

ARTICLE ONE
PROJECT DESCRIPTION/SCOPE OF WORK

1.1 ARCHITECT'S SERVICES

1.1.1 The District shall authorize the Architect to proceed on each Project with a written Project Authorization prepared and submitted by the Architect and approved by the District which:

- (1) Provides a description of the type, size and scope of the Project;
- (2) Specifies the Designated and/or Additional Services required of the Architect;
- (3) States method and/or amount of compensation to be paid the Architect for its services;
- (4) States the Project Budget, if any;
- (5) States the Project Schedule, if any;
- (6) Identifies the services to be provided or not to be provided by the District or others for the Project;
- (7) Provides written definitions of those specific services authorized; and,
- (8) Indicates special provisions related to the Project and/or modifications to the Agreement that may pertain to the Project.

1.1.2 The term "Owner", when used on any documents attached to this Agreement or used in connection with the performance of the Architect's services shall at all times and in every instance mean the District.

1.1.3 A Project Authorization, when signed by the District and the Architect shall become an effective and integral part of this Agreement with each and all of the provisions of one such document applying to the other as to the applicable Project, except as specifically modified or set forth to the contrary in the Project Authorization.

1.1.4 The size of the Project and the type and quality of construction are dependent upon the funds available for the Project. In making recommendations to the District, the Architect will exercise his best judgment in recommending the balance between the size of the Project, the type of construction and the quality of construction required to achieve a professionally competent solution within budget limitations.

ARTICLE TWO
SCOPE OF ARCHITECT'S DESIGNATED SERVICES

2.1 DEFINITION

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

2.2 PRE-DESIGN PHASE

- 2.2.1 The Architect shall provide consultation with and assistance to the District and its personnel in ascertaining the scope and requirements of the Project and to the preparation of a written statement of the Project Program which describes such elements as facility goals and objectives, space requirements, operational and functional relationships, work station requirements, teaching station requirements, support facility requirements, furniture and equipment needs, utility needs, environmental design criteria, and other Project criteria essential to designing the Project. A Project Program shall serve as the basis for the Architect's design recommendations during subsequent phases.
- 2.2.2 The Architect shall assist in the development of special studies related to the physical feasibility and financial feasibility elements of the Project, site selection studies, demographic analyses, advance governmental agency involvement, community interaction, and other activities in advance of the design.
- 2.2.3 The Architect shall assist in the coordination of the work with qualified professional consultant(s) when said consultant(s) are retained and paid for by the District for the Project.

2.3 SITE ANALYSIS PHASE

- 2.3.1 The Architect shall prepare studies, drawings, master plans, and/or documents which indicate such elements as the physical development scope of a Project site, including involvement with such factors as site utilization, facilities placement, on and off-site utility needs, topography and grading analysis, zoning and other regulatory agency requirements, and a Statement of Probable Construction Cost relative to physical site development, for the District's review and approval.

2.4 SCHEMATIC DESIGN PHASE

- 2.4.1 The Architect shall review and analyze the Project's needs as furnished by the District to ascertain the requirements of the Project, shall arrive at a mutual understanding of such requirements with the District, shall commit such understanding to writing, and shall furnish a copy to the District for review before proceeding with preliminary designs.

- 2.4.2 The Architect shall provide a preliminary evaluation of the District's program, District's schedule, and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 6.2.1.
- 2.4.3 The Architect shall review with the District alternative approaches to design and construction of the Project.
- 2.4.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare, for approval by the District, Schematic Design Documents consisting of drawings and/or other documents illustrating the scale and relationship of the Project components.
- 2.4.5 The Architect shall submit to the Owner a preliminary Statement of Probable Construction Cost based on area, volume or other unit costs.

2.5 DESIGN DEVELOPMENT PHASE

- 2.5.1 Based on the approved Schematic Design Documents and any adjustments in the program, schedule or construction budget, the Architect shall prepare, for approval by the District, Design Development Documents consisting of drawings and/or specifications, and/or other documents to fix and describe the size and character of the Project as to pertinent architectural, structural, mechanical, and electrical systems, materials and such other elements as may be appropriate.
- 2.5.2 The Architect shall advise the Owner of any adjustments to the preliminary Statement of Probable Construction Cost.

2.6 CONSTRUCTION DOCUMENTS PHASE

- 2.6.1 Based on the District approved Design Development Documents and any further adjustments in the scope or quality of the Project, or in the construction budget, authorized by the District, the Architect shall prepare, for approval by the District, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.
- 2.6.2 The Architect shall assist the District in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.
- 2.6.3 The Architect shall advise the District of any adjustments to previous preliminary Statements of Probable Construction Cost indicated by changes in requirements or general market conditions.
- 2.6.4 The Architect shall assist the District in connection with the District's responsibility for filing documents required for approval of governmental authorities having jurisdiction over the Project.

2.7 BIDDING AND/OR NEGOTIATION PHASE

- 2.7.1 The Architect, following the District's and DSA's (Division of the State Architect) approval of the Construction Documents and of the latest

preliminary Statement of Probable Construction Cost, shall assist the District in obtaining bids or written quotations and shall assist in awarding contracts for construction.

2.8 CONSTRUCTION ADMINISTRATION PHASE

- 2.8.1 The Architect's responsibility to provide Designated Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates at the issuance to the District of the Final Certificate for Payment or sixty (60) calendar days after the date of Substantial Completion of the Work, whichever occurs first, unless extended by mutual agreement in writing.
- 2.8.2 The Architect shall provide administration of the Contractor's contract as set forth in the General Conditions of the Contract for Construction provided by the District.
- 2.8.3 Duties, responsibilities, and limitations of authority of the Architect shall not be restricted, modified, or extended without written agreement of the District and Architect with consent of the Contractor, which consent shall not be unreasonably withheld.
- 2.8.4 The Architect shall be a representative of and shall advise and consult with the District:
- (1) during construction until final payment to the Contractor is due, and
 - (2) as an Additional Service at the Owner's direction from during the correction period described in the Contract for Construction. The Architect shall have authority on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.
- 2.8.5 The Architect shall visit the site at intervals appropriate to the stage of construction or as otherwise agreed by the District and Architect in writing to familiarize itself with the progress and quality of the Work and to determine for the District's benefit and protection if the Work is proceeding in accordance with the intent of the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site observations as an architect, nor shall the Architect be required to warrant the work of the Contractor. On the basis of his on-site observations as an architect, the Architect shall keep the District informed of the progress and quality of the Work, and shall give prompt notice to the District in writing of any major or material deviations from the Contract Documents in the Work.
- 2.8.6 The Architect shall at all times have access to the Work whenever it is in preparation or progress.
- 2.8.7 Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized, the District and Contractor shall communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect.
- 2.8.8 Based on the Architect's observations, observations of the Work, and evaluations of the Contractor's Application for Payment, the Architect shall review and certify the amounts due the Contractor.

- 2.8.9 The Architect's certification for payment shall constitute a representation to the District, based on the Architect's observations at the site as provided in subparagraph 2.8.5 and on the data comprising the Contractor's Application for Payment, that the Work observed has progressed to the point indicated, that the quality of the Work observed is in accordance with the Contract Documents, and that the Work observed has been performed in a good and workmanlike fashion. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion, and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, 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, (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.
- 2.8.10 The Architect shall have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional 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. 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.
- 2.8.11 The Architect shall review and approve or take other 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 concepts expressed in the Contract Documents. The Architect's actions will be taken with such reasonable promptness as to cause no delay in the Work, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Shop drawings and their content of drawings, designs, calculations, etc. are the responsibility of the Contractor. 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 designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems, or equipment is required

by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems, or equipment will meet the performance criteria required by the Contract Documents.

- 2.8.12 The Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Architect as provided in subparagraph 3.2.1 for the District's approval and execution in accordance with the Contract Documents. The Architect may solely authorize minor changes in the Work, not involving on adjustment in the Contract Sum or an extension of the Contract Time, which are not inconsistent with the intent of the Contract Documents.
- 2.8.13 The Architect shall observe the work to assist in determining the date of Substantial Completion and the date of Final Completion. The Architect shall receive and forward to the District for the District's review and records written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a Final Certificate for Payment upon compliance with the requirements of the Contract Documents.
- 2.8.14 The Architect shall interpret and decide matters concerning performance of the Owner and Contractor under the requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such request shall be made with reasonable promptness and/or within time limits mutually agreed upon.
- 2.8.15 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 initial decisions, the Architect shall endeavor to secure faithful performance by the Contractor and shall not be liable for results of interpretations or decisions so rendered in good faith.
- 2.8.16 The Architect shall have decision authority on matters relating to aesthetic effect, provided such authority is exercised in a way that is consistent with the intent expressed in the Contract Documents.
- 2.8.17 The Architect shall render written decisions within a reasonable time on all claims, disputes, or other matters in question between the District and Contractor relating to the execution or progress of the work as provided in the Contract Documents.
- 2.8.18 The architect's decisions on claims, disputes or other matters, including those in question between the District and Contractor, except for those relating to aesthetic effect as provided in Subparagraph 2.8.16, may be subject to arbitration as provided in this Agreement and the Contract Documents.

2.9 POST CONSTRUCTION PHASE

- 2.9.1 The Architect shall provide those services which apply to post-construction requirements of the Project, such as preparation and assembly of maintenance/operational manuals, assistance in the utilization of equipment of systems, (e.g., testing, balancing, and training personnel for operations or maintenance, assisting the Contractor and Project Inspector(s) in the preparation of as-built drawings, warranty review, and evaluation of newly appearing construction deficiencies, the latter

following acceptance of the work but prior to the expiration of the guarantee period of the Project Contract. Record drawings preparation and submittal are the expressed responsibility of the Contractor and will be submitted to the Architect.

- 2.9.2 Upon completion of the Project, the Architect shall deliver to the District a set of record drawings conforming to information furnished to the Architect by the Contractor.

ARTICLE THREE
ADDITIONAL SERVICES

3.1 GENERAL

- 3.1.1 The services described in this Article 3 are not included in the Designated Services unless so identified in each Project Authorization as being included in the Designated Services, and they shall be paid for by the District as provided in this Agreement in addition to the compensation for Designated Services. The services described under Paragraph 3.2 and 3.3 shall only be provided if authorized or confirmed in writing by the District. If services described under Contingent Additional Services in Paragraph 3.2 are required due to circumstances beyond the Architect's control, the Architect shall notify the District prior to commencing such services. If the District deems that such services described under Paragraph 3.2 are not required, the District shall give prompt written notice to the Architect. If the District indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services.

3.2 CONTINGENT ADDITIONAL SERVICES

- 3.2.1 Making material and substantial revisions in Drawings, Specifications, or other documents when such revisions are:
- .1 Required by the enactment or revision of codes, laws, or regulations subsequent to the preparation of such documents; or
 - .2 Due to changes required as a result of the District's failure to render decisions in a timely manner.
 - .3 Inconsistent with approvals or instructions previously given by the District, including revisions made necessary in the District's program or budget.
- 3.2.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the District's schedule, or the method of bidding or negotiating and contracting for construction. When said services are made necessary because of significant change in the size, quality, or complexity of the Project which may result in a significant change in the Designated Services and/or Construction Cost, the Architect's fee for Designated Services, which is commensurate with the services required of the Architect, may not apply, dependent upon status of Architect's efforts and the changes being considered.
- 3.2.3 Preparing Drawings, Specifications, and other documentation and supporting

data, and providing other services in connection with Change Orders and Construction Change Directives when the adjustment in the basic compensation resulting from the adjusted Construction Cost is not commensurate with the services required of the Architect.

- 3.2.4 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.
- 3.2.5 Providing services made necessary by the default of the Contractor, by minor defects or deficiencies in the Work of the Contractor, or by failure of performance of either the District or Contractor under the Contractor's contract.
- 3.2.6 Providing services, other than those required by the Project Authorization, after issuance to the District or Contractor of the final Certificate for Payment, or after filing of a Notice of Completion, whichever comes first.
- 3.2.7 Providing services as indicated in Construction Phase when the Construction Contract Time has been exceeded or extended by more than thirty (30) days through no fault of the Architect.

3.3 OPTIONAL ADDITIONAL SERVICES

- 3.3.1 Providing financial feasibility or other special studies.
- 3.3.2 Providing planning surveys, site evaluations or comparative studies of prospective sites.
- 3.3.3 Providing services relative to future facilities, systems, and equipment.
- 3.3.4 Providing detailed Statements of Probable Construction Cost beyond those enumerated in this Agreement.
- 3.3.5 Providing detailed quantity surveys or inventories of material, equipment, and labor.
- 3.3.6 Providing analyses of lifecycle operational and maintenance costs.
- 3.3.7 Providing interior design and other similar services required for, or in connection with, the selection, procurement, or installation of furniture, furnishings, and related equipment.
- 3.3.8 Providing services for planning tenant or rental spaces.
- 3.3.9 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.
- 3.3.10 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation in addition to those included in the Post Construction Phase.
- 3.3.11 Providing consulting services for acoustical evaluations and environmental analysis.

- 3.3.12 Investigating existing conditions of facilities or making measured drawings thereof, or verifying the accuracy of drawings or other information furnished by the District.
- 3.3.13 Providing, or providing for construction management services.
- 3.3.14 Providing special analyses of the District's needs, assistance in the preparation of Educational Specifications, planning surveys, population projections, future site needs, site evaluations, comparative studies of prospective sites, negotiation conferences, and/or master planning of sites.
- 3.3.15 Providing professional services as required to prepare Construction Documents and Construction Administration related to the letting of contract(s) on a segregated bid basis on any portion of a Project.

ARTICLE FOUR
PROJECT INSPECTOR(S)

- 4.1 Project Inspector(s), employed by and responsible to the District, as required by applicable law, will receive technical guidance regarding the construction documents from the Architect. Such Project Inspector(s) shall be selected and retained by the District, subject to the DSA's and the Architect's approval.
- 4.2 The Agreement between the District and the retained Project Inspector(s) describing the duties, responsibilities, and limitations of authority of such Inspector(s) shall be furnished to and approved by the Architect.
- 4.3 The on-site observations of the work in progress by such Project Inspector(s) shall not modify the rights, responsibilities, or obligations of the Architect as described in this Agreement, nor shall said Project Inspector(s) issue any directions, orders, or request to the Contractor which in any way change, revise, or contravene the intent, scope or specifics of the Contract Documents other than through the use of Change Orders approved by the District, the Contractor, and the Architect.

ARTICLE FIVE
DISTRICT RESPONSIBILITIES

- 5.1 The District shall provide, or with the Architect's assistance as outlined under paragraph 3.3, requirements for the Project including a program which shall set forth the District's objectives, schedule, constraints, and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements.
- 5.2 The District shall provide, or with the Architect's assistance as outlined under paragraph 3.3, an overall budget for the Project, including the construction cost, the District's other costs, and reasonable contingencies related to all of these costs.
- 5.3 If requested by the Architect, the District shall furnish evidence that financial arrangements have been made to fulfill the District's obligations under this Agreement.

- 5.4 The District may designate a representative authorized to act on its behalf with respect to the Project. The District or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.
- 5.5 As available, the District will furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of each part of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable: grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; 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 the information on the survey shall be referenced to a project benchmark.
- 5.6 The District shall furnish the services of geotechnical engineers when such services are appropriate. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating sub-soil conditions, with reports and appropriate professional recommendations.
- 5.7 The District shall furnish the services of other special consultants when such services are reasonably required by the scope of the Project and are requested in writing by the Architect.
- 5.8 The District shall furnish structural, mechanical, chemical, air, and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections, and reports required by law or the Contract Documents.
- 5.9 The District shall furnish all legal, accounting, and insurance counseling services as may be necessary at any time for the Project, including auditing services the District may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the District.
- 5.10 The services, information, surveys, and reports required by Paragraphs 5.5 through 5.9 shall be furnished at the District's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.
- 5.11 Prompt written notice shall be given by the District to the Architect if the District becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents.
- 5.12 The proposed language of certificates or certifications requested of the Architect or Architect's consultants shall be submitted to the Architect for review and approval at least fourteen (14) calendar days prior to execution. The District shall not request certifications that would require knowledge or services beyond the scope of the Project Authorization.
- 5.13 The District shall perform all of its duties and responsibilities under this Agreement and provide any information requested by the Architect so as not

to unnecessarily disrupt the orderly progress of the work as provided in the District's schedule. If the District fails to provide Architect the requested information, or fails to provide the requested information in a timely manner, with or without reasonable cause, then, to the extent that the District has caused delay, an equal amount of time shall be added to the schedule to compensate for the delay. To the extent that such delay has an economic effect on the Architect, then the Architect's fee will be equitably adjusted to compensate for the effect caused by the delay.

ARTICLE SIX
PROJECT CONSTRUCTION COST

6.1 DEFINITION

6.1.1 The Project Construction Cost shall be determined as follows:

- .1 Project Construction Cost shall be determined by the District's Project Budget, established in conjunction with the Architect, for the project during:

Pre-Design Phase (Paragraph 2.2),

Site Planning Phase (Paragraph 2.3),

Schematic Design Phase (Paragraph 2.4),

Design Development Phase (Paragraph 2.5),

Construction Document Phase (Paragraph 2.6),

Bidding and/or Negotiation Phase (Paragraph 2.7),

- .2 During the Construction Phase (Paragraph 2.8), Project Construction Cost shall be determined by the contract price as stated in the Owner-Contractor Agreement, as amended by any Change Orders formally approved by the District, Architect, and Contractor.

6.1.2 Project Construction Cost as used in this agreement or a Project Authorization means the total cost to the District of all work designed or specified by the Architect, but specifically excluding the following:

- .1 The cost of all work covered by Change Order(s) issued during the Construction Phase, except for Construction Costs accounted for after construction has commenced;
- .2 Any payments to the Architect or Architect's consultants for professional services;
- .3 Costs to the District of inspections, surveys, tests, geotechnical work, regulatory fees, special consultants, or land acquisition costs;
- .4 Costs of furnishings, fixtures, and equipment not traditionally provided within a contract for general construction;

- .5 Costs incidental to the District for District staff and District overhead costs pertaining to the development and maintenance of facilities.

6.2 RESPONSIBILITY FOR PROJECT CONSTRUCTION COST

- 6.2.1 Evaluations of the District's Project budget, preliminary Statement of Probable Construction Cost, and detailed Statements of Probable Construction Cost, if any, prepared by the Architect, represent the Architect's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the District 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 negotiated prices will not vary from the District's Project budget or from any Statement of Probable Construction Cost or evaluation prepared or agreed to by the Architect.
- 6.2.2 The Architect shall prepare and provide Statements of Probable Construction Cost referred to in Article 2, based upon the Scope of Work computed on a square foot basis, or more detailed computation if deemed necessary by the Architect, considering prevailing construction costs and including all work for which bids will be received.
- 6.2.3 If a Project Budget is set forth as stated in Article 1 or thereafter approved by the District, the Architect shall review the Statements of Probable Construction Cost at each phase of his services and if such Statements are in excess of the Project Budget, approval of a higher figure shall be given by the District or the District shall authorize the Architect to revise the size of the Project Scope and the type and/or quality of construction to come within the Project Budget limit.
- 6.2.4 If bids are received within sixty (60) days of DSA approvals, and the lowest bonafide bid exceeds the latest agreed Project Budget by more than 10%, the Architect shall, upon request of and at no additional expense to the District, revise the construction documents sufficiently to reduce the contract price to permit the receipt of new bids to within a ten percent (10%) increase of the latest agreed Project Budget.

ARTICLE SEVEN
CHANGE ORDER EXPENSES

- 7.1 The cost of preparing change orders, including design, specification, and contract administration, as between the District and the Architect, shall be distributed as follows:
- .1 Work added to the scope of the project by District after bidding the project. Such cost will be borne solely by the District.
- .2 Work which has to be redone, removed, and/or reinstalled, due to errors or mistakes of the Architect or its consultants. Such costs will be negotiated between the District and the Architect and/or its consultants.

- .3 To the proportionate extent that Work has to be redone, removed, reinstalled or added to the scope of the project due to changes in codes, laws or ordinances following the time that plans and specifications were developed. Such cost will be borne solely by the District.

ARTICLE EIGHT DISPUTE RESOLUTION

MEDIATION

- 8.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.
- 8.2 Mediation, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.
- 8.3 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be Arbitration as described below:

ARBITRATION

- 8.4 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof may be subject to and decided by binding arbitration upon mutual agreement in accordance with procedures and rules agreed upon by the parties.
- 8.5 Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.
- 8.6 No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the District, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional

person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

- 8.7 The award rendered by the arbitrator or arbitrators shall be final and judgment may be entered in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE NINE

TERMINATION, SUSPENSION, OR ABANDONMENT

- 9.1 This Agreement may be terminated by either party upon not less than ten (10) calendar 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. Should either party exercise its right of termination under this Paragraph, the written notice shall set forth the nature of the other party's breach.
- 9.2 Where the Agreement is terminated by the District for cause and said cause is outlined in written notice of termination as required in Paragraph 9.1, the Architect may be held liable for those actual damages suffered by the District due to the Architect's failure to perform as provided in this Agreement.
- 9.3 If the Project is suspended by the District for more than ninety (90) consecutive calendar days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services.
- 9.4 This Agreement may be terminated for any reason by the District upon not less than seven (7) calendar days' written notice to the Architect. If the Project is abandoned by the District for more than ninety (90) consecutive calendar days, the Architect may terminate this Agreement by giving written notice to the District.
- 9.5 Failure of the District to make payments to the Architect in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.
- 9.6 If the District fails to make payment when due the Architect for services and expenses, the Architect may, upon ten (10) calendar days' written notice to the District, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within ten (10) calendar days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Architect shall have no liability to the District for delay or damage caused the District because of such suspension of services.
- 9.7 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.
- 9.8 Upon termination of this Agreement, the Architect shall perform no further services except as requested in writing by the District and enclosed in the District's notice of termination or as may be necessary to preserve the Work.

- 9.9 In the event the District elects to utilize completed drawings, specifications, estimates, or other completed contract documents prepared by the Architect when the District has decided to complete the Project through the services of other than the Architect, the District hereby agrees to waive the Architect's responsibility and hold the Architect free and harmless for the results of the use of said Documents.

ARTICLE TEN
MISCELLANEOUS PROVISIONS

- 10.1 Unless otherwise provided, this Agreement shall be governed by the laws of the State of California.
- 10.2 The District and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.
- 10.3 This Agreement represents the entire and integrated agreement between the District and 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 District and Architect.
- 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 District or Architect.
- 10.5 The Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form which exist at the Project site at the time of commencement of each Port of the Project, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.
- 10.5.1 The Architect shall not specify or approve for use in the Project any new materials containing asbestos, asbestos products, polychlorinated biphenyl (PCB). If the Architect discovers that such substances as described herein have been used or do exist in the Project, the Architect shall promptly notify the District in writing. When asbestos containing materials, polychlorinated biphenyl (PCB), or illegal toxic or illegal hazardous substances are suspected or found in the course of the Project, the District shall immediately provide the services of an appropriately qualified expert or consultant to determine the proper course of action reasonably necessary to carry out the provisions of this Agreement.
- 10.6 The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials. The Architect's materials shall not include the District's confidential or proprietary information if the District has previously advised the Architect in writing of the specific information considered by the District to be confidential or proprietary.
- 10.7 Any notices provided for hereunder shall be in writing and may be served either personally to an authorized representative of the receiving party or by registered mail to the address of the principal place of business of that party or as such

address may have been changed by written notice.

- 10.8 The Agreement, and all rights and obligations hereunder, shall not be assigned by either party without the written consent of the non-assigning party.
- 10.9 If any provision of the Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, this Agreement shall nevertheless remain in full force and effect as to all other provisions.
- 10.10 No consideration shall be given to this Agreement by virtue of the fact that one party or the other drafted the provisions hereof, or any of them, and the Agreement shall be construed as though it was jointly drafted by both parties.
- 10.11 Each party to this Agreement agrees to perform any and all further acts necessary to implement this Agreement and to execute and deliver any documents that may be reasonable necessary to carry out the provisions of this Agreement.
- 10.12 The paragraph headings used in this Agreement are for convenience of reference only and shall not in any way limit or amplify the terms and provisions hereof, nor affect the interpretation of this Agreement.
- 10.13 If either the District or the Architect petitions to confirm, correct, or vacate the award as provided by Chapter 4 or Title 9 of the Code of Civil Procedures (commencing with Section 1285), the prevailing party shall be entitled as part of its costs, to a reasonable attorney's fee to be fixed by the court.

ARTICLE ELEVEN
OWNERSHIP OF DOCUMENTS

- 11.1 All design and construction documents, specifications and estimates shall be and remain the property of the District. Architect shall maintain all drawings, specifications, calculations, cost estimates, quantity take-offs, schedules, all correspondence, internal memoranda, papers, and documents of any sort prepared by or furnished to Architect during the course of providing services under the Project Authorization, for a minimum period of three (3) years following Final Acceptance.
- 11.2 The District agrees to employ the Architect for any Project whose construction is based upon reuse of any of the Architect's original documents. If Architect is not contracted for reuse of documents, District will hold Architect harmless and Architect will not be liable for such reuse of documents.

ARTICLE TWELVE
OTHER ARCHITECTS

- 12.1 Nothing in this Agreement shall preclude the District from employing other architects to provide professional services as the District may so determine during the term of this Agreement.

ARTICLE THIRTEEN
BASIS OF COMPENSATION

13.1 COMPENSATION FOR DESIGNATED SERVICES

- 13.1.1 For designated services, as identified and described in the Project Authorization, compensation shall be computed by one or more of the following methods for the particular Services so indicated in the Project Authorization determined in advance by the Architect and District.

Stipulated Sum: Compensation as a Stipulated Sum shall be established at the time each Project Authorization is prepared.

Hourly Billing Rates: Compensation for services rendered by principals and employees shall be based upon the rates as stated on the Architect's currently dated "Hourly Billing Classification Rates Schedule" which shall be attached to and made a part of each Project Authorization. This schedule of billing rates is subject to annual adjustments by the Architect, whereby the Architect shall inform the District, in writing, of said adjustments, if any, which shall then be the prevailing rates applied to the Project(s) so authorized.

- 13.1.2 Determination of Designated Services shall be as identified for each Project on the Project Authorization forms wherein all services to be provided which are not indicated as Designated Services shall be considered Additional Services for the Project authorized.
- 13.1.3 If the scope of the Project or if the scope of the Architect's Services is changed materially, the amounts of compensation shall be equitably adjusted.

13.2 REIMBURSABLE EXPENSES

- 13.2.1 Reimbursable Expenses are in addition to compensation for Designated and Additional Services, and shall be payable provided they are approved in advance and in writing by the District. "Approval in advance and in writing by the District" shall not apply to 13.2.1.4 (reproduction and postage) below. Reimbursable Expenses include actual expenses incurred by the Architect and Architect's employees and consultants in the interest of the Project, as identified in the following Subparagraphs:

- .1 Out-of-town travel expenses when such travel is connected with the Project if requested by the District.
- .2 Fees paid for securing approval of authorities having jurisdiction over the project. The District would prefer to pay these fees directly. It is incumbent upon the Architect to provide the District at least 2 weeks' notice prior to document submission to DSA or other agencies for review so the District can process a check for the plan check fee in a timely manner.
- .3 Expense of overtime work requiring higher than regular rates if requested by the District.
- .4 Expenses of reproduction and postage for drawings, specifications and other documents provided for the District's review, generally at project milestones, or agency submissions. Reprographics

expenses for the architect's or its consultants use are not billable to the District.

- .5 Expenses of renderings, models, and mock-ups requested by the District.
- .6 Expense of special consultants not outlined in the Project Authorization.
- .7 Additional costs of consultants per Article Three of this agreement.

13.3 PAYMENTS ON ACCOUNT OF DESIGNATED SERVICES

- 13.3.1 Payments for Designated Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Subparagraph 14.2.1. All invoices for payment of Designated Services, Additional Services, or Reimbursable Expenses by Architect shall set forth all professional services rendered and/or itemize expenses incurred for the prior month.
- 13.3.2 If any portions of the Project that 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.

13.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

- 13.4.1 Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of an invoice by the Architect's for services rendered and/or expenses incurred pursuant to Subparagraph 13.3.1.
- 13.4.2 No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages, or other sums withheld from payments to Contractor, its subcontractors, or on account of the cost of changes in the Work other than those for which the Architect has been found to be liable.

13.5 ARCHITECT'S ACCOUNTING RECORDS

- 13.5.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services on the Project and for services performed on the basis of a Multiple of Direct Personnel Expense shall be kept on the Architect's standard accounting basis, and shall be available to the District or its authorized representative at mutually convenient times for inspecting and reproduction at the District's expense.
- 13.5.2 Statements presented by the Architect for services rendered and for Reimbursable Expenses shall be itemized according to the Architect's standard method of accounting and shall indicate generally the services rendered. The District may, at its expense, request or conduct more detailed audit or research of the Architect's statements. Payment for Reimbursable Expenses shall be made only for expenses that are shown on certified vouchers delivered to the District with copies of invoices or receipts designating specific expenditures, if reasonably available.

ARTICLE FOURTEEN
PAYMENTS TO ARCHITECT

The District shall compensate the Architect as follows:

14.1 GENERAL

- 14.1.1 For Designated Services, as described in each Project Authorization a fee Methodology shall be established between the District and the Architect.

14.2 REIMBURSABLE EXPENSES

- 14.2.1 Architect shall receive one hundred and ten percent (110%) of all Reimbursable Expenses, as described in Paragraph 13.2, incurred by the Architect, the Architect's employees, and consultants in the interest of the Project.

14.3 ADDITIONAL PROVISIONS

- 14.3.1 Payments are due and payable thirty (30) calendar days from the date of the Architect's invoice. Amounts unpaid sixty calendar days after the invoice date shall bear interest at the rate of either one percent (1 %) per month or the prevailing legal rate, whichever is lesser.

14.4 PAYMENT PRO-RATIONS AND PAYMENT PERIODS

- 14.4.1 Progress payments for Designated Services in each phase shall be invoiced to the District on a monthly basis. The invoice shall describe in detail the services rendered.

ARTICLE FIFTEEN
OTHER CONDITIONS OR SERVICES

15.1 RECORDATION OF MEETINGS

- 15.1.1 It shall be the duty of the Architect throughout the term of this Agreement, as part of Designated Services, to make a prompt written record of all appropriate meetings, conferences, discussions, and decisions made between Architect, District, and/or Contractor during all phases of the Project and concerning any material condition in the requirements, scope, performance, and/or sequence of the Work and to provide promptly a copy of such record to the District and/or the Contractor. This duty may be partially relinquished to the Contractor dependent upon the terms of the Contractor's contract with the District.

15.2 INSURANCE

- 15.2.1 The Architect agrees to maintain at no additional cost to the District the following insurance until the termination of services of this Agreement:

- .1 Workers' Compensation coverage that meets or exceeds legal requirements;

- .2 Automobile and truck liability coverage with a minimum combined single limit of liability of \$1,000,000; and
 - .3 Architects and engineers professional liability insurance coverage with minimum limits of \$1,000,000 per claim and/or occurrence prior to the start of construction and \$1,000,000 limit per claim and/or occurrence following the start of construction.
- 15.2.2 With respect to any of the insurance policies provided by the Architect pursuant to this Agreement which are "claims made" policies, in the event at any time any such policies are canceled or not renewed, the Architect shall provide a substitute insurance policy(ies) with terms and conditions and in amounts which comply with the terms of this Agreement and which provides for retroactive coverage to the date of cancellation or non-renewal to fill any gaps in coverage which may exist due to cancellation or non-renewal of the prior "claims made" policy(ies). With respect to all "claims made" policies which are renewed, the Architect shall provide coverage retroactive to the date of commencement of work under this Agreement. All said substitute or renewal "claims made" policies shall be maintained in full force and effect for three years from the date of completion of the Project.

15.3 TERM

- 15.3.1 The term of this Agreement shall be for a period of _____ (__) years unless terminated prior thereto under the provisions of Article Nine.