

**WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT
VARIOUS SOLAR SITES
INDEPENDENT CONTRACTOR AGREEMENT FOR PROFESSIONAL SERVICES
PROJECT INSPECTOR SERVICES**

This Independent Contractor Agreement for Professional Services ("Agreement") is made as of the is made as of the 15 day of June, in the year 2017, by and between the **West Contra Costa Unified School District** ("District") and **Production Technical Services, Inc.** ("Inspector"). The District and Inspector may be individually referred to herein as a "Party" or collectively referred to herein as the "Parties."

RECITALS

WHEREAS, District intends to award contracts to construction contractor(s) to perform work ("Construction Work") at approximately Twenty-Four (24) District sites identified as Various Solar Sites including: Bayview ES, DeAnza HS, Ellerhorst ES, Ford ES, Harding ES, El Cerrito HS, Lincoln ES, LaVonya DeJean MS, Kennedy HS, Kensington ES, King ES, Murphy ES, Peres ES, Nutrition Center, Ohlone ES, Pinole MS, Sheldon ES, Richmond HS, Lupine Hills ES, Grant ES, Helms MS, Hercules HS, Tara Hills ES, and Vista HS ("Site(s)"); and

WHEREAS, District has retained the services of SunPower as the design build professional(s) of the Construction Work ("Architect(s)"); and

WHEREAS, the Construction Work shall be performed pursuant to District-approved plans, drawings, specifications, rules, regulations and statutes applicable to school construction and other contract documents ("Contract Documents"); and

WHEREAS, District requires the services of a Division of the State Architect ("DSA") approved project inspector during the Construction Work; and

WHEREAS, pursuant to Education Code section 17311, DSA and the Architect have approved Inspector to be a project inspector on California public school construction projects; and

WHEREAS, Inspector warrants and represents that Inspector is competent to perform the duties and responsibilities required by this Agreement and by applicable laws and regulations for the inspection of Construction Work at the Site(s) ("Project").

NOW, THEREFORE, the Parties agree as follows:

1. **Inspector as District Representative.** Inspector shall, as requested by District, act as the project inspector for the Project. Inspector shall observe construction operations to insure that the Project is constructed and completed in strict conformity with all applicable laws and regulations and the Contract Documents ("Services").
2. **Scope of Work and Compensation.** The Services include project inspection services for each component as listed below.
 - 2.1. Any one component or combination of components may be changed, or terminated, in the same manner as the Services, without changing in any way the remaining component(s). The provisions of this Agreement shall apply to each component without regard to the status of the remaining component(s). Inspector shall invoice for each component separately and District shall compensate Inspector for each component separately on a proportionate basis based on the level and scope of work completed for each component.
 - 2.2. Inspector's fee for the performance of Services at each of the above Sites shall be **\$80** per hour for a total maximum fee of **\$46,400**.

- 2.3. The Inspector shall submit a monthly itemized statement of Service charges and expenses (if applicable) to the District on the fifth (5th) day of each month. Inspector shall prepare a separate itemized statement for each Site Inspector provides Services. The itemized statement shall show the days and hours worked each workday Inspector performs Services for the previous month. District will permit a one (1) month grace period beyond this time for the Inspector to submit its invoice for a particular month's work. No amounts shall be due or owing to the Inspector if it fails to submit an invoice to the District at or before the end of that grace period.
- 2.4. Payment of all undisputed amounts for Services satisfactorily rendered pursuant to this Agreement will be due within thirty (30) days of receipt of Inspector's invoice.
- 2.5. Inspector must provide, to the District's satisfaction, appropriate substantiation for all Services performed on an hourly basis. Inspector shall properly support payment of all hourly services, as further described herein, for each invoice or application for payment submitted by Inspector for its Services. Failure to satisfy this requirement will result in Inspector's invoice or application for payment being rejected until District approves Inspector's full compliance herewith.
- 2.6. To substantiate Inspector's hourly performance of the Services, Inspector at a minimum must set forth (i) the date, (ii) location of the Services, (iii) amount of time spent on each task performed that day, (iv) a sufficiently-detailed description of the Services for the task, and (v) the day's total number of hours. Merely stating the date and total number of hours worked shall be deemed insufficient.
- 2.7. The daily job log referred to herein shall detail the time spent by the Inspector in the performance of Services pursuant to this Agreement.
- 2.8. Inspector shall provide to the District on a timely basis and to not cause a delay in DSA's approval of the Project, all verified report(s) for all scope(s) of Work and all other required Project documents if not already completed and provided to the District. District shall retain five percent (5%) of Inspector's Fee or Ten Thousand Dollars (\$10,000), whichever is greater, until Inspector has filed all required verified report(s) and other Project Documents.
- 2.9. If requested by the District, the Inspector shall provide additional or extended Services for the Project as may be necessary because of changed conditions including, without limitation, conditions made necessary by Work damaged by fire or other Acts of God during construction or prolongation of the initial construction contract time beyond the construction contract time schedule. Those additional or extended Services shall be as agreed to by the District and shall be based on rates at or below the hourly, daily, weekly, or monthly rates as indicated here:

Maximum Rate for Additional or Extended Services

Hourly	\$80/Hour
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3. **Term.** The term of this Agreement shall be the period of construction of the Project and shall terminate when the notice of completion for the Construction Work is recorded ("Term"), unless terminated or otherwise cancelled.
4. **Submittal of Documents.** Inspector shall not commence the Services under this Agreement until Inspector has submitted and District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u>X</u>	Signed Agreement
<u>X</u>	Workers' Compensation Certificate
<u>X</u>	Criminal Background Investigation Certification
<u>X</u>	Insurance Certificates and Endorsements
<u>X</u>	W-9 Form

5. **Expenses.** District shall not be liable to Inspector for any costs or expenses paid or incurred by Inspector in performing Services, except for those set forth in this Agreement. Inspector agrees that travel may be required, at Inspector's expense. These travel expenses are not reimbursable.
6. **Standard of Care.** Inspector shall perform Services, obtain findings, and prepare recommendations in accordance with generally and currently accepted principles and practices for project inspectors of California school buildings and of the work of construction or alteration of school buildings.
7. **Direction of Architect.** Inspector shall act under the direction of the Architect and shall be responsible to the Department of General Services, Division of the State Architect for enforcement of the Project plans and specifications.
8. **Authority to Reject or Stop Construction Work.** Inspector shall not have the authority to direct a contractor in the execution of the Construction Work nor to stop work on the Project. However, if Inspector observes Construction Work being performed in deviation from the approved plans, specifications, or change orders or in violation of any local, state or federal statute, Inspector shall, if such deviation or violation is not immediately corrected by contractor when brought to the attention of contractor, direct the contractor in writing, while simultaneously notifying the Architect, and the District, to cease installation of that nonconforming portion of Construction Work, pending further decision by Architect and District, and shall in all cases, make a written record of the event. Inspector shall deliver copies of the written record to District within twenty-four (24) hours of the event.
9. **Conflict of Interest.** Inspector shall not have a financial or investment interest in any person, contractor, entity, or their employees, agents, or subcontractors with responsibilities for the construction of, design of, or other work or duties related to the Project. Inspector shall not have the authority to assist any person, contractor, entity, or their employees, agents, or subcontractors in the performance of the any work on the Project. Inspector shall not undertake any responsibilities of any person, contractor, entity, or their employees, agents, or subcontractors.
10. **On-Site Presence.** Inspector shall act as the Project inspector on an as needed basis, not to exceed four hours per site per day, including during off hours, and weekend hours as deemed necessary by Inspector, the Architect and/or District. Inspector shall be physically present at each Site at all times necessary for performance of its duties as project inspector. Inspector shall have personal knowledge of the Construction Work at all stages. Inspector shall accompany the Architect, District, the construction manager, or other consultants when any of them are observing the Construction Work. Inspector shall be physically present for all concrete work and masonry work.
11. **Inspector's General Obligations, Duties, and Responsibilities.** Inspector shall completely and timely inspect all portions of the Construction Work as it progresses.
 - 11.1. Inspector shall endeavor to guard District and the State of California ("State") against apparent defects and deficiencies in the Construction Work and shall act on behalf of District to see that the Construction Work is executed and completed in a timely manner in accordance with the Contract Documents and applicable laws and regulations.
 - 11.2. Inspector shall study and fully comprehend the requirements of the Construction Documents in order to provide competent inspection of the Construction Work. Inspector shall consult the Architect to

resolve any uncertainties in Inspector's comprehension of the plans and specifications. Inspector shall possess a thorough understanding of the requirements of the plans and specifications for each portion of Construction Work before that portion of Construction Work is performed.

- 11.3. Inspector shall identify all non-compliant Construction Work as work on the Project progresses in order to facilitate timely corrective action.
- 11.4. Inspector shall verify code-compliant implementation of the materials testing and special inspection program, as applicable, including notification of materials testing labs, the performance of material sampling and special inspections, and the review of all material sampling and special inspection reports. Inspector shall not be required to conduct tests that are specified in the Contract Documents to be performed by a testing or inspection laboratory or firm.
- 11.5. Inspector shall comply with all the requirements of a DSA project inspector including, without limitation, all the requirements included and/or referenced in the following forms:
 - 11.5.1. Form DSA IR A-7, Project Inspector: Certification and Approval (Revised 02-22-13).
 - 11.5.2. Form DSA IR A-8, Project Inspector and Assistant Inspector: Duties and Performance (Revised 12-01-12)
- 11.6. Inspector shall not authorize deviations from the Contract Documents.

12. Inspector Maintenance of Records, Job File, and Building Codes

- 12.1. **Inspection Records.** Inspector shall maintain detailed, comprehensive, organized, accessible, and timely documentation of all inspections of the Construction Work ("Inspection Records"). The Inspection Records shall identify all compliant and non-compliant Construction Work. The Inspection Records shall include, without limitation:
 - 12.1.1. **Record of Inspection on Plans.** A systematic record of the inspection of all Construction Work required by the Construction Documents. Inspector shall perform this by marking properly completed Construction Work on a set of Construction Documents to verify that the requirements of the plans and specifications have been met.
 - 12.1.2. **Construction Procedure Records (Title 24, Part 1, Section 4-342(6)).** These shall include, without limitation, concrete placement operations, welding operations, pile penetration blow counts, and other records specified on the approved Construction Documents.
 - 12.1.3. **Deviations and Resolution of Deviations.** The resolution of reported deviations.
 - 12.1.4. **Daily Job Log.** Daily job log of the Inspector's time spent, areas and scopes inspected, and tasks performed on the Site(s).
- 12.2. **Job File.** Inspector shall maintain a record of his/her attendance on the Site(s) and shall maintain files of schedules, notes, communications, records, documents, and drawings on behalf of the District.
 - 12.2.1. The schedules, notes, communications, records, documents, and drawings shall be regularly reviewed with the District, shall be kept in an order as directed by the District (e.g. by date or type of transaction).
 - 12.2.2. In addition, the Inspector shall organize and maintain a complete system of construction records, including, but not limited to:

- 12.2.2.1. All Inspection Records.
- 12.2.2.2. Job memo file.
- 12.2.2.3. Site conference file.
- 12.2.2.4. Progress reports.
- 12.2.2.5. Test and Inspection List (Form DSA-103-1 (Revised 01-01-12)).
- 12.2.2.6. Correspondence file, including, without limitation, all correspondence from/to Architect, construction contractor(s), District, and DSA.
- 12.2.2.7. Complete change order file.
- 12.2.2.8. All Addenda.
- 12.2.2.9. All deferred approval documents.
- 12.2.2.10. Complete shop drawings, samples, and submittal file.
- 12.2.2.11. All Contract Documents including, without limitation, the approved plans and specifications.

12.2.3. All records and documents kept by Inspector shall be and remain the property of District.

- 12.3. **Building Codes.** In addition to the above documents, Inspector shall keep at the Site(s), a copy of all applicable building codes and regulations necessary to perform required inspections, including, without limitation, the following parts of Title 24 of the California Code of Regulations in the edition referenced in the Contract Documents:

- 12.3.1. Title 24, Part 1 (Administrative Code)
- 12.3.2. Title 24, Part 2, Volumes 1, 2, and 3 (Building Code)
- 12.3.3. Title 24, Part 3 (Electrical Code)
- 12.3.4. Title 24, Part 4 (Mechanical Code)
- 12.3.5. Title 24, Part 5 (Plumbing Code)
- 12.3.6. Title 24, Part 6 (Energy Code)

13. Communications, Reporting, and Notifications

- 13.1. **DSA Notification.** Inspector shall notify DSA:

- 13.1.1. At least forty-eight (48) hours prior to the start of any Construction Work at each Site.
- 13.1.2. At least forty-eight (48) hours prior to completion of any foundation excavations/trenches.
- 13.1.3. At least forty-eight (48) hours prior to the first concrete pour/placement at any Site.
- 13.1.4. When Construction Work has been suspended for a period of more than two (2) weeks.

- 13.2. **Notification of District and Architect.** Inspector shall immediately report to District, the Architect, and the construction manager any failure by any contractor or subcontractor to comply with the Contract Documents, or any attempted substitutions of required materials and/or workmanship in any portion of the Construction Work. Inspector shall inform the District, the Architect, and the construction manager of any conflicts, ambiguity, and/or inconsistencies in the Contract Documents and of any interpretations, suggestions, comments, and/or criticisms the Inspector has related to the Project or the Contract Documents. Inspector shall advise the District of needed inspections related to the status of the Construction Work, and District shall provide the schedule of Construction Work to Inspector so that both Parties arrange timely inspections.

- 13.3. **Deviation Notification of Contractor(s).** Inspector shall notify a contractor verbally and in writing of any deviations from the approved Contract Documents by that contractor or its subcontractors. If the contractor does not immediately correct the deviation upon the verbal notice, then copies of the written notice shall be forwarded immediately to the District, the Architect, the construction manager, and DSA. Inspector shall document all resolutions of reported deviations and make them part of the

Inspection Records.

- 13.4. **Contractor Inquiries.** Contractors are expected to direct inquiries regarding Construction Document interpretation to the Architect through the Inspector, including the contractor's uncertainties regarding the Construction Documents. Inspector shall document these inquiries and immediately forward them to the Architect for response.
- 13.5. **Construction Manager.** Inspector shall also work with the construction manager if the District uses a construction manager on any portion of the Project. If District does not use a construction manager on the Project, then all references to a construction manager herein shall mean the District.

14. Inspector Responsibilities for Forms and Reports

- 14.1. **Semi-Monthly Reports.** Inspector shall submit semi-monthly reports on the 1st and the 15th of each month to District, the Architect, and DSA.
- 14.2. **Verified Reports.** Inspector shall submit verified reports at the following times that will include notification of outstanding deviations:
 - 14.2.1. Work on the Project(s) is suspended for a period of more than one (1) month.
 - 14.2.2. Inspector is terminated for any reason.
 - 14.2.3. DSA requests a verified report.
 - 14.2.4. If District occupies any building on the Site(s).
 - 14.2.5. When the Construction Work is complete.

Each verified report shall be on Form DSA-6, or more current form, and shall clearly describe all non-compliant Construction Work including change order work that is pending DSA approval. Each verified report shall state that Inspector knows of his/her personal knowledge that the Construction Work has, in every material respect, been performed in compliance with the Construction Documents. Inspector shall declare under penalty of perjury that all information indicated on the report is true.

- 14.3. **All Other Reports.** In addition, Inspector shall initiate and file with DSA prior to their due date, any other Project-related, forms, required of contractors, subcontractors, testing and inspection laboratories, and the District. Inspector shall prepare and forward to the District, Architect, and DSA all other reports required by Title 24 of the California Code of Regulations, the State, and/or DSA.
- 15. **Inspector Responsibilities for Laboratory Structural Tests.** Inspector shall initiate and expedite testing by independent test laboratories and shall maintain all necessary back up information for special inspection invoice processing, and shall be responsible for the sequential progress of the Project related to the test lab reports.
 - 16. **Inspector Responsibilities at Beginning of Occupancy.** Inspector shall observe the District's occupancy or movement of District-furnished equipment to each Site before completion and record and report any damages occurring so any claims may be fully documented.
 - 17. **Compliance with Applicable Laws.** Inspector shall conform to the following specific rules and regulations as well as all other applicable laws, ordinances, rules, and regulations. Nothing in the drawings, plans and specifications is to be construed to permit Construction Work not conforming to these codes.
 - 17.1. California Code of Regulations, Title 24, including amendments, in the edition referenced in the Contract Documents.
 - 17.2. Regulations of the State Fire Marshall (Title 19, California Code of Regulations) and applicable local fire safety codes.
 - 17.3. Labor Code of the State of California - Division 2, Part 7, Public Works and Public Agencies.

- 17.4. Education Code of the State of California
- 17.5. Industrial Accident Commission's Safety Orders, State of California.
- 17.6. National Electrical Safety Code, U. S. Department of Commerce.
- 17.7. National Board of Fire Underwriters' Regulations.
- 17.8. Manual of Accident Prevention in Construction, latest edition, published by the American General Contractors of America.

Inspector certifies that it is aware of the provisions of California Labor Code, the California Code of Regulations, and/or precedential decisions of the California Department of Industrial Relations and/or any of its subsidiary divisions that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since Inspector is performing Services as part of an applicable "public works" or "maintenance" project, and since the total compensation is \$1,000 or more, Inspector agrees to fully comply with and to require its consultant(s) to fully comply with all applicable Prevailing Wage Laws.

- 18. **Compliance with DSA Inspection Card Process.** Inspector shall comply with the DSA inspection card process that establishes specific construction milestones that must be approved by the Inspector before contractor(s) can start subsequent work on a project.
- 19. **Facilities/Equipment.** District shall provide for Inspector's operational needs, such as office supplies, telephone, and fax machine.
- 20. **Inspector Certification.** Inspector shall provide the District a copy of documents satisfactory to the District certifying that Inspector holds proper state certification and approval by DSA to perform the required Services for this Agreement. Inspector shall also provide any other documents or certification requested by the District. Inspector shall initiate and provide the District with Form DSA-5, or more current qualification/certification form.
- 21. **Substitute Inspector and/or Assistant Inspector.** Inspector shall provide the Services throughout the Term, and shall not delegate its duties without the full knowledge and prior written consent of the District. In the event of Inspector's absence for more than two (2) consecutive days or unavailability for scheduled inspections, Inspector, at no cost to District, shall secure a substitute inspector and/or assistant inspector who shall be appropriately certified, approved by DSA, and pre-approved in writing by District, to perform the Services. Certification documents for the approved substitute inspector(s) and/or assistant inspector(s) shall be presented to District within thirty (30) working days after the date of this Agreement. All substitute inspector(s) and assistant inspector(s) shall be obligated to perform the Services while performing any work on the Project. Inspector shall provide technical guidance and monitoring of all substitute inspector(s) and assistant inspector(s).
- 22. **Other Jobs Outside of the Project.** Inspector shall be required to work full-time on the Project, and shall not work on or be under contract for another project without prior written approval from District, and without a reduction in compensation proportionate to the amount of time Inspector is required to be absent for responsibilities to another project.
 - 22.1. In the event that this Agreement involves a company of inspectors, a DSA-approved inspector shall be designated as the Inspector for District, and shall be on constant duty at each Site as described in this Agreement.
 - 22.2. Inspector shall have the right to request and obtain an uncompensated release for a reasonable amount of time to fulfill unavoidable duties on other incomplete projects in progress at the beginning of the Project.

23. **District's Evaluation of Inspector and Inspector's Employees and/or Subcontractors.** District may evaluate Inspector in any manner which is permissible under the law. District's evaluation may include, without limitation:
- 23.1. Requesting that District employee(s) evaluate Inspector and Inspector's employees and subcontractors and each of their performance.
 - 23.2. Announced and unannounced observance of Inspector, Inspector's employee(s), and/or subcontractor(s).
24. **Confidentiality.** Inspector and all personnel designated by Inspector to perform under this Agreement shall maintain the confidentiality of all information received in the course of performing any work pursuant to this Agreement. This requirement to maintain confidentiality shall extend beyond the effective termination date of the Agreement.
25. **Independent Contractor.** Inspector shall act as an independent contractor and shall not be an employee, officer, agent, partner, or joint venture of District by virtue of this Agreement. Inspector shall not earn or be 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 Worker's Compensation. Nothing in this Agreement shall be construed to mean that the District retains any control over the manner and means of how Inspector performs its duties and responsibilities under this Agreement, but only as to the results of the Services. It is understood that no deductions will be made from payments to Inspector on account of withholding for income tax, Social Security, health insurance, retirement, or any other benefits applicable to employees of the District. Inspector shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Inspector's employees.
26. **Subcontractors.** Inspector may contract for or employ, at Inspector's expense, subcontractors to the extent deemed necessary for completion of its Services, licensed as required by applicable law. The names of subcontractors and a detailed scope of work to be performed by any subcontractors shall be submitted to the District for approval prior to commencement of Services by a subcontractor. The District reserves the right to reject Inspector's use of any particular subcontractor. District shall not approve any invoice or application for payment submitted that includes costs for Services performed by a subcontractor that has not been approved by District. In the event Inspector contracts with or employs a subcontractor for the Services, Inspector shall pay all subcontractor invoices within thirty (30) days of receipt or as otherwise agreed to by Inspector and the subcontractor, in compliance with applicable law; all Inspector payments to and records between its subcontractor(s) shall be subject to the audit provisions herein this Agreement. Nothing in the foregoing shall create any contractual relationship between the District and any subcontractor(s) employed by Inspector under the terms of this Agreement.
27. **Employment with Public Agency.** Inspector, if an employee of another public agency, agrees that Inspector will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which Services are actually being performed pursuant to this Agreement.
28. **Non-Assignment.** This Agreement is a personal services agreement. Inspector shall not assign this Agreement or any portion of it voluntarily to any third party without the prior written consent of the District, and any purported assignment without prior written consent of the District shall automatically terminate this Agreement.
29. **District's Right to Audit.** District retains the right to review and audit, and the reasonable right of access to Inspector's and any subcontractor's premises to review and audit, the Inspector's compliance with the provisions of this Agreement ("District's Audit Right"). The District's Audit Right includes the right to inspect, photocopy, and to retain copies, outside of the Inspector's premises, of any and all Work-related records,

documents and other information with appropriate safeguards, if such retention is deemed necessary by the District in its sole discretion. The District's Audit Right shall also include the right to interview current or former employees and subcontractors of Inspector with respect to matters or issues under audit. The District shall keep this information confidential, as allowed by applicable law.

- 29.1. Inspector shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Inspector transacted under this Agreement. Inspector shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter.
 - 29.2. Inspector shall, without limitation, permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Inspector and shall conduct audit(s) during Inspector's normal business hours, unless Inspector otherwise consents.
 - 29.3. Inspector shall include audit provisions in any and all of its subcontracts, and shall ensure that provision is binding upon all subcontractors.
 - 29.4. Inspector shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of Inspector's Work-related documents, records and information. The District's Audit Right and Inspector's compliance with the same, shall be at no additional cost to the District.
 - 29.5. In the event the District's Audit Right, or an audit by the State Auditor, evidences payments to Inspector not in accordance with the provisions of this Agreement, Inspector shall immediately pay District the amount of said payments not in compliance in addition to all costs reasonably incurred by District in conducting an audit hereunder.
 - 29.6. Inspector acknowledges and agrees that the District's Audit Right, pursuant to the foregoing provisions, shall apply to, and may be utilized by the District for the production of, any records or documents subject to disclosure under the California Public Records Act, Government Code § 6250 et seq. ("CPRA"), unless otherwise exempt, and which may include, but are not limited to, records or documents in the District's constructive possession but under Inspector's control regardless if created, sent, received, stored, or maintained in a personal account or device of Inspector or its employees, as prescribed by applicable law. In the event the District exercises District's Audit Right in response to or as part of a request under the CPRA, Inspector agrees to provide District with an affidavit, if and as needed or requested by District, within five (5) days of District's request therefor, that certifies Inspector's search for and production of responsive records subject to disclosure pursuant to the CPRA, if any.
30. **Audit.** Inspector shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Broker transacted under this Agreement. Inspector shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Inspector shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Inspector and shall conduct audit(s) during Inspector's normal business hours, unless Inspector otherwise consents. If the Agreement involves the expenditure of public funds in excess of ten thousand dollars (\$10,000), the Agreement shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment. The audit shall be confined to those matters connected with the

performance of the Agreement, including, but not limited to, the costs of administering the Agreement.

31. Termination

31.1. **Job Completion.** Unless previously terminated or otherwise cancelled, this Agreement shall terminate when the notice of completion for the Project is recorded with the County recorder.

31.2. **Termination For Convenience**

31.2.1. District may terminate this Agreement by written notification seven (7) days prior to the effective date of the termination.

31.2.2. Inspector may terminate this Agreement by written notification forty-five (45) days prior to the effective date of the termination. Inspector acknowledges that this forty-five (45) day notice period is acceptable so that District can attempt to procure inspection services from another source.

31.2.3. Neither Party shall be required to provide just cause for termination in the written notification. Inspector and District shall notify DSA upon the termination of this Agreement.

31.3. **Termination for Cause.** District may terminate this Agreement immediately for cause. Cause shall include, without limitation:

31.3.1. Material violation of this Agreement by Inspector, including without limitation, failure to provide required reports; or

31.3.2. Any act by Inspector exposing the District to liability to others for personal injury or property damage; or

31.3.3. Inspector is adjudged bankrupt, Inspector makes a general assignment for the benefit of creditors or a receiver is appointed on account of Inspector's insolvency.

31.3.4. In the event of a termination for cause, the District may secure the required services from another project inspector. If the expense, fees, and/or costs to the District exceeds the cost of providing the service pursuant to this Agreement, Inspector shall immediately pay the excess expense, fees, and/or costs to District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

31.4. **Documentation upon Termination.** Upon termination, Inspector shall provide the District with all documents produced maintained or collected by Inspector pursuant to this Agreement, whether or not such documents are final or draft documents.

32. **Indemnification.** To the furthest extent permitted by California law, Inspector shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, Inspectors, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim"), to property or persons, including personal injury and/or death, to the extent that any of the above arise out of, pertain to, or relate to the negligence, recklessness, errors or omissions, or willful misconduct of Inspector, its officials, officers, employees, subcontractors, Inspectors, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement, including without limitation the payment of all consequential damages.

33. Insurance

33.1. Inspector shall procure and maintain during the life of the Project the following insurance with minimum limits equal to the amount indicated below.

33.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Inspector, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from any portion of the Services.

33.1.2. **Workers' Compensation and Employers' Liability Insurance.** In accordance with provisions of section 3700 of the California Labor Code, Inspector shall be required to secure workers' compensation coverage for its employees. In addition, the Inspector shall provide Employers' Liability Insurance for all of its employees engaged in any work on the Project. If any class of employee or employees engaged in work under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence work under this Agreement.

33.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Inspector's profession.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
Automobile Liability Insurance - Any Auto	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
Professional Liability	\$ 1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

33.2. **Proof of Carriage of Insurance.** Inspector shall not commence any work under this Agreement until all required insurance has been obtained and certificates indicating the required coverages have been delivered in duplicate to District and approved by District. Certificates and insurance policies shall include the following:

33.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

33.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

33.2.3. An endorsement stating that District and the State and their agents, representatives,

employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Inspector's insurance policies shall be primary to any insurance or self-insurance maintained by District.

33.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

33.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to District.

34. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

District

West Contra Costa Unified School District
1400 Marina Way South
Richmond, CA 94804
ATTN: Luis Freese
Telephone: (510) 307-4540
Fax: (510) 231-2406

Inspector:

Production Technical Services, Inc.
35 Asoleado Dr.
Carmel Valley, CA 93924
ATTN: Steve Cayson
Telephone: (510) 812-0606

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

35. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed in connection with this Agreement.

36. **Fingerprinting.** Inspector shall comply with the provisions of Education Code section 45125.01 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. Inspector shall not permit any employee to have any contact with District pupils until such time as the Inspector has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. Inspector's responsibility shall extend to all employees, substitute inspectors, agents, and employees or agents of substitute inspectors regardless of whether those individuals are paid or unpaid, concurrently employed by District, or acting as independent contractors of Inspector. Verification of compliance with this section and the Criminal Background Investigation Certification shall be provided in writing to the District prior to each individual's commencement of employment or participation on the Project and prior to permitting contact with any student.

37. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, Inspector must submit, upon request by District, appropriate documentation to District identifying the steps Inspector has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.

38. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.
39. **Integration/Extent of Agreement.** This Agreement represents the entire and integrated contract between District and Inspector, and supersedes all prior understandings, negotiations, representations, or agreements, either written or oral, unless specifically incorporated into this Agreement. Addenda shall be included only with the written approval of both District and Inspector. The headings of the paragraphs are for convenience only and are not a part of this Agreement and shall not be considered in construing the intent of this Agreement.
40. **Agreement Number.** The District will issue an agreement number for this Agreement as part of the District's fiscal accounting and payment procedures. The agreement number shall be included in all requests for payment hereunder. The District may change the agreement number during the term of the Agreement. The District's revision of an agreement number shall not be considered a material or substantive change to the Agreement.
41. **Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
42. **Disputes.** All claims, disputes, or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. If this method proves unsuccessful, then all claims, disputes or controversies as stated above may be decided through arbitration, if agreed to by all Parties.
43. **Severability.** If any term, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
44. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under this Agreement there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Inspector agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Inspector agrees to require like compliance by all its subcontractor(s).
45. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.
46. **Authority of Executing Officer or Party.** By signing below, the signer represents that it has the legal right, power, and authority to enter into and execute this Agreement and to bind the Party on whose behalf the signer executes this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2017

West Contra Costa Unified School District

By: _____

Print Name: _____

Print Title: _____

Dated: _____, 2017

Production Technical Services, Inc.

By: _____

Print Name: _____

Print Title: _____

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

Date: _____

Proper Name of Inspector: _____

Signature: _____

Print Name: _____

Title: _____

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Work under this Contract.)

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Independent Consultant Agreement for Professional Services ("Agreement"):

☐ **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]** Consultant's employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Consultant's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c))

Date: _____

District Representative's Name and Title: _____

Signature: _____

☐ The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant's services under this Agreement and Consultant certifies its compliance with these provisions as follows: *"Consultant certifies that the Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto."*

☐ ~~Consultant's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:~~

Megan's Law (Sex Offenders). I have verified and will continue to verify that the employees of Consultant that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

[MUST BE COMPLETED BY CONSULTANT'S AUTHORIZED REPRESENTATIVE.] I am a representative of the Consultant entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant.

Date: _____

Name of Consultant or Company: _____

Signature: _____

Print Name and Title: _____

**WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT
INDEPENDENT CONTRACTOR AGREEMENT FOR PROFESSIONAL SERVICES
PROJECT INSPECTOR SERVICES**

This Independent Contractor Agreement for Professional Services ("Agreement") is made as of the 15 day of June, in the year 2017, by and between the **West Contra Costa Unified School District** ("District") and **Production Technical Services, Inc.** ("Inspector"). The District and Inspector may be individually referred to herein as a "Party" or collectively referred to herein as the "Parties."

RECITALS

WHEREAS, District intends to award contracts to construction contractor(s) to perform work ("Construction Work") at approximately Two (2) District sites identified as Korematsu Middle School and Valley View Elementary ("Site(s)"); and

WHEREAS, District has retained the services of HY Architects and DLM Architects as the architect(s) and/or design professional(s) of the Construction Work ("Architect(s)"); and

WHEREAS, the Construction Work shall be performed pursuant to District-approved plans, drawings, specifications, rules, regulations and statutes applicable to school construction and other contract documents ("Contract Documents"); and

WHEREAS, District requires the services of a Division of the State Architect ("DSA") approved project inspector during the Construction Work; and

WHEREAS, pursuant to Education Code section 17311, DSA and the Architect have approved Inspector to be a project inspector on California public school construction projects; and

WHEREAS, Inspector warrants and represents that Inspector is competent to perform the duties and responsibilities required by this Agreement and by applicable laws and regulations for the inspection of Construction Work at the Site(s) ("Project").

NOW, THEREFORE, the Parties agree as follows:

1. **Inspector as District Representative.** Inspector shall, as requested by District, act as the project inspector for the Project. Inspector shall observe construction operations to insure that the Project is constructed and completed in strict conformity with all applicable laws and regulations and the Contract Documents ("Services").
2. **Scope of Work and Compensation.** The Services include project inspection services for each component as listed below.
 - 2.1. Any one component or combination of components may be changed, or terminated, in the same manner as the Services, without changing in any way the remaining component(s). The provisions of this Agreement shall apply to each component without regard to the status of the remaining component(s). Inspector shall invoice for each component separately and District shall compensate Inspector for each component separately on a proportionate basis based on the level and scope of work completed for each component.
 - 2.2. The following dollar amounts are the estimated approximate hard construction costs for each Site:
 - \$800,000 Korematsu Middle School
 - \$800,000 Valley View Elementary School

- 2.3. Inspector's fee for the performance of Services at each of the above Sites shall be **\$95** per hour for a total maximum fee of **\$40,660**.
- 2.4. The Inspector shall submit a monthly itemized statement of Service charges and expenses (if applicable) to the District on the fifth (5th) day of each month. Inspector shall prepare a separate itemized statement for each Site Inspector provides Services. The itemized statement shall show the days and hours worked each workday Inspector performs Services for the previous month. District will permit a one (1) month grace period beyond this time for the Inspector to submit its invoice for a particular month's work. No amounts shall be due or owing to the Inspector if it fails to submit an invoice to the District at or before the end of that grace period.
- 2.5. Payment of all undisputed amounts for Services satisfactorily rendered pursuant to this Agreement will be due within thirty (30) days of receipt of Inspector's invoice.
- 2.6. Inspector must provide, to the District's satisfaction, appropriate substantiation for all Services performed on an hourly basis. Inspector shall properly support payment of all hourly services, as further described herein, for each invoice or application for payment submitted by Inspector for its Services. Failure to satisfy this requirement will result in Inspector's invoice or application for payment being rejected until District approves Inspector's full compliance herewith.
- 2.7. To substantiate Inspector's hourly performance of the Services, Inspector at a minimum must set forth (i) the date, (ii) location of the Services, (iii) amount of time spent on each task performed that day, (iv) a sufficiently-detailed description of the Services for the task, and (v) the day's total number of hours. Merely stating the date and total number of hours worked shall be deemed insufficient.
- 2.8. The daily job log referred to herein shall detail the time spent by the Inspector in the performance of Services pursuant to this Agreement.
- 2.9. Inspector shall provide to the District on a timely basis and to not cause a delay in DSA's approval of the Project, all verified report(s) for all scope(s) of Work and all other required Project documents if not already completed and provided to the District. District shall retain five percent (5%) of Inspector's Fee or Ten Thousand Dollars (\$10,000), whichever is greater, until Inspector has filed all required verified report(s) and other Project Documents.
- 2.10. If requested by the District, the Inspector shall provide additional or extended Services for the Project as may be necessary because of changed conditions including, without limitation, conditions made necessary by Work damaged by fire or other Acts of God during construction or prolongation of the initial construction contract time beyond the construction contract time schedule. Those additional or extended Services shall be as agreed to by the District and shall be based on rates at or below the hourly, daily, weekly, or monthly rates as indicated here:

Maximum Rate for Additional or Extended Services

Hourly	\$95/Hour
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3. **Term.** The term of this Agreement shall be the period of construction of the Project and shall terminate when the notice of completion for the Construction Work is recorded ("Term"), unless terminated or otherwise cancelled.
4. **Submittal of Documents.** Inspector shall not commence the Services under this Agreement until Inspector has submitted and District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u>X</u>	Signed Agreement
<u>X</u>	Workers' Compensation Certificate
<u>X</u>	Criminal Background Investigation Certification
<u>X</u>	Insurance Certificates and Endorsements
<u>X</u>	W-9 Form

5. **Expenses.** District shall not be liable to Inspector for any costs or expenses paid or incurred by Inspector in performing Services, except for those set forth in this Agreement. Inspector agrees that travel may be required, at Inspector's expense. These travel expenses are not reimbursable.
6. **Standard of Care.** Inspector shall perform Services, obtain findings, and prepare recommendations in accordance with generally and currently accepted principles and practices for project inspectors of California school buildings and of the work of construction or alteration of school buildings.
7. **Direction of Architect.** Inspector shall act under the direction of the Architect and shall be responsible to the Department of General Services, Division of the State Architect for enforcement of the Project plans and specifications.
8. **Authority to Reject or Stop Construction Work.** Inspector shall not have the authority to direct a contractor in the execution of the Construction Work nor to stop work on the Project. However, if Inspector observes Construction Work being performed in deviation from the approved plans, specifications, or change orders or in violation of any local, state or federal statute, Inspector shall, if such deviation or violation is not immediately corrected by contractor when brought to the attention of contractor, direct the contractor in writing, while simultaneously notifying the Architect, and the District, to cease installation of that nonconforming portion of Construction Work, pending further decision by Architect and District, and shall in all cases, make a written record of the event. Inspector shall deliver copies of the written record to District within twenty-four (24) hours of the event.
9. **Conflict of Interest.** Inspector shall not have a financial or investment interest in any person, contractor, entity, or their employees, agents, or subcontractors with responsibilities for the construction of, design of, or other work or duties related to the Project. Inspector shall not have the authority to assist any person, contractor, entity, or their employees, agents, or subcontractors in the performance of the any work on the Project. Inspector shall not undertake any responsibilities of any person, contractor, entity, or their employees, agents, or subcontractors.
10. **On-Site Presence.** Inspector shall act as the Project inspector on an as-needed basis, not to exceed four hours per day, including during off hours, and weekend hours as deemed necessary by Inspector, the Architect and/or District. Inspector shall be physically present at each Site at all times necessary for performance of its duties as project inspector. Inspector shall have personal knowledge of the Construction Work at all stages. Inspector shall accompany the Architect, District, the construction manager, or other consultants when any of them are observing the Construction Work. Inspector shall be physically present for all concrete work and masonry work.
11. **Inspector's General Obligations, Duties, and Responsibilities.** Inspector shall completely and timely inspect all portions of the Construction Work as it progresses.
 - 11.1. Inspector shall endeavor to guard District and the State of California ("State") against apparent defects and deficiencies in the Construction Work and shall act on behalf of District to see that the Construction Work is executed and completed in a timely manner in accordance with the Contract Documents and applicable laws and regulations.
 - 11.2. Inspector shall study and fully comprehend the requirements of the Construction Documents in order to provide competent inspection of the Construction Work. Inspector shall consult the Architect to

resolve any uncertainties in Inspector's comprehension of the plans and specifications. Inspector shall possess a thorough understanding of the requirements of the plans and specifications for each portion of Construction Work before that portion of Construction Work is performed.

- 11.3. Inspector shall identify all non-compliant Construction Work as work on the Project progresses in order to facilitate timely corrective action.
- 11.4. Inspector shall verify code-compliant implementation of the materials testing and special inspection program, as applicable, including notification of materials testing labs, the performance of material sampling and special inspections, and the review of all material sampling and special inspection reports. Inspector shall not be required to conduct tests that are specified in the Contract Documents to be performed by a testing or inspection laboratory or firm.
- 11.5. Inspector shall comply with all the requirements of a DSA project inspector including, without limitation, all the requirements included and/or referenced in the following forms:
 - 11.5.1. Form DSA IR A-7, Project Inspector: Certification and Approval (Revised 02-22-13).
 - 11.5.2. Form DSA IR A-8, Project Inspector and Assistant Inspector: Duties and Performance (Revised 12-01-12)
- 11.6. Inspector shall not authorize deviations from the Contract Documents.

12. Inspector Maintenance of Records, Job File, and Building Codes

- 12.1. **Inspection Records.** Inspector shall maintain detailed, comprehensive, organized, accessible, and timely documentation of all inspections of the Construction Work ("Inspection Records"). The Inspection Records shall identify all compliant and non-compliant Construction Work. The Inspection Records shall include, without limitation:
 - 12.1.1. **Record of Inspection on Plans.** A systematic record of the inspection of all Construction Work required by the Construction Documents. Inspector shall perform this by marking properly completed Construction Work on a set of Construction Documents to verify that the requirements of the plans and specifications have been met.
 - 12.1.2. **Construction Procedure Records (Title 24, Part 1, Section 4-342(6)).** These shall include, without limitation, concrete placement operations, welding operations, pile penetration blow counts, and other records specified on the approved Construction Documents.
 - 12.1.3. **Deviations and Resolution of Deviations.** The resolution of reported deviations.
 - 12.1.4. **Daily Job Log.** Daily job log of the Inspector's time spent, areas and scopes inspected, and tasks performed on the Site(s).
- 12.2. **Job File.** Inspector shall maintain a record of his/her attendance on the Site(s) and shall maintain files of schedules, notes, communications, records, documents, and drawings on behalf of the District.
 - 12.2.1. The schedules, notes, communications, records, documents, and drawings shall be regularly reviewed with the District, shall be kept in an order as directed by the District (e.g. by date or type of transaction).
 - 12.2.2. In addition, the Inspector shall organize and maintain a complete system of construction

records, including, but not limited to:

- 12.2.2.1. All Inspection Records.
- 12.2.2.2. Job memo file.
- 12.2.2.3. Site conference file.
- 12.2.2.4. Progress reports.
- 12.2.2.5. Test and Inspection List (Form DSA-103-1 (Revised 01-01-12)).
- 12.2.2.6. Correspondence file, including, without limitation, all correspondence from/to Architect, construction contractor(s), District, and DSA.
- 12.2.2.7. Complete change order file.
- 12.2.2.8. All Addenda.
- 12.2.2.9. All deferred approval documents.
- 12.2.2.10. Complete shop drawings, samples, and submittal file.
- 12.2.2.11. All Contract Documents including, without limitation, the approved plans and specifications.

12.2.3. All records and documents kept by Inspector shall be and remain the property of District.

- 12.3. **Building Codes.** In addition to the above documents, Inspector shall keep at the Site(s), a copy of all applicable building codes and regulations necessary to perform required inspections, including, without limitation, the following parts of Title 24 of the California Code of Regulations in the edition referenced in the Contract Documents:

- 12.3.1. Title 24, Part 1 (Administrative Code)
- 12.3.2. Title 24, Part 2, Volumes 1, 2, and 3 (Building Code)
- 12.3.3. Title 24, Part 3 (Electrical Code)
- 12.3.4. Title 24, Part 4 (Mechanical Code)
- 12.3.5. Title 24, Part 5 (Plumbing Code)
- 12.3.6. Title 24, Part 6 (Energy Code)

13. Communications, Reporting, and Notifications

- 13.1. **DSA Notification.** Inspector shall notify DSA:

- 13.1.1. At least forty-eight (48) hours prior to the start of any Construction Work at each Site.
- 13.1.2. At least forty-eight (48) hours prior to completion of any foundation excavations/trenches.
- 13.1.3. At least forty-eight (48) hours prior to the first concrete pour/placement at any Site.
- 13.1.4. When Construction Work has been suspended for a period of more than two (2) weeks.

- 13.2. **Notification of District and Architect.** Inspector shall immediately report to District, the Architect, and the construction manager any failure by any contractor or subcontractor to comply with the Contract Documents, or any attempted substitutions of required materials and/or workmanship in any portion of the Construction Work. Inspector shall inform the District, the Architect, and the construction manager of any conflicts, ambiguity, and/or inconsistencies in the Contract Documents and of any interpretations, suggestions, comments, and/or criticisms the Inspector has related to the Project or the Contract Documents. Inspector shall advise the District of needed inspections related to the status of the Construction Work, and District shall provide the schedule of Construction Work to Inspector so that both Parties arrange timely inspections.

- 13.3. **Deviation Notification of Contractor(s).** Inspector shall notify a contractor verbally and in writing of any deviations from the approved Contract Documents by that contractor or its subcontractors. If the contractor does not immediately correct the deviation upon the verbal notice, then copies of the written notice shall be forwarded immediately to the District, the Architect, the construction manager,

and DSA. Inspector shall document all resolutions of reported deviations and make them part of the Inspection Records.

- 13.4. **Contractor Inquiries.** Contractors are expected to direct inquiries regarding Construction Document interpretation to the Architect through the Inspector, including the contractor's uncertainties regarding the Construction Documents. Inspector shall document these inquiries and immediately forward them to the Architect for response.
- 13.5. **Construction Manager.** Inspector shall also work with the construction manager if the District uses a construction manager on any portion of the Project. If District does not use a construction manager on the Project, then all references to a construction manager herein shall mean the District.

14. Inspector Responsibilities for Forms and Reports

- 14.1. **Semi-Monthly Reports.** Inspector shall submit semi-monthly reports on the 1st and the 15th of each month to District, the Architect, and DSA.
- 14.2. **Verified Reports.** Inspector shall submit verified reports at the following times that will include notification of outstanding deviations:
 - 14.2.1. Work on the Project(s) is suspended for a period of more than one (1) month.
 - 14.2.2. Inspector is terminated for any reason.
 - 14.2.3. DSA requests a verified report.
 - 14.2.4. If District occupies any building on the Site(s).
 - 14.2.5. When the Construction Work is complete.

Each verified report shall be on Form DSA-6, or more current form, and shall clearly describe all non-compliant Construction Work including change order work that is pending DSA approval. Each verified report shall state that Inspector knows of his/her personal knowledge that the Construction Work has, in every material respect, been performed in compliance with the Construction Documents. Inspector shall declare under penalty of perjury that all information indicated on the report is true.

- 14.3. **All Other Reports.** In addition, Inspector shall initiate and file with DSA prior to their due date, any other Project-related, forms, required of contractors, subcontractors, testing and inspection laboratories, and the District. Inspector shall prepare and forward to the District, Architect, and DSA all other reports required by Title 24 of the California Code of Regulations, the State, and/or DSA.
- 15. **Inspector Responsibilities for Laboratory Structural Tests.** Inspector shall initiate and expedite testing by independent test laboratories and shall maintain all necessary back up information for special inspection invoice processing, and shall be responsible for the sequential progress of the Project related to the test lab reports.
 - 16. **Inspector Responsibilities at Beginning of Occupancy.** Inspector shall observe the District's occupancy or movement of District-furnished equipment to each Site before completion and record and report any damages occurring so any claims may be fully documented.
 - 17. **Compliance with Applicable Laws.** Inspector shall conform to the following specific rules and regulations as well as all other applicable laws, ordinances, rules, and regulations. Nothing in the drawings, plans and specifications is to be construed to permit Construction Work not conforming to these codes.
 - 17.1. California Code of Regulations, Title 24, including amendments, in the edition referenced in the Contract Documents.
 - 17.2. Regulations of the State Fire Marshall (Title 19, California Code of Regulations) and applicable local fire safety codes.

- 17.3. Labor Code of the State of California - Division 2, Part 7, Public Works and Public Agencies.
- 17.4. Education Code of the State of California
- 17.5. Industrial Accident Commission's Safety Orders, State of California.
- 17.6. National Electrical Safety Code, U. S. Department of Commerce.
- 17.7. National Board of Fire Underwriters' Regulations.
- 17.8. Manual of Accident Prevention in Construction, latest edition, published by the American General Contractors of America.

Inspector certifies that it is aware of the provisions of California Labor Code, the California Code of Regulations, and/or precedential decisions of the California Department of Industrial Relations and/or any of its subsidiary divisions that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since Inspector is performing Services as part of an applicable "public works" or "maintenance" project, and since the total compensation is \$1,000 or more, Inspector agrees to fully comply with and to require its consultant(s) to fully comply with all applicable Prevailing Wage Laws.

- 18. **Compliance with DSA Inspection Card Process.** Inspector shall comply with the DSA inspection card process that establishes specific construction milestones that must be approved by the Inspector before contractor(s) can start subsequent work on a project.
- 19. **Facilities/Equipment.** District shall provide for Inspector's operational needs, such as office supplies, telephone, and fax machine.
- 20. **Inspector Certification.** Inspector shall provide the District a copy of documents satisfactory to the District certifying that Inspector holds proper state certification and approval by DSA to perform the required Services for this Agreement. Inspector shall also provide any other documents or certification requested by the District. Inspector shall initiate and provide the District with Form DSA-5, or more current qualification/certification form.
- 21. **Substitute Inspector and/or Assistant Inspector.** Inspector shall provide the Services throughout the Term, and shall not delegate its duties without the full knowledge and prior written consent of the District. In the event of Inspector's absence for more than two (2) consecutive days or unavailability for scheduled inspections, Inspector, at no cost to District, shall secure a substitute inspector and/or assistant inspector who shall be appropriately certified, approved by DSA, and pre-approved in writing by District, to perform the Services. Certification documents for the approved substitute inspector(s) and/or assistant inspector(s) shall be presented to District within thirty (30) working days after the date of this Agreement. All substitute inspector(s) and assistant inspector(s) shall be obligated to perform the Services while performing any work on the Project. Inspector shall provide technical guidance and monitoring of all substitute inspector(s) and assistant inspector(s).
- 22. **Other Jobs Outside of the Project.** Inspector shall be required to work full-time on the Project, and shall not work on or be under contract for another project without prior written approval from District, and without a reduction in compensation proportionate to the amount of time Inspector is required to be absent for responsibilities to another project.
 - 22.1. In the event that this Agreement involves a company of inspectors, a DSA-approved inspector shall be designated as the Inspector for District, and shall be on constant duty at each Site as described in this Agreement.
 - 22.2. Inspector shall have the right to request and obtain an uncompensated release for a reasonable amount of time to fulfill unavoidable duties on other incomplete projects in progress at the beginning of the Project.

23. **District's Evaluation of Inspector and Inspector's Employees and/or Subcontractors.** District may evaluate Inspector in any manner which is permissible under the law. District's evaluation may include, without limitation:
- 23.1. Requesting that District employee(s) evaluate Inspector and Inspector's employees and subcontractors and each of their performance.
 - 23.2. Announced and unannounced observance of Inspector, Inspector's employee(s), and/or subcontractor(s).
24. **Confidentiality.** Inspector and all personnel designated by Inspector to perform under this Agreement shall maintain the confidentiality of all information received in the course of performing any work pursuant to this Agreement. This requirement to maintain confidentiality shall extend beyond the effective termination date of the Agreement.
25. **Independent Contractor.** Inspector shall act as an independent contractor and shall not be an employee, officer, agent, partner, or joint venture of District by virtue of this Agreement. Inspector shall not earn or be 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 Worker's Compensation. Nothing in this Agreement shall be construed to mean that the District retains any control over the manner and means of how Inspector performs its duties and responsibilities under this Agreement, but only as to the results of the Services. It is understood that no deductions will be made from payments to Inspector on account of withholding for income tax, Social Security, health insurance, retirement, or any other benefits applicable to employees of the District. Inspector shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Inspector's employees.
26. **Subcontractors.** Inspector may contract for or employ, at Inspector's expense, subcontractors to the extent deemed necessary for completion of its Services, licensed as required by applicable law. The names of subcontractors and a detailed scope of work to be performed by any subcontractors shall be submitted to the District for approval prior to commencement of Services by a subcontractor. The District reserves the right to reject Inspector's use of any particular subcontractor. District shall not approve any invoice or application for payment submitted that includes costs for Services performed by a subcontractor that has not been approved by District. In the event Inspector contracts with or employs a subcontractor for the Services, Inspector shall pay all subcontractor invoices within thirty (30) days of receipt or as otherwise agreed to by Inspector and the subcontractor, in compliance with applicable law; all Inspector payments to and records between its subcontractor(s) shall be subject to the audit provisions herein this Agreement. Nothing in the foregoing shall create any contractual relationship between the District and any subcontractor(s) employed by Inspector under the terms of this Agreement.
27. **Employment with Public Agency.** Inspector, if an employee of another public agency, agrees that Inspector will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which Services are actually being performed pursuant to this Agreement.
28. **Non-Assignment.** This Agreement is a personal services agreement. Inspector shall not assign this Agreement or any portion of it voluntarily to any third party without the prior written consent of the District, and any purported assignment without prior written consent of the District shall automatically terminate this Agreement.
29. **District's Right to Audit.** District retains the right to review and audit, and the reasonable right of access to Inspector's and any subcontractor's premises to review and audit, the Inspector's compliance with the provisions of this Agreement ("District's Audit Right"). The District's Audit Right includes the right to inspect, photocopy, and to retain copies, outside of the Inspector's premises, of any and all Work-related records,

documents and other information with appropriate safeguards, if such retention is deemed necessary by the District in its sole discretion. The District's Audit Right shall also include the right to interview current or former employees and subcontractors of Inspector with respect to matters or issues under audit. The District shall keep this information confidential, as allowed by applicable law.

- 29.1. Inspector shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Inspector transacted under this Agreement. Inspector shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter.
 - 29.2. Inspector shall, without limitation, permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Inspector and shall conduct audit(s) during Inspector's normal business hours, unless Inspector otherwise consents.
 - 29.3. Inspector shall include audit provisions in any and all of its subcontracts, and shall ensure that provision is binding upon all subcontractors.
 - 29.4. Inspector shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of Inspector's Work-related documents, records and information. The District's Audit Right and Inspector's compliance with the same, shall be at no additional cost to the District.
 - 29.5. In the event the District's Audit Right, or an audit by the State Auditor, evidences payments to Inspector not in accordance with the provisions of this Agreement, Inspector shall immediately pay District the amount of said payments not in compliance in addition to all costs reasonably incurred by District in conducting an audit hereunder.
 - 29.6. Inspector acknowledges and agrees that the District's Audit Right, pursuant to the foregoing provisions, shall apply to, and may be utilized by the District for the production of, any records or documents subject to disclosure under the California Public Records Act, Government Code § 6250 et seq. ("CPRA"), unless otherwise exempt, and which may include, but are not limited to, records or documents in the District's constructive possession but under Inspector's control regardless if created, sent, received, stored, or maintained in a personal account or device of Inspector or its employees, as prescribed by applicable law. In the event the District exercises District's Audit Right in response to or as part of a request under the CPRA, Inspector agrees to provide District with an affidavit, if and as needed or requested by District, within five (5) days of District's request therefor, that certifies Inspector's search for and production of responsive records subject to disclosure pursuant to the CPRA, if any.
30. **Audit.** Inspector shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Broker transacted under this Agreement. Inspector shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Inspector shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Inspector and shall conduct audit(s) during Inspector's normal business hours, unless Inspector otherwise consents. If the Agreement involves the expenditure of public funds in excess of ten thousand dollars (\$10,000), the Agreement shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment. The audit shall be confined to those matters connected with the

performance of the Agreement, including, but not limited to, the costs of administering the Agreement.

31. Termination

31.1. Job Completion. Unless previously terminated or otherwise cancelled, this Agreement shall terminate when the notice of completion for the Project is recorded with the County recorder.

31.2. Termination For Convenience

31.2.1. District may terminate this Agreement by written notification seven (7) days prior to the effective date of the termination.

31.2.2. Inspector may terminate this Agreement by written notification forty-five (45) days prior to the effective date of the termination. Inspector acknowledges that this forty-five (45) day notice period is acceptable so that District can attempt to procure inspection services from another source.

31.2.3. Neither Party shall be required to provide just cause for termination in the written notification. Inspector and District shall notify DSA upon the termination of this Agreement.

31.3. Termination for Cause. District may terminate this Agreement immediately for cause. Cause shall include, without limitation:

31.3.1. Material violation of this Agreement by Inspector, including without limitation, failure to provide required reports; or

31.3.2. Any act by Inspector exposing the District to liability to others for personal injury or property damage; or

31.3.3. Inspector is adjudged bankrupt, Inspector makes a general assignment for the benefit of creditors or a receiver is appointed on account of Inspector's insolvency.

31.3.4. In the event of a termination for cause, the District may secure the required services from another project inspector. If the expense, fees, and/or costs to the District exceeds the cost of providing the service pursuant to this Agreement, Inspector shall immediately pay the excess expense, fees, and/or costs to District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

31.4. Documentation upon Termination. Upon termination, Inspector shall provide the District with all documents produced maintained or collected by Inspector pursuant to this Agreement, whether or not such documents are final or draft documents.

32. Indemnification. To the furthest extent permitted by California law, Inspector shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, Inspectors, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim"), to property or persons, including personal injury and/or death, to the extent that any of the above arise out of, pertain to, or relate to the negligence, recklessness, errors or omissions, or willful misconduct of Inspector, its officials, officers, employees, subcontractors, Inspectors, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement, including without limitation the payment of all consequential damages.

33. Insurance

33.1. Inspector shall procure and maintain during the life of the Project the following insurance with minimum limits equal to the amount indicated below.

33.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Inspector, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from any portion of the Services.

33.1.2. **Workers' Compensation and Employers' Liability Insurance.** In accordance with provisions of section 3700 of the California Labor Code, Inspector shall be required to secure workers' compensation coverage for its employees. In addition, the Inspector shall provide Employers' Liability Insurance for all of its employees engaged in any work on the Project. If any class of employee or employees engaged in work under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence work under this Agreement.

33.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Inspector's profession.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
Automobile Liability Insurance - Any Auto	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
Professional Liability	\$ 1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

33.2. **Proof of Carriage of Insurance.** Inspector shall not commence any work under this Agreement until all required insurance has been obtained and certificates indicating the required coverages have been delivered in duplicate to District and approved by District. Certificates and insurance policies shall include the following:

33.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

33.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

33.2.3. An endorsement stating that District and the State and their agents, representatives,

employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Inspector's insurance policies shall be primary to any insurance or self-insurance maintained by District.

33.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

33.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to District.

34. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

District

West Contra Costa Unified School District
1400 Marina Way South
Richmond, CA 94804
ATTN: Luis Freese
Telephone: (510) 307-4540
Fax: (510) 231-2406

Inspector:

Production Technical Services, Inc.
35 Asoleado Dr.
Carmel Valley, CA 93924
ATTN: Steve Cayson
Telephone: (510) 812-0606

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

35. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed in connection with this Agreement.

36. **Fingerprinting.** Inspector shall comply with the provisions of Education Code section 45125.01 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. Inspector shall not permit any employee to have any contact with District pupils until such time as the Inspector has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. Inspector's responsibility shall extend to all employees, substitute inspectors, agents, and employees or agents of substitute inspectors regardless of whether those individuals are paid or unpaid, concurrently employed by District, or acting as independent contractors of Inspector. Verification of compliance with this section and the Criminal Background Investigation Certification shall be provided in writing to the District prior to each individual's commencement of employment or participation on the Project and prior to permitting contact with any student.

37. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, Inspector must submit, upon request by District, appropriate documentation to District identifying the steps Inspector has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.

38. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.
39. **Integration/Extent of Agreement.** This Agreement represents the entire and integrated contract between District and Inspector, and supersedes all prior understandings, negotiations, representations, or agreements, either written or oral, unless specifically incorporated into this Agreement. Addenda shall be included only with the written approval of both District and Inspector. The headings of the paragraphs are for convenience only and are not a part of this Agreement and shall not be considered in construing the intent of this Agreement.
40. **Agreement Number.** The District will issue an agreement number for this Agreement as part of the District's fiscal accounting and payment procedures. The agreement number shall be included in all requests for payment hereunder. The District may change the agreement number during the term of the Agreement. The District's revision of an agreement number shall not be considered a material or substantive change to the Agreement.
41. **Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
42. **Disputes.** All claims, disputes, or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. If this method proves unsuccessful, then all claims, disputes or controversies as stated above may be decided through arbitration, if agreed to by all Parties.
43. **Severability.** If any term, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
44. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under this Agreement there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Inspector agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Inspector agrees to require like compliance by all its subcontractor(s).
45. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.
46. **Authority of Executing Officer or Party.** By signing below, the signer represents that it has the legal right, power, and authority to enter into and execute this Agreement and to bind the Party on whose behalf the signer executes this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

Contract # to be provided upon Board approval

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2017

West Contra Costa Unified School District

By: _____

Print Name: _____

Print Title: _____

Dated: _____, 2017

Production Technical Services, Inc.

By: _____

Print Name: _____

Print Title: _____

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

Date: _____

Proper Name of Inspector: _____

Signature: _____

Print Name: _____

Title: _____

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Work under this Contract.)

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Independent Consultant Agreement for Professional Services ("Agreement"):

☐ **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]** Consultant's employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Consultant's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c))

Date: _____

District Representative's Name and Title: _____

Signature: _____

☐ The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant's services under this Agreement and Consultant certifies its compliance with these provisions as follows: *"Consultant certifies that the Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto."*

☐ ~~Consultant's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:~~

Megan's Law (Sex Offenders). I have verified and will continue to verify that the employees of Consultant that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

[MUST BE COMPLETED BY CONSULTANT'S AUTHORIZED REPRESENTATIVE.] I am a representative of the Consultant entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant.

Date: _____

Name of Consultant or Company: _____

Signature: _____

Print Name and Title: _____

**AGREEMENT FOR ARCHITECTURAL SERVICES
BY AND BETWEEN
WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT
AND
HY ARCHITECTS**

This Agreement for Architectural Services is made as of the 15 day of June, in the year 2017, between the **West Contra Costa Unified School District**, a California public school district ("District"), and **HY Architects** ("Architect") (individually a "Party" and collectively "Parties"), for the following project ("Project"):

Korematsu Middle School Roof Screens, Fall Protection & Driveway

WITNESSETH, that for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

Article 1. Definitions

- 1.1. In addition to the definitions above, the following definitions for words and phrases shall apply when used in this Agreement, including all Exhibits:
 - 1.1.1. **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
 - 1.1.2. **Architect:** The architect listed in the first paragraph of this Agreement, including all Consultants to the Architect.
 - 1.1.3. **As-Built Drawings ("As-Built"):** Any document prepared and submitted by District's contractor(s) that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by change orders.
 - 1.1.4. **Bid Set:** The plans, drawings, and specifications at the end of the Construction Documents Phase that DSA has approved and that the District can use to go out to bid for construction of the Project.
 - 1.1.5. **Conforming Set:** The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase. The Architect shall ensure that DSA has approved all revisions to the Bid Set that are incorporated onto the Conforming Set and for which DSA approval is required.
 - 1.1.6. **Consultant(s):** Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Architect.
 - 1.1.7. **District:** The West Contra Costa Unified School District.
 - 1.1.8. **DSA:** The Division of the State Architect.
 - 1.1.9. **Project Budget:** The total amount indicated by the District for the entire Project plus all other costs, including design, construction, administration, financing, and all other costs.
 - 1.1.10. **Record Drawings:** A final set of drawings prepared by the Architect based upon marked-up prints, drawings, and other data furnished to Architect by Contractor that incorporates all changes from all As-Built, sketches, details, and clarifications.
 - 1.1.11. **Service(s) or Work:** All labor, materials, supervision, services, tasks, and work that the Architect is required to perform and that are required by, or reasonably inferred from, the Agreement, and that

are necessary for the design and completion of the Project.

- 1.1.12. **Visually Verify:** To verify to the fullest extent possible by physical inspection and reasonable investigation and without any destructive action.

Article 2. Scope, Responsibilities, And Services Of Architect

- 2.1. Architect shall provide the Services as described in **Exhibit "A"**, commencing with receipt of a written Notice to Proceed or authorization from District to perform Services requested hereunder.
- 2.2. Architect represents that the Architect has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of Services required under this Agreement and that no person having any such interest shall be employed by Architect.
- 2.3. Architect shall comply with Education Code section 17302(a) and agrees that any plans and/or specifications included in the Services shall be prepared under the supervision of licensed personnel, and that licensed personnel shall be in "responsible charge" of persons who observe the construction.
- 2.4. Architect shall contract for or employ at Architect's expense, Consultant(s) to the extent deemed necessary for completion of its Services on the Project including, but not limited to, architects, mechanical, electrical, structural, fire protection, civil engineers, landscape architects, food service, low voltage, data, and telephone Consultants, and interior designers, and cost estimation providers, licensed as required by applicable law. The names of Consultant(s) and a detailed scope of work to be performed by Consultants, shall be submitted to the District for approval prior to commencement of Services, as indicated below. The District reserves the right to reject the Architect's use of any particular Consultant. District shall not approve any Invoice submitted pursuant to Exhibit "D" that includes costs for Services performed by a Consultant that has not been approved by District. Nothing in the foregoing procedure shall create any contractual relationship between the District and any Consultant(s) employed by the Architect under terms of the Agreement.

Article 3. Completion of Services

The Architect shall commence Services under this Agreement upon receipt of a Notice to Proceed and shall prosecute the Services diligently as described in **Exhibit "A"**, so as to proceed with and complete the Services in compliance with the time as specified in the notice, if any.

Article 4. Compensation and Value of Agreement

- 4.1. District shall pay Architect for all Services contracted for under this Agreement on a time and materials basis. The total compensation paid Architect pursuant to this Agreement may not exceed One Hundred Five Thousand Five Hundred Sixty Eight **Dollars (\$105,568)**, as described in Exhibit B.
- 4.2. Architect shall notify District if District requested services or reimbursables will exceed the Five Thousand Dollars (\$5,000) limit of this Agreement. If any work is performed by Architect without the prior written authorization of District, District shall not be obligated to pay for such work. The Parties may, by written agreement, increase the monetary limit of this Agreement.
- 4.3. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Architect submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.
- 4.4. **Expenses.** District shall not be liable to Architect for any costs or expenses paid or incurred by Architect in performing the Services for District.

- 4.5. Architect must provide, to the District's satisfaction, appropriate substantiation for all Services or Work performed on an hourly basis. Architect shall properly support payment of all hourly services, as further described herein, for each invoice or application for payment submitted by Architect for its Services and Work. Failure to satisfy this requirement will result in Architect's invoice or application for payment being rejected until District approves Architect's full compliance herewith.
- 4.6. To substantiate Architect's hourly performance of the Services or Work, Architect at a minimum must set forth (i) the date, (ii) location of the Services or Work, (iii) amount of time spent on each task performed that day, (iv) a sufficiently-detailed description of the Services or Work for the task, and (v) the day's total number of hours. Merely stating the date and total number of hours worked shall be deemed insufficient. The District reserves the right to reject, in its sole discretion, any invoice that does not contain sufficient information to support the payment requested.

Article 5. Ownership of Data

- 5.1. Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for District to use, at its discretion, all plans, including, but not limited to, Record Drawings, specifications, and estimates that the Architect or its consultants, prepares or causes to be prepared pursuant to this Agreement.
- 5.2. The Architect retains all rights to all copyrights, designs, and other intellectual property embodied in the plans, Record Drawings, specifications, estimates, and other documents that the Architect or its consultants prepares or causes to be prepared pursuant to this Agreement.
- 5.3. The Architect shall perform the Services and prepare all documents under this Agreement with the assistance of Computer Aided Design Drafting (CADD) (e.g., AutoCAD) Technology. The Architect shall deliver to the District, on request, a "thumb" drive and/or compact disc with these documents that is compatible with AutoCAD. As to any drawings that Architect provides in a CADD file format, the District acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that the District should rely on hard copies of all documents.
- 5.4. In order to document exactly what CADD information was given to the District, Architect and District shall each sign a "hard" copy of reproducible documents that depict the information at the time Architect produces the CADD information. District agrees to release Architect from all liability, damages, and/or claims that arise due to any changes made to this information by anyone other than the Architect or Consultant(s) subsequent to it being given to the District.
- 5.5. Following the termination of this Agreement, for any reason whatsoever, the Architect shall promptly deliver to the District upon written request and at no cost to the District the following items (hereinafter "Instruments of Service") in electronic format (Microsoft Word) which the District shall have the right to utilize in any way permitted by statute:
 - 5.5.1. One (1) set of the Contract Documents, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.
 - 5.5.2. One (1) set of fixed image CADD files in DXF format of the drawings that are part of the Contract Documents.
 - 5.5.3. One (1) set of non-fixed image CADD drawing files in DXF and/or DWG format of the site plan, floor plans (architectural, plumbing, structural mechanical, and electrical), roof plan, sections, and exterior elevations of the Project.
 - 5.5.4. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data, and reports prepared by the Architect under this Agreement.

- 5.6. In the event the District changes or uses any fully or partially completed documents without the Architect's knowledge and participation, the District agrees to release Architect of responsibility for such changes, and shall indemnify, defend, and hold the Architect harmless from and against any and all claims, liabilities, suits, demands, losses, costs, and expenses including, but not limited to, reasonable attorneys' fees, on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of that change or use except to the extent the Architect is found to be liable in a forum of competent jurisdiction. In the event District uses any fully or partially completed documents without the Architect's full involvement, the District shall remove all title blocks and other information that might identify the Architect and the Architect's consultants.

Article 6. Termination of Agreement

- 6.1. If Architect fails to perform Architect's duties to the satisfaction of the District and as required by this Agreement, or if Architect fails to fulfill in a timely and professional manner Architect's material obligations under this Agreement, or if Architect shall violate any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement, in whole or in part, effective immediately upon the District giving written notice thereof to the Architect. In the event of a termination pursuant to this subdivision, Architect may invoice District for all Services performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Architect's actions, errors, or omissions that caused the District to terminate this Agreement. The District may, at its discretion, provide the Architect time to cure its default or breach.
- 6.2. District shall have the right in its sole discretion to terminate this Agreement for its own convenience. In the event of a termination for convenience, Architect may invoice District and District shall pay all undisputed invoice(s) for Services performed until the District's notice of termination.
- 6.3. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 6.4. The Architect has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement. Such termination shall be effective after receipt of written notice from Architect to the District. Architect may invoice District and District shall pay all undisputed invoice(s) for Services performed until the Architect's notice of termination.
- 6.5. If, at any time in the progress of the Design of the Project, the governing board of the District determines that the Project should be terminated, the Architect, upon written notice from the District of such termination, shall immediately cease Services on the Project. The District shall pay the Architect only the costs associated with the Services provided since the last invoice that has been paid and up to the notice of termination.
- 6.6. If the District suspends the Project for more than one hundred twenty (120) consecutive days, the Architect shall be compensated for Services performed prior to notice of that suspension. When the Project is resumed, the schedule shall be adjusted and the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Architect's Services. If the District suspends the Project for more than two (2) years, the Architect may terminate this Agreement by giving written notice.

Article 7. Indemnity/Architect Liability

- 7.1. To the fullest extent permitted by California law and in accordance with California Civil Code section 2782.8, Architect shall indemnify, protect, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees and members ("Indemnified Parties") from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney's and consultants'

fees and causes of action to property or persons, including personal injury and/or death ("Claim(s)"), to the extent that the Claim(s) arises out of, pertains to, or relates to the negligent errors or omissions (active or passive, ordinary or gross), recklessness (ordinary or gross), or willful misconduct of Architect, its directors, officials, officers, employees, contractors, subcontractors, consultants, subconsultants or agents arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. This indemnity excludes Architect's liability as to the active or sole negligence or willful misconduct of the District.

7.2. The following shall be Claims, to the extent they satisfy the definition of Claims herein:

7.2.1. The cost of Project delays. Without limiting Architect's liability for indirect cost impacts due to Project delays, the direct costs for which the Architect shall be liable for shall be proportionate to the amount the District is liable to the Project contractor(s), subcontractor(s), suppliers, inspector(s), construction manager(s) for the Project delays, including the proportionate cost of interim housing necessitated by Project delays, to the extent that the Project delays arise out of, pertain to, relate to or result from the negligent errors or omissions, recklessness, or willful misconduct of Architect in the performance of any Services which falls below the applicable standard of care of Architects engaged in similar public education projects.

7.2.2. The cost of construction change orders for errors and omissions. Without limiting Architect's liability for indirect cost impacts, the direct costs for which the Architect shall be liable shall equal the difference between the cost of the change order(s) and the reasonable cost of the work had that work been a part of the originally prepared construction documents, the change order(s) result from any error or omission of Architect in the performance of Services which falls below the applicable standard of care of Architects engaged in similar public education projects.

These amounts may be paid by Architect to District or the District may in reasonable good faith withhold those costs from amounts owing to Architect, pending resolution of the dispute.

7.3. Architect's duty to indemnify under this Agreement shall apply during the term of this Agreement and shall survive any expiration or termination of this Agreement until any such Claim(s) are barred by the applicable statute of limitations and is in addition to any other rights or remedies that the District may have under the law or under this Agreement.

Article 8. Mandatory Mediation for Claims

8.1. The Parties hereto agree prior to commencing any legal action relating to any Claim, as defined herein, to submit the Claim to a mandatory good-faith mediation process ("Mediation"). The Parties' expectations are that if the Claim is made by a third party (e.g., a contractor), that the third party will be a participant in that Mediation. The Parties agree that any statute of limitations applicable to any Claim shall be tolled for the period from the date a Party requests Mediation through the tenth (10th) day after termination of the Mediation, unless otherwise agreed to by the Parties.

8.2. Except as set forth below, the Parties agree to refrain from filing, maintaining, or prosecuting any action related to the Claim during the pendency of the Mediation provided that the Mediation must commence within thirty (30) days after a Party makes written demand to the other for Mediation.

8.3. The Parties shall participate in a minimum of one full-day mediation session before the Mediation may be declared unsuccessful and terminated by either Party. The Mediation shall be conducted in accordance with such rules as the Parties agree upon, or in the absence of agreement, in accordance with the Commercial Mediation Rules of JAMS/Endispute. Evidence of anything said, any admissions made, or any documents prepared in the course of the Mediation shall not be admissible in evidence or subject to discovery in any court action pursuant to Evidence Code Section 1152.5.

8.4. The Parties shall mutually agree to the selection of a mediator who is an attorney that is experienced in public

works construction claims. If the Parties are unable to agree upon a mediator, then the mediator shall be appointed by JAMS/Endispute.

- 8.5. The Mediation shall take place at a location within twenty (20) miles of the District's administrative office. The mediator's fees and administrative fees, if any, shall be split equally between the Parties, but, unless otherwise agreed to in writing, each Party shall bear its own attorney's fees.
- 8.6. If any Party commences a legal action without first attempting to resolve the Claim as required by this Article, that Party shall be in breach of this Agreement and shall not be entitled to recover attorney's fees that might have otherwise been recoverable.
- 8.7. This mandatory mediation process shall only apply to Claims pursuant to the Architect Indemnity provision herein and shall not apply to any disputes to be resolved pursuant to the Alternative Dispute Resolution provisions herein.

Article 9. Fingerprinting

Pursuant to Education Code section 45125.2, District has determined on the basis of scope of Services in this Agreement of this Project, that Architect, Consultants, and their employees will have only limited contact with pupils at most. Architect shall promptly notify District in writing of any facts or circumstances which might reasonably lead District to determine that contact will be more than limited as defined by Education Code section 45125.1(d).

Article 10. Responsibilities of the District

- 10.1. The District shall examine the documents submitted by the Architect and shall render decisions so as to avoid unreasonable delay in the process of the Architect's Services.
- 10.2. The District shall verbally or in writing advise the Architect if the District becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's documents. Failure to provide such notice shall not relieve Architect of its responsibility therefore, if any.
- 10.3. Unless the District and the Architect agree that a hazardous materials consultant shall be a Consultant of the Architect, the District shall furnish the services of a hazardous material consultant or other consultants when such services are requested in writing by Architect and deemed necessary by the District or are requested by the District. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to said matters which are to be incorporated into bid documents prepared by Architect. If the hazardous materials consultant is furnished by the District and not a consultant of the Architect, the specifications shall include a note to the effect that they are included in the Architect's bid documents for the District's convenience and have not been prepared or reviewed by the Architect. The note shall also direct questions about the specifications to its preparer.
- 10.4. District personnel and/or its designated representatives shall coordinate with Architect as may be requested and desirable for the coordination or management of work related to the Project.
- 10.5. The District shall provide to the Architect all relevant information it knows it possesses regarding the Project that the Architect needs to perform its Services. The District shall provide this information and its decisions required under this Agreement in a timely manner and to avoid unreasonable delay in the Project.

Article 11. Liability of District

- 11.1. Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided for in this Agreement. Notwithstanding any other provision of

this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed.

- 11.2. District shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Architect, or by its employees, even though such equipment may be furnished or loaned to Architect by District.

Article 12. Nondiscrimination

- 12.1. Architect agrees that no discrimination shall be made in the employment of persons under this Agreement because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of such person.
- 12.2. Architect shall comply with any and all applicable regulations and laws governing nondiscrimination in employment.

Article 13. Insurance

- 13.1. The Architect shall procure and maintain at all times it performs any portion of Services the following insurance with minimum limits equal to the amount indicated below.

13.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Architect, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from or in connection with the performance of any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

13.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of Architect's employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Architect shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

13.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Architect's profession.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	 \$ 1,000,000 \$ 1,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	 \$ 1,000,000 \$ 1,000,000
Professional Liability	\$ 1,000,000
Workers Compensation	Statutory Limits

Employer's Liability	\$ 1,000,000
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13.2. **Proof of Carriage of Insurance.** The Architect shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

13.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

13.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

13.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Architect's insurance policies shall be primary to any insurance or self-insurance maintained by District.

13.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

13.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

Article 14. Covenant Against Contingent Fees

Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Architect, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Architect, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the contract price or consideration, or to recover, the full amount of such compensation, fee, commission, percentage fee, gift, or contingency.

Article 15. Entire Agreement/Modification

This Agreement, including the Exhibits incorporated by reference into this Agreement, supersedes all previous contracts and constitutes the entire understanding of the Parties hereto. Architect shall be entitled to no other benefits than those specified herein. No changes, amendments, or alterations shall be effective unless in writing and signed by both Parties. Architect specifically acknowledges that in entering this Agreement, Architect relies solely upon the provisions contained in this Agreement and no others.

Article 16. Non-Assignment of Agreement

In as much as this Agreement is intended to secure the specialized Services of the Architect, Architect may not assign, transfer, delegate, or sublet any interest therein without the prior written consent of District and any such assignment, transfer, delegation, or sublease without the District's prior written consent shall be considered null and void. Likewise, District may not assign, transfer, delegate, or sublet any interest therein without the prior written consent of Architect and any such assignment, transfer, delegation, or sublease without Architect's prior written consent shall be considered null and void.

Article 17. Law/Venue

- 17.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability, and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.
- 17.2. The county in which the District administration office is located shall be the venue for any action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

Article 18. Alternative Dispute Resolution

18.1. Architect's Invoices

- 18.1.1. If the District disapproves of any portion or amount(s) of the Architect's invoices, the District shall within thirty (30) days of receipt by the District of any of the Architect's invoices, communicate to the Architect in writing, with reasonable detail, what portion or amount of the Architect's invoices that are disapproved for payment, what portion or amount of the Architect's invoices that are approved for payment, and the basis for the District's disapproval of the disputed portion(s) or amount(s) of the Architect's invoices ("Disputed Architect Invoice Detail").
- 18.1.2. If the Architect disagrees with the Disputed Architect Invoice Detail, the Architect shall communicate to the District in writing, and request to meet and confer in good faith with respect to any such disapproved portion or amount of the Architect invoices and the Disputed Architect Invoice Detail to determine if the dispute can be resolved. Such meet and confer communications shall include, but are not limited to, face-to-face meetings within thirty (30) days of the Architect's notice to the District with the appropriate District and Architect personnel as appropriate and necessary.
- 18.1.3. If the Parties cannot resolve the matter during this meet and confer process, the Parties shall handle the matter as a dispute as indicated herein.

18.2. Disputes between the parties arising out of this Agreement shall be resolved by the following processes:

- 18.2.1. **Negotiation.** The parties shall first attempt in good faith to resolve any controversy or dispute arising out of or relating to this Agreement by negotiation. The Parties' meet and confer process for any Disputed Architect Invoice Detail shall satisfy this negotiation requirement.
- 18.2.2. **Mediation.** Within thirty (30) days, but no earlier than fifteen (15) days, following the earlier of receipt of notice by one party by the other party of a demand for mediation, the parties shall submit the dispute to non-binding mediation administered by the AAA (or other agreed upon rules) under its construction industry mediation rules, unless waived by mutual stipulation of both parties.
- 18.2.3. **Litigation.** Disputes arising from this Agreement that cannot be settled through negotiation or mediation (after those processes have been exhausted) shall be litigated in the California Superior Court in the county in which the Project that is the subject of this Agreement is located.

- 18.3. Architect shall neither rescind nor stop the progress of its work pending the outcome of any dispute under this Agreement.

Article 19. Severability

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

Article 20. Employment Status

- 20.1. Architect shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the Architect performs the Services which are the subject matter of this Agreement; provided always, however, that the Services to be provided by Architect shall be provided in a manner consistent with all applicable standards and regulations governing such Services.
- 20.2. Architect understands and agrees that the Architect's personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical, or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave, or other leave, with or without pay, or for other benefits which accrue to a District employee.
- 20.3. Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Architect is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Architect which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 20.4. Should a relevant taxing authority determine a liability for past services performed by Architect for District, upon notification of such fact by District, Architect shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Architect under this Agreement (again, offsetting any amounts already paid by Architect which can be applied as a credit against such liability).
- 20.5. A determination of employment status pursuant to the preceding paragraphs of this Article shall be solely for the purposes of the particular tax in question and, for all other purposes of this Agreement, Architect shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Architect is an employee for any other purpose, then Architect agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Architect was not an employee.
- 20.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 21. Warranty and Certification of Architect

- 21.1. Architect warrants and certifies that the Architect is properly certified and licensed under the laws and regulations of the State of California to provide the professional Services that it has herein agreed to perform.
- 21.2. Architect warrants and certifies that it is aware of the provisions of the California Labor Code that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with those provisions before commencing the performance of the Services of this Agreement.
- 21.3. Architect warrants and certifies that it is aware of the provisions of the California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since the Architect is performing Services as part of an applicable "public works" or "maintenance" project, and since the total compensation may be One Thousand

Dollars (\$1,000) or more, the Architect agrees to fully comply with and to require its Consultant(s) to fully comply with all applicable Prevailing Wage Laws.

Article 22. Cost Disclosure - Documents And Written Reports

Architect shall be responsible for compliance with California Government Code section 7550, if the total cost of the Contract is over Five Thousand Dollars (\$5,000).

Article 23. Notices & Communications

Notices and communications between the Parties to this Agreement may be sent to the following addresses:

District:

West Contra Costa Unified School District
1400 Marina Way South
Richmond, CA 94804
Attn: Luis Freese

Architect:

HY Architects
300 27th Street, 2nd Floor
Oakland, CA 94612
Attn: Marcus Hibser

Any notice personally given shall be effective upon receipt. Any notice sent by facsimile shall be effective the day after receipt. Any notice sent by overnight delivery service shall be effective the day after delivery. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

Article 24. Disabled Veteran Business Enterprise Participation

Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises ("DVBEs") of at least three percent (3%), per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the Act). This Project may use funds allocated under the Act. Therefore, to the extent feasible and pertaining to future hirings, the Architect, before it executes this Agreement, shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBEs in conjunction with the contract, and documentation demonstrating the Architect's good faith efforts to meet these goals.

Article 25. District's Right to Audit

- 25.1. District retains the right to review and audit, and the reasonable right of access to Architect's and any Consultant's premises to review and audit the Architect's compliance with the provisions of this Agreement ("District's Audit Right"). The District's Audit Right includes the right to inspect, photocopy, and to retain copies, outside of the Architect's premises, of any and all Project-related records, documents and other information with appropriate safeguards, if such retention is deemed necessary by the District in its sole discretion. The District's Right to Audit shall also include the right to interview current or former employees and Consultants of Architect with respect to matters or issues under audit. The District shall keep this information confidential, as allowed by applicable law.
- 25.2. The District's Audit Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the District determines are necessary to discover and verify that the Architect is in compliance with the requirements of this Agreement.
- 25.3. If there is a claim for additional compensation or for Extra Services, the District's Audit Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the District determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

- 25.4. The Architect shall maintain complete and accurate records for a minimum of seven (7) years and in accordance with generally accepted accounting practices in the industry. The Architect shall make available to the District for review and audit, all Project related accounting records and documents, and any other financial data. Upon District's request, the Architect shall submit exact duplicates of originals of all requested records to the District.
- 25.5. The Architect shall include audit provisions in any and all of its subcontracts, and shall ensure that this Article is binding upon all Consultants.
- 25.6. Architect shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of Architect's Project-related documents, records and information. The District's Right to Audit and Architect's compliance with the same, shall be at no additional costs to the District.
- 25.7. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of more than Ten Thousand Dollars (\$10,000), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of the District, or as part of any audit of the District, for a period of three (3) years after final payment under the Agreement.
- 25.8. In the event the District's Right to Audit, or an audit by the State Auditor evidences payments to Architect not in accordance with the provisions of this Agreement, Architect shall pay District all costs reasonably incurred by District in conducting an audit hereunder.
- 25.9. Architect acknowledges and agrees that the District's Audit Right, pursuant to the foregoing provisions, shall apply to, and may be utilized by the District for the production of, any records or documents subject to disclosure under the California Public Records Act, Government Code § 6250 et seq. ("CPRA"), unless otherwise exempt, and which may include, but are not limited to, records or documents in the District's constructive possession but under Architect's control regardless if created, sent, received, stored, or maintained in a personal account or device of Architect or its employees, as prescribed by applicable law. In the event the District exercises District's Audit Right in response to or as part of a request under the CPRA, Architect agrees to provide District with an affidavit, if and as needed or requested by District, within five (5) days of District's request therefor, that certifies Architect's search for and production of responsive records subject to disclosure pursuant to the CPRA, if any.

Article 26. Other Provisions

- 26.1. Neither the District's review of, approval of, nor payment for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Architect shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Architect's failure to perform any of the Services furnished under this Agreement to the standard of care of the Architect for its Services, which shall be, at a minimum, the standard of care of architects performing similar work for California school districts in or around the same geographic area of the District.
- 26.2. Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.
- 26.3. The Architect acknowledges that the District is a public agency that is subject to heightened curiosity by the news media and the public and that the Architect may not be apprised of all facts surrounding the Project that Architect is working on. Accordingly, Architect shall promptly refer all inquiries from the news media or public concerning this Agreement or its performance under the Agreement to the District, and Architect shall not make any statements or disclose any documents to the media or the public relating to the performance under this Agreement or the effects caused thereby. If Architect receives a complaint from a citizen or member of the public concerning the performance or effects of this Agreement, it shall promptly inform the District of that

complaint. In its sole discretion, the District shall determine the appropriate response to the complaint.

- 26.4. **Agreement Number.** The District will issue an agreement number for this Agreement as part of the District's fiscal accounting and payment procedures. The agreement number shall be included in all requests for payment hereunder. The District may change the agreement number during the term of the Agreement. The District's revision of an agreement number shall not be considered a material or substantive change to the Agreement.
- 26.5. **Confidentiality.** Architect, and its Consultants, and employee(s) shall maintain the confidentiality of all information received in the course of performing the Services. Architect understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
- 26.6. **Exhibit "A", "B"** and any Certificate(s) attached hereto are hereby incorporated by this reference and made a part of this Agreement.
- 26.7. **Authority of Executing Officer or Party.** By signing below, the signer represents that it has the legal right, power, and authority to enter into and execute this Agreement and to bind the Party on whose behalf the signer executes this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

Dated: _____, 20__

Dated: _____, 20__

West Contra Costa Unified School District

HY Architects, Inc.

By: _____

By: _____

Print Name: Lisa LeBlanc

Print Name: _____

Print Title: Associate Superintendent of Operations

Print Title: _____

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Agreement for Architectural Service ("Agreement"):

☐ **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]** Architect's employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Architect's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Architect for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Ed. Code, § 45125.1 (c).)

Date: _____
District Representative's Name and Title: _____
Signature: _____

☐ The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Architect's services under this Agreement and Architect certifies its compliance with these provisions as follows: *"Architect certifies that the Architect has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Architect's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Architect, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto."*

☐ Architect's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

_____ The installation of a physical barrier at the worksite to limit contact with pupils.

_____ Continual supervision and monitoring of all Architect's on-site employees of Architect by an employee of Architect, _____, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

_____ Surveillance of Employees by District personnel. **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]**

Date: _____
District Representative's Name and Title: _____
Signature: _____

Megan's Law (Sex Offenders). I have verified and will continue to verify that the employees of Architect that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

[MUST BE COMPLETED BY ARCHITECT'S AUTHORIZED REPRESENTATIVE.] I am a representative of the Architect entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Architect.

Date: _____
Name of Architect or Company: _____
Signature: _____
Print Name and Title: _____

TUBERCULOSIS CLEARANCE CERTIFICATION

The undersigned does hereby certify to the governing board of the District as follows:

I am a representative of the Architect currently entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Architect.

Architect's responsibility for tuberculosis clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Architect.

Architect certifies that at least one of the following items applies to the services that are the subject of the Agreement:

☐

The Architect ensures that any person providing any portion of the Services has submitted to an examination within the past 60 days to determine that he or she is free of active tuberculosis, by a physician or surgeon. A complete and accurate list of Architect's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto; and/or

☐

Architect's services under the Agreement are to be provided at an unoccupied school site only and/or will not be done on any District property and no employee and/or subcontractor or supplier of any tier of Agreement shall come in contact with District pupils.

Date: _____

Proper Name of Architect: _____

Signature: _____

Print Name: _____

Title: _____

EXHIBIT "A"
SCOPE OF SERVICES

Architect's entire Proposal is not made part of this Agreement.

Services include bidding and construction administration including coordination with the civil engineer, structural engineer, and waterproofing consultant.

EXHIBIT "B"
FEE SCHEDULE

Architectural	\$53,380
Structural	\$7,488
Civil	\$7,500
Waterproofing	\$32,200
Reimbursable	\$5,000

Title	Bill Rate
Principal	\$235
Architect 3	\$170
Architect 2	\$160
Architect 1	\$150
Job Captain	\$130
Administrative Staff	\$85
Reimbursables	5%

**AGREEMENT FOR ARCHITECTURAL SERVICES
BY AND BETWEEN
WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT
AND
ARCHITECTS MA**

This Agreement for Architectural Services is made as of the 15 day of June, in the year 2017, between the **West Contra Costa Unified School District**, a California public school district ("District"), and **Architects MA** ("Architect") (individually a "Party" and collectively "Parties"), for the following project ("Project"):

Caliber Temporary Campus @ Kennedy HS

WITNESSETH, that for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

Article 1. Definitions

- 1.1. In addition to the definitions above, the following definitions for words and phrases shall apply when used in this Agreement, including all Exhibits:
 - 1.1.1. **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
 - 1.1.2. **Architect:** The architect listed in the first paragraph of this Agreement, including all Consultants to the Architect.
 - 1.1.3. **As-Built Drawings ("As-Built"):** Any document prepared and submitted by District's contractor(s) that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by change orders.
 - 1.1.4. **Bid Set:** The plans, drawings, and specifications at the end of the Construction Documents Phase that DSA has approved and that the District can use to go out to bid for construction of the Project.
 - 1.1.5. **Conforming Set:** The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase. The Architect shall ensure that DSA has approved all revisions to the Bid Set that are incorporated onto the Conforming Set and for which DSA approval is required.
 - 1.1.6. **Consultant(s):** Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Architect.
 - 1.1.7. **District:** The West Contra Costa Unified School District.
 - 1.1.8. **DSA:** The Division of the State Architect.
 - 1.1.9. **Project Budget:** The total amount indicated by the District for the entire Project plus all other costs, including design, construction, administration, financing, and all other costs.
 - 1.1.10. **Record Drawings:** A final set of drawings prepared by the Architect based upon marked-up prints, drawings, and other data furnished to Architect by Contractor that incorporates all changes from all As-Built, sketches, details, and clarifications.
 - 1.1.11. **Service(s) or Work:** All labor, materials, supervision, services, tasks, and work that the Architect is required to perform and that are required by, or reasonably inferred from, the Agreement, and that

are necessary for the design and completion of the Project.

- 1.1.12. **Visually Verify:** To verify to the fullest extent possible by physical inspection and reasonable investigation and without any destructive action.

Article 2. Scope, Responsibilities, And Services Of Architect

- 2.1. Architect shall provide the Services as described in **Exhibit "A"**, commencing with receipt of a written Notice to Proceed or authorization from District to perform Services requested hereunder.
- 2.2. Architect represents that the Architect has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of Services required under this Agreement and that no person having any such interest shall be employed by Architect.
- 2.3. Architect shall comply with Education Code section 17302(a) and agrees that any plans and/or specifications included in the Services shall be prepared under the supervision of licensed personnel, and that licensed personnel shall be in "responsible charge" of persons who observe the construction.
- 2.4. Architect shall contract for or employ at Architect's expense, Consultant(s) to the extent deemed necessary for completion of its Services on the Project including, but not limited to, architects, mechanical, electrical, structural, fire protection, civil engineers, landscape architects, food service, low voltage, data, and telephone Consultants, and interior designers, and cost estimation providers, licensed as required by applicable law. The names of Consultant(s) and a detailed scope of work to be performed by Consultants, shall be submitted to the District for approval prior to commencement of Services, as indicated below. The District reserves the right to reject the Architect's use of any particular Consultant. District shall not approve any Invoice submitted pursuant to Exhibit "D" that includes costs for Services performed by a Consultant that has not been approved by District. Nothing in the foregoing procedure shall create any contractual relationship between the District and any Consultant(s) employed by the Architect under terms of the Agreement.

Article 3. Completion of Services

The Architect shall commence Services under this Agreement upon receipt of a Notice to Proceed and shall prosecute the Services diligently as described in **Exhibit "A"**, so as to proceed with and complete the Services in compliance with the time as specified in the notice, if any.

Article 4. Compensation and Value of Agreement

- 4.1. District shall pay Architect for all Services contracted for under this Agreement as described in Exhibit B "Fee Schedule". The total compensation paid Architect pursuant to this Agreement may not exceed Thirty Nine Thousand Three Hundred **Dollars (\$39,300)**.
- 4.2. Architect shall notify District if District requested services or reimbursables will exceed the Five Hundred Dollars (\$500) limit of this Agreement. If any work is performed by Architect without the prior written authorization of District, District shall not be obligated to pay for such work. The Parties may, by written agreement, increase the monetary limit of this Agreement.
- 4.3. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Architect submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.
- 4.4. **Expenses.** District shall not be liable to Architect for any costs or expenses paid or incurred by Architect in performing the Services for District.

- 4.5. Architect must provide, to the District's satisfaction, appropriate substantiation for all Services or Work performed. Architect shall properly support payment of all services, as further described herein, for each invoice or application for payment submitted by Architect for its Services and Work. Failure to satisfy this requirement will result in Architect's invoice or application for payment being rejected until District approves Architect's full compliance herewith.
- 4.6. The District reserves the right to reject, in its sole discretion, any invoice that does not contain sufficient information to support the payment requested.

Article 5. Ownership of Data

- 5.1. Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for District to use, at its discretion, all plans, including, but not limited to, Record Drawings, specifications, and estimates that the Architect or its consultants, prepares or causes to be prepared pursuant to this Agreement.
- 5.2. The Architect retains all rights to all copyrights, designs, and other intellectual property embodied in the plans, Record Drawings, specifications, estimates, and other documents that the Architect or its consultants prepares or causes to be prepared pursuant to this Agreement.
- 5.3. The Architect shall perform the Services and prepare all documents under this Agreement with the assistance of Computer Aided Design Drafting (CADD) (e.g., AutoCAD) Technology. The Architect shall deliver to the District, on request, a "thumb" drive and/or compact disc with these documents that is compatible with AutoCAD. As to any drawings that Architect provides in a CADD file format, the District acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that the District should rely on hard copies of all documents.
- 5.4. In order to document exactly what CADD information was given to the District, Architect and District shall each sign a "hard" copy of reproducible documents that depict the information at the time Architect produces the CADD information. District agrees to release Architect from all liability, damages, and/or claims that arise due to any changes made to this information by anyone other than the Architect or Consultant(s) subsequent to it being given to the District.
- 5.5. Following the termination of this Agreement, for any reason whatsoever, the Architect shall promptly deliver to the District upon written request and at no cost to the District the following items (hereinafter "Instruments of Service") in electronic format (Microsoft Word) which the District shall have the right to utilize in any way permitted by statute:
 - 5.5.1. One (1) set of the Contract Documents, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.
 - 5.5.2. One (1) set of fixed image CADD files in DXF format of the drawings that are part of the Contract Documents.
 - 5.5.3. One (1) set of non-fixed image CADD drawing files in DXF and/or DWG format of the site plan, floor plans (architectural, plumbing, structural mechanical, and electrical), roof plan, sections, and exterior elevations of the Project.
 - 5.5.4. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data, and reports prepared by the Architect under this Agreement.
- 5.6. In the event the District changes or uses any fully or partially completed documents without the Architect's knowledge and participation, the District agrees to release Architect of responsibility for such changes, and shall indemnify, defend, and hold the Architect harmless from and against any and all claims, liabilities, suits,

demands, losses, costs, and expenses including, but not limited to, reasonable attorneys' fees, on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of that change or use except to the extent the Architect is found to be liable in a forum of competent jurisdiction. In the event District uses any fully or partially completed documents without the Architect's full involvement, the District shall remove all title blocks and other information that might identify the Architect and the Architect's consultants.

Article 6. Termination of Agreement

- 6.1. If Architect fails to perform Architect's duties to the satisfaction of the District and as required by this Agreement, or if Architect fails to fulfill in a timely and professional manner Architect's material obligations under this Agreement, or if Architect shall violate any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement, in whole or in part, effective immediately upon the District giving written notice thereof to the Architect. In the event of a termination pursuant to this subdivision, Architect may invoice District for all Services performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Architect's actions, errors, or omissions that caused the District to terminate this Agreement. The District may, at its discretion, provide the Architect time to cure its default or breach.
- 6.2. District shall have the right in its sole discretion to terminate this Agreement for its own convenience. In the event of a termination for convenience, Architect may invoice District and District shall pay all undisputed invoice(s) for Services performed until the District's notice of termination.
- 6.3. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 6.4. The Architect has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement. Such termination shall be effective after receipt of written notice from Architect to the District. Architect may invoice District and District shall pay all undisputed invoice(s) for Services performed until the Architect's notice of termination.
- 6.5. If, at any time in the progress of the Design of the Project, the governing board of the District determines that the Project should be terminated, the Architect, upon written notice from the District of such termination, shall immediately cease Services on the Project. The District shall pay the Architect only the costs associated with the Services provided since the last invoice that has been paid and up to the notice of termination.
- 6.6. If the District suspends the Project for more than one hundred twenty (120) consecutive days, the Architect shall be compensated for Services performed prior to notice of that suspension. When the Project is resumed, the schedule shall be adjusted and the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Architect's Services. If the District suspends the Project for more than two (2) years, the Architect may terminate this Agreement by giving written notice.

Article 7. Indemnity/Architect Liability

- 7.1. To the fullest extent permitted by California law and in accordance with California Civil Code section 2782.8, Architect shall indemnify, protect, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees and members ("Indemnified Parties") from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney's and consultants' fees and causes of action to property or persons, including personal injury and/or death ("Claim(s)"), to the extent that the Claim(s) arises out of, pertains to, or relates to the negligent errors or omissions (active or passive, ordinary or gross), recklessness (ordinary or gross), or willful misconduct of Architect, its directors, officials, officers, employees, contractors, subcontractors, consultants, subconsultants or agents arising out of,

connected with, or resulting from the performance of the Services, the Project, or this Agreement. This indemnity excludes Architect's liability as to the active or sole negligence or willful misconduct of the District.

7.2. The following shall be Claims, to the extent they satisfy the definition of Claims herein:

7.2.1. The cost of Project delays. Without limiting Architect's liability for indirect cost impacts due to Project delays, the direct costs for which the Architect shall be liable for shall be proportionate to the amount the District is liable to the Project contractor(s), subcontractor(s), suppliers, inspector(s), construction manager(s) for the Project delays, including the proportionate cost of interim housing necessitated by Project delays, to the extent that the Project delays arise out of, pertain to, relate to or result from the negligent errors or omissions, recklessness, or willful misconduct of Architect in the performance of any Services which falls below the applicable standard of care of Architects engaged in similar public education projects.

7.2.2. The cost of construction change orders for errors and omissions. Without limiting Architect's liability for indirect cost impacts, the direct costs for which the Architect shall be liable shall equal the difference between the cost of the change order(s) and the reasonable cost of the work had that work been a part of the originally prepared construction documents, the change order(s) result from any error or omission of Architect in the performance of Services which falls below the applicable standard of care of Architects engaged in similar public education projects.

These amounts may be paid by Architect to District or the District may in reasonable good faith withhold those costs from amounts owing to Architect, pending resolution of the dispute.

7.3. Architect's duty to indemnify under this Agreement shall apply during the term of this Agreement and shall survive any expiration or termination of this Agreement until any such Claim(s) are barred by the applicable statute of limitations and is in addition to any other rights or remedies that the District may have under the law or under this Agreement.

Article 8. Mandatory Mediation for Claims

8.1. The Parties hereto agree prior to commencing any legal action relating to any Claim, as defined herein, to submit the Claim to a mandatory good-faith mediation process ("Mediation"). The Parties' expectations are that if the Claim is made by a third party (e.g., a contractor), that the third party will be a participant in that Mediation. The Parties agree that any statute of limitations applicable to any Claim shall be tolled for the period from the date a Party requests Mediation through the tenth (10th) day after termination of the Mediation, unless otherwise agreed to by the Parties.

8.2. Except as set forth below, the Parties agree to refrain from filing, maintaining, or prosecuting any action related to the Claim during the pendency of the Mediation provided that the Mediation must commence within thirty (30) days after a Party makes written demand to the other for Mediation.

8.3. The Parties shall participate in a minimum of one full-day mediation session before the Mediation may be declared unsuccessful and terminated by either Party. The Mediation shall be conducted in accordance with such rules as the Parties agree upon, or in the absence of agreement, in accordance with the Commercial Mediation Rules of JAMS/Endispute. Evidence of anything said, any admissions made, or any documents prepared in the course of the Mediation shall not be admissible in evidence or subject to discovery in any court action pursuant to Evidence Code Section 1152.5.

8.4. The Parties shall mutually agree to the selection of a mediator who is an attorney that is experienced in public works construction claims. If the Parties are unable to agree upon a mediator, then the mediator shall be appointed by JAMS/Endispute.

8.5. The Mediation shall take place at a location within twenty (20) miles of the District's administrative office. The

mediator's fees and administrative fees, if any, shall be split equally between the Parties, but, unless otherwise agreed to in writing, each Party shall bear its own attorney's fees.

- 8.6. If any Party commences a legal action without first attempting to resolve the Claim as required by this Article, that Party shall be in breach of this Agreement and shall not be entitled to recover attorney's fees that might have otherwise been recoverable.
- 8.7. This mandatory mediation process shall only apply to Claims pursuant to the Architect Indemnity provision herein and shall not apply to any disputes to be resolved pursuant to the Alternative Dispute Resolution provisions herein.

Article 9. Fingerprinting

Pursuant to Education Code section 45125.2, District has determined on the basis of scope of Services in this Agreement of this Project, that Architect, Consultants, and their employees will have only limited contact with pupils at most. Architect shall promptly notify District in writing of any facts or circumstances which might reasonably lead District to determine that contact will be more than limited as defined by Education Code section 45125.1(d).

Article 10. Responsibilities of the District

- 10.1. The District shall examine the documents submitted by the Architect and shall render decisions so as to avoid unreasonable delay in the process of the Architect's Services.
- 10.2. The District shall verbally or in writing advise the Architect if the District becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's documents. Failure to provide such notice shall not relieve Architect of its responsibility therefore, if any.
- 10.3. Unless the District and the Architect agree that a hazardous materials consultant shall be a Consultant of the Architect, the District shall furnish the services of a hazardous material consultant or other consultants when such services are requested in writing by Architect and deemed necessary by the District or are requested by the District. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to said matters which are to be incorporated into bid documents prepared by Architect. If the hazardous materials consultant is furnished by the District and not a consultant of the Architect, the specifications shall include a note to the effect that they are included in the Architect's bid documents for the District's convenience and have not been prepared or reviewed by the Architect. The note shall also direct questions about the specifications to its preparer.
- 10.4. District personnel and/or its designated representatives shall coordinate with Architect as may be requested and desirable for the coordination or management of work related to the Project.
- 10.5. The District shall provide to the Architect all relevant information it knows it possesses regarding the Project that the Architect needs to perform its Services. The District shall provide this information and its decisions required under this Agreement in a timely manner and to avoid unreasonable delay in the Project.

Article 11. Liability of District

- 11.1. Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided for in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed.

- 11.2. District shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Architect, or by its employees, even though such equipment may be furnished or loaned to Architect by District.

Article 12. Nondiscrimination

- 12.1. Architect agrees that no discrimination shall be made in the employment of persons under this Agreement because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of such person.
- 12.2. Architect shall comply with any and all applicable regulations and laws governing nondiscrimination in employment.

Article 13. Insurance

- 13.1. The Architect shall procure and maintain at all times it performs any portion of Services the following insurance with minimum limits equal to the amount indicated below.

13.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Architect, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from or in connection with the performance of any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

13.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of Architect's employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Architect shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

13.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Architect's profession.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
Automobile Liability Insurance - Any Auto	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
Professional Liability	\$ 1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

- 13.2. **Proof of Carriage of Insurance.** The Architect shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered

in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

- 13.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
 - 13.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
 - 13.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Architect's insurance policies shall be primary to any insurance or self-insurance maintained by District.
 - 13.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.
- 13.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

Article 14. Covenant Against Contingent Fees

Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Architect, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Architect, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the contract price or consideration, or to recover, the full amount of such compensation, fee, commission, percentage fee, gift, or contingency.

Article 15. Entire Agreement/Modification

This Agreement, including the Exhibits incorporated by reference into this Agreement, supersedes all previous contracts and constitutes the entire understanding of the Parties hereto. Architect shall be entitled to no other benefits than those specified herein. No changes, amendments, or alterations shall be effective unless in writing and signed by both Parties. Architect specifically acknowledges that in entering this Agreement, Architect relies solely upon the provisions contained in this Agreement and no others.

Article 16. Non-Assignment of Agreement

In as much as this Agreement is intended to secure the specialized Services of the Architect, Architect may not assign, transfer, delegate, or sublet any interest therein without the prior written consent of District and any such assignment, transfer, delegation, or sublease without the District's prior written consent shall be considered null and void. Likewise, District may not assign, transfer, delegate, or sublet any interest therein without the prior written consent of Architect and any such assignment, transfer, delegation, or sublease without Architect's prior written consent shall be considered null and void.

Article 17. Law/Venue

- 17.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability, and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State

of California.

- 17.2. The county in which the District administration office is located shall be the venue for any action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

Article 18. Alternative Dispute Resolution

18.1. Architect's Invoices

18.1.1. If the District disapproves of any portion or amount(s) of the Architect's invoices, the District shall within thirty (30) days of receipt by the District of any of the Architect's invoices, communicate to the Architect in writing, with reasonable detail, what portion or amount of the Architect's invoices that are disapproved for payment, what portion or amount of the Architect's invoices that are approved for payment, and the basis for the District's disapproval of the disputed portion(s) or amount(s) of the Architect's invoices ("Disputed Architect Invoice Detail").

18.1.2. If the Architect disagrees with the Disputed Architect Invoice Detail, the Architect shall communicate to the District in writing, and request to meet and confer in good faith with respect to any such disapproved portion or amount of the Architect invoices and the Disputed Architect Invoice Detail to determine if the dispute can be resolved. Such meet and confer communications shall include, but are not limited to, face-to-face meetings within thirty (30) days of the Architect's notice to the District with the appropriate District and Architect personnel as appropriate and necessary.

18.1.3. If the Parties cannot resolve the matter during this meet and confer process, the Parties shall handle the matter as a dispute as indicated herein.

18.2. Disputes between the parties arising out of this Agreement shall be resolved by the following processes:

18.2.1. **Negotiation.** The parties shall first attempt in good faith to resolve any controversy or dispute arising out of or relating to this Agreement by negotiation. The Parties' meet and confer process for any Disputed Architect Invoice Detail shall satisfy this negotiation requirement.

18.2.2. **Mediation.** Within thirty (30) days, but no earlier than fifteen (15) days, following the earlier of receipt of notice by one party by the other party of a demand for mediation, the parties shall submit the dispute to non-binding mediation administered by the AAA (or other agreed upon rules) under its construction industry mediation rules, unless waived by mutual stipulation of both parties.

18.2.3. **Litigation.** Disputes arising from this Agreement that cannot be settled through negotiation or mediation (after those processes have been exhausted) shall be litigated in the California Superior Court in the county in which the Project that is the subject of this Agreement is located.

18.3. Architect shall neither rescind nor stop the progress of its work pending the outcome of any dispute under this Agreement.

Article 19. Severability

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

Article 20. Employment Status

20.1. Architect shall, during the entire term of Agreement, be construed to be an independent contractor and nothing

in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the Architect performs the Services which are the subject matter of this Agreement; provided always, however, that the Services to be provided by Architect shall be provided in a manner consistent with all applicable standards and regulations governing such Services.

- 20.2. Architect understands and agrees that the Architect's personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical, or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave, or other leave, with or without pay, or for other benefits which accrue to a District employee.
- 20.3. Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Architect is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Architect which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 20.4. Should a relevant taxing authority determine a liability for past services performed by Architect for District, upon notification of such fact by District, Architect shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Architect under this Agreement (again, offsetting any amounts already paid by Architect which can be applied as a credit against such liability).
- 20.5. A determination of employment status pursuant to the preceding paragraphs of this Article shall be solely for the purposes of the particular tax in question and, for all other purposes of this Agreement, Architect shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Architect is an employee for any other purpose, then Architect agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Architect was not an employee.
- 20.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 21. Warranty and Certification of Architect

- 21.1. Architect warrants and certifies that the Architect is properly certified and licensed under the laws and regulations of the State of California to provide the professional Services that it has herein agreed to perform.
- 21.2. Architect warrants and certifies that it is aware of the provisions of the California Labor Code that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with those provisions before commencing the performance of the Services of this Agreement.
- 21.3. Architect warrants and certifies that it is aware of the provisions of the California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since the Architect is performing Services as part of an applicable "public works" or "maintenance" project, and since the total compensation may be One Thousand Dollars (\$1,000) or more, the Architect agrees to fully comply with and to require its Consultant(s) to fully comply with all applicable Prevailing Wage Laws.

Article 22. Cost Disclosure - Documents And Written Reports

Architect shall be responsible for compliance with California Government Code section 7550, if the total cost of the Contract is over Five Thousand Dollars (\$5,000).

Article 23. Notices & Communications

Notices and communications between the Parties to this Agreement may be sent to the following addresses:

District:

West Contra Costa Unified School District
1400 Marina Way South
Richmond, CA 94804
Attn: Luis Freese

Architect:

Architects MA
1676 Calle Ranchero
Petaluma, CA 94954
Attn: Mark Albertson

Any notice personally given shall be effective upon receipt. Any notice sent by facsimile shall be effective the day after receipt. Any notice sent by overnight delivery service shall be effective the day after delivery. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

Article 24. Disabled Veteran Business Enterprise Participation

Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises ("DVBES") of at least three percent (3%), per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the Act). This Project may use funds allocated under the Act. Therefore, to the extent feasible and pertaining to future hirings, the Architect, before it executes this Agreement, shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBEs in conjunction with the contract, and documentation demonstrating the Architect's good faith efforts to meet these goals.

Article 25. District's Right to Audit

- 25.1. District retains the right to review and audit, and the reasonable right of access to Architect's and any Consultant's premises to review and audit the Architect's compliance with the provisions of this Agreement ("District's Audit Right"). The District's Audit Right includes the right to inspect, photocopy, and to retain copies, outside of the Architect's premises, of any and all Project-related records, documents and other information with appropriate safeguards, if such retention is deemed necessary by the District in its sole discretion. The District's Right to Audit shall also include the right to interview current or former employees and Consultants of Architect with respect to matters or issues under audit. The District shall keep this information confidential, as allowed by applicable law.
- 25.2. The District's Audit Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the District determines are necessary to discover and verify that the Architect is in compliance with the requirements of this Agreement.
- 25.3. If there is a claim for additional compensation or for Extra Services, the District's Audit Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the District determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.
- 25.4. The Architect shall maintain complete and accurate records for a minimum of seven (7) years and in accordance with generally accepted accounting practices in the industry. The Architect shall make available to the District for review and audit, all Project related accounting records and documents, and any other financial data. Upon District's request, the Architect shall submit exact duplicates of originals of all requested records to the District.

- 25.5. The Architect shall include audit provisions in any and all of its subcontracts, and shall ensure that this Article is binding upon all Consultants.
- 25.6. Architect shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of Architect's Project-related documents, records and information. The District's Right to Audit and Architect's compliance with the same, shall be at no additional costs to the District.
- 25.7. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of more than Ten Thousand Dollars (\$10,000), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of the District, or as part of any audit of the District, for a period of three (3) years after final payment under the Agreement.
- 25.8. In the event the District's Right to Audit, or an audit by the State Auditor evidences payments to Architect not in accordance with the provisions of this Agreement, Architect shall pay District all costs reasonably incurred by District in conducting an audit hereunder.
- 25.9. Architect acknowledges and agrees that the District's Audit Right, pursuant to the foregoing provisions, shall apply to, and may be utilized by the District for the production of, any records or documents subject to disclosure under the California Public Records Act, Government Code § 6250 et seq. ("CPRA"), unless otherwise exempt, and which may include, but are not limited to, records or documents in the District's constructive possession but under Architect's control regardless if created, sent, received, stored, or maintained in a personal account or device of Architect or its employees, as prescribed by applicable law. In the event the District exercises District's Audit Right in response to or as part of a request under the CPRA, Architect agrees to provide District with an affidavit, if and as needed or requested by District, within five (5) days of District's request therefor, that certifies Architect's search for and production of responsive records subject to disclosure pursuant to the CPRA, if any.

Article 26. Other Provisions

- 26.1. Neither the District's review of, approval of, nor payment for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Architect shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Architect's failure to perform any of the Services furnished under this Agreement to the standard of care of the Architect for its Services, which shall be, at a minimum, the standard of care of architects performing similar work for California school districts in or around the same geographic area of the District.
- 26.2. Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.
- 26.3. The Architect acknowledges that the District is a public agency that is subject to heightened curiosity by the news media and the public and that the Architect may not be apprised of all facts surrounding the Project that Architect is working on. Accordingly, Architect shall promptly refer all inquiries from the news media or public concerning this Agreement or its performance under the Agreement to the District, and Architect shall not make any statements or disclose any documents to the media or the public relating to the performance under this Agreement or the effects caused thereby. If Architect receives a complaint from a citizen or member of the public concerning the performance or effects of this Agreement, it shall promptly inform the District of that complaint. In its sole discretion, the District shall determine the appropriate response to the complaint.
- 26.4. **Agreement Number.** The District will issue an agreement number for this Agreement as part of the District's fiscal accounting and payment procedures. The agreement number shall be included in all requests for payment

hereunder. The District may change the agreement number during the term of the Agreement. The District's revision of an agreement number shall not be considered a material or substantive change to the Agreement.

- 26.5. **Confidentiality.** Architect, and its Consultants, and employee(s) shall maintain the confidentiality of all information received in the course of performing the Services. Architect understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
- 26.6. **Exhibit "A", "B"** and any Certificate(s) attached hereto are hereby incorporated by this reference and made a part of this Agreement.
- 26.7. **Authority of Executing Officer or Party.** By signing below, the signer represents that it has the legal right, power, and authority to enter into and execute this Agreement and to bind the Party on whose behalf the signer executes this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

Dated: _____, 20__

Dated: _____, 20__

West Contra Costa Unified School District

Architects MA

By: _____

By: _____

Print Name: Lisa LeBlanc

Print Name: _____

Print Title: Associate Superintendent of Operations

Print Title: _____

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Agreement for Architectural Service ("Agreement"):

☐ **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]** Architect's employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Architect's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Architect for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Ed. Code, § 45125.1 (c).)

Date: _____
District Representative's Name and Title: _____
Signature: _____

☐ The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Architect's services under this Agreement and Architect certifies its compliance with these provisions as follows: *"Architect certifies that the Architect has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Architect's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Architect, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto."*

☐ Architect's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

_____ The installation of a physical barrier at the worksite to limit contact with pupils.

_____ Continual supervision and monitoring of all Architect's on-site employees of Architect by an employee of Architect, _____, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

_____ Surveillance of Employees by District personnel. **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]**

Date: _____
District Representative's Name and Title: _____
Signature: _____

Megan's Law (Sex Offenders). I have verified and will continue to verify that the employees of Architect that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

[MUST BE COMPLETED BY ARCHITECT'S AUTHORIZED REPRESENTATIVE.] I am a representative of the Architect entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Architect.

Date: _____
Name of Architect or Company: _____
Signature: _____
Print Name and Title: _____

TUBERCULOSIS CLEARANCE CERTIFICATION

The undersigned does hereby certify to the governing board of the District as follows:

I am a representative of the Architect currently entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Architect.

Architect's responsibility for tuberculosis clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Architect.

Architect certifies that at least one of the following items applies to the services that are the subject of the Agreement:

☐

The Architect ensures that any person providing any portion of the Services has submitted to an examination within the past 60 days to determine that he or she is free of active tuberculosis, by a physician or surgeon. A complete and accurate list of Architect's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto; and/or

☐

Architect's services under the Agreement are to be provided at an unoccupied school site only and/or will not be done on any District property and no employee and/or subcontractor or supplier of any tier of Agreement shall come in contact with District pupils.

Date: _____

Proper Name of Architect: _____

Signature: _____

Print Name: _____

Title: _____

EXHIBIT "A"
SCOPE OF SERVICES

Architect's entire Proposal is not made part of this Agreement.

The proposed scope of work includes relocation of six temporary portable buildings (either existing or new) from Nystrom Elementary School to the Coronado Interim School campus located at Kennedy High School in Richmond, California. One portable shall be a triple-wide cafeteria and the remaining five portables shall be double-wide classrooms. The portables are planned to be in service for more than 36 months. In addition, two new shade structures shall be installed at the Coronado Interim School Campus. Site work shall require chain link fencing, gates, minor grading, underground water and sewer service, electrical and fire alarm service.

The scope of work shall require the following architectural and engineering services:

Architectural Services

- Layout and design of portable building locations.
- Identification and summary of required accessible path of travel from the public way to each portable.
- Location and Dimension Control Plan for portable buildings and shade structures
- Location and Dimension Control Plan for all existing and proposed site improvements related to portable building locations including the trash removal location.
- Design and specification of all new portable building exterior signage.
- Design and specification of all miscellaneous fencing and pertinent site improvements.

Civil Engineering Services:

- Design, engineering, and specification of minor site grading and drainage.
- Design, engineering, and specification of domestic water and sanitary sewer utility connections from selected portables to respective utility points of connection.

Structural Engineering Services

- Review of DSA approved temporary foundation attachments located in original portable building plans.

Electrical Engineering Services:

- Design and specification of new electrical service distribution to five portable buildings from existing switch gear located on Coronado Interim School campus.
- Design and specification of a new fire alarm connection to service five portable buildings. The relocated portables fire alarm systems (located within the portables) shall tie into the existing fire alarm system within Coronado Interim School campus.
- Design and specification of a stand-alone voice evacuation system including panel, devices, and administrative office microphones.
- Design and specification of tie-ins to existing campus clocks, bells, data systems, and telephone systems.
- Electrical Engineering assumptions include:
 - The portable buildings will be completely equipped with all light fixtures, switches, panel boards, and receptacles.
 - No services are included for interior electrical design layouts to accommodate custom interior partitions within the spaces.
 - All lighting and controls are by the modular building manufacturer, but can make adjustments to exterior lighting and some interior items to make each unit suitable for use at the School.
 - The relocated portables fire alarm system will tie into the existing fire alarm system within Coronado Interim School campus.

PHASES OF WORK and DELIVERABLES

Architects|MA operates under a traditional services format as outlined by industry recognized AIA Contracts and General Conditions documents. In regards to the above referenced portable work, Architects|MA proposes that the scope of work be divided into five phases as follows:

Phase I - Field Investigation and Program Development

This initial phase of work shall include acquiring and disseminating any existing building information from WCCUSD records including boundary maps, topography maps, original construction documents, and other possible information requiring consideration.

Once the programmatic work is complete, the Architect shall prepare and present a portables layout to the WCCUSD illustrating the site design and functional considerations based on the District's needs and assessments. Presentation of this layout shall be in sketch, AutoCAD, and 3D computer graphic formats in site plan and floor plan.

Tasks:

- Existing Building and Site Field Measurement and Documentation
- Civil topography survey of site condition
- Portable Building Design Drawings illustrating layout options for Coronado ES Temporary Campus
- Review and Discussion of ADA compliance options
- Review and Discussion of electrical and fire alarm service options
- Review and Discussion of existing and proposed grade and paving options

Deliverables:

- Field Visits as needed to complete site and building documentation
- Existing Conditions Site files in PDF format
- Graphic Presentation of Design Drawings and Design Options in PDF and print formats
- Two meetings with WCCUSD to review goals, existing conditions, and design options

Phase II - Construction Documents:

Based upon District approved program development plans, the Architect and Engineers shall prepare industry recognized construction documents and specifications necessary to adequately describe the scope of construction work required, and to obtain competitive contractor bid proposals. Construction document drawings shall be prepared in AutoCAD format and shall be prepared in cooperation with and coordinated with all engineering disciplines. The Final Construction Documents Set shall include:

Architectural Demolition, New Construction, and Dimension Control Drawings
Accessibility Compliance Drawings (where necessary)
Grading Plans
Utility Connection Plans – Sewer and Water
Electrical Overhead Power Distribution and Portable Building Service Drawings
Fire Alarm Drawings
Campus clock, bell, data, and telephone Drawings
Emergency Voice Evacuation Drawings

Tasks:

- Construction Drawings—All Disciplines
- Engineering Discipline Coordination
- Coordination with WCCUSD regarding Administrative Requirements and General Conditions
- Project Material Specifications using standard 16 Division CSI Format

Deliverables:

- 75% and 100% Complete Construction Documents—All Disciplines—5 Sets at each percentage
- Two course-of-design WCCUSD staff meetings - 25% and 75% complete documents

Phase III - DSA Plan Submission and Approval:

At the direction of the WCCUSD Design Manager, the completed construction drawings, specifications, and all associated project documentation shall be presented to the Division of the State Architect (DSA) Oakland Office for plan review and project approval. All plan check and review comments applicable to the scope of work referenced to herein shall be properly and adequately addressed by the Architect or Engineers in writing and resubmittals shall be made as a part of the scope of work.

Tasks:

- *Submission to DSA Oakland Office for Building Plan Review Approval*
- *Drawing and Specification Revisions in Response to DSA Plan Review Comments*

Deliverables:

- *Up to two meetings with DSA Oakland Office to submit, review, and resubmit Plans for Project Approval*

Phase IV - Bid or Negotiation:

The Architect and Engineers shall assist the WCCUSD Design Manager in the preparation of competitive bid documents. The Architect and Engineers shall be available to respond to questions or clarifications while the WCCUSD secures competitive bids for the work required. Response to questions or clarifications arising during this phase shall be made available in writing.

Tasks:

- *Respond to Contractor and Subcontractor Inquiries*
- *Prepare and Distribute Contract Document Addendums as necessary*

Deliverables:

- *One Conference with WCCUSD Staff and prospective bidders*
- *Written Contract Document Addendums as necessary*
- *One bid opening meeting with WCCUSD staff – at District Offices*

Phase V - Construction Administration and Project Closeout:

The Architect shall visit the construction site on regular intervals to observe the work progress. Observations shall be documented in writing and submitted to the WCCUSD PM, DM, and General Contractor for review and action. The Engineers shall visit the construction site as directed by the Architect. Such site visits shall be coordinated with the course of construction work. As requested by the Project Manager, the Architect shall attend project meetings on an as needed basis.

The Architect and Engineers shall receive, review, and return Contractor's submittals, as required by the specifications, during the course of construction administration as per normal industry practices. The Architect shall review all Contractor's Applications For Payment. During the course of

construction, the Architect and Engineers shall make themselves available to answer any questions or clarifications that may arise as a result of the scope of work described herein. Answers shall be documented in writing to the WCCUSD PM, DM, and General Contractor.

Tasks:

- *Periodic Field Visits during Course of Construction*
- *Review of Contractor Shop Drawings and Submittals*
- *Review of Contractor Applications for Payment*
- *Preparation of Change Directive Documents*
- *Preparation of "punch list" corrective work as necessary by Architect and all Engineering Consultants*

Deliverables:

- *One Pre-Construction Kickoff Meeting*
- *Five Field Visits with corresponding Architect's Written Field Reports*
- *Written responses to Contractor Requests for Information*
- *Written Supplemental Instructions and Change Directive Documents*
- *Final Field Visit and corresponding Written Punch List of Corrective Work*
- *Assistance to the WCCUSD Staff in compiling, signing, and submitting Project Closeout Documents*

EXHIBIT "B"
FEE SCHEDULE

Field Investigation & Program Development	\$6,600
Construction Documents – All Disciplines	\$23,800
DSA Review & Approval	\$4,300
Bid	\$300
Construction Administration & Closeout	\$3,800
Reimbursables NTE (5%)	\$500

**FIRST AMENDMENT TO AGREEMENT FOR ARCHITECTURAL SERVICES FOR
KENNEDY HIGH SCHOOL WELDING LAB
BETWEEN WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT AND
ARCHITECTS MA**

THIS FIRST AMENDMENT to Agreement for Architectural Services ("First Amendment") is made as of the 15 day of June, in the year 2017, by and between **West Contra Costa Unified School District**, a California public school district ("District"), and **Architects MA** ("Architect"). District and Architect may be individually referred to herein as "Party" or collectively referred to herein as "Parties."

RECITALS

WHEREAS, District and Architect entered into an Agreement for Architectural Services for Kennedy HS Welding Lab ("Project"), dated as of February 2, 2017 ("Agreement"); and

WHEREAS, the Parties desire to amend the terms of the Agreement to modify the "Scope of Services of the Agreement" and "Compensation", pursuant to the terms of this First Amendment; and

WHEREAS, the Parties now mutually intend to amend the terms of the Agreement to effectuate the intentions of the Parties set forth herein this First Amendment;

NOW THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, District and Architect agree as follows:

1. Amended Scope of Services. The Scope of Services of the Agreement is hereby modified as follows:
 - a. Additional Services:
 - i. Fire alarm design work
 - ii. Security system design
 - b. Additional Deliverables:
 - i. Electrical Sheet and Specification – Fire Alarm System
 - ii. Revisions to electrical sheets
 - iii. Specification Section – Fire Alarm
 - iv. Specification Section – Intrusion System
2. Amended Compensation. The Compensation terms of the Agreement are hereby modified as follows: To allow for the additional fees required to implement the revisions described in this First Amendment, the present allowable compensation, a maximum amount not-to-exceed Sixty Nine Thousand Six Hundred Fifty Dollars (\$69,650), is hereby increased by Two Thousand Eight Hundred Seventy-Five Dollars (\$2,875), for a total maximum amount not-to-exceed Seventy Two Thousand Five Hundred Twenty Five Dollars (\$72,525).
3. Miscellaneous. This First Amendment may be executed in any number of counterparts all of which when taken together shall constitute one and the same document. Except as expressly modified by this First Amendment, all other terms and provisions of the Agreement are and remain in full force and effect. This First Amendment shall be governed by and construed in accordance with the laws of the State of California.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 20__

West Contra Costa Unified School District

By: _____

Print Name: Lisa LeBlanc

Print Title: Associate Superintendent of Operations

Dated: _____, 20__

Architects MA

By: _____

Print Name: _____

Print Title: _____

**FIRST AMENDMENT TO AGREEMENT FOR ARCHITECTURAL SERVICES FOR
OHLONE ELEMENTARY SCHOOL CRITICAL NEEDS PROJECT
BETWEEN WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT AND
HMC ARCHITECTS**

THIS FIRST AMENDMENT to Agreement for Architectural Services ("First Amendment") is made this 15 day of June, by and between **West Contra Costa Unified School District**, a California public school district ("District"), and **HMC Architects** ("Architect"). District and Architect may be individually referred to herein as "Party" or collectively referred to herein as "Parties."

RECITALS

WHEREAS, District and Architect entered into an Agreement for Architectural Services for Ohlone Elementary School Critical Needs Project ("Project"), dated as of March 2, 2017("Agreement"); and

WHEREAS, the Parties desire to amend the terms of the Agreement to modify the "Scope of Services of the Agreement" and "Compensation", pursuant to the terms of this First Amendment; and

WHEREAS, the Parties now mutually intend to amend the terms of the Agreement to effectuate the intentions of the Parties set forth herein this First Amendment;

NOW THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, District and Architect agree as follows:

1. Amended Scope of Services. The Scope of Services of the Agreement is hereby modified to incorporate the following phases: Construction Documents, Bidding, Construction Administration, and Closeout.
2. Amended Compensation. The Compensation terms of the Agreement are hereby modified as follows: To allow for the additional fees required to implement the revisions described in this First Amendment, the present allowable compensation, a maximum amount not-to-exceed Twenty-Two Thousand Dollars (\$22,000), is hereby increased by Sixty Thousand Eleven Dollars (\$60,011), for a total maximum amount not-to-exceed Eight Two Thousand Eleven Dollars (\$82,011).

Replace Exhibit "D" Payment Schedule Section 1.3 in its entirety:

"District shall pay Architect for all services contracted for under this Agreement pursuant to the following schedule ("Payment Schedule"):

PERCENTAGE OF TOTAL FEE PER PHASE	
Phase	Phase Amount
Pre-Design and Start-Up Services	Hourly NTE
Construction Documents Phase	55%
Bidding Phase	5%
Construction Administration Phase	30%
Closeout Phase	10%
Generate Punch List	3%
Sign Off on Punch List	3%
Receive and Review All O&M Documents	2%
DSA Closeout	2%

3. Miscellaneous. This First Amendment may be executed in any number of counterparts all of which when taken together shall constitute one and the same document. Except as expressly modified by this First Amendment, all other terms and provisions of the Agreement are and remain in full force and effect. This First Amendment shall be governed by and construed in accordance with the laws of the State of California.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 20____

West Contra Costa Unified School District

By: _____

Print Name: Lisa LeBlanc

Print Title: Associate Superintendent of Operations

Dated: _____, 20____

HMC Architects

By: _____

Print Name: _____

Print Title: _____