



COAST COMMUNITY COLLEGE DISTRICT

REQUEST FOR PROPOSAL # 2028

FOR

**PROFESSIONAL DESIGN SERVICES FOR THE GOLDEN WEST
COLLEGE STUDENT SERVICES CENTER**

March 6, 2014

QUALIFICATIONS DUE:

By 4 p.m. - April 3, 2014

**Coast Community College
Attn: John Eriksen
Purchasing Department
1370 Adams Ave
Costa Mesa, CA 92626**

www.cccd.edu

A. INVITATION

The Coast Community College District (“District”) is seeking Requests for Proposal (RFP) from qualified firms, partnerships, and corporations to provide Professional Design Services to the District for the Golden West College Student Services Center. This document outlines the requirements, selection process and documentation necessary to submit qualifications in response to this solicitation.

Responses must conform to the requirements of this Request for Proposal (RFP). The District reserves the right to waive any irregularity in any proposal or reject any proposal which does not comply with this RFP.

All proposals shall be submitted to the District no later than **4:00 p.m. on April 3, 2014**

B. DESCRIPTION

The District is seeking an Architecture/Engineering team to provide professional design services for an estimated 44,000 square foot facility. This project will include the demolition of the existing Boyce Library, in the center of campus, and the construction of a new centralized one-stop location for student services at the core of campus. Multiple departments will be integrated into this centralized facility. This facility will be a LEED silver equivalent rating.

The construction budget for this project is \$14.1 million dollars.

C. PROJECT SCHEDULE:

<i>Selection</i>	
Advertisement of RFP	3/6 & 3/13
Requests for Information Due	March 21, 2014
RFP's Due	April 3, 2014
Interviews of Finalists	April 14-18, 2014
Deadline for Recommendation to Board	April 29, 2014
Board Approval	May 7, 2014
Design Phase (estimated)	5/19/14 - 12/19/14
DSA Approval (estimated)	12/22/14 – 6/26/15
Construction (estimated)	7/27/15 – 5/19/17

D. SCOPE OF SERVICES:

The District is seeking an Architecture/Engineering team to provide professional design services for the GWC Student Services Center (see Attachment A). The architectural/engineering firm shall, without limitation to the District's right to require other services not listed herein, carry out the responsibilities delineated in the scope of services set forth below. Such services shall be performed, consistent with the highest standard care for professionals performing similar scopes of services.

E. MINIMUM REQUIREMENTS

- E.1 Prospective Consultants must furnish all of the listed items in Section F. Respondents are solely responsible for ensuring the completeness and accuracy of all information. Any false statements, inaccuracies, omissions or failures to disclose are grounds for exclusion.
- E.2 Acceptance of the terms and conditions defined in the attached Architectural Services Agreement. (Attachment B).

F. PROPOSAL CONTENT

Proposals must contain sufficient detail to enable the District Selection Committee to determine the merits of the firm. Proposals shall clearly address all elements requested below, and **not exceed 20 pages singled sided on 8 ½ x 11” paper**. (Excluding Transmittal letter, cover pages, tabs/dividers, and District required forms.)

1. **Transmittal Letter**: The proposal shall be transmitted with a cover letter describing the firm's/team's interest and commitment to the proposed project. The letter shall state that the proposal shall be valid for a 90-day period and that staff proposed are available to begin work on this contract. The person authorized by the firm/team to enter into a contract with Coast Community College District shall sign the cover letter and the letter should identify the individual to whom correspondence and other contacts should be directed during the consultant selection process.
2. **Company Information**: The proposal shall include a completed Consultant Declaration Form (Attachment C) including the legal name of the organization, names of principals, firm's longevity, and any other pertinent information to assist evaluators to understand the overall capability, stability, and resources of the organization.
3. **Expertise**: In a narrative format, the proposal should illustrate the firm's understanding of all aspects of this project and an indication of any strengths or unique expertise the firm would bring to the project.
4. **Proposed Project Team**: Names, qualifications, education and experience (biographies and/or resume) of the *proposed project team* and an indication of their proposed roles.
5. **Project Management Plan**: Discuss methods to be employed in managing this project and how these will ensure success of the project. Specifically address the firm's approach to working as an integrated project team.
6. **References**: Five references for which Consultant has performed same or similar services within the past five years. Include the organization name, address, the contact person's name and telephone number, the nature of the project, and a brief narrative describing the scope, complexity, and outcomes of the project.

7. Local Business Participation: Describe the respondents plan for inclusion of local businesses and/or individuals in the services to be provided to the District. The District strives to support our local community, and as such would like to see how its Consultants plan to utilize entities in support of this intent.
8. Disclosure: A complete disclosure of any prior or ongoing incidents as to which it is alleged that proposer has failed to perform. Identify the parties and circumstances involved.
9. Proposed Cost: The proposer shall provide a total Not to Exceed cost. Cost should include and note all direct and indirect costs associated with this proposal. Any optional work or tasks that are not included in your cost proposal must be clearly identified as such.
10. District Forms: Executed Non-Collusion and Drug Free Workplace Forms.
11. Signatures: The signature(s) of the company officer(s) empowered to bind the firm, with the title of each (e.g., President, General Partner).

G. EVALUATION CRITERIA

Statements of Qualifications (SOQ) will be evaluated by a selection committee on a variety of criteria. The District will award a contract to the firm with *the most advantageous* proposal based on an evaluation of qualifications and price. This means the lowest cost proposal may not be selected. The District may, at its sole discretion, award to a firm based on their proposal and interview it alone without further consideration; or, the District may interview other top firms. **INCOMPLETE PROPOSALS WILL NOT BE CONSIDERED.**

Statements of Qualifications (SOQ) will be evaluated by an appointed Selection Committee based on the following criteria:

- Consultant's approach to this project and management plan (20 pts)
- Experience and qualifications of the team assigned to the project (20 pts)
- Cost/Rates (20 pts)
- References (20 pts)
- Local business participation (10 pts)
- Consultant's overall capability, stability, resources (10 pts)

Maximum Total Score (100 points)

H. SELECTION PROCESS

The Selection Committee will make its recommendation to the Chancellor of Coast Community College District. It is anticipated that the selected firm will be recommended by the Chancellor to the Board of Trustees for approval on May 7, 2014.

J. CONTRACT AWARD

The District reserves the right to contract with any entity responding to this RFP. The awarding of a contract is at the sole discretion of the District.

Firm(s) selected will be expected to enter into a Standard Architectural Service Agreement (Attachment B) with the District within ten (10) calendar days from approval by the Board of Trustees. The District shall not be bound, or in any way obligated, until both parties have executed a contract. No party may incur any chargeable costs prior to the execution of the final contract.

K. REJECTION AND WAIVERS OF PROPOSALS

This Request for Proposal does not commit the District to award a contract or to pay any costs incurred in the preparation of a proposal in response to this Request.

The District reserves the right to accept or reject any or all proposals received; to negotiate with qualified proposer(s) or cancel the Request; and, to waive any minor irregularities and informalities in the proposal or proposal process.

The District reserves the right to evaluate proposals for a period of ninety (90) days before deciding which proposal, if any, to accept.

L. NON-COLLUSION

By submittal and signing the enclosed Non-Collusion Affidavit (Attachment D), the proposer is certifying that the proposal document is genuine and not a sham or collusive, and not made in the interest of any person not named and that the Consultant has not induced or solicited others to submit a sham offer, or to refrain from proposing.

M. COMPLIANCE WITH LAWS AND REGULATIONS

The Consultant shall comply with federal, state and local laws, regulations, and Industry standards. The proposer shall also comply with the Drug Free Workplace Act requirements of California Government Code Sec. 8350 et seq. (Attachment E)

N. QUESTIONS / CONTACT PERSON

The District will accept **written** questions via e-mail until **March 21, 2014**. Questions regarding the work must be submitted to:

John Eriksen, Director of Purchasing
E-mail: jeriksen@mail.cccd.edu.
Telephone: (714) 438-4680

The District will respond to each question by email directly to the firm submitting the question. If the question demonstrates that clarification or additional information is

needed, an addendum will be issued to all proposers by e-mail. Consultant should acknowledge any and all e-mails sent by the District regarding this RFP by replying to the e-mail sender that the e-mail was received.

Proposers shall not contact any District employee or official regarding this proposal other than the individual listed above as the contact person. Contacting District staff or officials regarding this work may result in disqualification. No verbal comments made by District staff or officials are binding regarding this RFP except for that which is made in writing by the above mentioned contact person. This will assure that all proposers receive the same information in a timely manner.

O. DEADLINE FOR SUBMISSION OF STATEMENT OF QUALIFICATIONS

To be considered, proposals must be received at the address below **no later than April 3, 2014**. Late proposals will not be considered. The District highly encourages **early** submittal of proposals.

Proposer shall submit one electronic version of the proposal on a CD or flash drive; one (1) printed *original*, two (2) printed copies, and (1) electronic version on CD/flashdrive of the entire proposal including any supporting documentation in a sealed box or package addressed as follows:

**Attention: John Eriksen
Coast Community College District
Purchasing Department
1370 Adams Ave
Costa Mesa, CA 92626**

The box or envelope must also be clearly marked on the outside with the words:
Proposals Enclosed: RFP # 2028 Design Services for GWC Student Services Center; Deadline: 4 p.m., April 3, 2014.

Scope of Work

The District is seeking an Architecture/Engineering team to provide professional design services for the GWC Student Services Center pursuant to the Vision 2020 Facilities Master Plan. The architectural/engineering firm shall, without limitation to the District's right to require other services not listed herein, carry out the responsibilities delineated in the scope of services set forth below. Such services shall be performed, consistent with the highest standard care for professionals performing similar scopes of services.

The Architectural/Engineering firm shall, as a minimum, undertake the following responsibilities, and any additional responsibilities reasonably necessary and customarily provided by Architectural/Engineering firm conducting business in the Southern California area, to ensure that all Coast Community College District project goals, standards, policies and procedures are adhered to over the course of the project.

The Architectural/Engineering Services are governed by the terms and conditions of the CCCD Architectural Agreement and include, but are not limited to, the following:

1. Prepare a building program document and utilize the document as the basis for design.
2. Review and validate existing conditions at the proposed site and utilize it in the preparation of the design documents.
3. Prepare the design documents in accordance with the Architectural Agreement.
4. The basic design phase services to be provided shall include:
 - a. Schematic Design, Design Development, Construction Documents, Bid Phase support, Construction Administration, Project Management and Documentation (via Primavera Expedition Software), and post-occupancy building commissioning phase support.
 - b. Prepare schematic design documents including cost estimate and basis of design.
 - c. Basic design phase services for this project to include the following disciplines: Civil, Structural, Architectural, Mechanical – HVAC, Plumbing, Electrical, Fire Protection, and Hardware. The design of the facility and site shall meet all requirements of the applicable jurisdictions, codes and regulations and be consistent with campus design standards.

- d. At conclusion of all design phases, required deliverables shall include but may not be limited to the following: drawings, specifications, basis of design report, and cost estimates. Submit progress updates of design documents for review as requested by the Director of Facilities and Planning.
5. Initiate and participate in discussions with the relevant College building user groups, utility providers, the Board of Trustees and community groups regarding this project as required.
6. Prepare and coordinate design phase meetings with College building user groups, other College representatives, the District Facilities Team, the Project Manager and contractors. Attend project meetings as requested through bidding, award and construction, closeout and post-occupancy phases of the project, as required.
7. Prepare and distribute meeting minutes of all meetings held with the District, the college, the Project Manager, or governmental agencies.
8. Submit design documents to District Director of Facilities and Planning, College Vice President of Administrative Services, Project Manager, and other government entities and/or utility providers for plan checks and approvals as required.
9. Assist CCCD Facilities Team in Bid Phase by preparing addenda, responding to Requests for Information (RFI's) and other documents as required.
10. Facilitate weekly construction meetings, prepare detailed work plans indicating required and recommended milestones, deliverables and submittals, review timeframes, and critical actions or decisions required of the College, District Facilities Team or Project Manager. Make modifications and updates to the work plan as requested by the Project Manager.

The Architect/Engineer shall work closely and in cooperation with CCCD team, including the campus Facilities Construction Manager, campus Maintenance & Operations department, and the District Facilities department, and shall be readily accessible at all times for review and project coordination.

CCCD Contract No.: _____

STANDARD ARCHITECTURAL SERVICES AGREEMENT

Between

COAST COMMUNITY COLLEGE DISTRICT

and

For the _____ Project

On the Property Located at

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COAST COMMUNITY COLLEGE DISTRICT STANDARD ARCHITECTURAL SERVICES AGREEMENT

This Standard Architectural Services Agreement (this “**Agreement**”) is made and entered into by and between Coast Community College District, a community college district organized and operating pursuant to Education Code Sections 70900 *et seq.* (the “**District**”), and _____, a _____ (the “**Architect**”). The District and the Architect are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties.**” This Agreement is made with reference to the following facts:

RECITALS

A. Each person performing professional architectural services hereunder on behalf of the Architect shall be fully licensed by the California Architects Board (the “**CAB**”) to provide architectural services in conformity with the laws of the State of California. Each person performing professional engineering or surveying services hereunder on behalf of the Architect shall be fully licensed by the California Board for Professional Engineers and Land Surveyors (the “**CBPELS**”) to provide engineering or surveying services in conformity with the laws of the State of California.

B. The District now owns, or is in the process of acquiring, certain real property located at _____ in _____, California (the “**Site**”) at which the District currently, or in the future intends to, conduct college classes and/or related administrative functions.

C. The District intends to cause a district or college facility to be designed and constructed upon the Site and/or cause certain modifications, alterations, additions and improvements to be made to one or more of the buildings and/or other facilities located on the Site. The design, construction, and/or improvement of said district or college facility is referred to herein as the “**Project**”. Exhibit “A” to this Agreement contains a more detailed description of the Project.

D. The District wishes to engage the Architect to perform certain architectural and related services in connection with the Project, and the Architect wishes to provide such services to the District, all subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1: GENERAL CONDITIONS TO ARCHITECT’S PERFORMANCE

1.1 **Basic and Supplemental Services.** The Architect hereby agrees to perform for the District, subject to all of the terms and provisions of this Agreement, (a) the services identified in Article 2 of this Agreement (the “**Basic Services**”) and (b) if authorized by the District in writing pursuant to Article 3 of this Agreement, those services identified in said Article 3 (the “**Supplemental Services**”). The Basic Services and the Supplemental Services are sometimes collectively referred to herein as the “**Architect’s Services**”. In performing the Architect’s Services, the Architect shall comply with all of the terms and conditions of this Agreement, including without limitation the general conditions set forth in this Article 1 and any representations and warranties of the Architect set forth in this Agreement.

1.2 **Standard of Care.** The Architect’s Services shall be performed in a manner consistent with professional skill and care and the orderly progress of the design and construction of the Project. The Architect represents that in performing the Architect’s Services, the Architect (together with all individuals employed by or under the supervision of the Architect) will adhere to the standards of care and professionalism established or required by the CAB for architects licensed to practice in California. In addition, the Architect’s Proposal for Architectural Services and Firm Qualifications dated _____, are included as Exhibit “M” and are incorporated into the Agreement to further establish the Architect’s level of standard of care.

1.3 **Key Personnel.** Each and every one of the persons identified on Exhibit “B” to this Agreement (“**Key Personnel**”) shall personally oversee the Architect’s performance of its obligations under this Agreement. Each of the Key Personnel shall make himself or herself available to resolve any disputes or potential disputes that may arise during the Architect’s performance of the Architect’s Services. If, during the term of this Agreement, any of the Key Personnel should cease to be employed by the Architect or otherwise fail to personally oversee the performance of the Architect’s Services, the Architect shall submit a replacement for such person, who may be approved or disapproved by the District in the District’s sole discretion. The Architect’s failure to submit a replacement acceptable to the District shall be cause for termination of this Agreement by the District pursuant to Section 7.2 below.

1.4 **Budgets and Time Schedules.** The Architect shall use its best efforts to adhere to all budgets and time schedules prepared by the Architect and/or the District in connection with the Project, and shall not exceed same except for reasonable cause. The Architect shall notify the District in writing immediately if and when the Architect determines that a reasonable possibility exists that any such budgets or time schedules will (or may) be exceeded. Such written notice shall specify the reasons why such budgets or time schedules will (or may) be exceeded.

1.5 **Completion Deadlines.** The Project consists of the following stages and phases, which are defined and described in Article 2 of this Agreement:

- Preparation of Project Schedule
- Schematic Design Phase

- Design Development Phase
- Submittal of Preliminary Drawings (Design Development completion level) to the State
- Chancellor’s Office (for courtesy review)
- Construction Documents Phase
- Submittal of Contract Documents to DSA (defined below)
- Approval of Contract Documents by DSA

- Submittal of DSA approved Contract Documents to State Chancellor’s Office (for courtesy review)
- Bidding Phase
- Construction Phase
- Post-construction/Close out Phase

The Architect shall cause those stages and phases of the Project to be completed on or before the deadlines identified in the Schedule of Project Deadlines set forth at Exhibit “C”. If at any time the Architect determines there is a reasonable likelihood the Architect will be unable to meet one or more of those deadlines, the Architect shall notify the District in writing. Such written notice shall specify the reasons why the Architect will (or may) be unable to meet the deadline(s) in question, and shall indicate the date(s) on which the Architect anticipates that the subject stage(s) or phase(s) will be completed. Except as noted below in this Section 1.5, the Architect’s delivery and/or the District’s receipt of any such notice shall neither be deemed a waiver of any rights the District may have to insist on conformance with the deadline nor a waiver of any remedies available to the District for the Architect’s failure to comply with the deadline. However, if any such deadline is missed for reasons not caused by the Architect and not under the Architect’s control, then the District will agree to a reasonable extension of that deadline. With respect to approval of the Construction Documents (as defined in Section 2.7.1 below) by California’s Department of General Services, Division of the State Architect (“**DSA**”), if the DSA fails to approve the Construction Documents by the approval deadline set forth above, then the District will agree to a reasonable extension of that approval deadline if all of the following conditions are met: (a) the Architect submitted the Construction Documents (plus all related forms, applications and other submission materials required by the DSA) to the DSA on or before the submittal deadline set forth above; (b) the DSA’s failure to approve the Construction Documents by the approval deadline is not based on the DSA’s determination that those Construction Documents (or other such forms, applications, or submission materials) are inadequate or incomplete; and (c) the DSA’s failure to approve the Construction Documents by the approval deadline is not otherwise caused by the negligent acts, errors, or omissions of the Architect.

1.6 **Confidentiality**. The Architect shall maintain the confidentiality of any and all information provided to the Architect by the District, unless otherwise required by law. Unless the Architect is notified to the contrary by the District in writing, the Architect should presume that all such information (including without limitation information pertaining to budgetary matters and/or hazardous materials) is confidential. The Architect shall not release any such

information (except to the persons identified in the following sentence) without the District’s prior written consent. The Architect shall require its employees, subcontractors, consultants, and other third parties to whom the Architect is permitted or required to disclose such information in the performance of the Architect’s duties under this Agreement to similarly maintain the confidentiality of such information. Notwithstanding the foregoing, nothing set forth in this Section 1.6 shall cause the Parties to treat as confidential any information which is identified by Section 17.18 as not being confidential. Moreover, nothing in this Section 1.6 shall prohibit the release of information to the extent and in the manner that such information is authorized to be released pursuant to Section 17.8 below.

1.7 **Conflicts of Interest; Litigation.** The Architect shall not, without the District’s prior written consent, engage in any activity or accept any employment, interest or compensation that would reasonably appear to compromise the Architect’s professional judgment with respect to the Project. Further, the Architect represents and warrants that it has no unresolved litigation pending against it for claims based on services provided by the Architect.

1.8 **Knowledge of and Compliance with Applicable Laws.** The Architect, and all persons and/or entities performing the Architect’s Services on behalf of Architect, shall at all times during the term of this Agreement have sufficient knowledge of all laws, statutes, ordinances, regulations, and other legal requirements (including, without limitation, any rules and guidelines promulgated thereunder) applicable to the design and/or construction of the Project and/or otherwise applicable to any of the Architect’s Services (collectively, “**Applicable Laws**”) necessary to enable the Architect to perform the Architect’s Services (including without limitation preparation of any documents required to be prepared hereunder by or with the assistance of the Architect) in conformance with Applicable Laws. In the performance of the Architect’s Services, the Architect, and all persons and/or entities performing the Architect’s Services on behalf of Architect, shall comply with all Applicable Laws.

1.9 **Compliance with Requests of Government Agencies.** Unless otherwise directed by the District, the Architect shall respond to and comply with requests relative to the Project made by any and all federal, state, regional or local governmental entities having jurisdiction over the Project (collectively, “**Governmental Agencies**”), including without limitation: the California Department of Finance (“**DOF**”); the DSA; the California Department of General Services, California’s State Allocation Board (“**SAB**”); the California State Public Works Board (“**SPWB**”); and the building department, planning department, zoning department, health department, public works department, or any similar department, agency, or subdivision of any city or county having jurisdiction over the Project.

1.10 **Ownership of Architect’s Work Product.** All plans, specifications, drawings, and estimates relative to the Project prepared by the Architect and/or its employees, subcontractors and consultants (collectively, the “**Project Documents**”) shall be and remain the property of the District. Without limiting the generality of the foregoing, the Project Documents include the Project Schedule, the Budget, the Schematic Design Documents, the Design Development Documents and the Construction Documents, all as defined in Article 2 below. Also without

limiting the generality of the foregoing, the Project Documents shall be and remain the property of the District regardless of the format on which said items are prepared or stored, including without limitation paper copies, original or reproducible transparencies, AutoCAD R-2007 files (or similar computer-aided drafting or design formats), or other types of computerized data. Finally, and again without limiting the generality of the foregoing, the District specifically maintains ownership of the design of the Project and the design of any buildings or other improvements which are a part thereof, despite the fact that such design may have been created or prepared by the Architect or its employees, subcontractors, and consultants, and such design may not be re-used by the Architect or its employees, subcontractors, or consultants without the specific prior written consent of the District. Notwithstanding the foregoing, the official copyright in all Project Documents shall remain with the Architect; however, the Project Documents themselves shall be the property of the District as set forth in this Section 1.10, and the District may use the Project Documents in the manner and for the purposes specified in Sections 1.10.1, 1.10.2, and 1.10.3 below.

1.10.1 **Right to Use.** The Architect grants to the District the right to use and reuse all or any part of the Project Documents at the District’s sole discretion and with no additional compensation to the Architect, for the purposes of (a) construction of all or part of the Project; (b) the repair, renovation, modernization, replacement, reconstruction, or expansion of the Project; or (c) the construction of another project by or for the District for the District’s ownership and/or use. The District is not bound by this Agreement to employ the services of the Architect in the event any of the Project Documents are used for such purposes. The District shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Architect or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit the District’s right to recover for latent defects or for errors or omissions of the Architect; provided, however, that any use or reuse by the District of the Project Documents on any project other than this Project without employing the services of the Architect shall be at the District’s own risk with respect to third parties. If the District uses or reuses the Project Documents on any project other than this Project without employing the services of the Architect, it shall remove the Architect’s seal from the Project Documents and indemnify and hold harmless the Architect from claims arising out of the use or re-use of the Project Documents on such other project. The Architect shall not be responsible or liable for any revisions to the Project Documents made by any person or entity other than (i) the Architect, (ii) a person or entity acting on behalf of the Architect and/or for whose acts Architect is responsible or liable, or (iii) any person or entity approved in writing by Architect to revise the Project Documents.

1.10.2 **License.** This Agreement creates a non-exclusive and perpetual license for the District to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. The Architect shall require any and all of the Architect’s subcontractors and consultants to agree in writing that the District is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

1.10.3 **Right to License.** The Architect represents and warrants that the Architect has the legal right to license any and all copyrights, designs, and other intellectual property embodied in the Project Documents that the Architect prepares or causes to be prepared pursuant to this Agreement. The Architect shall indemnify and hold the District harmless pursuant to Article 11 of this Agreement for any breach of this Section.

ARTICLE 2: SCOPE OF ARCHITECT’S SERVICES

2.1 **Basic Services Applicable to All Stages and Phases of the Project.**

2.1.1 **General Architectural and Engineering Services.** The Architect shall perform any and all architectural design, structural engineering, civil engineering, mechanical engineering, electrical engineering, landscape architecture, and construction administration services, and any other professional architectural services requested by the District (other than the Supplemental Services), which in the opinion of the Architect and/or the District are necessary for the completion of the Project.

2.1.2 **Coordination With and Oversight by Program Manager.** The District may, at its option, utilize the services of a construction program manager (the “**Program Manager**”) in connection with the Project. The Program Manager’s duties may include any or all of the following, at the District’s discretion: acting as an advisor to the District and to the Architect in the areas of construction technology, constructability, scheduling, markets, and/or costs; assisting the District and the Architect with identifying early purchase or long lead-time items; assisting the District and the Architect with the preparation of Contract Documents (as defined in Section 2.7.1 below); assisting the District and the Architect in obtaining bids and awarding either one (1) Construction Contract (defined in Section 2.7.1 below) to the General Contractor (defined in Section 2.7.1 below), or awarding multiple Construction Contracts to multiple contractors for various aspects of the Project (the “**Prime Contractors**”); and coordinating negotiations relative to the construction of the Project. If the District elects to utilize the services of a Program Manager, then the Architect shall cooperate with the Program Manager in connection with the performance of the Architect’s duties hereunder.

2.1.3 **Assistance with Government Approvals.** The Architect shall assist the District in obtaining required approvals from Governmental Agencies necessary for the design, construction, and commencement of operation of the Project, including without limitation approvals relative to the provision of electrical, gas, water, sanitary or storm sewer, telephone, and other utilities to the Site.

2.1.4 **Attendance at Project Coordination Meetings; Responsiveness; Preparation of Minutes.** The Architect shall attend regular Project coordination meetings (at such times and places as established by the District in its discretion) between the Architect, its consultants, the District’s representatives, the District’s consultants, the Program Manager and the General Contractor (as defined in Section 2.7.1 below) throughout the design and construction of the Project. The Architect shall respond promptly with respect to matters assigned to the Architect for action or resolution. The Architect shall make a written record of all such meetings, and of

any other meetings, conferences, discussions, and decisions made between or among the District, the Architect, the Program Manager and the General Contractor during all phases of the Project and concerning any material condition in the requirements, scope, performance and/or sequence of the Work (defined below). The Architect shall provide a copy of such record to the District. As used herein, the term “**Work**” means the construction and services required by the Contract Documents (as defined in Section 2.7.1 below), whether incomplete, partially completed or fully completed, and includes all other labor, materials, equipment and services provided or to be provided by the General Contractor (or, where there is no General Contractor, by each Prime Contractor) to fulfill the General Contractor’s (or Prime Contractors’) obligations. Notwithstanding the foregoing, upon written notice to the Architect from the District or the Project Manager, the written records of any or all such meetings, conferences, discussions and decisions (as specified in the notice) shall be prepared by the Project Manager rather than by the Architect.

2.1.5 **Attendance and Presentations at Public Meetings.** To the extent requested by the District, the Architect shall prepare for and make formal presentations to the District’s Board of Trustees, and shall attend public hearings and other public meetings related to the Project.

2.1.6 **Existing Utilities.** The Architect shall be responsible for determining the capacity of any existing utilities serving the Site, and for any design or documentation required to make points of connection to existing utility services or relocation of existing utilities at the Site required for the Project.

2.1.7 **Revisions of Documents to Correct Inconsistencies.** If the District at any time discovers that any of the Project Documents do not conform to written instructions previously given to the Architect by the District, the District shall promptly notify the Architect of the discrepancy, and the Architect shall promptly revise the Project Documents to conform to those written instructions.

2.1.8 **Changes Required by Government Agencies.** If any Government Agency (or any other third party having the legal right to do so) requires that any of the Project Documents be modified or that additional Project Documents be prepared, the Architect shall so modify and prepare the Project Documents upon the District's request. If the requirement arises prior to the completion of the Design Development Documents, such modification or preparation shall be Basic Services. If the requirement arises after the completion of the Design Development Documents, such modification or preparation shall be Supplemental Services.

2.1.9 **Assistance with Legal Proceedings.** To the extent requested by the District, the Architect shall attend legal hearings and proceedings, and cooperate with the District’s attorneys in preparation for such hearings and proceedings, relating to third-party claims against the District which either (a) allege errors or omissions on the part of the Architect, or (b) in the opinion of the District may have arisen from errors or omissions on the part of the Architect.

2.1.10 **Architect’s Employees, Engineers, Subcontractors, and Consultants.** As part of the Basic Services, the Architect shall comply with the provisions of Article 10 hereof with respect to any and all of the Architect’s employees and any engineers, subcontractors, and consultants employed or retained by the Architect.

2.1.11 **Graphics and Signage.** The Architect shall provide design and other services required for or in connection with interior and exterior graphics and signage following the standards provided by the District.

2.1.12 **General Project Administration.** The Architect shall manage the Architect’s Services and administer the Project as described in Article 2. The Architect shall consult with the District, research applicable design criteria, attend meetings relative to the Project, and communicate with other individuals and entities involved in the Project. The Architect shall issue written progress reports to the District on either a biweekly or monthly basis as directed by the District. The Architect shall coordinate the services provided by the Architect and the Architect’s employees, subcontractors, and consultants with those services provided by the District and the District’s employees and consultants. To the extent the District elects to use the services of a Program Manager on the Project, the Architect shall perform some or all of its services under this Section 2.1.12 in conjunction with the Program Manager, as directed by the District. The Architect will be required to utilize the document control software, Expedition, implemented by the District for management and tracking of all correspondence and submittals.

2.1.13 **Submittal Requirements.** The Architect shall submit to the District or the Program Manager the documents identified in Exhibit “D” at the times and in the quantities identified in that Exhibit “D”.

2.1.14 **Specification Format.** The District will provide a set of standard specifications reflecting format, terminology, products, materials, and construction methods and procedures that are generally acceptable on District projects. These standard specifications are intended to serve as a guide. The Architect shall review the standard specifications and determine the extent to which the various sections and paragraphs are applicable and the extent to which modifications are required. Where, in the opinion of the Architect, modifications in either format, terminology, products, materials, or construction methods and procedures are required, Architect shall identify the modifications in the specifications for District attention, review, and approval. The standard specifications are not intended to limit the Architect’s discretion to propose other products, materials, or construction methods and procedures. Neither the provisions of the standard specifications established by the District nor Architect’s use of the standard specifications as a guide to prepare specifications shall derogate from the Architect’s responsibility to prepare the Construction Documents.

2.2 **Notice to Proceed.** The Architect shall not commence the performance of any of the Architect’s Services until the District has delivered to the Architect a letter signed by the District expressly directing the Architect to commence the performance of the Architect’s Services (the “**Notice to Proceed**”).

2.3 **Project Schedule.** Not later than 14 days after the District's delivery of the Notice to Proceed, the Architect shall prepare and submit to the District a schedule (the "**Project Schedule**") that identifies milestone dates for the commencement and completion of the various stages of design and construction of the Project, including all stages and phases identified in Exhibit "C" hereto, together with any other important dates or deadlines (including without limitation dates by which the District must provide the Architect with information relative to one or more such stages in order to allow the Project to continue on schedule) which the Architect deems material to the Architect's successful administration of the Project. Any such revisions to the Project Schedule shall also include allowances for time required by the District and by Governmental Agencies to review documents and information submitted to them in connection with the design and construction of the Project. Nothing in the Project Schedule shall conflict with or extend the completion deadlines set forth in Exhibit "C" hereto. If the District has identified a Program Manager for the Project, the Architect shall work with and consider the advice and recommendations of the Program Manager when revising the Project Schedule. The Architect shall adhere to the Project Schedule in administering the Project. If at any time the Architect determines there is a reasonable probability the Project will not progress as quickly as required by the Project Schedule, the Architect shall notify the District in writing. Such written notice shall identify the anticipated delay, specify the reasons therefor, and indicate the effect of that delay on the subsequent items of the Project Schedule. The Architect's delivery and/or the District's receipt of any such notice shall neither be deemed a waiver of any rights the District may have to insist on adherence to the Project Schedule nor a waiver of any remedies available to the District for any failure to adhere to the Project Schedule.

2.4 **Budget.**

2.4.1 **Definition of Project Construction Cost.** As used in this Agreement, the term "**Project Construction Cost**" shall mean the total cost incurred by the District for construction materials, construction services and any other Work in connection with the Project. Design contingency and construction escalation are to be calculated into the Project Construction Cost. A separate construction contingency is to be added to all estimates, which is not to be included in the Project Construction Cost amount. The cost of construction management and construction supervision services incurred by the District shall be excluded from the definition of Project Construction Cost. Project Construction Cost shall not include: (a) amounts payable to the Architect under this Agreement; (b) compensation payable to the Architect's subcontractors or consultants; (c) the District's cost of acquiring the Site; (d) amounts payable by the District to the Architect pursuant to Section 2.7.1 below for the Architect's preparation of Initial As-Built Drawings (as defined in Section 2.5.4 below); (e) financing costs, if any, payable by the District in connection with the Site and/or the Project; (f) the cost of construction management and construction supervision services incurred by the District; (g) permit fees and other charges imposed by Governmental Agencies for plan review, building permits, or other governmental services or approvals relative to the Project; (h) costs of surveys; and (i) costs of obtaining any environmental assessments and any other hazardous materials testing and/or remediation costs.

2.4.2 Obligation of Architect to Design Within Budget. Subject to the provisions of Section 2.4.5, it is the obligation of the Architect to design the Project in a manner that will enable the Project to be completed for an amount that does not exceed the Budget. No adjustments shall be made to the Budget, except for (i) adjustments caused by fluctuations in general levels of prices in the construction industry as reflected by the Engineering News-Record Index; (ii) adjustments caused by changes requested in writing by District to the Conceptual Design/Architectural Program; or (iii) other adjustments to the Budget that the District determines, in its sole discretion, are appropriate or necessary. To increase the likelihood that the Project Construction Cost will neither substantially exceed nor substantially fall short of the Budget, the Architect shall include in its design of the Project optional features, elements, components, treatments, and other items that may be added to or deleted from the Project for the purpose of adjusting the Project Construction Cost (collectively, the “**Optional Features**”). The number and types of Optional Features shall be mutually agreed upon by the Architect and the District; provided, however, that each of the Optional Features shall contemplate only the addition or deletion of “non-essential” features, elements, components, treatments or other items. As used in the preceding sentence, “non-essential” means such features, elements, components, treatments, or other items that are not deemed by the District to be necessary to the Project. Without limiting the generality of the foregoing, the Optional Features shall with rare exception be limited to decorative/aesthetic elements or alternate construction materials. An Optional Feature shall be identified as an additive or deductive alternate in the Construction Documents (defined in Section 2.7.1 below), or by means of a simple narrative, or in some other manner mutually agreed upon by the Architect and the District. To the extent possible, each Optional Feature shall be described and/or depicted so as to enable the Optional Features to be added or deleted without the need for the plans and specifications to be re-designed or re-drawn. The estimated cost of incorporating the Optional Features into (or removing them from) the Project shall total approximately five percent of the Budget.

2.4.3 Modification of Budget Based on Delay in Preparation of Contract Documents. If the Contract Documents (defined in Section 2.7.1 below) are not completed and delivered to the District and bidding thereon has not commenced within three and one-half months after the DSA approves the Construction Documents, then the Architect shall, upon the District’s request, revise the Budget to reflect changes in the general level of prices in the construction industry between the date of the District’s initial approval of the Budget and the date on which the District intends to seek bids for the Work. If the Architect’s failure to complete or deliver the Contract Documents within the time specified above was caused by the District’s delay, or if the District’s delay prevented the bidding from commencing within the time specified above, or if the revisions to the Budget are needed due to the District’s delay, then the Architect’s revision of the Budget pursuant to this Section 2.4.3 shall be Supplemental Services for which the Architect shall be compensated pursuant to Article 3 below. In all other cases, the Architect’s revision of the Budget pursuant to this Section 2.4.3 shall be Basic Services.

2.4.4 Modification of Budget Upon Receipt of Bids. The Budget shall be the acceptable estimate of Project Construction Cost to the District as submitted by the Architect until such time as bids have been received pursuant to Section 2.8 below, whereupon the Budget shall

be revised to reflect the bid results and any contingencies as determined by the District and the Program Manager. If the District elects to use multiple Prime Contractors rather than a single General Contractor, then each portion of the Budget corresponding to the Work to be performed by each Prime Contractor shall be revised pursuant to this Section 2.4.4 upon the District's acceptance of each such Prime Contractor's bid. Nothing in this paragraph shall restrict the District's rights as set forth in Section 2.4.5 below.

2.4.5 District's Rights Where Lowest Bid is Less than Budget or Exceeds Budget by Five Percent or Less. If the lowest bid received by the District is less than the Budget, or exceeds the Budget by an amount equal to or less than five percent (5%) of the Budget, then the District may direct the Architect to exclude or include one or more Optional Features. The determination of which Optional Features to exclude or include pursuant to this Section 2.4.5 shall be made by the District in its sole discretion.

2.4.6 District's Rights Where Lowest Bid Exceeds Budget by Greater Than Five Percent. If the lowest bid received exceeds the Budget by more than five percent, the District may (a) give written approval to increase any item of the Budget to equal the lowest bid received, (b) authorize rebidding of all or any portion of the Project within a reasonable time; (c) abandon the Project and terminate this Agreement in accordance with Article 7 below; or (d) require the Architect to modify the Construction Documents (at no additional cost to the District) in order to reduce the estimated Project Construction Cost to a level that falls within the Budget. If the District requires the Architect to revise the approved Construction Documents pursuant to clause (d) above, revisions proposed by the Architect shall be consistent with the design and architectural criteria previously established and/or approved by the District for the Project, and shall not materially compromise (as determined by the District in its reasonable judgment) those criteria or the aesthetic, structural or functional elements of the Project.

2.4.7 Phased Construction. If the District requests that the Project be bid or constructed in phases, the Architect shall prepare appropriate bid documents at no additional expense to the District. Notwithstanding the foregoing, if the bidding of said phases is separated by six months or more, then the preparation of such bid documents shall be considered Supplemental Services, to the extent any such delay causes the cost to prepare such bid documents to increase.

2.5 Schematic Design Phase. The obligations of the Architect set forth in this Section 2.5 shall be referred to as the "**Schematic Design Phase**". The services to be performed by the Architect pursuant to this Section 2.5 shall be referred to as the "**Schematic Design Services**".

2.5.1 Schematic Design Documents. Promptly following the District's issuance of the Notice to Proceed, the Architect shall prepare, for approval by the District, documents establishing three conceptual designs of the Project illustrating the scale and relationship of Project components ("**Schematic Design Documents**"). The Architect shall submit Schematic Design Documents as listed in Exhibit "D". If the District has identified a Program Manager for the Project, the Architect shall work with and consider the advice and recommendations of the

Program Manager when preparing the Schematic Design Documents. Without limiting the generality of the foregoing, the Schematic Design Documents shall include: a general description of the Project; a conceptual site plan; preliminary building plans, sections and elevations; perspective sketches; outline specifications; code analysis; area (assignable and gross square footages) tabulation; and any other drawings or documents requested by the District. Preliminary selections of major building systems and construction materials shall be noted on the drawing or described in writing as part of the Schematic Design Documents. The design of the Project as shown on the Schematic Design Documents, and the construction requirements specified therein or made necessary by such design, shall comply with all Applicable Laws. Once schematic design is approved by the program manager, the architect will prepare a 3D animation “fly around” presentation of the structure and present same to the Administration and Board members as needed. A maximum of three presentations is included in this Agreement.

2.5.2 Budgetary and Scope Constraints. The Architect shall perform the Schematic Design Services in such a manner as not to exceed the budgetary and scope constraints established by the District, unless otherwise directed by the District in writing. The District understands and acknowledges, however, that the Architect makes no warranties or guaranties of the Project Construction Cost. The Architect shall prepare a schematic design cost estimate at the completion of the Schematic Design Phase. The Architect’s estimate at the completion of the schematic design phase shall include in the total Project Construction Cost a 15% design contingency and escalation. For non-State funded projects, the estimate shall be based upon the cost index and/or other prorates provided by the Program Manager and adjusted to the anticipated mid-point of construction.

2.5.3 Investigation of Existing Conditions and Preparation of Initial As-Built Drawings. Prior to and during the course of the Architect’s performance of the Schematic Design Services, the Architect shall investigate existing conditions or facilities at the Site as necessary to effectively prepare the Schematic Design Documents. If the Architect needs to review “as-built” drawings of the buildings, facilities and other improvements existing on the Site as of the date of this Agreement (the “**Initial As-Built Drawings**”) in order to prepare the Schematic Design Documents, and if such Initial As-Built Drawings are incomplete or do not exist, then the Architect shall deliver a written proposal to the District identifying the need for the Architect to prepare the Initial As-Built Drawings, the scope of work proposed to be undertaken by the Architect in connection with that preparation, and the number of hours which the Architect expects will be required of it to prepare the Initial As-Built Drawings. Upon and to the extent of the District’s written approval of the Architect’s proposal, the Architect shall prepare any such Initial As-Built Drawings. The Architect shall be compensated pursuant to Section 5.1 below for preparation of the Initial As-Built Drawings. Nothing in this Agreement shall warrant the accuracy of any existing Initial As-Built Drawings provided by the District.

2.6 Design Development Phase. The obligations of the Architect set forth in this Section 2.6 shall be referred to as the “**Design Development Phase**”.

2.6.1 Design Development Documents. Upon the District’s delivery of the Notice to Proceed, the Architect shall prepare design development documents (“**Design Development Documents**”) for written approval by the District. The Architect shall submit Design Development Documents as listed in Exhibit “D”. If the District has identified a Program Manager for the Project, the Architect shall work with and consider the advice and recommendations of the Program Manager when preparing the Design Development Documents. The Design Development Documents shall illustrate and define the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of site plans, floor plans, elevations, cross sections, and other documents necessary to depict the design of the Project. The Design Development Documents shall also include: typical construction details; equipment layouts; landscape conceptual plans; architectural information to fix and illustrate the size, character, and quality of all Project components as they relate to the District’s program requirements; updated code analysis; updated area tabulations; and such other essentials as may be deemed appropriate by the Architect and/or the District. The Design Development Documents shall also include specifications that identify major materials and systems (including civil, structural, mechanical, and electrical systems) and establish in general their quality levels. The Architect shall provide samples of all finish materials listed in the materials/color schedule. These samples shall be accurate with respect to the actual finishes, textures, and colors being proposed. Material samples shall be mounted and displayed on presentation boards and be presented for review and approval by the District.

2.6.2 Budgetary and Scope Constraints. The Architect shall prepare the Design Development Documents in such a manner as not to exceed the budgetary and scope constraints established by the District, unless otherwise directed by the District in writing. The Architect shall prepare a detailed construction cost estimate at the completion of the Design Development Phase. The Architect’s detailed estimate at the completion of the design development phase shall include within the total Project Construction Cost a 10% design contingency and escalation. For non-State funded projects, the estimate shall be based upon the cost index and/or other prorates provided by the Program Manager and adjusted to the anticipated mid-point of construction. The Architect shall prepare a complete Final Project Proposal (FPP) for submittal by the District to the State. The requirements for preparation of the FPP may be found on the State Chancellor’s Office website at www.cccco.edu.

2.6.3 Selection of Manufactured Items. The Architect shall cooperate and consult with the District in use and selection of manufactured items which are to be incorporated into the Project and/or shown in the Design Development Documents, including without limitation paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials, and floor coverings. All such manufactured items shall be standardized to the District’s criteria to the extent such criteria do not interfere with Project design and are in compliance with the requirements of *Public Contract Code* Section 3400.

2.6.4 Consideration of Costs and Funding Sources. The Architect shall consider operating and maintenance costs when selecting systems for the District and when preparing the Design Development Documents. The Architect shall prepare the Design Development

Documents so as to allow the District to utilize grants and outside funding sources which the District has identified and as to which the District has given reasonable advance notice to the Architect. To the extent that the Architect is aware of any grants or funding sources whose availability may depend upon specific features of the Project's design, the Architect agrees to notify the District of those grants or funding sources when preparing the Design Development Documents. In preparing the Design Development Documents, and in any subsequent efforts by the Architect relative to the design of the Project, the Architect shall work with the District to consider and utilize funding from grants and alternative funding sources.

2.6.5 District's Election Regarding Alternate Design Documents. Up through the District's approval of the Schematic Design, the District may request that the Architect (a) prepare alternate Schematic Design Documents based on different construction concepts proposed or adopted by the District, (b) prepare the Schematic Design Documents such that they will permit the Contract Documents (as defined in Section 2.7.1 below) to allow for portions of the Work to be performed under separate construction contracts, or (c) prepare the Schematic Design Documents such that they will permit the Contract Documents to allow for the deferral of the construction of certain buildings, facilities, or other portions of the Project. If the District makes such a request during the Schematic Design Phase (or, if the request arises due to the fault of the Architect or is needed to prevent the Project from exceeding the Budget), then such services shall be included as part of the Basic Services. In all other cases, such services shall constitute Supplemental Services and shall be subject to the provisions of Article 3 below.

2.7 Construction Documents Phase. The obligations of the Architect set forth in this Section 2.7 shall be referred to as the "**Construction Documents Phase**".

2.7.1 Definition of Contract Documents, As used herein, the term "**Contract Documents**" shall include the following: (a) an agreement ("**Construction Contract**") between the District and the licensed general contractor to whom the District will award the right to act as the District's general contractor for the Project (the "**General Contractor**") specifying the General Contractor's rights and obligations with respect to the construction of the Project and including, among other things, general and supplementary conditions of the Construction Contract ("**General Conditions**"); (b) plans, specifications, drawings, addenda, and other documents (the "**Construction Documents**") which (i) set forth in detail the requirements for the construction of the Project, (ii) describe the quality, configuration, size and relationships of all components to be incorporated into the Project, and (iii) are consistent with the Design Development Documents, the Budget, and the Project Schedule; (c) information, documents and forms relative to the bidding of the construction work for the Project and the procurement of materials for the Project, including without limitation (i) descriptions of the time, place and conditions of bidding, (ii) proposal forms, (iii) bidding forms, and (iv) a requirement that the General Contractor provide operation manuals and adequate training for the District in the operation of mechanical, electrical, heating, air conditioning, and other systems installed by or at the direction of the General Contractor (the "**Bidding Documents**"); and (d) a comprehensive project manual for the Project containing all design and construction requirements (including without limitation details as to the quality levels of materials and systems required for the Project) with which the General

Contractor, subcontractors and material suppliers must comply in connection with the Project (the “**Project Manual**”). Without limiting the generality of the foregoing: (1) the Contract Documents shall set forth in detail the requirements for the Work in conformity with all Applicable Laws and requirements of the DSA; (2) the Contract Documents shall show all the construction work to be done, the materials, workmanship, finishes, and equipment required for the Project; (3) the Construction Documents (together with any other portions of the Contract Documents that the District may specify subsequent to the execution of this Agreement) shall be prepared in the formats required by Section 2.7.4 below; and (4) the Contract Documents shall contain any information necessary to inform the General Contractor and all subcontractors of the requirements of any Owner Controlled Insurance Program (“**OCIP**”) applicable to the Project, and of the fact that the General Contractor and subcontractors are not to include insurance cost in their bids to the extent that insurance is to be provided under the OCIP. If the District elects to use multiple Prime Contractors rather than a single General Contractor, then all references herein to the Construction Contract shall be deemed to refer to each agreement entered into between the District and any Prime Contractor. If the District elects to use multiple Prime Contractors, it shall constitute Supplemental Services and shall be subject to the provisions of Article 3 below.

2.7.2 Preparation of Construction Documents. Promptly following the District’s approval of the Design Development documents and receipt of a written Notice to Proceed with Construction Documents Phase, the Architect shall prepare the Construction Documents, as well as those portions of the Project Manual which are to be prepared by the Architect hereunder, based on the Design Development Documents approved by the District. The Architect shall deliver such items to the District for its review and approval when such items are 50% complete, 95% complete and 100% complete. The Architect shall submit Construction Documents as listed in Exhibit “D”. The Architect shall also assist the District and its attorneys in the preparation of the Construction Contract (including the General Conditions) and the Bidding Documents. If the District has identified a Program Manager for the Project, the Architect shall work with and consider the advice and recommendations of the Program Manager when preparing (or assisting in the preparation of) the Contract Documents. The Architect shall modify the Construction Documents to include any revisions required by the District as a condition to its approval of the Construction Documents. A final 100% updated materials board is to be submitted with the 95% Construction Documents submittal. The Architect shall also prepare and deliver to the Program Manager a detailed estimate of the Project Construction Cost at 50% completion, 95% completion and 100% completion (DSA approval) of those portions of the Construction Documents that the Architect is responsible for preparing. The Architect’s detailed estimate at the 50% and 95% Construction Documents phase submittals shall include within the total Project Construction Cost a 5% and 3% design contingency, respectively, plus escalation. At the 100% submittal (DSA approval), the Architect shall submit an updated detailed estimate with the design contingency reduced to 0%. For non-State funded projects, the estimate shall be based upon the cost index and/or other prorates provided by the Program Manager and adjusted to the anticipated mid-point of construction.

2.7.3 **Asbestos-Containing Materials.** The Architect shall include statements in the Construction Documents that materials containing asbestos are not to be incorporated into the Project.

2.7.4 **Submission of Construction Documents to DSA for Approval.** Upon the District's approval of all of the Construction Documents, the Architect shall, by not later than the deadline specified in Exhibit "C", submit the Construction Documents to the DSA for approval. The Architect shall submit a sufficient number of copies of the Construction Documents to the DSA so that the DSA will return one (1) original set bearing DSA's stamp of approval. Promptly following DSA's approval of the Construction Documents, the Architect shall assemble and deliver to the District the Construction Documents and any and all other portions of the Contract Documents in quantities specified in Exhibit "D". Any portions thereof consisting of drawings shall be provided to the District in AutoCAD R-2007 (or more recent version) format and the remainder shall be provided in Microsoft Word format. Upon receipt of DSA approval the Architect shall prepare an updated complete Final Project Proposal (FPP) for submittal by the District to the State. The requirements for preparation of FPP may be found on State Chancellor's Office website at www.cccco.edu.

2.7.5 **Deposit with Reprographics Company.** Upon the District's approval of the Contract Documents, the Architect shall deposit with the reprographics company specified by the District the number of Contract Documents as listed in Exhibit "D" to be used in connection with the bidding of the construction work on the Project and for the printing of additional sets of Contract Documents during the Project.

2.7.6 **No Warranty by Architect Regarding Project Construction Cost.** The District acknowledges that the Architect's initial estimate of the Project Construction Cost, the Architect's review of the District's budgetary goals and constraints, the Architect's preparation of the Budget, and any subsequent re-evaluation and revised estimates of the Project Construction Costs all represent the Architect's judgment as a design professional familiar with the construction industry. The District and the Architect also acknowledge that neither the Architect nor the District has control over the cost of labor, materials, or equipment, over the General Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the District recognizes that the Architect cannot and does not warrant or represent that the bids or negotiated prices will not vary from the Budget or from any estimate of the Project Construction Cost prepared or agreed to by the Architect. Notwithstanding the foregoing, nothing in this Section 2.7.6 shall alleviate or release the Architect from its responsibility to design the Project within the Budget.

2.7.7 **Modification of Construction Documents.** Notwithstanding the provisions of Section 2.7.6 above, the Architect shall periodically re-evaluate and revise its estimate of the Project Construction Cost and advise the District of the revised estimate. The Architect shall also notify the District of adjustments in previous estimates of the Project Construction Cost arising from market fluctuations or approved changes in the scope of the Project or in the requirements of construction of the Project. At the completion of the Schematic Design Phase, and at the

completion of the Design Development Phase, and at 50%, 95% and 100% completion of the Construction Document Phase, the District may direct the Architect, without additional charge to the District, to redesign the Project and revise the Construction Documents in order to allow the Project to be completed within the requirements of the Budget. As used in this paragraph, “redesign” does not mean phasing or removal of parts of the Project unless agreed in writing by the District; instead, “redesign” means redesign of the entire Project, including all of its component parts. At the District’s discretion, the District may instruct the Architect that the Architect’s redesign of the Project and revision of the Construction Documents shall include any or all of the following: contingencies for design, bidding and price escalation; modifications concerning the materials, equipment, component systems, and types of construction; adjustments to the scope of the Project; and alternate bids as may be necessary to adjust the estimated Project Construction Cost so that it does not exceed the Budget.

2.8 **Bidding Phase.** The “**Bidding Phase**” will commence upon the District’s approval of the Construction Documents (and of any revisions to the Budget and/or the estimated Project Construction Cost). During the Bidding Phase, the Architect shall assist the District in obtaining bids and awarding the Construction Contract for the construction of the Project, and, at the District’s request, the Architect shall print and distribute necessary bidding information. The Bidding Phase shall end upon the District’s award of the Construction Contract to the General Contractor (or to the last of the Prime Contractors where the District elects to use multiple Prime Contractors instead of a single General Contractor, in which case the Bidding Phase and the Construction Phase identified in Section 2.9 below may overlap). Before issuing to the General Contractor or any subcontractor any addenda or other change or supplement to the Contract Documents, the Architect shall first obtain the written approval to such addenda, change or supplement from any Governmental Agencies having jurisdiction over the Project, to the extent any such approval is required by Applicable Laws. A representative of the Architect (including any of the Key Personnel designated by the District or the Program Manager) shall attend all scheduled pre-bid conferences and Site visits. The Architect shall assist the District and the Program Manager in the review and evaluation of bids.

2.9 **Construction Phase.** The “**Construction Phase**” will commence with the award of the Construction Contract to the General Contractor (or to the first of the multiple Prime Contractors, where the District elects to use multiple Prime Contractors with a Construction Manager instead of a single General Contractor) and will continue until the issuance of the Architect’s certificate of completion and final certificate for payment relative to the Project. During the Construction Phase, the Architect shall do all of the following:

2.9.1 **Provide Copies of Contract Documents.** Immediately upon the commencement of the Construction Phase, the Architect shall provide Contract Documents labeled “For Construction” as specified in Exhibit “D” for use by the District and its consultants.

2.9.2 **General Administration.** The Architect shall provide general administration of the Contract Documents and of the Work, which general administration shall include without limitation all of the following: (a) making periodic visits to the Site as often as the Architect

deems necessary (but not less than once every week) to render architectural observation, which is distinguished from the continuous personal inspection to be made by the Project Inspector (defined in Section 2.9.6 below); (b) making regular reports as may be required by Government Agencies; (c) keeping the District informed of the progress of construction; (d) reviewing schedules and shop drawings for compliance with design; (e) review and accept of the substitution of materials and equipment, laboratory reports, all following notice to, consultation with, and (if required by the District) approval of the District; (f) maintaining construction logs; (g) preparing Construction Directives, Clarifications, Change Orders, etc. (as defined in Section 2.9.13 below) for written approval of the District; (h) examining the General Contractor's applications for payment, and issuance of certificates for payment in amounts approved by the Architect, Program Manager, and the District; (i) revising and updating the materials/color schedule and materials boards, which were prepared during the Design Development Phase and updated in the Construction Documents Phase, as necessary to reflect the actual manufacturers' products that have been submitted by the General Contractor and approved for use on the Project; (j) determining, with the Program Manager, the date of completion of the Project; (k) preparing a final punch-list and performing a final punch-list inspection of the Project; (l) receiving from the General Contractor and delivering to the District written guarantees, instruction books, diagrams, and charts required to be provided to or executed by the General Contractor under the Construction Contract; (m) issuing the Architect's certificate of completion and final certificate for payment; and (n) attending and participating in weekly construction progress meetings as scheduled by the District or the Program Manager. The Architect shall respond to the General Contractor's requests for information (RFI) within seven calendar days after issuance by the General Contractor. The Architect shall review and return shop drawings and other submittals within ten calendar days after issuance by the General Contractor. The Architect shall issue bulletins requesting cost proposals from the General Contractor within five days after identifying the requirement for additional Work.

2.9.3 **Access to Site.** The Architect shall have access to the Site at all times during the term of this Agreement for the purpose of performing its obligations under Section 2.9.2 and under any other provision of this Agreement.

2.9.4 **Interpretation of Construction Requirements.** The Architect shall be the interpreter of the requirements of the Contract Documents, and shall advise the District as to the performance by the General Contractor (or, where there is no General Contractor, by each Prime Contractor) thereunder.

2.9.5 **Extent and Limitation of Architect's Authority.** The Architect shall be the District's architectural representative during the performance of the Work and shall advise and consult with the District as to that performance. The Architect shall have authority to act on behalf of the District only to the extent provided in this Agreement unless otherwise specified by the District in writing. The Architect shall not issue orders to the General Contractor (or Prime Contractors) that might commit the District to extra expenses, and the Architect shall not otherwise amend the Contract Documents, without first obtaining the written approval of the District.

2.9.6 **Assistance to District’s Project Inspector.** The Architect shall provide technical direction to a full time or part-time project inspector employed or retained by and responsible to the District as required by applicable law (the “**Project Inspector**”). The Architect shall also provide assistance to any and all other Program Managers and/or consultants retained by the District.

2.9.7 **Review of General Contractor’s Drawings, Data, and Samples.** The Architect shall review and approve or take other appropriate action upon the General Contractor’s (or Prime Contractors’) submittals of shop drawings, product data, and samples for the purpose of checking for conformance with the Contract Documents. The Architect’s action shall not delay the Work. The Architect’s action shall be in accordance with Section 2.9.2.

2.9.8 **Rejection of Construction Work.** The Architect shall advise the District to reject Work which does not conform to the Contract Documents. However, the final decision to stop or reject work will be exclusively the District’s. The Architect shall promptly inform the District whenever, in the Architect’s opinion, it may be necessary to stop the Work to avoid the improper performance of any work. The Architect has authority to require additional inspection or testing of any Work in accordance with the provisions of the Contract Documents, regardless of whether that Work is fabricated, installed, or completed.

2.9.9 **No Guaranty by Architect.** The Architect will endeavor to secure compliance by the General Contractor with the requirements of the Contract Documents, but does not guarantee the performance of the Construction Contract or any subcontracts related to the Project.

2.9.10 **Evaluation of the Work.** The Architect, as an architectural representative of the District, shall visit the site at intervals appropriate to the stage of the Contractor’s operations, or as otherwise agreed by the District and the Architect in Section 2.9, (1) to become generally familiar with and to keep the District informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the District against, and to discover and report to the District, defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work when fully completed will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor’s rights and responsibilities under the Contract Documents.

2.9.11 **Certification as to Progress and Quality of Work.** The Architect shall review and certify the amounts due the General Contractor (or any Prime Contractors) after review and approval by the IOR. The Architect’s certification for payment shall constitute a representation to the District, based on the Architect’s observations and inspections at the Site, that the Work has progressed to the level certified, that quality of the Work materially complies with the

requirements of the Contract Documents and that the General Contractor (or any Prime Contractors) is entitled to payment in the amount certified.

2.9.12 **Permits**. The Architect shall assist the District in preparing and filing all documents required for obtaining approvals of any and all Governmental Agencies in connection with the design and construction of the Project, except that applying for and obtaining construction permits shall be the responsibility of the General Contractor (or any Prime Contractors). The Architect shall be responsible for gathering information and processing forms required by applicable Government Agencies in a timely manner. The District shall pay all fees required by such Governmental Agencies. The Architect shall, whenever feasible, establish beforehand the exact costs due to Governmental Agencies and submit this cost information to the District so payments may be prepared. All such fees and costs shall be paid by the District directly (although such payment may be delivered by the Architect) by means of checks written from the District's bank accounts.

2.9.13 **Change Orders**. The Architect shall provide services in connection with evaluating substitutions proposed by the General Contractor (or any Prime Contractors) and making subsequent revisions to drawings, specifications, and other documentation resulting therefrom. The Architect shall prepare Change Orders (defined below) with supporting documentation and data for the District's review in accordance with the Contract Documents, and may authorize minor changes in the Work relative to the Project not involving an adjustment in the amounts owing to the General Contractor (or any Prime Contractors) thereunder or an extension of time for completion of the Work. The Architect shall evaluate and make written recommendations regarding the General Contractor's (or Prime Contractors') proposals for possible Change Orders. The Architect shall, at the Architect's expense, prepare a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings, and other data furnished by the General Contractor (or any Prime Contractors) to the Architect. As used herein, the term "**Change Order**" means a written instrument prepared by the Architect and signed by the District, the General Contractor (or any Prime Contractors) and the Architect, stating their agreement upon all of the following: (i) change in the Work; (ii) the amount of the adjustment, if any, in the sum payable by the District due to that change; and (iii) the extent of the adjustment, if any, in the time available for the General Contractor (or the applicable Prime Contractor(s)) to complete the Work due to the approved change in the Work.

2.9.14 **Certification of Absence of Asbestos-Containing Building Materials**. The Architect shall certify to the best of its information pursuant to Title 40, Section 763.99(a)(7) of the *Code of Federal Regulations*, that no asbestos-containing building material was specified as a building material in any of the Contract Documents, and will ensure that the General Contractor (or any Prime Contractors) and any applicable subcontractors and/or material suppliers provide the District with certification that all materials used in the construction of any college building or other improvement made as part of the Project are free from any asbestos-containing building materials.

2.9.15 **Final Completion.** The Architect shall visit the Project to determine the date or dates of final completion, receive, and forward to the District for the District’s review all written warranties and related documents required by the Contract Documents, and issue a final certificate for payment upon the General Contractor’s (or Prime Contractors’) compliance with the requirements of the Contract Documents.

2.9.16 **Evaluation of General Contractor.** The Architect shall provide written evaluation of the performance of the General Contractor (or any Prime Contractors) under the requirements of the Contract Documents when requested in writing by the District to do so.

2.10 **Architect’s Post-Construction Obligations.**

2.10.1 **Preparation of Record Drawings.** Promptly following completion of construction of the Project, the Architect shall prepare and deliver to the District (on diskette or similar media) an AutoCAD R-2007 file (or more recent version) of all as-built improvements made or modified in connection with the Project, together with full-size paper copies as specified in Exhibit “D”, at no additional cost.

2.10.2 **Notice of Construction Defects.** The Architect, as part of the Architect’s Basic Services, shall immediately notify the District of any deficiencies in the Work discovered by the Architect following the District’s acceptance of the Work and prior to the expiration of the guarantee period of the Work.

2.10.3 **Contractor Performance.** The Architect shall monitor and keep the District advised as to the extent of the General Contractor’s (or any Prime Contractors) performance of (or failure to perform) its (or their) obligations regarding the final delivery of all testing reports, adjusting and balancing reports, preparation of operation and maintenance manuals, training for operation and maintenance, responses to warranty items, and consultation during operation, relative to all equipment and systems installed in connection with the Project. If the Architect and/or the District determines that the General Contractor (or any Prime Contractors) has failed, is failing, or is likely to fail to perform those obligations as required by the Contract Documents, then the Architect shall take all actions reasonably requested by the District to attempt to cause the General Contractor (or Prime Contractors) to fulfill those obligations. Architect shall advise District on General Contractor (or Prime Contractors) performance issues.

2.10.4 **Assistance Regarding Close-Out and Final Regulatory Certification.** In connection with the project closeout, the Architect shall assist the District in obtaining final certifications from the DSA and other Governmental Agencies as needed to enable the District to obtain any and all available government funding for the Project.

2.11 **Architect’s Duties Regarding Claims and Disputes Between District and General Contractor or Prime Contractors.** The Architect shall make recommendations to the District on claims made by, to or against the District relating to the execution and progress of the Work and all matters and questions relating thereto. The Architect’s recommendations in matters relating to artistic effect shall be consistent with the intent of the Contract Documents. The

Architect shall evaluate and render written recommendations, within a reasonable time, on all claims, disputes or other matters at issue between the District and the General Contractor (or the Program Manager or Prime Contractors) relating to the execution or progress of the Work as provided in the Construction Contract and/or the other Contract Documents. Under no circumstances should this evaluation take longer than twenty calendar days from the date the claim is received by the Architect.

ARTICLE 3: ADDITIONAL ARCHITECT’S SERVICES

3.1 **Supplemental Services.** The Architect shall notify the District in writing of the need for Supplemental Services required due to circumstances beyond the Architect’s control and which are not the direct or indirect result of the Architect’s negligent acts, errors or omissions. The Architect shall obtain written authorization from the District before rendering any such Supplemental Services. Compensation for the Supplemental Services shall be subject to District approval. The amount of such compensation shall be determined by a separate written agreement to be negotiated and signed by the Architect and the District at the time the need for the Supplemental Services arises and prior to the performance of any Supplemental Services. The Supplemental Services shall include:

3.1.1 **Revisions Required by New Laws.** Making material revisions in drawings, specifications or other documents when such revisions are required by the enactment or revision of Applicable Laws subsequent to the preparation and completion of the Construction Documents, unless such Applicable Laws were enacted at the time of execution of this Agreement but not in effect until the preparation or completion of the Construction Documents. In the case of an Applicable Law enacted at the time of execution of this Agreement and subsequently effective, the Architect is expected to incorporate the requirements of the Applicable Law in anticipation of the Applicable Law taking effect during the preparation and completion of the Construction Documents for the Project.

3.1.2 **Damage to Work.** Providing consultation concerning replacement of Work damaged by fire and furnishing services required related to the replacement of such Work.

3.1.3 **Default of General Contractor.** Providing services made necessary by the default of the General Contractor (or Prime Contractors) or by the default, during the Construction Phase, of the Program Manager, but only if the need for such services does not arise directly or indirectly from the negligent acts, errors, or omissions of the Architect (including without limitation the Architect’s failure to discover or report defects as provided in Section 2.9.10 above).

3.1.4 **Phased Construction.** If, after the completion of the Design Development Documents, the District requests the Project be bid or constructed in phases, and if the request or need for such phasing does not arise from the Architect’s having exceeded the Budget, then plan preparation and/or contract administration work to prepare the phased Construction Documents will constitute Supplemental Services.

3.1.5 **Contract Administration Beyond Time Specified in Project Schedule Where Additional Time is Needed Due to Default of General Contractor, Prime Contractor(s), or Program Manager** Contract administration services performed by the Architect for a period of time after the Project construction completion deadline specified in the Construction Contract and/or the Project Schedule shall be Supplemental Services if the need for such contract administration services beyond said deadline results from a default or delay by the General Contractor (or Prime Contractor(s) or the Program Manager) under the Contract Documents and is authorized by the District.

3.1.6 **Models, Renderings and Electronic Modeling.** Preparation of scale models, study models, visual renderings, and electronic models (excluding Construction Documents in AutoCAD R-2007 format, presentation of Schematic drawings and elevations per Section 2.5.1).

3.1.7 **Information Regarding Site and Improvements.** To the extent directed by the District, the provision of detailed planning surveys, site evaluations and comparative studies of the Site, any adjacent or alternate real property which may be considered by the District in connection with the Project, and any existing or proposed buildings and other improvements located on the Site and/or contemplated to be constructed or included as part of the Project.

3.1.8 **Information Regarding Materials, Equipment, and Labor.** To the extent directed by the District, the provision of detailed quantity surveys pertaining to inventories of material, equipment and labor related to the Project.

3.1.9 **Analysis of Ownership and Operating Cost.** At the District's request, the provision of analyses of District ownership and operating costs for the Project.

3.1.10 **Inspection of Materials.** The Architect shall visit suppliers, fabricators, and manufacturers to review the quality or status of items (such as carpet, stone, wood veneers, and standard or custom furniture) being produced for the Project as deemed necessary.

3.1.11 **Authorized Additional Services.** Upon the District's request, the Architect shall perform, as Supplemental Services, the authorized additional services identified in Exhibit "E".

3.1.12 **Excluded Design Services.** The Parties agree that the services identified in Exhibit "F" are not part of the Basic Services. If the District instructs the Architect to perform such services, those services shall be deemed Supplemental Services hereunder.

3.1.13 **Other Services.** When approved by the District, providing any other services not otherwise required by this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 4: DISTRICT'S RESPONSIBILITIES

4.1 **District Shall Inform Architect of Project Requirements.** The District shall provide the Architect with information pertaining to the District's requirements for the Project (including the District's objectives, constraints and criteria related to the District's educational plan, its scheduling concerns, and its budgetary limitations) as necessary for the Architect to perform its obligations under Article 2 and Article 3 of this Agreement.

4.2 **District's Representative.** The District's Board of Trustees hereby appoints the Program Director, of the District's Program Management Team, as the District's Authorized Representative for the purposes of issuing written approvals, disapprovals, consents, waivers, directives, instructions, and other notices pursuant to this Agreement and the Project (the "**District's Authorized Representative**"). The Program Director may delegate any or all of his or her authority as the District Authorized Representative to one or more project managers by delivering a written notice to the Architect identifying the name of each such assistant and specifying the types of approvals, disapprovals, consents, waivers, directives, instructions, and other notices said assistant is authorized to issue. Except as authorized by this Section 4.2, no person or entity other than the District's Authorized Representative is authorized to issue any approval, disapproval, consent, waiver, directive, instruction, or other notice on behalf of the District in connection with this Agreement, and the Architect shall not rely on any purported oral or written approval, disapproval, consent, waiver, directive, instruction, or other notice issued by any other individual or entity.

4.3 **Notice of Faulty Construction.** The District shall give prompt written notice to the Architect if the District becomes aware of any fault or defect in the Work or nonconformance with the Contract Documents. However, the District's failure or omission to do so shall not relieve the Architect of the Architect's responsibilities under this Agreement, under Titles 21 and 24 of the *California Code of Regulations*, or under the Field Act (codified at *Education Code* Sections 81130 – 81149. The District shall have no duty to observe, inspect, or investigate the Work or any other aspect of the Project.

ARTICLE 5: COMPENSATION TO THE ARCHITECT

5.1 **Compensation for Basic Services.** As compensation for the Architect’s performance of the Basic Services, the Architect shall receive the sum of _____ Dollars (\$_____), as specified on the Schedule of Compensation attached as Exhibit “G” hereto. To the extent such compensation is based on hourly rates, such compensation shall be determined in accordance with the Hourly Rate Schedule attached at Exhibit “H”.

5.2 **Allocation of Compensation Among Project Phases.** The total amount of such compensation shall be allocated among the separate phases of the Architect’s Services as follows:

During & prior to the Schematic Design Phase	_____%
During the Design Development Phase:	_____%
During the Construction Documents Phase:	_____%
Upon DSA approval:	_____%
During the Bidding Phase	_____%
During the Construction Phase:	_____%
Upon completion of items required by Section 2.10:	_____ <u>5%</u>
TOTAL:	100%

5.3 **Compensation for Supplemental Services.** Compensation for Supplemental Services shall be determined by a separate written agreement between the District and the Architect pursuant to Section 3.1 above.

5.4 **Payment in Monthly Installments.** Compensation payable to the Architect hereunder shall be paid monthly in arrears, in proportion to the percentage of completion of the Architect’s Services which are to be performed in each phase of the Project. Each monthly installment shall be paid by the District upon its receipt of the Architect’s invoice and corresponding back-up documentation. The back-up documentation referenced above shall include the following to the extent applicable with respect to each application for payment: (a) a description of the status of completion of the Basic Services; (b) a projection of Basic Services anticipated to be performed over the next thirty calendar days; (c) a description of the status of performance of Supplemental Services ; (d) a projection of Supplemental Services anticipated to be performed over the next thirty calendar days; (e) the status of the Architect’s performance under the Project Schedule, noting any delays, their impact on progress of the Project, and recommendations for recapturing time lost. In the case of any Architect’s Services which are performed and compensated on an hourly (as opposed to fixed fee or lump sum) basis, said back-up documentation shall also include

detailed time summaries for Basic Services and Supplemental Services performed that are broken down by timekeeper, task, and time expended (block billings are not permitted) and copies of time sheets.

5.5 **Reductions in Scope of Project.** Where the Architect’s compensation hereunder is based on a percentage of the Project Construction Cost, and where modifications to the Project result in portions of the Project being eliminated and not constructed, compensation for Architect’s Services applicable to those portions of the Project shall be payable only to the extent that actual services authorized by this Agreement have been performed. Where those modifications result in a reduction in the Project Construction Cost, and where the Architect’s compensation hereunder is based on a percentage of the Project Construction Cost, then the corresponding reduction in the Architect’s compensation shall be effective concurrent with the District’s approval of the modifications to the Project, and shall be effective as to all phases of the Project from that point forward.

5.6 **Extension of Time During Which Architect’s Services Must Be Performed.** Unless the Architect and the District have previously agreed in writing to the contrary, no delay or extension of the time necessary or available for the Architect’s completion of the Architect’s Services shall entitle the Architect to any additional compensation beyond that specified in this Agreement. Notwithstanding the foregoing, where such delay or extension is caused or made necessary by the default of the General Contractor (or Prime Contractor(s) or the Program Manager) under the Construction Contract, any additional compensation to be paid to the Architect in connection therewith shall be subject to the limitations set forth in Section 3.1.5 above.

5.7 **Reimbursement of Architect’s Expenses.** The District shall reimburse the Architect at cost, without markup, for reasonable expenses of the types identified in Exhibit “J” incurred by the Architect and the Architect’s employees and consultants in the course of the Architect’s performance of the Architect’s Services, but only to the extent that (a) such expenses have been specifically approved in writing by the District prior to those expenses being incurred, (b) the requirements set forth in Section 10.2 below, if applicable, have been satisfied, and (c) the Architect has provided the District with invoices, receipts and other documentation reasonably requested by the District, verifying the amounts of reimbursable expenses for which reimbursement is sought.. Notwithstanding the foregoing, wherever this Agreement specifies that an obligation of the Architect or any item of the Architect’s Services is to be performed at the Architect’s expense, the Architect shall not be entitled to reimbursement hereunder.

ARTICLE 6: AGREEMENT CONTINGENT ON OBTAINING FUNDING ON TERMS REASONABLY ACCEPTABLE TO DISTRICT

The District’s receipt of funding (in an amount deemed necessary by the District) for the Project on terms and conditions acceptable in all respects to the District is a condition precedent to the effectiveness of this Agreement. If the District is unable to obtain funding in such amount or on such terms and conditions by the time that the District determines such funding is necessary

for the commencement or completion of the Project, then this Agreement shall be void except to the extent services have been rendered pursuant to authorization from the District's Board of Trustees.

ARTICLE 7: TERMINATION

7.1 **Termination by District Without Cause.** This Agreement may be terminated without cause by the District upon not less than ten days' written notice to the Architect.

7.2 **Termination by Either Party For Cause.** Subject to the provisions of Article 8 below, this Agreement may be terminated by either Party upon not less than thirty days' written notice if the other Party has failed to substantially perform its obligations in accordance with the terms of this Agreement through no fault of the Party initiating the termination.

7.3 **Termination for Lack of Funding.** The District may terminate this Agreement due to lack of funding for the Project pursuant to Article 6 above. Any termination pursuant to this Section 7.3 shall become effective immediately upon the District's delivery to the Architect of written notice of said termination.

7.4 **Suspension of Project by District.** If the Project is suspended by the District for more than ninety consecutive days, the Architect shall be compensated in the amounts specified in this Agreement for the Architect's Services satisfactorily performed prior to such suspension. When the Project is resumed, the Architect's compensation shall be equitably adjusted to provide for expenses incurred as a result of the interruption and resumption of the Basic Services.

7.5 **Abandonment of Project by District.** If the District abandons the Project for more than ninety consecutive days, the Architect shall be compensated in the amounts specified in this Agreement for the Architect's Services satisfactorily performed prior to the abandonment. In addition, the Architect may terminate this Agreement by giving not less than thirty days' written notice to the District; provided, that such termination shall not be effective if, within such thirty-day period, the District gives the Architect written notice that the Project is being resumed and the Project is, in fact, resumed within such thirty-day period.

7.6 **District's Failure to Pay Architect.** Without limiting the generality of Section 7.2 above, but subject to the provisions of Article 8 below, the District's failure to pay to the Architect any amounts required pursuant to the terms of this Agreement, where such failure continues beyond sixty days after the delivery of written notice by the Architect to the District, shall be grounds for termination of this Agreement by the Architect pursuant to Section 7.2 above. Furthermore, and again subject to the provisions of Article 8 below, where such non-payment continues beyond said sixty day period the Architect shall be entitled to suspend performance of the Architect's Services hereunder, and such suspension may commence immediately upon the expiration of said sixty day period (or upon any later date specified by the Architect) and may continue until the delinquent payment has been delivered by the District to the Architect.

7.7 **Compensation to Architect Upon Termination.** Where this Agreement is terminated for any reason, the Architect’s compensation shall be limited to amounts due and payable for the Architect’s Services as of the termination date pursuant to Section 5.1 above.

ARTICLE 8: NO WORK STOPPAGE PENDING RESOLUTION OF DISPUTES

In the event of a dispute between the Parties as to performance of the Work, the interpretation of this Agreement, or payment (or nonpayment) for Work performed or not performed, the Parties agree that they shall negotiate in good faith to resolve the dispute. Pending resolution of any such dispute, the Architect agrees to continue to perform the Architect’s Services diligently to completion and shall have no right to terminate or assign this Agreement so long as the District continues to make timely payment of all undisputed invoices. If the Parties are unable to agree upon a resolution of the dispute, the Architect agrees that the Architect will neither rescind this Agreement nor stop the progress of the Work; the Architect’s sole remedy shall be to submit the dispute for determination by a court having competent jurisdiction of the dispute, after the Project has been completed, and not before.

ARTICLE 9: ACCOUNTING RECORDS OF THE ARCHITECT

Records of the Architect’s direct personnel and reimbursable expenses pertaining to the Supplemental Services and records of accounts between the District and the General Contractor (or Prime Contractor(s) and/or the Program Manager, if applicable) shall be kept in accordance with generally accepted accounting principles. Any and all such records shall be made available to the District or its authorized representative promptly upon the District’s request at any time or times during the term of this Agreement or within five years following the expiration or termination of this Agreement.

ARTICLE 10: EMPLOYEES AND CONSULTANTS

10.1 **Engineers and Engineering Services.** As part of the Basic Services, the Architect shall furnish at its expense the services of landscape architects, structural engineers, mechanical engineers, electrical engineers, and provide civil engineering and landscape design services as deemed necessary for the Project.

10.2 **Approval by District.** The Architect shall submit, for written approval by the District, the names of the qualified engineers and consultants proposed for the Project. No engineers or consultants shall perform any work relative to the Project, nor shall the District be obligated hereunder to reimburse the Architect for any expenses incurred by or in connection with any such engineers or consultants, unless and until the involvement in the Project of the engineer or consultant in question has been approved in writing by the District. Nothing in this Agreement shall create any contractual relation between the District and any engineer or consultant employed or retained by the Architect under the terms of this Agreement.

10.3 **Engineer’s Certification of Construction Documents.** The Architect shall ensure that each engineer hired or otherwise retained by the Architect in connection with the Project places said engineer’s name, seal and signature on all Construction Documents, other Contract Documents, Change Orders, Record Drawings, and/or any other drawings and specifications prepared in whole or in part by said engineer.

10.4 **License and Experience Requirements.** The individual principal or employee of the Architect who is designated as the “architect of record” for the Project, and every engineer and consultant hired or otherwise retained by the Architect in connection with the Project, shall be licensed to practice in California.

10.5 **District’s Disapproval of Individual Employees or Consultants.** If any individual employee or consultant of the Architect is not acceptable to the District, then that individual shall be replaced by the Architect with an acceptable, competent, and qualified person at the District’s request.

10.6 **Construction Administrator/Field Representative.** The construction administrator or field representative assigned to the Project by the Architect, and each of the Architect’s Project Representatives (if any), shall be (a) licensed as a California architect or engineer, (b) competent, qualified and authorized to make critical decisions relative to the Project in a timely manner, and (c) readily available to provide (by phone or facsimile and through correspondence) design direction and decisions when he or she is not at the Site.

ARTICLE 11: INDEMNIFICATION AND DEFENSE

11.1 **Indemnification.** The Architect shall indemnify the District, its Board of Trustees, officers, employees, and agents from and against all "Liability" arising from any "Claim". As used in this Agreement, "**Claim**" means any third-party claim or allegation that the District (or any of its officers, employees, agents, or trustees) is responsible for damages caused by negligence, recklessness, or willful misconduct of the Architect or any subcontractor or consultant retained by the Architect. As used in this Agreement, "**Liability**" means any order issued by a court, arbitrator or judicial referee (or any voluntary settlement, if the Architect agrees to the settlement) requiring the District to pay money, take action, or refrain from action due to a Claim. "**Liability**" also includes any attorneys' fees and other expenses reasonably incurred by the District in defending a Claim.

11.2 **Defense.** If covered by the Architect's insurance policy (or policies) maintained under this Agreement, the Architect or its insurer will hire and pay the fees of an attorney to defend the District against any Claim as defined in Section 11.1. The District will select that attorney, unless the Architect's insurance policy requires the Architect or its insurer to select the attorney.

11.3 **Survival of Obligations.** The Architect’s duties of indemnification and defense established in this Article 11 shall survive the expiration or termination of this Agreement and shall continue thereafter with respect to all such Claims, whether those Claims are first asserted during the term of this Agreement or after the expiration or termination of this Agreement.

ARTICLE 12: INSURANCE

The Architect, at its expense, shall purchase and maintain policies of insurance as required by this Article 12 with an insurer or insurers qualified to do business in the State of California and acceptable to District, insuring the Architect and the District against any and all Claims, whether such Claims arise from actions or inaction committed by (a) the Architect, (b) any subcontractor or consultant retained by the Architect, (c) any employee of any such subcontractor or consultant, or of the Architect, or (d) any other person or entity for whose acts any of the foregoing may be liable.

12.1 **Workers’ Compensation.** The Architect shall carry Workers ’ Compensation Insurance in accordance with California law and Employers Liability Insurance with “per employee” and “per occurrence” limits of not less than the amounts specified in the Schedule of Insurance attached at Exhibit “K”.

12.2 **General and Automobile Liability Insurance.** The Architect shall carry commercial general liability insurance with limits not less than the amounts specified in the Schedule of Insurance attached at Exhibit “K” for combined single limit, bodily injury and property damage liability per occurrence, including: (a) owned, non-owned and hired vehicles; (b) blanket contractual; (c) broad form property damage; (d) products/completed operations; and (e) personal injury.

12.3 **Professional Liability Insurance.** The Architect shall carry professional liability insurance, including contractual liability, with “per claim” and “annual aggregate” limits of not less than the amounts specified in the Schedule of Insurance attached at Exhibit “K”. Such insurance shall be maintained during the term of this Agreement and renewed for a period of at least five (5) years thereafter and/or at rates consistent with the time of execution of this Agreement adjusted for inflation. In the event that the Architect subcontracts any portion of the Architect’s Services, the Architect shall require any such subcontractor to purchase and maintain insurance coverage as provided in this subparagraph, as modified by Section 12.5 below. Failure to maintain professional liability insurance is a material breach of this Agreement and grounds for immediate termination.

12.4 **Policy Requirements.** Each policy of insurance required under Sections 12.1 and 12.2 above shall: (a) name the District and its Board of Trustees, officers, employees, and agents as additional insureds (required under Section 12.1 only); (b) be issued by an insurance company which is licensed to do business in the State of California and which has and maintains a rating of not less than A-X in Best’s Insurance Guide or which is otherwise acceptable to the District; (c) state that, with respect to the operations of the Architect hereunder, such policy is primary and

any insurance carried by the District is excess and non-contributory with such primary insurance; (d) state that not less than thirty days' written notice shall be given to the District prior to cancellation (or not less than ten days' written notice, where cancellation is due to non-payment of premiums); and (e) shall waive all rights of subrogation on behalf of both the Architect and the insurer. The provisions of clause (b) of the preceding sentence shall also apply to each policy of insurance required under Section 12.3 above. The Architect shall notify District in the event of material change in, or failure to renew, any such policy. Prior to commencing any of the Architect's Services, the Architect shall deliver to the District certificates of insurance as evidence of compliance with the requirements herein. In the event the Architect fails to obtain or maintain any policy of insurance required hereby, the District may, at its sole discretion, obtain such policy of insurance in the name of and for the account of the Architect, and in such event the Architect shall reimburse the District upon demand for the cost thereof. Further, maintaining the insurance required by this Agreement shall not relieve Architect from, nor limit Architect's liability with respect to, its obligations to indemnify the District as set forth in this Agreement.

12.5 Subcontractor's Insurance. If the Architect subcontracts any portion of Architect's Services, then (unless otherwise agreed to in writing by the District) the Architect shall require any such subcontractor to purchase and maintain insurance coverage for the types of insurance referenced in this 12.5, in amounts which are appropriate with respect to that subcontractor's part of the Architect's Services, which shall in no event (unless otherwise agreed to in writing by the District) be less than the "per occurrence" limits of not less than the amounts specified in the Schedule of Insurance attached at Exhibit "K".

12.6 Additional Insurance Obligations. Upon the District's reasonable request, the Architect shall carry and maintain during the term of this Agreement, at the Architect's sole cost and expense, (a) increased amounts of the types of insurance identified in Sections 12.1 through 12.3 above, and (b) additional types and amounts of insurance specified by the District relative to the Architect's Services as identified in Exhibit "K".

ARTICLE 13: INDEPENDENT CONTRACTOR

The Architect, in the performance of the Architect's Services under this Agreement, shall be and act as an independent contractor. The Architect shall complete the services required of it hereunder according to its own means and methods of work, which shall be in the exclusive charge and control of the Architect and not subject to the control or supervision of the District, except (a) as to the results of the Architect's Services, (b) as otherwise required by Applicable Laws, and (c) as otherwise specified in this Agreement. The Architect is not an employee of the District and shall not represent itself (and no employee of the Architect shall represent himself or herself) as an employee of the District. No payments made to the Architect hereunder shall be subject to withholding taxes or other employment taxes required with respect to compensation paid by an employer to an employee. The Architect understands and agrees that neither the Architect nor any of the Architect's employees shall be considered officers, employees, or agents of the District, and that none are entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's

employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. The Architect assumes the full responsibility for the acts and/or omissions of the Architect's employees, subcontractors, consultants, or agents as they relate to the Architect's Services to be provided under this Agreement. The Architect shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including unemployment insurance, social security, and income taxes for the Architect's employees.

ARTICLE 14: CROSS-DEFAULT

A default by the Architect under any other agreement between the Architect and the District (whether that other agreement was entered into prior to, concurrently with or subsequent to the Parties' entry into this Agreement) may also, at the District's option, be deemed to be a default by the Architect under this Agreement. If the District exercises such option, then the District shall have any and all remedies available to it resulting from a default by the Architect hereunder, including without limitation the right of the District to terminate this Agreement.

ARTICLE 15: ARCHITECT'S RECORDS

15.1 **Maintenance of Project Books and Records.** The Architect (and its subconsultants) shall maintain complete and accurate books and records with respect to services, costs, expenses, receipts and other information required by the District to verify the scope or charges for any services provided under this Agreement. The Architect (and its subconsultants) shall maintain such records in sufficient detail to permit the District and its designees (including without limitation the District's independent auditors) to thoroughly evaluate and verify the nature, scope, value, and charges for services performed under this Agreement. All such books and records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Such records shall be kept separate from the other documents and records unrelated to the Project for a period of four years after the later of termination of this Agreement or final completion of the Project.

15.2 **District's Audit Rights.** The District and its designees (including without limitation the District's independent auditors) shall have the right to examine and to audit the books and records identified in Section 15.1 above ("Audit"). Such Audit rights shall include without limitation verification of the amounts and tasks performed for all time expended that is charged to the District on an hourly basis. Such Audit rights may be exercised at all reasonable times at the Architect's offices. The Architect shall, at no expense to the District (or to the District's designees and independent auditors) furnish facilities and cooperate fully with the Audit. Upon the District's (or its designee's or auditor's) request, the Architect shall provide reproducible copies of the records identified in Section 15.1 above that are applicable to the Audit for reproduction by the District and/or its designees and auditors.

15.3 **Reimbursement of Overpayments; Cost of Audit.** If any Audit reveals excess charges inaccurately or improperly collected by the Architect from the District, then the Architect shall refund the overpayment to the District within five business days after the receipt of the results of the Audit, together with interest at a rate that is the lesser of (i) ten percent per annum or (ii) the maximum rate allowable by law. Furthermore, if the Audit reveals that the Architect overcharged the District by more than five percent, then the Architect shall pay the cost of the Audit.

ARTICLE 16: RESOLUTION OF DISPUTES

Disputes between the Parties in any way related to this Agreement (“**Disputes**”) shall be resolved by the Parties in accordance with the Dispute resolution provisions of this Article 16, in lieu of any and all rights under the law that either Party may have to cause the Dispute to be adjudged by a trial court or jury (except as to enforcement of an arbitrator’s award, as noted below in this paragraph). The dispute resolution process set forth in this Article 16 shall be the exclusive recourse of the Architect and the District for determination and resolution of Disputes; provided, however, that either Party may bring litigation against the other in order to enforce an arbitrator’s award rendered pursuant to Section 16.4 below. The Parties shall utilize each of the following steps in the Dispute resolution process in the sequence they appear below. Each Party shall participate fully and in good faith in each step in the Dispute resolution process, which good faith effort shall be a condition precedent to the right of each Party to proceed to the next step in that process.

16.1 **Step One: Submission of Disputes for Resolution.** Each Party’s rights to submit a Dispute for resolution pursuant to this Article 16 shall commence upon that Party’s discovery of facts which are the basis of the Dispute, subject to any applicable statute of limitations. The Party submitting a Dispute for resolution (the “**Claimant**”) shall do so by delivering to the other Party (the “**Respondent**”) a written statement (“**Statement of Dispute**”) setting forth in reasonable detail the events or circumstances giving rise to the Dispute, the dates of their occurrence, the damages claimed by the Claimant as a result of those events or circumstances, and the relief sought by the Claimant to resolve the Dispute. Concurrently with the delivery of the Statement of Dispute, the Claimant shall deliver to the Respondent supporting data and/or documentation adequate to substantiate the events and claims set forth in the Statement of Dispute. Said Statement of Dispute and supporting data and documentation must be delivered not later than thirty days after the Claimant’s discovery of the circumstances giving rise to the subject claims. Nothing contained herein shall preclude either Party from asserting claims in response to a Statement of Dispute from the other Party.

16.2 **Step Two: Direct Negotiations.** Designated representatives of the District and the Architect shall meet as soon as possible (but not later than ten days after receipt of the Statement of Dispute) in a good faith effort to negotiate a resolution to the Dispute. Each Party shall be represented in such negotiations by an authorized representative with full knowledge of the details of the Dispute or defenses being asserted by such Party, and with full authority to resolve such Dispute then and there, subject only to the District’s right and obligation to obtain Board of Trustees approval of any agreed settlement or resolution. If the Dispute involves the assertion of

a right or claim by a subcontractor against the Architect that is in turn being asserted by the Architect against the District, then such subcontractor shall also have a representative attend such negotiations, with the same authority and knowledge as just described. Upon completion of the meeting, if the Dispute is not resolved, the Parties may either continue the negotiations or either Party to this Agreement may declare negotiations ended. All discussions that occur during such negotiations and all documents prepared solely for the purpose of such negotiations shall be confidential and privileged pursuant to *Evidence Code* Sections 1119 and 1152.

16.3 **Step Three: Non-Binding Mediation.** If the Dispute remains unresolved after direct negotiations pursuant to Section 16.2 above, the Parties agree to submit the Dispute to non-binding mediation before a mutually acceptable third party mediator.

16.3.1 **Qualifications of Mediator.** The mediator shall be selected by the mutual agreement of the Parties. The Parties shall endeavor to select a mediator who is a retired judge or an attorney with at least five years of experience in public works construction contract law and in mediating public works construction disputes.

16.3.2 **Submission to Mediation and Selection of Mediator.** The Party initiating mediation of a Dispute shall provide written notice to the other Party of the initiating Party's decision to mediate. In the event the Parties are unable to agree upon a mediator within fifteen days after the receipt of such written notice, then the Parties shall submit the matter to the American Arbitration Association (“AAA”) at its Orange County Regional Office for selection of a mediator in accordance with the AAA Construction Industry Mediation Rules.

16.3.3 **Mediation Process.** The location of the mediation shall be at the offices of the District. The costs of mediation shall be shared equally and in advance by both Parties. The mediator shall provide an independent assessment on the merits of the Dispute and recommendations for resolution. All discussions that occur during the mediation and all documents prepared solely for the purpose of the mediation shall be confidential and privileged pursuant to *Evidence Code* Sections 1119 and 1152.

16.4 **Step Four: Binding Arbitration.** If the Dispute is not resolved by mediation, the Party wishing to further pursue resolution of the Dispute shall submit the Dispute for final and binding arbitration pursuant to the provisions of *Public Contract Code* Sections 10240 *et seq.* The award of the arbitrator therein shall be final and may be entered as a judgment by any court of competent jurisdiction. Such arbitration shall be conducted in accordance with the following:

16.4.1 **Initiation of Arbitration.** The arbitration shall be initiated by filing a complaint in arbitration in accordance with the regulations promulgated pursuant to *Public Contract Code* Section 10240.5.

16.4.2 **Qualifications of the Arbitrator.** The arbitrator shall be selected by the mutual agreement of the Parties. The arbitrator shall be a retired judge or an attorney with at least five years of experience with public works construction contract law and in arbitrating public works construction disputes. In the event the Parties cannot agree upon a mutually acceptable arbitrator,

then the provisions of *Public Contract Code* Section 10240.3 shall be followed in selecting an arbitrator possessing the qualifications required herein. Under no circumstances shall the arbitrator be the same individual as the mediator hearing the complaint under Section 16.3 above.

16.4.3 **Hearing Days and Location.** Arbitration hearings shall be held at the offices of the District and, except for good cause shown to and determined by the arbitrator, shall be conducted on consecutive business days, without interruption or continuance.

16.4.4 **Hearing Delays.** Arbitration hearings shall not be delayed unless the arbitrator agrees that the Party requesting the delay has shown good cause for the delay.

16.4.5 **Recorded Hearings.** All arbitration hearings to receive evidence shall be recorded by a certified stenographic reporter, with the costs thereof borne equally by the District and the Architect and allocated by the arbitrator in the final award.

16.4.6 **Discovery.** Discovery shall be permitted in accordance with the provisions of Section 10240.11 of the *Public Contract Code*, without limitation on the number of percipient or expert witnesses. Expert reports shall be exchanged prior to receipt of evidence, in accordance with the direction of the arbitrator, and expert reports (excluding rebuttal reports) not so submitted shall not be admissible as evidence.

16.4.7 **Authority of Arbitrator.** The arbitrator shall have the authority to hear dispositive motions and issue interim orders, interim or executory awards, and final orders and awards.

16.4.8 **Waiver of Jury Trial.** The Architect and the District each voluntarily waives its right to a jury trial with respect to any Dispute that is subject to binding arbitration in accordance with the provisions of this Article 16. The Architect shall include this provision for waiver of jury trial, waiving the right to jury trial in any action involving District as a party in its contracts with its subcontractors who provide any portion of the services required by this Agreement.

16.4.9 **Consolidation and Joinder.** The Parties hereto consent to the consolidation or joinder of any third-party claims involving other of the District's or the Architect's consultants relative to the Dispute, but only if resolution of those third-party claims is reasonably necessary to the complete resolution of the Dispute and only if the District or the Architect has the right to require said third party or parties to submit to the binding arbitration contemplated pursuant to this Article 16.

ARTICLE 17: MISCELLANEOUS

17.1 **No Third-Party Rights.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the District or the Architect.

17.2 **Successors and Assigns; Prohibition Against Architect's Assignment.** The District and Architect, respectively, bind themselves, their partners, officers, successors, assigns, and legal representatives to the other Party to this Agreement with respect to the terms of this Agreement. The District may assign its rights and obligations under this Agreement to any third party upon written notice to the Architect. The Architect shall not assign this Agreement or any of its rights or obligations hereunder.

17.3 **Entire Agreement; Modification.** This Agreement represents the entire understanding between the District and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement (and the duties, responsibilities, and limitations of authority relative to each Party established herein) may be amended or modified only by an agreement in writing signed by both the District and the Architect.

17.4 **Notices.** All written notices required to be given pursuant to the terms hereof shall be either (i) personally delivered, (ii) deposited in the United States express mail or first class mail, registered or certified, return receipt requested, postage prepaid, (iii) delivered by overnight courier service, or (iv) delivered by facsimile or e-mail transmission, provided that the original of such facsimile notice, or a copy of such e-mail notice, is sent by certified U.S. mail, return receipt requested, postage prepaid, no later than one business day following such facsimile or e-mail transmission. All such notices shall be deemed delivered upon actual receipt (or upon the first attempt at delivery pursuant to the methods specified in clauses (i), (ii) or (iii) above if the intended recipient refuses to accept delivery). All such notices shall be delivered to the following addresses or to such other address as the receiving Party may from time to time specify by written notice to the other Party:

To the District:

Coast Community College District
1370 Adams Avenue
Costa Mesa, California 92626
Attn: Director, Facilities and Planning
Telephone No.: (714) 438-4731
Fax No.: (714) 438-4689
E-mail: jmarchbank@ccd.edu

With a copy to:

Coast Community College District
1370 Adams Avenue
Costa Mesa, CA 92626
Attn: Director, Risk Services
Telephone No.: (714) 438-4800
Fax No.: (714) 438-4689
E-mail: bkerwin@ccd.edu

To the Architect:

Attn: _____

Telephone No.: _____

Fax No.: _____

E-mail: _____

With a copy to:

Attn: _____

Telephone No.: _____

Fax No.: _____

E-mail: _____

17.5 **Time.** Time is of the essence of every provision contained in this Agreement.

17.6 **Incorporation of Recitals.** All of the recitals set forth in this Agreement are by this reference incorporated in and made a part of this Agreement.

17.7 **Attorneys' Fees.** In the event any dispute between the Parties hereto should result in arbitration or litigation, or if any action at law or in equity is taken to enforce or interpret the terms and conditions of this Agreement, the prevailing Party shall (in addition to any other relief to which that Party may be entitled) be reimbursed for all reasonable costs and expenses incurred in connection with such arbitration or litigation, including, without limitation, reasonable attorneys' fees, accountants' fees and experts' fees. As used herein, the term "prevailing Party" shall include without limitation any Party against whom a cause of action, complaint, cross-complaint, counter-claim, cross-claim or third party complaint is voluntarily dismissed, with or without prejudice.

17.8 **Construction.** The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments hereto.

17.9 **Governing Law.** This Agreement shall be construed and interpreted in accordance with and shall be governed and enforced in all respects according to the laws of the State of California, without regard to conflicts of laws principles.

17.10 **Consent to Jurisdiction and Service of Process.** Subject to Article 16, all judicial proceedings brought against any Party hereto arising out of or relating to this Agreement may be brought in any state or federal court of competent jurisdiction in the County of Orange, State of California, and by execution and delivery of this Agreement each Party accepts for itself and in connection with its properties, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts, waives any defense of forum non-conveniens and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement. Each Party hereby agrees that service of all process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested, to any other Party at its address provided herein, such service being hereby acknowledged by each Party to be sufficient for personal jurisdiction in any action against said Party in any such court and to be otherwise effective and binding service in every respect. Nothing herein shall affect the right to serve process in any other manner permitted by law.

17.11 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and may be executed by the affixing of the signatures of each of the Parties to any one of such counterpart signature pages; all of such counterpart signature pages shall read as though one and they shall have the same force and effect as though all of the signers had signed a single signature page.

17.12 **Captions**. Any captions or headings to the Sections and subsections in this Agreement are solely for the convenience of the Parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of validity of this Agreement or any provision hereof.

17.13 **Severability**. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable term or provision had never been contained herein.

17.14 **Further Assurances**. Each Party shall cooperate with the other and shall execute such other documents as may be reasonably necessary to carry out the provisions of this Agreement.

17.15 **No Waiver**. Any waiver, consent, or approval by either Party of any breach, default or event of default of any provision, condition or covenant of this Agreement must be in writing and shall be effective only to the extent set forth in writing. No waiver of any breach, default or event of default shall be deemed a waiver of any later breach, default or event of default of the same or any other provision of this Agreement. Any failure or delay on the part of either Party in exercising any power, right, or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude any further exercise thereof.

17.16 **Rights and Remedies**. Except as otherwise provided herein, no right or remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other right or remedy given hereunder or hereafter existing at law or in equity. The exercise of any one or more rights or the election of any one or more remedies by any Party shall not constitute a waiver of the right to exercise other available rights or pursue other available remedies.

17.17 **Joint and Several Liability**. To the extent that either Party constitutes more than one person or entity, then the obligations of each such person or entity shall be joint and several.

17.18 **Confidentiality**. This Agreement and the Project Documents shall be held confidential by the Architect to the extent they are not subject to disclosure pursuant to the terms of this Agreement (including without limitation Section 1.6 above and this Section 17.18 or under the Brown Act or the California Public Records Act. The Project Documents shall not, without the written consent of the District, be used or reproduced by the Architect for any purposes other than the performance of the Architect's Services. The Architect shall not disclose, or cause or facilitate the disclosure of, the Project Documents to any person or entity not connected with the performance of the Architect's Services or the Project. Nothing furnished to the Architect which is otherwise known to the Architect or is generally known, or has become known, to the related industry shall be deemed confidential. The Architect shall not use the District's name or insignia, photographs of the Project, or any publicity pertaining to the Architectural Services or the Project in any magazine, trade paper, newspaper, television or radio production, web site, or other similar medium without the prior written consent of the District.

This Agreement is entered into as of the day and year of later execution below.

ARCHITECT

COAST COMMUNITY COLLEGE DISTRICT

By: _____

By: _____

President, Board of Trustees

Print Name: _____

Date:

Date:

Architect's Federal Taxpayer I.D. Number:

EXHIBIT "A"
DESCRIPTION OF PROJECT

Description:

EXHIBIT “C”

SCHEDULE OF PROJECT DEADLINES*

Sheet __ of __

NTP:	TBD
Schematic Design	Weeks
Review and Approval:	Weeks
Design Development:	Weeks
District Review and Approval:	Weeks
Submit to State for Approval:	Prior to: _____
Construction Documents 50%:	Weeks
Construction Documents 95%:	Weeks
District Review and Approval:	Weeks
DSA Review & Approval:	Weeks
Submit to State for Approval:	Week
Bid Period:	Weeks
Construction Contract Award:	Weeks
Construction Period:	Months (estimated)

EXHIBIT “D”

SUBMITTAL REQUIREMENTS

Unless otherwise directed by the District, the Architect shall submit to the Program Manager, at the conclusion of each phase of service, the following documents in the types and quantities indicated:

PHASE	DRAWINGS	SPECIFICATIONS, BASIS OF DESIGN, CALCULATIONS AND COST ESTIMATE AS APPLICABLE TO PHASE
Schematic Design	3 sets of full size prints; 3 sets of half-size prints; 1 set of reproducible drawings to be submitted to the District's reprographic company for further printing; 3 copies of electronic files of drawings.	3 sets of 8 ½" x 11" bound Outline Specifications; 3 sets of detailed cost estimate and design criteria. An electronic copy or reproducible copy of each to be submitted to the District's reprographic company for further copying. 3 copies of electronic files of all documents.
Design Development	3 sets of full size prints; 3 sets of half-size prints; 1 set of reproducible drawings to be submitted to the District's reprographic company for further printing; 3 copies of electronic files of drawings.	3 sets of 8 ½" x 11" bound Specifications; 3 sets of detailed cost estimate and design criteria. An electronic copy or reproducible copy of each to be submitted to the District's reprographic company for further copying. 3 copies of electronic files of all documents.
50% Construction Documents	3 sets of full size prints; 3 sets of half-size prints; 1 set of reproducible drawings to be submitted to the District's reprographic company for further printing; 3 copies of electronic files of drawings.	3 sets of 8 ½" x 11" bound Specifications; 3 sets of 50% level detailed cost estimate and preliminary engineering calculations. An electronic copy or reproducible copy of each to be submitted to the District's reprographic company for further copying. 3 copies of electronic files of all documents.
95% Construction Documents	3 sets of full size prints; 3 sets of half-size prints; 1 set of reproducible drawings to be submitted to the District's reprographic company for further printing; 3 copies of electronic files of drawings.	3 sets of 8 ½" x 11" bound Specifications; 3 sets of 95% level detailed cost estimate and engineering calculations. An electronic copy or reproducible copy of each to be submitted to the District's reprographic company for further copying. 3 copies of electronic files of all documents.

<p>Upon DSA Approval</p>	<p>1 set of prints bearing an original DSA stamp of approval; 3 copies of full size and 3 half-size prints with DSA's stamp of approval.</p>	<p>1 set of Specifications and engineering calculations bearing an original DSA stamp of approval; 3 copies of 8 1/2" x 11" bound Specifications and engineering calculations with DSA's approval stamp; 3 sets of the final detailed cost estimate updated to reflect DSA comments. An electronic or reproducible copy of each to be submitted to the District's reprographic company for further copying. 3 copies of electronic files of final detailed cost estimate.</p>
<p>Bidding support / solicitation of bids</p>	<p>1 set of reproducible drawings with DSA's stamp to be submitted to the District's reprographic company for printing of Bid Sets.</p>	<p>1 set of the Project Manual with DSA's stamp of approval to be submitted to the District's reprographic company for printing of Bid Sets.</p>
<p>Bidding Support Addenda</p>	<p>3 sets of full size reproducible drawings bearing DSA stamp of approval; 3 copies of electronic files of drawings.</p>	<p>3 sets of 8 1/2" x 11" Specifications and written addenda; 3 copies of electronic files of all documents.</p>
<p>Construction Phase</p>	<p>1 set of reproducible drawings with DSA's stamp to be submitted to the District's reprographic company for printing of Bid Sets. This set to be labeled "FOR CONSTRUCTION."</p>	<p>1 set of the Project Manual with DSA's stamp of approval to be submitted to the District's reprographic company for printing of Bid Sets. This set to be labeled "FOR CONSTRUCTION."</p>
<p>Record Documents</p>	<p>Initial submittal for review; submit 3 sets of Record Drawings. Upon approval, submit 3 sets of full size and 3 half-size prints of Record Drawings; 1 set of reproducible Record Drawings to be submitted to the District's reprographic company for further printing; 3 copies of electronic files of Record Drawings.</p>	<p>Initial submittal for review; submit 3 sets of Record Project Manual. Upon approval, submit 3 sets of Record Manual; 1 set of reproducible Record Project Manual to be submitted to the District's reprographic company for further printing; 3 copies of electronic files of Record Project Manual.</p>

In addition to the above described submittals, the required quantities of documents shall be submitted for review and approval to the appropriate governing agencies, which may include but is not limited to the following:

Division of State Architect; Bureau of Public Works (B Permit); County Health Department (Food preparation and food service); Office of the Public School Construction; State Chancellor's Office; Local Fire Department.

EXHIBIT "E"

AUTHORIZED ADDITIONAL SERVICES

None.

EXHIBIT "F"
EXCLUDED DESIGN SERVICES

None.

EXHIBIT "G"

SCHEDULE OF COMPENSATION*

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As total compensation for the Architect's performance of the Basic Services, the Architect shall receive the sum of _____ Dollars (\$_____).

EXHIBIT “I”

FEE PAYMENT SCHEDULE

Sheet 1 of 1

Schematic Design Phase:	\$_____	Invoiced monthly
Design Development:	\$_____	Invoiced monthly
Construction Documents 50%:	\$_____	Invoiced monthly up to this amount
Construction Documents 95%:	\$_____	Invoiced monthly up to this amount
DSA Review & Approval:	\$_____	Upon submittal to the State of DSA approved Construction Documents
Bidding Phase:	\$_____	Invoiced monthly up to this amount
Construction Period:	\$_____	Invoice monthly up to this amount
Construction Close-out:	\$_____	Upon completion of items required by Section 2.10
Total Fee:	\$_____	

EXHIBIT “J”

REIMBURSABLE EXPENSES

District shall, in addition to its Basic Services compensation, reimburse Architect a reasonable sum for the out-of-pocket expenses listed in this Exhibit that are incurred and paid for by Architect in furtherance of performance of its obligations under this Agreement, but only to the amount expended by the Architect (“at cost”), only to the extent that such expenses are generated in connection with the operations of this Project, and only to the extent authorized by Section 5.7 of the Agreement:

- (i) Printing and reproduction expenses for drawings and documents beyond that which is included in this Agreement;
- (ii) express shipping, overnight mail, messenger, courier, or delivery services (but not including company or corporate required communications or reports, such as but not limited to timesheets, expense reports, inter-office memoranda, invoices, etc.);
- (iii) long distance telephone calls (i.e., outside the 562, 323, 213, 310, 818, 714, 626, 909, and 949 area codes);
- (iv) mileage beyond a 50 mile radius of Architect’s office in conjunction with the performance of Basic and/or Additional Services (excluding travel from residence to Project or Architect’s home or branch offices to Project) at the rate established by Internal Revenue Service and related parking and/or tolls;
- (v) out-of-town travel as approved in advance in writing by District;
- (vi) regulatory agency and permit-filing fees that are specific to the Project;
- (vii) presentation models and renderings;
- (viii) preparation of measured “as-built” drawings.
- (ix) selection by the Architect, at the District’s request, of movable furniture, equipment, or articles not included in the Construction Contract;
- (x) special consultants other than included in Basic Services;
- (xi) providing detailed quantity surveys or inventories of material, equipment, and labor.

EXHIBIT “K”

SCHEDULE OF INSURANCE

Current Certificates for Liability and Worker’s Compensation are required to be on file for all District projects.

District insurance requirements are:

1. Commercial General Liability Insurance for bodily injury and property damage, including accidental death in an amount not less than One Million Dollars per occurrence, Two Million Dollars in the aggregate, and commercial auto liability insurance with limits of not less than One Million Dollars per occurrence, including: (1) owned, non-owned and hired vehicles; (b) blanket contractual; (c) broad form property damage; (d) products/completed operations; and (e) personal injury. Coast Community College District is to be named as an additional insured.
2. Professional Liability Insurance covering the Consultant’s negligent acts, errors, and omissions, with limits not less than \$1,000,000 each claim and \$3,000,000 annual aggregate and with a deductible of not more than \$50,000. Such policy shall continue in effect for four years following the date of acceptance by the District of the completed project for which the Consultant provided services.
3. Worker’s Compensation Insurance in accordance with California law and Employers Liability Insurance with limits of not less than One Million Dollars per employee and One Million Dollars per occurrence.

EXHIBIT “L”
DESCRIPTION OF BOND PROGRAM
(IF ANY)

EXHIBIT “M”

ARCHITECT’S STATEMENT OF QUALIFICATIONS AND PROPOSAL

CONSULTANT DECLARATION

Consultant (legal name of entity): _____

Address: _____

Phone: _____ FAX: _____

Email: _____

Type of Firm: Individual___ Corporation ___ Partnership___ Other (specify)_____

Tax I.D. No.:_____ Date Business Formed:_____

Date Incorporated (if applicable): _____ State of Incorporation: _____

OWNERS, OFFICERS, AND PRINCIPALS			
Name	Years with Firm	Position	% of Ownership

Consultant has attached a Certificate of Insurance demonstrating a valid insurance policy with a policy limit of at least \$1,000,000 per occurrence and \$2,000,000 aggregate or has attached a letter from their insurer that such policy limits will be secured in the event that the Bidder is awarded the project. Yes_____ No _____

Consultant has attached verification of a current workers' compensation insurance policy as required by the Labor Code or is legally self-insured pursuant to Labor Code section 3700 et. seq. Yes_____ No _____

If yes to any of the below listed questions, explain on a separate signed page.

Has there been any change in the control of the firm in the last five years? Yes_____ No _____

Have you declared bankruptcy or been placed in receivership within the past ten (10) years? Yes_____ No _____
Are any of the firm's owners, officers, and/or principals

connected with any other companies as a subsidiary, parent, or affiliate?

Yes _____ No _____

Has your firm been involved in any litigation, arbitration, claim, or dispute of any kind with a public agency in the past 10 years?

Yes _____ No _____

Have you failed to complete one or more contracts in the past ten (10) years?

Yes _____ No _____

Have you declared bankruptcy or been placed in receivership within the past ten (10) years?

Yes _____ No _____

Has your firm or any owner, officer or principal of your firm ever been found guilty of violating any federal, state or local law, rule or regulation regarding a contract?

Yes _____ No _____

Has your firm ever failed to complete a contract within the authorized contract time?

Yes _____ No _____

Has your firm received any notices threatening termination?

Yes _____ No _____

NON-COLLUSION AFFIDAVIT

_____, being first duly sworn, deposes and says that he or she is of the party making the foregoing proposal that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham bid, or that anyone shall refrain from proposing; that the proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the proposer or any other proposer, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other proposer, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the proposer has not, directly or indirectly, submitted his or her proposal or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

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

Signature & Date

Printed Name & Title

DRUG-FREE WORKPLACE CERTIFICATION

This Drug-Free Workplace Certification is required pursuant to Government Code Sections 8350, et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract for the procurement of any property or services from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract awarded by a State agency may be subject to suspension of payments or termination of the contract and the contractor may be subject to debarment from future contracting, if the state agency determines that specified acts have occurred.

Pursuant to Government Code Section 8355, every person or organization awarded a contract from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:

a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;

b) Establishing a drug free awareness program to inform employees about all of the following:

- 1) The dangers of drug abuse in the workplace;
- 2) The person's or organization's policy of maintaining a drug-free workplace;
- 3) The availability of drug counseling, rehabilitation and employee-assistance programs;
- 4) The penalties that may be imposed upon employees for drug abuse violations;

c) Requiring that each employee engaged in the performance of the contract be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code Section 8355 listed above and will publish a statement notifying employees concerning (a) the prohibition of controlled substance at the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the contract be given a copy of the statement required by Section 8355(a) and requiring that the employee agree to abide by the terms of that statement.

I also understand that if the DISTRICT determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of

Section 8355, that the contract awarded herein is subject to suspension of payments, termination, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of Section 8350, et seq.

I acknowledge that I am aware of the provisions of Government Code Section 8350, et seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

NAME OF CONTRACTOR

Signature

Print Name

Title

Date