written schedule for the performance of work, as necessary until District approves them in writing. Architect and its Consultants may be required to attend and present at a District Governing Board meeting to obtain the Governing Board's approval of the design development documents.

5.4.2 Architect and its Consultants shall assist District and its consultants in the preparation and/or modification of the Storm Water Pollution Prevention Plan if any such plan is required for this Project.

5.4.3 Architect shall prepare necessary documents for and oversee the processing of District's application for and obtaining of required approvals from the DSA, the OPSC (if applicable), the Department of Education, the State Fire Marshall and other agencies exercising jurisdiction over the Project. Architect shall also be responsible for the preparation and submission of any required applications, notices or certificates to public agencies as required by law. Architect shall provide a copy of all such documents to District.

5.4.4 Architect shall advise District and its consultants of any adjustments to the preliminary Project Construction Cost.

5.4.5 Architect shall identify areas of construction for which unit pricing shall be required as part of the Contractor's bid.

5.4.6 Architect shall provide at no expense to District one complete set of design development plans (1 hard copy + 1 disc of PDF's) for the review and written approval of District and its consultants, and one set for each public agency having approval authority over such plans for their review and approval at no expense to District.

5.4.7 Following District's written approval of the design development documents, Architect shall prepare a revised Projected Construction Cost estimate for the Contract Document phase.

5.4.8 Upon District's approval of the revised Projected Construction Cost estimate for the Contract Document phase, the Parties shall commence the process described in Sections 4.5.1 through and including 4.5.3. District shall pay the monthly invoices in accordance with the process set forth in Section 4.4.

5.5 Contract Documents Phase

5.5.1 Following District's written approval of the design development documents, including the Project Construction Cost and construction schedule, Architect shall prepare Contract Documents for the written approval of District consisting of 100% complete working drawings and specifications setting forth the work to be done in detail sufficient for construction, including but not limited to the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work. Architect shall also update the construction schedule and the Project Construction Cost for District's written approval. The Contract Documents shall conform to, comply with, and satisfy all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the Americans with Disabilities Act ("ADA").

5.5.2 Architect shall coordinate with District and its consultants in development of the bid documents.

5.5.3 Prior to submission of the Contract Documents to DSA for plan check, if requested by District, Architect shall submit one complete set the Contract Documents (1 hard copy + 1 disc of PDF's) to District and its consultants for an opportunity to review them for various issues, including but not limited to constructability, scheduling, general completeness, clarity, consistency, coordination, cost-effectiveness, value engineering, identification of possible add/delete bid alternatives and time of construction.

5.5.4 After approval by District and any constructability review, Architect shall submit the Contract Documents to DSA for plan check, and make the necessary corrections to secure DSA approval.

5.5.5 Architect shall give District and its consultants, at the time of DSA approval of the final form of the Contract Documents, Architect's final estimate of Project Construction Cost and construction schedule, which shall be given final written approval by District along with the Contract Documents. The revised Project Construction Cost shall be based on current area, volume and other unit costs, and on a mutually acceptable recognized building cost index, and shall include a reasonable contingency. In preparing the revised estimate of Project Construction cost and construction schedule for the Contract Documents, Architect shall consult with and involve District and its consultants in the process to maximize accuracy and completeness. The revised Project Construction Cost estimate shall conform to District's total Project budget, and the revised construction schedule shall conform to District's milestone and completion deadline requirements. Architect and its Consultants may be required to attend and present at a District Governing Board meeting in order to obtain the Governing Board's approval of the Contract Documents.

5.5.6 Following DSA's and District's written approval of Contract Documents, Architect shall prepare a revised Projected Construction Cost estimate for the Bidding and Negotiations Phase.

5.5.7 Upon District's approval of the revised Projected Construction Cost estimate for the Bidding and Negotiations Phase, the Parties shall commence the process described in Sections 4.5.1 through and including 4.5.3. District shall pay the monthly invoices in accordance with the process set forth in Section 4.4.

5.6 Bidding and Negotiations Phase

5.6.1 Following DSA's and District's written approval of Contract Documents, and District's written approval of Architect's final estimate of Project Construction Cost and construction schedule, Architect shall continue to work with District and its consultants in finalizing the bid documents, as described in Section 5.5.2, above.

5.6.2 Architect's estimate of Project Construction Cost at the time of DSA approval of the Contract Documents shall be current as of the date that the Request for Bids is published. Should bids be due more than ninety (90) calendar days after the date that the Request for Bids is initially published, Architect's Projected Construction Costs shall be modified by the percentage change in the cost-of-construction in the then current mutually agreed upon recognized building cost index (Engineering News Record index).

5.6.3 Should the lowest responsible and responsive bid received on a bid exceed Architect's most recent approved estimate of Project Construction Cost for that bid (or amount adjusted according to the then current mutually agreed upon recognized building cost index) as accepted by District by more than ten percent (10%), Architect shall, on request by District and as part of Architect's Basic Services, make such changes in the plans and specifications as shall be necessary to bring new bids within ten percent (10%) of such Project Construction Cost. In making such changes, Architect will exercise Architect's best judgment in determining the balance between the size of the Project, the type of construction, and the quality of the construction to achieve a satisfactory project within ten percent (10%) of Architect's Project Construction Cost. To avoid the potential for bids to exceed the estimate by more than 10% at bid opening, Architect may, as an alternative, with District's approval, include in the Contract Documents one or more deductive alternatives so that Architect and District and its consultants may evaluate different means to achieve a satisfactory project within ten percent (10%) of Architect's Project Construction Cost.

5.6.4 With the assistance of the Architect, the District will decide whether to conduct a prequalification of bidders' examination. If the District elects to conduct a prequalification of bidders' examination, Architect's and District's representative(s) shall review the qualifications of all bidders for the construction of the Project, and shall make recommendations to District as to whether a bidder meets the minimum qualification requirements.

5.6.5 If District will seek total or partial State funding for this Project, District shall publish the invitation to bid in the appropriate regional trade papers and publications devoted to Disabled Veteran Business Enterprises. Architect shall prepare and submit the appropriate documentation to the OPSC.

5.6.6 If Architect issues bid addenda during the bid phase, then Architect shall gain DSA approval of all bid addenda and Architect shall prepare and deliver to District one complete conformed set at the end of the bid phase that includes the DSA approved construction documents and all changes made by bid addenda. The conformed set will be for District use and reference.

5.6.7 Architect shall include in the bidding information, plans or specifications, a requirement that the Contractor(s) provide operation manuals and adequate training for the Client in the operation of mechanical, electrical, heating and air-conditioning systems installed by the Contractor(s).

5.6.8 Architect shall provide services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, specifications, and other documentation resulting from those substitutions as determined by Architect or required by the Division of State Architects ("DSA").

5.6.9 Upon the issuance of the official Notice to Proceed, the Parties shall commence the process described in Section 4.5.1 through and including 4.5.3. District shall pay the monthly invoices in accordance with the process set forth in Section 4.4.

5.7 Construction Phase

5.7.1 The construction phase shall begin on the date stated in the official Notice to Proceed.

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

5.7.3 Architect shall timely provide District with copies of all of its correspondence with the Contractors.

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

5.7.5 Based on information provided by District's consultants, Contractors and Architect's own knowledge of the Project (including documents in Architect's possession or reasonably available to it), Architect shall prepare an accurate final set of as-built record drawings indicating dimensions and locations of all work, including but not limited to buried utility lines and mechanical, electrical and plumbing layouts, which shall be forwarded to the District and its consultants upon completion of the Project (Architect will deliver PDF, CADD files, and a hard copy to District of the Record Drawings in a version acceptable to District). While Architect

cannot guarantee precise accuracy of such drawings, Architect shall exercise reasonable care in reviewing such drawings to determine their general compliance with the Contract Documents. Architect shall have no responsibility for their conformity to field conditions, except that in the event that Architect, consistent with standards of due care, becomes aware of non-conformity with field conditions, Architect shall have a duty immediately to notify District in writing.

5.7.6 Architect shall be responsible for the preparation and submission of any notifications regarding excavation in areas which are known or suspected to contain subsurface installations pursuant to Government Code section 4216, *et seq.* Architect may delegate this responsibility to a Contractor if such power to delegate was included in the Contract Documents and bid package, but Architect shall remain responsible for supervising such Contractor to ensure performance of this task. Architect shall provide a copy of all such notifications to District.

5.7.7 Architect shall, at all times, have access to the Project wherever it is in preparation and progress. To the extent reasonably possible given Contractor's work in progress, District and its consultants shall provide such access so that Architect may perform its functions under the Agreement and Contract Documents.

5.7.8 In the discharge of its duties of observation and interpretation, Architect shall require Contractors to comply with the Contract Documents, and shall guard District against defects and deficiencies in the work of the Contractor. Architect shall advise and consult with District, its consultants and inspectors concerning the Contractor's compliance with the Contract Documents and shall assist District, its consultants and inspectors in securing the Contractor's compliance.

5.7.9 Architect shall (1) visit the site not less than once per week while work is in progress, and as often as necessary and appropriate to the stage of construction (with particular emphasis on structural work) for the purpose of reviewing the work to determine conformance with the Project design and specifications and (2) determine for District's benefit and protection if the Work is proceeding in accordance with the intent of the Contract Documents and the construction schedule. Architect shall attend all construction progress meetings in conjunction with or in addition to visiting the site in satisfaction of other responsibilities.

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

5.7.11 Architect shall review and approve, take exception to, or take other appropriate action upon all schedules, shop drawings, samples, and other submissions of the Contractor to determine conformance with the Project design and specifications as set forth in the Contract Documents. All such action shall be taken within fourteen (14) calendar days of receipt of the submittals, unless the critical path of the Project is impacted in which case Architect shall take such action as soon as possible. If Architect is not able to take such action within the required time due to reasons beyond Architect's control, Architect may take action within a reasonable period of time under the circumstances; however, Architect shall make such determination within four (4) calendar days of receipt of the submission, and shall notify District, its consultants, and Contractor immediately after such determination with an explanation as to why Architect cannot take action within the time required, what Architect is doing to expedite its response, when Architect expects to

be able to issue a response, and what action, if any, should be taken by District, its consultant, or Contractor in the meantime to mitigate delays and/or costs.

5.7.11.1 Unless approved of by District, Architect will reject work and materials which do not conform to the Contract Documents. Architect's approval of a specific item shall not be an approval of an assembly of which the item is a component. Whenever, in Architect's reasonable judgment, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, Architect, with the District's approval, will require special inspection or testing of the work or materials in accordance with the Contract Documents whether or not such work or materials be then fabricated, installed, or completed. Architect will also recommend substitution of materials or equipment when, in Architect's reasonable judgment and with the District's approval, such action is necessary to the accomplishment of the intent and purpose of the Contract Documents. Such actions as are described in this paragraph shall be taken with reasonable promptness.

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

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

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

5.7.15 Architect will, consistent with standards of due care; make reasonable professional efforts to exclude hazardous materials from new construction. In the event District or Architect is or becomes aware of the presence of, or exposure of persons to, asbestos, polychlorinated biphenyl (PCB) or any other toxic or hazardous contaminants, materials, air pollutants or water pollutants at the Project site ("Hazardous Substances"), or the substantial risk thereof, each shall have a duty immediately to notify the other in writing. The parties recognize, however, that neither Architect nor District is trained or licensed in the recognition or remediation of Hazardous Substances. When construction is properly completed, Architect shall provide such certification as to Hazardous Substances as is required of architects for such projects by the OPSC.

5.7.16 Based on Architect's observations, Architect and Consultants, if applicable, shall assist District and its consultants to evaluate each Project Application for Payment and determine that the quality of the completed work is in accordance with the Contract Documents and that the Contractor is entitled to payment for the completed work.

5.7.17 Notwithstanding anything else in this Agreement, as a part of its Basic Services, Architect shall assist District and its consultants in evaluating and responding to claims, disputes, and other matters in question between the Contractor and District or its consultants, including but not limited to claims made against District as a result of alleged or claimed Wrongful

Acts or Omissions of Architect in the performance of any of its duties, set forth herein and shall in all instances provide such truthful testimonial assistance as may be required by District at no cost to District. Architect agrees to toll all statutory periods of limitation for District's claims, lawsuits, or other proceedings against Architect which arise out of, or are related to, any claims by Contractors against District until Contractors' claims are fully and finally resolved. This tolling period commences upon a Contractor's initial submission of a notice of claim, change order request, or claim. At any time, District may terminate the tolling period effective ten (10) calendar days after written notice to Architect, and after such termination, District may pursue claims, lawsuits or other proceedings against Architect.

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

5.7.19 Architect shall review and sign necessary change orders and provide supporting change drawing documents. Payment of fees to Architect as a result of change orders shall be handled as follows:

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

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

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

5.7.20 Architect shall provide a color schedule of all finish materials in the Project for District's review and approval.

5.7.21 Architect shall assist District and its consultants in determining the date of final completion and make a final detailed on-site review of the job with representatives of District, its consultants, and the Contractor. If requested by District, Architect shall also perform a warranty review with District no later than thirty (30) calendar days before the end of the 12-month warranty period from the filing of a Notice of Completion by the Architect.

5.7.22 Architect shall assist District and its consultants in issuing the final certificate for payment and any other documents required to be recorded by law or generally accepted architectural or construction contract practice upon compliance with the requirements of the Contract Documents, provided that such certification shall not constitute an admission that the Project has been completed in accordance with Contract Documents or in conformance with this Agreement.

5.7.23 Architect shall make reasonable professional efforts to ensure that the finished project complies with all standards imposed by the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, Disability Access Requirements of the State Building Code, and any other laws applicable to disability access. If a court, administrative agency, or other trier of fact were to subsequently determine that Architect has violated any of the above-referenced laws, Architect shall remedy the violation at its own cost. Architect shall indemnify, defend and hold District harmless pursuant to Article 18.1 of this Agreement for any breach of this paragraph due to Architect's negligence, recklessness, or willful misconduct.

5.7.23.1 Following review and approval by DSA, Architect shall use reasonable professional efforts to keep the Contract Documents up-to-date regarding any subsequent changes in the law, any regulation applicable to disabled access, or any subsequent differing interpretation of the laws or regulations applicable at the time Architect's design is reviewed by DSA. In the event that Architect, in its exercise of reasonable professional efforts, becomes aware that the Contract Documents are out of compliance with the foregoing standards, Architect shall immediately notify District in writing. Payment of fees to Architect to bring the Contract Documents into compliance with the above-referenced statutory mandates shall be handled as a change order pursuant to Section 5.7.19.

5.8 Use of Previously Prepared Materials

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

Article 6

ADDITIONAL SERVICES TO BE RENDERED BY ARCHITECT

6.1 "Additional Services" shall be provided by Architect if authorized in writing by District prior to the performance of such Additional Services. No additional compensation shall be paid to Architect for performing these Additional Services unless District and Architect agree in writing as to the amount of compensation for such services prior to such services being rendered. Such compensation shall be paid based on the hourly rates in Section 4.8 or a mutually acceptable lump sum and as otherwise set forth in this Agreement. Any work performed by Architect without prior written authorization OR without written agreement on compensation shall be presumed to be part of the Architect's Basic Services.

6.2 The following list of services is not included in the Basic Services to be provided under this Agreement, and they will be performed only in accordance with Article 6.1, above:

6.2.1 Providing financial feasibility or other special studies;

6.2.2 Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase;

6.2.3 Providing coordination of Project performed by separate contractors (i.e. separate contractors that require separate DSA 102 contract information forms);

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

6.2.5 Making revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given or are due to other causes not within the control of Architect;

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

6.2.7 Providing services made necessary by the default of the Contractor;

6.2.8 Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding, or legal proceeding, other than when resulting from Architect's or its consultants' alleged Wrongful Acts or Omissions, or as required of Architect as set forth in the definition of Basic Services;

6.2.9 Providing services of consultants for other than the normal architectural, structural, mechanical, and electrical engineering services for the Project;

6.2.10 Selecting moveable furniture, equipment or articles (at the District's request) which are not included in the Contract Documents;

6.2.11 Providing services related to change orders requested by District, as discussed in Section 5.7.19.1, above;

6.2.12 Providing any other services not otherwise included in the Agreement and not customarily furnished in accordance with generally accepted architectural practice; and

6.2.13 Preparing multiple sets of bid documents, reviewing multiple prime bid package scope descriptions and staging and phasing plans, and preparing and administration of multiple prime contracts, including separate change orders, DSA forms, DSA verified reports and DSA close out for more than one prime contract.

6.2.14 Providing bid and construction administration services for phased or multiple bid or construction phases, beyond the 3 increments currently anticipated.

6.2.15 Expense of outside professional renderings, models and mock-ups requested by District.

Article 7

RESPONSIBILITIES OF DISTRICT

It shall be the duty of District to:

- 7.1 Pay all fees required by any reviewing or licensing agency;
- 7.2 Designate a representative authorized to act as a liaison between Architect and District in the administration of this Agreement and the Contract Documents;
- 7.3 Furnish, at District's expense, the services of a Project Inspector;
- 7.4 Review all documents submitted by Architect and advise Architect of decisions thereon within a reasonable time after submission;
- 7.5 Issue appropriate orders to Contractors through Architect;
- 7.6 Furnish site topographic survey, site boundary surveys, soil investigation, and geological hazard reports, which District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Architect. If DSA determines any existing soils or geological hazards reports are required to be updated, the cost of the updates shall be borne by District.
- 7.7 Furnish the services of a hydrologist or other consultants not routinely provided by Architect when such services are reasonably required by the scope of the Project and are requested by Architect;
- 7.8 Provide asbestos review and abatement, identifying materials which may qualify for same;
- 7.9 Furnish copies of available as-built drawings for existing buildings and utilities systems related to the Project where available, which District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Architect. District will also provide information regarding programmatic needs and specific equipment selection data;
- 7.10 Furnish copies of structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents, which District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Architect; and
- 7.11 Furnish prompt notice of any fault or defects in the Project or nonconformance with the Contract Documents of which District becomes aware (however, District's failure to do so shall not relieve Architect of Architect's responsibilities under Title 21, Title 24, and the Field Act for this Project and under this agreement).

Article 8

PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

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

8.2 The following insurance shall be maintained by Architect in full force and effect during the entire period of performance of this Agreement, including any extensions, and shall be written on an "occurrence" basis: Commercial general liability insurance, excluding coverage for motor vehicles, shall be in amounts not less than Two Million Dollars (\$2,000,000) general aggregate, Two Million Dollars (\$2,000,000) personal and advertising injury aggregate, with a per occurrence limit of Two Million Dollars (\$2,000,000); Automobile liability insurance covering motor vehicles shall be in an amount not less than One Million Dollars (\$1,000,000) combined single limit.

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

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

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

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

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

Article 9

WORKER'S COMPENSATION INSURANCE

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

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

Article 10

ERRORS AND OMISSIONS INSURANCE

10.1 Prior to the commencement of services under this Agreement, Architect shall furnish to District satisfactory proof that Architect has, for the period covered by this Agreement, errors and omissions insurance on claims made basis with limits of at least One Million Dollars (\$1,000,000) per claim and in the aggregate with a deductible in an amount not to exceed the sum of Fifty Thousand Dollars (\$50,000).

10.1.1 If written on a "claims made" form, the Policy Retroactive Date should be no later than the date on which Architect commences activity on this project. The policy should contain a clause that enables Architect to purchase extended period, or "tail" coverage in the event that the policy is cancelled for any reason. The policy should remain in full force and effect for three (3) years following completion of this project.

10.2 Any consultant or subcontractor utilized by Architect in the performance of its responsibilities under this Agreement (1) who prepares architectural or construction documents for the Architect or one of its (Architect's) consultants or subcontractors or (2) who, if a licensed professional, provides advice to the Architect or one of its consultants or subcontractors regarding any architectural or construction documents shall comply with this Article. Architect shall include, in its contract with all such consultants or subcontractors, a requirement that each obtain general practice errors and omissions insurance, on a per claim and aggregate policy, in an amount not less than Five Hundred Thousand Dollars (\$500,000) prior to commencing services under this Agreement and that each furnish proof satisfactory to District of this insurance. This insurance shall be maintained by Architect's consultants and subcontractors for a period of not less than five (5) years after completion of the project.

Article 11

COMPLIANCE WITH LAWS

11.1 Architect shall be familiar with, and Architect and Architect's design shall comply with, all State and Federal laws and regulations applicable to the Project or lawfully imposed upon the Project by agencies having jurisdiction over the Project, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, prevailing wage law, and the Americans with Disabilities Act ("ADA"). Architect shall use reasonable professional effort and judgment in interpreting and advising the Owner as to the necessary requirements for the Project to comply with the Americans with Disabilities Act (ADA). Architect shall rely on the State of California Division of the State Architect for interpretations of the ADA at the time the service is rendered.

Article 12

TERMINATION OF AGREEMENT

12.1 **Termination by District** – This Agreement may be terminated, or the Project may be canceled, by District for District's convenience and without cause at any time immediately upon receipt of written notice by Architect. In such event, Architect shall be compensated for (a) all Basic or Additional Services completed, and Direct Project Expenses incurred, pursuant to this Agreement through the date of receipt of Notice of Termination and (b) such Basic or Additional Services performed, and Reimbursable Expenses incurred, after termination which are authorized by District. Such compensation shall be reduced by any amounts District is entitled to withhold under law or this Agreement. Upon District's request and authorization, Architect shall perform any and all Basic and Additional Services necessary to complete the work in progress as of the date of termination.

12.1.1 For any material breach of contract by Architect, District may instead terminate the Agreement for cause by delivering written Notice of Intent to Terminate for Cause to Architect. Such Notice shall include the following: (1) A description of Architect's material breach, and (2) a date not less than fourteen (14) calendar days after delivery of the notice by which Architect must cure such breach or reasonably commence to cure such breach. In response to such Notice, if Architect fails to cure or fails to reasonably commence to cure such breach by the deadline set forth in the Notice, then District may terminate the Agreement by written notice

delivered to Architect, which shall be effective upon such delivery. In such event, Architect shall be compensated for all services completed pursuant to this Agreement through the date of termination, together with compensation for such services performed after termination which are authorized by District, but less any amounts District incurs in fixing, addressing, or remedying the material breach by Architect is entitled to withhold under law, or has authorized by this Agreement. Upon District's request and authorization, Architect shall perform any and all services necessary to complete the work in progress as of the date of the termination.

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

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

12.3 **Miscellaneous Provisions**

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

12.3.2 In the event of the termination of this Agreement for any reason whatsoever, all designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by Architect or any of its agents pursuant to this Agreement shall

immediately upon request by District be delivered to District. Architect may not refuse to provide such writings or materials for any reason whatsoever, including but not limited to a possessory interest lien for any claim Architect may have against District or a claim by Architect to an ownership interest in the intellectual property embodied in the documents or materials.

Article 13

ARCHITECT AN INDEPENDENT CONTRACTOR

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

Article 14

STANDARDIZED MANUFACTURED ITEMS

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

Article 15

OWNERSHIP OF DOCUMENTS

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

15.2 Architect will provide District with a complete set of reproducible designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by Architect pursuant to this Agreement in a version acceptable to District, and will retain, on District's behalf, the original documents or reproducible copies of all such original documents, however stored, in Architect's files for a period of no less than ten (10) years. Architect shall promptly make available to District any original documents it has retained pursuant to this Agreement upon request by District.

Article 16

LICENSING OF INTELLECTUAL PROPERTY

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

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

16.3 Architect represents and warrants that Architect has the legal right to license any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates or other documents that Architect or its consultants prepares or causes to be prepared pursuant to this Agreement. Architect shall indemnify and hold District harmless pursuant to Article 18.1 of this Agreement for any breach of Article 16 due to Architect's negligence, recklessness or willful misconduct. 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 or its Consultants, Experts, or Agents and provided to Architect by District.

Article 17

ACCOUNTING RECORDS OF ARCHITECT

17.1 Architect's records of accounts regarding the Project shall be kept in accordance with generally accepted accounting principles and shall be available to District or its authorized representative at mutually convenient times.

Article 18

INDEMNITY

18.1 Architect Indemnification

18.1.1 As respects the operations of Architect under this Agreement other than the performance of professional services, Architect shall indemnify, hold harmless, and defend the Owner and its officers, directors, and employees from and against any and all claims, liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees and other costs of defense, attributable to personal injury, bodily injury, including death, or property damage, including loss of use thereof, and arising out of or alleged to arise out of the negligence or willful misconduct of Architect or anyone for whom Architect is legally responsible, excepting only those claims, damages, liabilities, losses, and costs caused by the Owner's sole negligence or willful misconduct.

18.1.2 As respects the performance of professional services under this Agreement, Architect shall indemnify and hold harmless the Owner, its officers, directors, and employees from and against liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees and other costs of defense, to the extent caused by the negligence or willful misconduct of Architect or anyone for whom Architect is legally responsible. Architect shall have no duty to defend the Owner for any claims asserted against in connection with the performance of Architect's professional services hereunder (including its officers, directors, employees, etc.), but shall reimburse Owner for any liability incurred by Owner and its legal fees and defense costs to the extent ultimately determined to be caused by Architect's negligence, including the negligence of those for whom Architect is legally liable.

18.2 District Indemnification for Use of Third Party Materials

18.2.1 To the extent required by Education Code section 17316, District shall defend, indemnify, and hold harmless Architect and its employees against any and all copyright infringement claims by any design professional formerly retained by District arising out of Architect's completion, use or re-use of that former design professional's designs or contract documents in performing this Agreement. Architect shall be entitled to such indemnification only if each of the following conditions are met: (a) Architect actually re-draws or completes such other designs or contract documents; (b) Architect complies with the provisions of Article 5.8 regarding

use of materials prepared by other design professionals; (c) District has supplied Architect with the previously prepared documents or materials; and (d) District expressly requests that Architect utilize the designs or contract documents in question. By providing this or any other indemnification in this Agreement, District does not waive any of its immunities.

Article 19

TIME SCHEDULE

19.1 Time for Completion

19.1.1 Time is of the essence of this Agreement. Architect shall timely complete its Basic and Additional Services as expeditiously as possible and according to a schedule to be agreed upon by both parties.

19.1.2 Architect acknowledges the importance to District of District's project schedule and agrees to put forth its best professional efforts to perform its services under this Agreement in a manner consistent with that schedule. District understands that Architect's performance must be governed by sound professional practices.

19.2 Delays

19.2.1 District recognizes that circumstances may occur beyond the control of either District or Architect and extensions for such delays may be made to the schedule if approved by District. Any time during which Architect is delayed in Architect's work by acts of District or its employees or those in a direct contractual relationship with District or by acts of nature or other occurrences which were not or could not have been reasonably foreseen and provided for, and which are not due to any Wrongful Acts or Omissions of Architect or its Consultants, shall be added to the time for completion of any obligations of Architect. District shall not be liable for damages to Architect on account of any such delay.

19.2.2 Architect shall not be responsible for delay caused by circumstances beyond its reasonable control, including, but not limited to delays by reason of 1) strikes, lockouts, work slowdowns or stoppages, or accidents, 2) acts of God, 3) failure of District to furnish timely information or to approve or disapprove Architect's instruments of service promptly, and 4) faulty performance or non-performance by District, District's independent consultants, contractors, or governmental agencies. Architect shall not be liable for damages arising out of any delay as described in this section 19.2.1, nor shall Architect be deemed to be in default of this Agreement as a result thereof.

Article 20

MISCELLANEOUS PROVISIONS

20.1 This Agreement shall be governed by and construed in accordance with the laws 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 Tuolumne County, California, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the School District.

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

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

District: Dr. John H. Keiter
District Superintendent
Summerville Union High School District
17555 Tuolumne Road
Tuolumne, CA 95379

Architect: Paul Bunton, AIA
C18659
BCA Architects
505 South Market Street
San Jose, CA 95113

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

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

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

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

20.8 This Agreement constitutes the entire agreement between the parties and supersedes any prior agreement or understanding. There are no understandings, agreements, representations or warranties, expressed or implied, not specified in this Agreement. Each Party, by the execution of

this Agreement, acknowledges that each has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

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

20.9.1 Architect shall not include pictures of students, staff, parents, or members of the public in such photographs or video recordings without their prior permission.

Article 21

MEDIATION/LITIGATION

21.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be first submitted to the Governing Board.

21.1.1 If Architect is not satisfied with the Governing Board's proposed resolution, Architect must proceed to mediation before any lawsuit may be filed. [If such matter relates to or is the subject of a lien arising out of Architect's services, Architect may proceed in accordance with applicable law to comply with the lien, notice, or filing deadline prior to resolution of the matter by mediation.] A request for mediation shall be filed in writing with the other party to this Agreement. The parties shall contact the State Mediation and Conciliation Service regarding mediation services. The parties agree to share the cost of any mediation fees. The mediation shall be held in county where the project is located at District Office unless another location is mutually agreed upon.

21.2 The parties further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project, and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their respective subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between all parties to the Project.

21.3 Neither party may initiate litigation in a court of law until mediation has proven unsuccessful in resolving the dispute.

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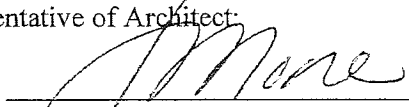
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SIGNATURE PAGE

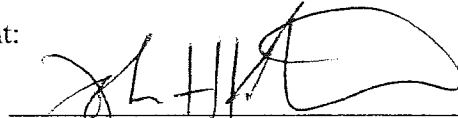
Reflects Approval by an Authorized Representative of Architect:

Date: 2/4/13


James E. Moore, IV
Vice President/Studio Principal
BCA Architects

Reflects Approval by District Superintendent:

Date: 2/13/13


John H. Keiter
District Superintendent
Summerville Union High School District

Reflects Ratification by a Majority of the Membership of the Governing Board:

Date: 2/13/2013

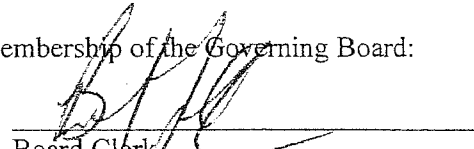

Board Clerk
Summerville Union High School District Governing
Board

EXHIBIT A

RATE SCHEDULE

STAFF	FEE
Principal Owner Architect	\$250.00
Principal Architect	\$225.00
Design Director	\$175.00
Sr Project Manager	\$155.00
Sr Construction Administrator	\$150.00
Associate Architect	\$140.00
Construction Administrator	\$125.00
Studio Production Manager	\$125.00
Project Architect	\$125.00
Project Manager	\$125.00
Senior Designer	\$115.00
Job Captain	\$100.00
Project Designer III	\$ 90.00
Project Designer II	\$ 80.00
Project Designer I	\$ 70.00
Project Admin IV and V	\$ 80.00
Project Admin III	\$ 75.00
Project Admin I and II	\$ 70.00
Project Assistant	\$ 70.00
Intern	\$ 60.00
Project Consultants	Actual Fee + 15%
Fees are subject to change every January 1 of the New Year	