

**AGREEMENT FOR ARCHITECTURAL SERVICES
FOR THE SANTA BARBARA UNIFIED SCHOOL DISTRICT**

Project:

Baseball Field Improvements at San Marcos High School

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Agreement for Architectural Services

This Agreement for Architectural Services is made as of _____ 2017, by and between the Santa Barbara Unified School District, a public K-12 district, (“District”) and PMSM Architects (“Architect”) (both collectively “Parties”), for the following project (“Project”):

Baseball Field Improvements at San Marcos High

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 or 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 or other documents attached and incorporated by reference.

1.1.2. *Alternative Delivery Methods*: The District may utilize the CM Multi-prime or Lease-Leaseback delivery method. In such instance, the Services of the Architect shall be adjusted to coincide with that delivery method as may be required by the District. Such adjustments shall be without additional compensation except as may be authorized as an Extra Service under Article 7. All definitions set forth in this Agreement shall be interpreted to conform with those practices and procedures contained in the trade contracts, construction manager contracts and other Construction Documents.

1.1.3. *Architect*: The architect listed in the first paragraph of this Agreement, including all Consultants to the Architect.

1.1.4. *As-Built Drawings (“As-BUILTS”)*: A final set of drawings prepared by the Architect that incorporates all applicable changes from available Record Drawings, sketches, details, and clarifications.

1.1.5. *Bid Set*: The plans, drawings, and specifications at the end of the Construction Documents Phase that the Division of the State Architect (“DSA”) has approved and that the District can use for the bidding or other contract delivery methodology and for construction of the Project.

1.1.6. *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 work with DSA to obtain DSA approval of all revisions to the Bid Set that are incorporated onto the Conforming Set and for which DSA approval is required.

1.1.7. *Construction Budget*: The Estimated Construction Cost for the Project acceptable to and approved by the District. The Construction Budget is set forth in Exhibit “B”. If the Construction Budget is identified as “not yet determined” in Exhibit “B,” the Architect shall

work with the District to promptly establish a Construction Budget and project scope acceptable to the District as part of the Pre-Design services.

1.1.8. *Construction Cost*: The actual cost of all elements of the completed Project designed or specified by the Architect, but excluding the costs of furniture and furnishings. The Construction Cost does not include the compensation of the Architect and the Architect's Consultants, the District's Consultants, the Construction Manager's fees (other than those direct costs incurred by the Construction Manager and/or District, including but not limited to fencing, trailers, security, and refuse that are not costs already included in the fees of the trade contractors in the case of a CM Multi-Prime delivery), the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District.

1.1.9. *Construction Documents*: The drawings and specifications prepared by Architect to be used for construction of the Project.

1.1.10. *Construction Manager*: The District will designate a Construction Manager. The Construction Manager may be a District employee or an outside person/entity retained by District. Unless otherwise indicated in writing, the Construction Manager will be the District's Authorized Representative during all phases of Project and will assist the District in the administration of this agreement, the construction contracts and in the administration of the Project generally. The Construction Manager's services may include: management and coordination of the construction process, including management of the communication, coordination and cooperation among the contractors; coordination and review of the submittal schedule and process; and review (in conjunction with the Architect) of RFI's, change orders, and pay applications for completeness and conformance with the requirements of the contract documents. All instructions from the District to the Architect (and to its Consultants) shall be directed through the Construction Manager unless otherwise provided. Any task, including, but not limited to, reviews or approvals that the District may perform pursuant to this Agreement may be performed by the Construction Manager unless that task indicates that it shall be performed by the District.

1.1.11. *Consultant(s)*: Any and all consultant(s) and sub-consultant(s) of the Architect or the District.

1.1.12. *Contractor*: The prime contractor or trade contractor awarded the construction contract by the District for each specific bid package for the Project.

1.1.13. *District*: The Santa Barbara Unified School District.

1.1.14. *District's Authorized Representative*: The individual designated by the District to act on the District's behalf with respect to the Program or Project and who shall be authorized to render decisions on behalf of the District and to carry out the District's responsibilities under this Agreement. The District's Authorized Representative may be the Construction Manager.

1.1.15. *DSA*: The Division of the State Architect.

1.1.16. *Estimated Construction Cost*: The estimate of the total Construction Cost prepared by Architect and/or its professional construction cost accounting consultant at various phases of the Project and submitted to District for approval.

1.1.17. *Record Drawings*: Any document prepared and submitted by District contractor(s) that record the changes made during the construction project on a Conforming Set, including changes necessitated by change orders.

1.1.18. *Service(s)*: 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 programming of, or the design and completion of the Project.

ARTICLE 2

Scope, Responsibilities, and Services of Architect

2.1. Architect shall render the Services as described in Exhibit “A” (as applicable to the particular project as determined by District) commencing with receipt of a written Notice to Proceed signed by the District representative.

2.2. Architect shall provide Services that shall comply with professional architectural standards and applicable requirements of federal, state, and local laws, rules, regulations and ordinances applicable to the Project in effect at the time the Services are rendered. Architect shall notify the District in writing if Architect is aware of any upcoming or anticipated changes to the applicable codes or other requirements described in this Paragraph affecting the Project.

2.3. Architect shall coordinate its services pursuant to this Agreement with the District’s DSA Project Inspector(s) and the District’s Consultants, including the Construction Manager as may be requested or necessary for the coordination or management of work related to the Project.

2.4. Architect shall coordinate with and implement the requirements of the regulatory agencies having jurisdiction over the Project, including, without limitation, the Department of General Services (DGS), DSA Fire/Life Safety, DSA Access Compliance Section, DSA Structural Safety Section, State Fire Marshal and any regulatory office or agency that has authority for review and supervision of K-12 construction projects.

2.5. Architect shall provide Services required in obtaining any local agencies’ approval for off-site work related to the Project including review by regulatory agencies having jurisdiction over the Project. Basic Services (except as authorized under Article 7) includes off site work for building related curb cuts/sidewalks and utility tie-ins at street. Excluded from Basic Services are infrastructure utility projects, street and non-building related sidewalk improvements, and traffic signals etc.

2.6. As part of its Basic Services pursuant to this Agreement, Architect is not responsible for:

2.6.1. The discovery, presence, analysis, handling, removal or disposal of Ground contamination, asbestos, lead, PCB's, mycotoxins or other hazardous materials; however, it shall coordinate and integrate its Services with any such information provided by District.

2.6.2. Compliance with the California Environmental Quality Act ("CEQA"), except that Architect agrees to coordinate its Services with that of any CEQA consultants retained by the District, to provide current elevations and schematic drawings for use in CEQA compliance documents, and to incorporate any mitigation measures adopted by the District into the Project design at no additional cost to the District; provided such incorporation does not require any significant redesign after the completion of the Design Development Phase which shall be compensated as Extra Services. If the District or its CEQA consultant or both do not provide mitigation measures to the Architect when reasonably required for incorporation into the Project design, the Architect may invoice the District for the work required to incorporate those mitigation measures as Extra Services.

2.6.3. Historical significance report or legal, insurance or accounting services.

2.6.4. Survey or soils investigation.

2.6.5. Geotechnical hazard report.

2.6.6. LEED Certification: [Not Applicable]

2.6.7. At the District's discretion, the District may provide standards for security and/or a security consultant and Architect will incorporate into the Project such standards and/or advice from the security consultant. Consultation and recommendations for Project security systems to prevent acts of terrorism are not the responsibility of the Architect.

2.6.8. If required, the District shall furnish technology guidelines to provide the information needed by the Architect and Architect's electrical engineer to provide a comprehensive technology "backbone" infrastructure system for the Project

ARTICLE 3

Architect Staff

3.1. The Architect has been selected to perform the Services herein because of the skills and expertise of key individuals.

3.2. The Architect agrees that certain key people in Architect's firm shall be associated with the Project in specified capacities. These key people are listed in Exhibit "B".

3.3. The Architect shall not change any of the key personnel listed above without prior written approval by District, unless said personnel cease to be employed by Architect. In either case, District shall be allowed to interview and approve replacement personnel, which approval shall not be unreasonably withheld.

3.4. Architect represents that, to the best of its information, knowledge and belief, the Architect has no existing interest and will not acquire any interest, direct or indirect, which could conflict with the performance of Services required under this Agreement and that no person having any such interest shall be employed by Architect.

3.5. Architect agrees that any plans 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.

3.6. As of the date of this Agreement, Architect has identified and District has accepted the consultants listed in Exhibit "B" as being necessary for completion of the Architectural Services. Unless otherwise specified in Exhibit "B," all consultants necessary for the completion of Architectural Services shall be contracted by or employed at Architect's expense. Architect's Consultant's shall be licensed by the State of California as required to perform their respective services.

3.7. The identity of any consultant(s) deemed necessary for the completion of Architectural Services and which do not appear on Exhibit "B" shall be submitted to the District for approval prior to commencement of Services. The District reserves the right to reject the Architect's use of any particular consultant. Nothing in the foregoing procedure shall create any contractual relationship between the District and any consultant employed by the Architect under terms of the Agreement.

3.8. If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice the Architect shall have ten (10) days to remove that person from the Project and have a total twenty (20) days to propose an alternate to replace that person with one acceptable to the District without causing any significant delays to the Project. All lead or key personnel for any of Architect's Consultants must also be designated by the consultant and are subject to all conditions previously stated in this Paragraph.

ARTICLE 4

Schedule of Services

4.1. The Architect shall commence Services under this Agreement upon receipt of a Notice to Proceed signed by the District's Authorized Representative.

4.2. The Architect has prepared a Schedule of Work for the Services to be performed under this Agreement, which is attached hereto as Exhibit "C." If no schedule is attached at the time of execution of this Agreement, Architect shall, as part of the Start-Up Services described Exhibit "A," promptly prepare a Schedule of Work for District's review. Architect shall update the Schedule of Work on a monthly basis and as otherwise provided in Exhibit "A" and electronically submit the schedule in Microsoft Project or other electronic format specified by the District.

4.3. If delays in meeting the date for Substantial Completion as set forth in the Project schedule are caused by the District or third parties other than Architect's Consultants, or by events beyond the control of Architect, Architect shall be granted an adjustment in the schedule

and, except when Architect may already be entitled elsewhere in this Agreement to an adjustment in its fee on account of an increase in the Construction Cost, an equitable adjustment to its Fee. Delays for which Architect may be entitled to an adjustment in its Fee shall include, but are not necessarily limited to, contractor-caused delays for which there is an extension of the Contractor's schedule but no increase Contractor's fee and the Construction Cost. If Architect identifies such a delay in the Project, Architect shall, prior to performing any extended services, promptly notify the District in writing of the delay and the Parties shall meet and mutually agree on the Fee adjustment. Otherwise, time is of the essence and failure of Architect to timely perform Services is a material breach of this Agreement. Notwithstanding the foregoing, Architect acknowledges that punch list review after Substantial Completion as required elsewhere as Basic Services in this Agreement shall not constitute an extension of the schedule that entitles the Architect to an Extra Service.

ARTICLE 5

Construction Budget and Estimated Construction Cost

5.1. Architect hereby acknowledges the District's established Construction Budget and Project scope. In accordance with the Exhibit "A", the Architect shall have responsibility to further develop, review, and reconcile the Estimated Construction Cost against the Construction Budget at the beginning of the Project as provided in Exhibit "A." The District and the Construction Manager shall also have responsibility to develop, review, reconcile, and accept the Estimated Construction Cost and Construction Budget with the Architect.

5.2. Architect shall complete all Services as described in Exhibit "A" including all plans, designs, drawings, specifications and other Construction Documents, so that the Construction Cost will not exceed the Construction Budget unless otherwise adjusted in writing by the District. The Architect shall maintain cost controls throughout the Project to deliver the Project within the Construction Budget. As part of these cost controls, the Architect shall be permitted to include contingencies for design, bidding and price escalation (with the percentage and basis of calculation clearly identified),, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the Estimated Construction Cost to the Construction Budget. It is also recognized, however, that neither the Architect nor the District has control over the cost of labor, materials or equipment, over the Contractor's methods of determining pricing, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the District's Construction Budget or from any Estimated Construction Cost prepared by the Architect.

5.3. If, prior to bidding, the Estimated Construction Cost prepared by Architect (or its professional construction cost estimator) exceeds the Construction Budget, the Architect will make recommendations to the District for approval of necessary or suggested design changes to reduce the Estimated Construction Cost. The Architect will revise the documents during the first quarter of the subsequent design phase (or prior to bidding) to reduce the Estimated Construction Cost so as not to exceed the District's Construction Budget. Alternatively, based on input to be

received from Architect, the District may approve the Estimated Construction Cost as a revised Construction Budget.

5.4. If the lowest responsive base bid or, in the case of a Lease/Leaseback delivery, the contractor's Guaranteed Maximum Price received is in excess of ten percent (10%) of the approved Construction Budget, or in the event of a separately bid trade contract, the budget for that particular portion of the work, then the District, in its sole discretion, has one or a combination of the following alternatives:

5.4.1. Give the Architect written approval on an agreed adjustment to the Construction Budget.

5.4.2. Authorize the Architect to re-negotiate, when appropriate, or re-bid the Project or trade contract within a reasonable time of receipt of bids (exclusive of District and other agencies' review time) with no additional compensation to the Architect.

5.4.3. Terminate this Agreement if the Project is abandoned, without further obligation by either party in accordance with Article 9.

5.4.4. Request the Architect prepare, at no additional cost, deductive alternates which bring the Project within the Construction Budget.

5.4.5. Request the Architect cooperate in revising the Project scope and quality as required, to meet the Construction Budget. If the District chooses to proceed under this alternative, the Architect, without additional compensation, agrees to redesign until the Project is brought within the approved Construction Budget. Architect will take all reasonable efforts consistent with the standard of care for its profession to redesign the Project with all of its component parts to meet the approved Construction Budget; however, the Architect cannot guarantee that the District may not need to modify the Project scope to meet the approved Construction Budget.

5.4.6. Notwithstanding the above, if the lowest responsive bid or aggregate trade bids (or Guaranteed Maximum Price) exceeds the Construction Budget due to unforeseen market conditions (e.g., rapid material or labor price escalation or labor shortages), the District may authorize the Architect to be reasonably compensated for its redesign efforts as an Extra Service.

ARTICLE 6

Fee and Method of Payment

6.1. The Architect's Fee for Basic Services as described in Article 2 shall be based on the total Construction Cost in accordance with the fee schedule set forth in Exhibit "B." Until such time as construction is completed and the total Construction Cost and compensation to the Architect can be determined, payments to Architect shall be estimated based on the Estimated Construction Cost prepared by Architect and approved by the District during the Pre-Design Phase, until such time as construction is completed. Once construction is completed, the Architect's Fee shall be determined and payments to Architect adjusted to align with the Construction Cost. If the Construction Cost is less than what was estimated, there shall be a

credit or refund to District. If the Construction Cost is more than what was estimated, the additional sums due shall be added to the payments due. Adjustments shall be made during the Close-Out Phase.

6.2. Unless otherwise specified in Exhibit “B,” the Architect’s Fee includes the Architect’s Consultants’ fees, personnel expense of the Architect and its Consultants, inclusive of all benefits and burdens, travel for the personnel of the Architect and its Consultants to and from their respective offices and the District and the Site of the Project, insurance and all other administrative or overhead costs associated with or arising out of performance of the Basic Services designated in this Agreement. Out-of-pocket expenses incurred in connection with Basic Services performed by Architect and its Consultants are included in the Architect’s Fee.

6.3. Architect shall submit monthly billing invoices to the District for Basic Services on a percent complete basis and for authorized Extra Services performed in the immediately prior month. Within thirty (30) days of receipt of Architect’s billing invoices, District will make payment to Architect of undisputed amounts of Architect’s Fee and authorized Extra Services due for the Project. Architect’s billings shall be in such form and format as may be reasonably requested by District. Upon request of District, Architect shall substantiate its billings with timecards, invoices, receipts, and other like documentation to establish the amounts being billed.

6.4. No deductions shall be made or withheld from payments due Architect hereunder on account of any penalty, assessment, liquidated damages or other amounts withheld by the District from payment to the Contractor engaged by the District for construction of the Project. The District may, however, withhold or deduct from amounts otherwise due Architect hereunder if Architect shall fail to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after Architect has fully cured such failure of performance, less costs, damages or losses sustained by the District resulting therefrom. Notwithstanding any provision of this Agreement to the contrary, if the District shall, in good faith, dispute the amount due Architect under any billing invoice rendered by Architect under this Agreement, pursuant to Civil Code §3320(a), the District may withhold from payment to the Architect an amount not to exceed one hundred and fifty percent (150%) of the disputed amount. Amounts not timely paid by District shall be subject to a finance charge of 1.5% per month. Architect shall continue to provide Services, so long as District continues to provide payments to Architect for undisputed amounts.

6.5. No increase in Architect’s Fee will be due from change orders generated during the construction period to the extent arising from the Architect’s errors or omissions.

ARTICLE 7

Payment for Extra Services

7.1. District-authorized services which are not identified as Basic Design Services in Exhibit “A” or which are defined elsewhere in this Agreement as Extra Services are “Extra Services.” Extra Services shall include:

- 7.1.1. Making revisions in drawings, specifications or other documents when such revisions are required by i) the enactment or revision of laws, rules or regulations, or ii) changes to interpretations or guidance previously provided by regulatory agencies having jurisdiction over the Project subsequent to the preparation and completion of the Design Development Phase Documents. Architect shall notify the District in writing if Architect is aware of any upcoming or anticipated changes to the applicable codes or other requirements described in this Paragraph affecting the Project or any changes to interpretations or guidance provided by the regulatory agencies having jurisdiction over the Project.
- 7.1.2. Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of such work.
- 7.1.3. Making significant revisions to the drawings, specifications or other documents when such revisions inconsistent with approvals or instructions previously given by the District, including revisions made necessary by adjustments in the District’s program or Construction Budget.
- 7.1.4. Providing augmented and/or extended services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of the Contractor under the Contract for Construction to the extent not arising from the negligence, errors or omissions of the Architect.
- 7.1.5. Providing services in evaluating an extensive and unwarranted number of claims, Requests for Information (“RFI”), shop drawings and change orders submitted by the Contractor or others in connection with the Work not arising from the negligence, errors or omissions of the Architect.
- 7.1.6. Providing services in connection with a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto.
- 7.1.7. Providing services beyond visually verifying the accuracy of drawings or other information furnished by the District through measured drawings or destructive testing.
- 7.1.8. Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment (FF&E).

7.1.9. Providing services after issuance to the District of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 60 days after recordation of the last Notice of Completion for the Project or more than 60 days after completion of the Project as defined in Public Contract Code section 7107 to the extent not arising from the Architect's negligence, errors or omissions.

7.1.10. Providing services (such as preparing additional bid packages due to the effort entailed in addressing scope gap issues or increased Construction Administration Phase services due to duplicative review based on separate bid packages) arising from the District's election to use the CM Multi-prime delivery method and where extra services are not ordinarily required in the absence of the CM Multi-prime delivery method.

7.1.11. Providing services related to the design for off-site work where the District requests such services after completion of the design documents. Billing for additional scope would be a separate project.

7.2. Extra Services do not include changes to the work caused by the Architect's errors or omissions.

7.3. Architect shall notify the District in writing of the need for Extra Services required due to circumstances beyond the Architect's control. Architect shall obtain written authorization from the District before rendering such services. Any charges for Extra Services shall be paid by the District at the hourly rates described in Exhibit "B" only upon certification that the claimed Extra Services were authorized as indicated herein. The hourly rates in Exhibit "B" include overhead, administrative cost and profit, and all other out-of-pocket expenses. For Extra Services of the Architect's consultants, a multiple of 1.1 times the amounts billed to the Architect for such services. If any service is done by Architect without prior written authorization by the District's Authorized Representative, the District will not be obligated to pay for such service.

7.4. The foregoing provision notwithstanding, the Architect will be paid by the District for Extra Services that the Construction Manager or the District's Authorized Representative verbally requests, provided that the Architect timely confirms such request in writing.

ARTICLE 8

Ownership of Data

8.1. Upon payment of all amounts due Architect hereunder that is not the subject of a good faith dispute, this Agreement creates a non-exclusive and perpetual license for District to use, at its discretion, both hard copies and electronic copies of 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.

8.2. 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.

8.3. 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) and/or Building Information Modeling (BIM) (e.g. Revit) Technology. If BIM is used in lieu of or in addition to CADD, all CADD references herein shall be interpreted as applicable to BIM. The Architect shall deliver to the District, on request, the tape or compact disc format and the name of the supplier of the software/hardware needed to use the design file. 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. The District understands that electronic versions of drawings may not match agency-approved drawings, since manual changes may be made during back-checking with said agency.

8.4. In order to document exactly what CADD information was given to the District, Architect and District shall each sign a “hard” copy of the conformed 100% Construction Documents that depict the information at the time Architect produces the CADD information. District agrees to release Architect from all liability, damages, or claims that arise due to any changes made to this information by anyone other than the Architect or its Consultant(s) subsequent to it being given to the District.

8.5. Following the termination of this Agreement and payment of all amounts then due hereunder that is not the subject of a good faith dispute, the Architect shall promptly deliver to the District upon written request and at no cost except reimbursable printing costs to the District the following items (hereinafter “Instruments of Service”) which the District shall have the right to duplicate and utilize in any way:

8.5.1. One set of the Contract Documents, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.

8.5.2. One set of fixed image CADD files in a District approved format of the drawings that are part of the Contract Documents.

8.5.3. One set of non-fixed image CADD drawing files in a District approved format of the site plan, floor plans (architectural, plumbing, structural mechanical and electrical), roof plan, sections and exterior elevations of the Project.

8.5.4. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data and reports prepared by the Architect under Agreement.

8.6. In the event the District changes or uses any fully or partially completed documents without the Architect’s knowledge or participation or both, 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, arising out of any unauthorized change or use. The District further agrees to remove the names and seals of the Architect and the Architect's consultants from the title block and signature pages on hard copies and as is feasible to electronic files.

ARTICLE 9

Termination of Agreement

9.1. The District may terminate this Agreement upon seven (7) days advance written notice to Architect if there is a material breach by Architect in its performance of its obligations hereunder and such breach in performance is not caused by the District. Such termination shall be deemed effective the seventh (7th) day following the date of the written termination notice, unless during such seven (7) day period, the Architect commences to cure the breach and diligently thereafter prosecutes such cure to completion. If District exercises the right of termination hereunder, the Architect's Fee for the Project through the effective date of termination, if any, shall be based upon Basic Design Services and authorized Extra Services provided prior the effective date of the District's termination of this Agreement, reduced by the District's prior payments of the compensation to the Architect and offset by the losses, damages, or other costs sustained by the District arising out of the breach of the Agreement. Architect shall remain responsible and liable to District all losses, damages or other costs sustained by District arising out of termination pursuant to the foregoing or otherwise arising out of Architect's breach hereunder.

9.2. The District may, at any time, upon seven (7) days advance written notice to Architect terminate this Agreement for the District's convenience and without fault, neglect or default on the part of Architect. In such event, the Agreement shall be deemed terminated seven (7) days after the date of the District's written notice to Architect or such other time as the District and Architect may mutually agree upon. If District exercises the right of termination hereunder, Architect's Fee through as of the effective date of termination, if any, shall be based upon Basic Services and authorized Extra Services provided prior to the effective date of the District's termination of this Agreement, reduced by the District's prior payments of the compensation to the Architect .

9.3. The District may, in its discretion, suspend all or any part of the construction of the Project or the Architect's services under this Agreement; provided, however, that if the District shall suspend construction of the Project or the Architect's services for the Project for a period of sixty (60) consecutive days or more and such suspension is not caused by the Architect's default or the acts or omissions of Architect or its Consultants, upon rescission of such suspension, the compensation due to the Architect will be subject to adjustment to reflect actual costs and expenses incurred by Architect, if any, as a direct result of the suspension and resumption of the Project construction or Architect's services for the Project.

9.4. If the District shall fail to compensate the Architect as provided in this Agreement, Architect may, upon seven (7) days advance written notice to the District, suspend further performance of services relating to such Project hereunder until payment in full is received. In such event, Architect shall have no liability for any delays or additional costs of construction of the Project due to, or arising out of, such suspension.

9.5. Upon the District's exercise of the right of termination under this Article of this Agreement, the Architect shall take action as directed by the District relative to on-going preparation of the Design Documents or construction of the Project. If requested by the District, the Architect shall within ten (10) days of such request, assemble and deliver to the District all work product, instruments of service and other items of a tangible nature (whether in the form of documents, drawings, samples or electronic files) prepared by or on behalf of the Architect under this Agreement. The Architect shall deliver the originals of all work product, instruments of service and other items of a tangible nature requested by the District pursuant to the preceding sentence; provided, however, that the Architect may, at its sole cost and expense, make reproductions of the originals delivered to the District.

ARTICLE 10

Insurance/ Indemnity / Architect Liability

10.1. *Architect Insurance.* At all times while providing or performing services under this Agreement, the Architect and its Consultants shall obtain and maintain the policies of insurance described in this Section. The minimum coverage amounts of each policy of insurance to be obtained and maintained by the Architect and its Consultants while providing or performing services in connection with the Project shall be as set forth in this Agreement.

10.2. *Workers Compensation and Employers Liability Insurance.* Architect shall purchase and maintain Workers' Compensation Insurance covering all claims under applicable workers' or workmen's compensation, disability benefit and other similar employee benefit acts. Architect shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Architect. The Employer's Liability Insurance required of Architect hereunder may be obtained by Architect as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance policy.

10.3. *Commercial General Liability Insurance.* Architect shall purchase and maintain Commercial General Liability Insurance as will protect Architect from the types of claims set forth below which may arise out of or result from Architect's services under this Agreement and for which Architect may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than Architect's employees; (ii) claims for damages insured by ordinary personal injury liability coverage; (iii) claims for damages, other than to the Work of the Project itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and (v) contractual liability insurance applicable to Architect's obligations under this Agreement. District shall be named as an additional insured to Architect's Commercial General Liability Insurance policy.

10.4. *Professional Liability Insurance.* Architect will procure and maintain professional liability insurance covering liabilities of the Architect arising out of the negligent performance of services under this Agreement.

10.5. *Consultants' Insurance.* Each Consultant providing or performing a portion of the services or obligations of the Architect under this Agreement shall obtain and maintain policies of insurance for Workers Compensation, Employers Liability, Commercial General Liability and Professional Liability. Each policy of insurance to be obtained by each of the Architect's Consultants shall conform with the standards or requirements set forth above.

10.6. *Policy Endorsements; Evidence of Insurance.* The Architect shall deliver to the District Certificates of Insurance evidencing each of the policies of insurance in the coverage amounts required hereunder. In addition, the Certificate of Insurance for Commercial General Liability Insurance policy shall include an endorsement adding the District as an additional insured. All policies of insurance required hereunder shall be issued by insurer(s) admitted to issue insurance by the State of California and to the reasonable satisfaction of the District. Coverages under each policy of insurance required hereunder, whether by endorsement or otherwise, shall provide that such policy will not be modified or canceled without at least thirty (30) days advance written notice (except for ten (10) days' written notice for non-payment of premium) to the District.

10.7. *Minimum Coverage Amounts.* Minimum coverage amounts for policies of insurance to be obtained and maintained by the Architect and each Consultant are set forth in Exhibit "D."

10.8. *Architect Indemnity.* To the fullest extent permitted by law, the Architect shall indemnify, defend and hold harmless the District and its employees, officers, Governing Board of Education, agents and representatives (collectively "the Indemnified Parties") from any and all claims, actions, demands, losses, responsibilities, expenses (including attorney fees and expert fees) or liabilities for: (i) injury or death of Architect's employees; (ii) injury or death of any persons, damage to any property, or (iii) other costs or charges to the extent caused by the negligent or willful acts, omissions, errors and/or other actionable conduct of Architect, its Consultants or the employees, agents and representatives of Architect or any of its Consultants in performing or providing any of the obligations, services or other work product contemplated under this Agreement. For claims based on professional liability and notwithstanding the foregoing, Architect has no obligation to provide defense counsel or to pay for any defense related costs prior to a final determination of its liability by a court of last resort (decisions regarding appeal shall lie solely with the District) or upon settlement; following any such determination of its liability, Architect shall be responsible to reimburse the Indemnified Parties as damages for an amount of such reasonable costs equal to the finally determined percentage of liability based upon the comparative fault of the Architect.

10.9. *District Indemnity of Architect.* The District shall indemnify and hold harmless Architect from all claims arising out of bodily injury (including death) and physical damage (other than to the Project itself and property covered by a policy of Builder's Risk Insurance) which arise out of the negligent or willful acts, omissions or other actionable conduct of the District.

ARTICLE 11

Responsibilities of the District

11.1. The District shall provide full information regarding the Project, including the District's objectives, general description of the scope, schedule requirements, District's Construction Budget, and other requirements which may affect the Project.

11.2. The District shall examine and accept (or reject) the documents submitted by the Architect and shall render decisions in a timely manner so as to avoid unreasonable delay in the orderly and sequential progress of the Architect's Services.

11.3. The District shall in writing notify 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 any responsibilities pursuant to this Agreement.

ARTICLE 12

Nondiscrimination

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

ARTICLE 13

Certificate of Architect

13.1 Architect certifies that the Architect's employees are certified or licensed under the laws and regulations of the State of California to provide the professional Services that it has herein agreed to perform.

13.2 Architect 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.

13.3 Architect certifies that it is aware of the provisions of 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"), and that Architect is performing Services as part of an applicable "public works" or "maintenance" project. Architect agrees to fully comply with and to require its Consultant(s) to fully comply with any and all applicable prevailing wage requirements of the California Labor Code.

ARTICLE 14

General Provisions

14.1 *Term.* The Term of this Agreement shall commence upon the District and the Architect each executing a counterpart copy hereof, delivery of an executed counterpart copy hereof to the other and ratification of this Agreement by the District's Governing Board. The Term shall expire upon completion of all services covered under this agreement.

14.2 *Governing Law; Interpretation.* This Agreement shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against the District or Architect. Venue for any lawsuit shall be in Santa Barbara County, Anacapa Division.

14.3 *Marginal Headings; Captions.* The titles of the various Paragraphs of the Agreement are for convenience of reference only and are not intended to and shall in no way enlarge or diminish the rights or obligations of Architect and District hereunder.

14.4 *Severability.* If any provision of this Agreement is deemed illegal, invalid unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted herefrom, but all remaining provisions will remain and continue in full force and effect.

14.5 *Cumulative Rights; No Waiver.* Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by District or Architect hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default by the other.

14.6 *Successors; Non-Assignability.* This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors of Architect and the District. Neither Architect nor District shall assign rights or obligations hereunder without the prior consent of the other, which consent may be withheld or granted in sole discretion of the Party requested to grant such consent.

14.7 *Authority.* The individual(s) executing this Agreement on behalf of Architect warrant and represent that she/he is authorized to execute this Agreement and bind Architect to all terms hereof. The individual(s) executing this Agreement on behalf of District warrant and represent that she/he is authorized to execute this Agreement and subject to approval and ratification by the District's Governing Board, to bind District to all terms hereof and authority granted to enter into this Agreement.

14.8 *Notices.* Notices under this shall be valid only if addressed to the other as set forth below or as modified by notice hereunder from time to time. Notices shall be effective only if by personal delivery requiring signature acknowledging receipt or by United States Mail, Certified, Return Receipt Requested, First Class, postage fully pre-paid. Notices effectuated by personal service shall be deemed effective as of delivery of such notices. Notices effectuated by

United States Mail shall be deemed effective the third (3rd) working day after deposit in the United States Mail. Notices hereunder shall be addressed as follows:

If to District:

David Hetyonk
Director of Facilities and Operations
Santa Barbara Unified School District
720 Santa Barbara St.
Santa Barbara, CA 93101
With courtesy copy to: dhetyonk@sbunified.org

If to Architect:

Alan Kroeker
Principal
PMSM Architects
802 East Cota Street, Suite A
Santa Barbara, CA 93103
With courtesy copy to: AKroeker@pmsm-architects.com

14.9. *Attorneys' Fees.* If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, expert fees, and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

14.10. *Independent Contractor.* 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 professional standards and regulations governing such Services.

14.11. *No Third Party Beneficiaries.* Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

14.12. *Entire Agreement.* This Agreement constitutes the entire agreement and understanding between the District and the Architect concerning the subject matter hereof, replacing and superseding all prior agreements or negotiations, whether written or verbal. No term or condition of this Agreement shall be modified or amended except by writing executed by the District and the Architect.

IN WITNESS WHEREOF, the District and Architect have executed this Agreement as of the date set forth above.

“District”
Santa Barbara Unified School District

By: _____

Title: _____

“Architect”
PMSM Architects

By: _____
Alan Kroeker
Principal

EXHIBIT "A"
RESPONSIBILITIES AND BASIC SERVICES OF ARCHITECT

General

A. Meetings and Site Visits.

1. During all phases of the Project, Architect shall attend, take part in, and, when indicated conduct meetings and site visits as needed. The District shall invite the Construction Manager to participate in these meetings.

2. Architect shall be prepared to answer questions and issues from the District, Construction Manager, staff, site staff, potential bidders, and/or contractors, as applicable.

3. Architect shall maintain a log of all meetings, site visits or site observations held in conjunction with the design and construction of the Project, with documentation of major discussion points, observations, decisions, questions. Meeting logs shall be submitted to the District on a monthly basis.

4. Architect will attend and take part in of meetings to review bid packages with all potential bidders, District, and Construction Manager.

5. Architect shall, at the District's direction, attend District governing board meeting(s) and present the Architect's design to the District's governing board for review and approval.

B. Estimated Construction Costs. At minimum, the Architect shall:

1. Prepare and submit Architect's Estimated Construction Cost at the end of the Pre-Design/Concept Phase and as otherwise specified further herein, which estimates shall prepared based on a square foot/unit cost basis, or based on a more detailed computation if needed for additional accuracy.

2. Unless otherwise agreed, submit a detailed Estimated Construction Cost prepared by Architect's professional construction cost estimator at the 100% Design Development Phase and 100% Construction Documents Phase.

C. Other.

1. Architect shall assist District in obtaining any local agencies' approval for off-site work related to the Project, including review by regulatory agencies having jurisdiction over the Project, pursuant to Section 2.5 of the Agreement.

Pre-Design and Start Up

D. Pre-Design and Start-Up Services.

1. Upon execution of the Agreement with the District, the Architect shall:

1. Meet with District and user groups and perform design investigations to establish appropriate guidelines around and within which the Project design is to be completed.

2. Review all data pertinent to the Project including survey, site maps, geotechnical reports and recommendations, soil testing results reports, and pertinent historical data, and other relevant information provided by District.

3. Review DSA requirements pertaining to the proposed Project design; attend DSA scoping meeting

4. Identify design issues relating to functional needs, directives and constraints imposed by applicable regulatory agencies.

5. Prepare a detailed scope of work list and work plan for documentation in a computer-generated Project schedule to the District's reasonable satisfaction. This scope of work list and work plan will identify specific tasks including, but not limited to: interviews, data collection, analysis, report preparation, planning, concepts and design preparation and estimating that are part of the work of the Project. Architect shall also identify milestone activities or dates, specific task responsibilities, required completion times necessary for the review and approval by the District and by all regulatory agencies and additional definition of deliverables ("Schedule of Work") or, if applicable, update Exhibit "C" as necessary to comport with the requirements of this paragraph.

6. Architect shall provide to the District up to 5 hard copies (as specified by the District) of the following items produced in this Phase, and 1 copy of each item in electronic format:

- Copies of site plan
- Copies of the Estimated Construction Cost
- Copies of final Schedule of Work
- Copies of Meeting Reports/Minutes

Schematic Design Phase

E. Schematic Design Phase. Upon District's acceptance of Architect's work in the previous Phase, the Architect shall

1. Update scope of work list and work plan identifying specific tasks including, but not limited to the tasks described in D.5. Also identified in this phase will be activities or dates, specific task responsibilities of the Architect, required completion times necessary for the review and approval by the District and by pertinent regulatory agencies and additional definition of deliverables. Architect shall review the developed work plan with the District representatives to familiarize them with the proposed tasks and schedule and develop necessary modifications. The Construction Manager shall be responsible to establish overall project milestones in which the Architect shall adjust its timelines and manpower as appropriate.

2. Architect shall present and review with the District the detailed Schematic Design. The Schematic Design shall be revised until a final concept within the approved Construction Budget has been accepted and approved by the District at no additional cost to the District. If directed by the District prior to or at the time of approval of the Schematic Design, the Construction Documents shall be prepared so that portions of the work of the Project may be performed under separate construction contracts, or so that the construction of portions of the Project may be deferred. Alternate construction schemes proposed by the District subsequent to the Schematic Design Phase which do not arise from the errors or omissions of the Architect, and are not the result of the Project exceeding the Construction Budget caused by the Architect will be considered Extra Services.

3. The Schematic Design shall contain the following items as applicable to the Project scope:

a. Architectural:

- i. Scaled floor showing overall dimensions, identifying the various major areas and their relationship. Also, provide typical layouts of major equipment or operational layout.
- ii. Preliminary exterior elevations and sections in sufficient detail to demonstrate design concept indicating location and size of fenestration.

4. Architect shall provide to the District up to 5 hard copies (as specified by the District) of the following items produced in this phase, together with one copy of each item in electronic format:

- Meeting Reports/Minutes
- Schematic Design package with alternatives (up to 3 full size and up to 2 half size copies of all drawings)
- DSA file, including all correspondence and meeting notes to date, or notification in writing that Architect has not met or corresponded with DSA.

Design Development Phase

F. Design Development Phase. Upon District's acceptance of Architect's work in the previous Phase, the Architect shall:

1. Prepare from the accepted deliverables from the Schematic Design Phase, the Design Development Phase documents consisting of, without limitation, the following for each proposed system within Architect's scope of work:

a. Architectural:

- i. Scaled, dimensioned floor plans with room locations including openings.
- ii. Building sections showing dimensional relationships, materials and component relationships.
- iii. Identification of fixed equipment to be installed in the construction contract.
- iv. Site plan with beginning notes and dimensions including paving.
- v. Preliminary development of details and enlarged details.
- vi. Legend showing all symbols used on drawings.
- vii. Floor plans identifying all fixed and major movable equipment and furniture.
- viii. Outline specifications of proposed architectural, structural, mechanical and electrical materials, systems and equipment and their criteria and quality standards. If applicable, Architect is to use District's standardized equipment/material list for new construction and modernization in development of the Project design and specifications.
- ix. Typical reflected ceiling development including ceiling grid and heights for each ceiling to be used, showing light fixtures, ceiling registers or diffusers, and access panels. As applicable, identify proposed roof system, deck, insulation system and drainage technique.
- x. Identify minimum finish requirements.
- xi. Identify code requirements include occupancy classification(s) and type of construction.

b. Structural:

- i. Structural drawing with all major members located and sized.
- ii. Establish final building and floor elevations.
- iii. Preliminary specifications (may be shown in the drawings for this phase).
- iv. Identify foundation requirement (including fill requirement, piles) in consideration of associated soil pressure, water table and seismic center identified in the District-provided soils report.

c. Mechanical/plumbing:

- i. Preliminary heating and cooling load calculations as required and major duct or pipe runs sized to interface with structural.
- ii. Major mechanical equipment scheduled indicating size and capacity.
- iii. Ductwork and piping should be substantially located and sized.
- iv. Devices in ceiling located.
- v. Legend showing all symbols used on drawings.
- vi. More developed specifications indicating quality level and manufacture.
- vii. Control systems to be identified.

d. Electrical:

- i. Calculate preliminary overall approximate electrical loads.
- ii. Lighting fixtures located and scheduled showing all types and quantities of fixtures to be used, including proposed lighting levels for each usable space.
- iii. Preliminary electrical distribution including a one line diagram indicating final location of switchboards, communications, controls (high and low voltage), motor control centers, panels, transformers and emergency generators, if required. Low voltage system includes fire alarm system, security system, intercom, clock and public address system, voice data system, and telecom/technology system (as applicable)
- iv. Legend showing all symbols used on drawings.
- v. Developed and detailed outline specifications indicating quality level and manufacture.

e. Civil:

- i. Refinement of Schematic Design phase development of street access to new building sites if required by design, development of on and off site utility systems for sewer, electrical, water, storm drain, firewater lines and fire hydrants. This includes, without limitation, pipe sizes, materials, invert elevation location and installation details. Basic Design Services include off site work for building related sidewalks, curb cuts and utility tie-ins at street.
 - ii. Refinement of Schematic Design Phase surface improvements including on site roadways, walkways, parking (with assumed wheel weights), grading, and storm drainage improvements. Includes details and large scale drawings of curb and gutter, manhole, thrust blocks, paved parking and roadway sections.
 - iii. Preliminary Development of Storm Water Prevention Plan (if required)
- f. Landscape: Develop and coordinate landscape design concepts entailing visual analysis of existing conditions, proposed components and how the occupants will use the facility. Include location and description of planting, ground improvements, irrigation main distribution lines and visual barriers. .

2. The District may conduct a constructability review of the Design Development Documents. If so done, the reports will be given to the Architect who shall make necessary changes along with providing written comments for each item listed in the report within 10 working days and at no additional cost to the District, unless specifically instructed otherwise by the District in writing. Notwithstanding, if Architect is requested to make changes identified in the constructability review which conflict with prior District directives, the incorporation of such changes shall constitute an Extra Service. Further, the 10 working day time period may be

extended on mutual agreement of the Parties. Any costs arising from the Architect's failure to incorporate any constructability comments shall be the responsibility of the Architect, unless otherwise directed by the District in writing.

3. Architect shall provide to the District up to 5 hard copies (as specified by the District) of the following items produced in this phase, together with one copy of each item in electronic format:

- Design Development drawing set from all professional disciplines necessary to deliver the Project – up to 3 full size and up to 2 half size sets of all drawings.
- Specifications.
- DSA file, including all correspondence and meeting notes to date, or notification in writing that Architect has not met or corresponded with DSA.

Construction Documents Phase

G. Construction Documents Phase. Upon District's acceptance of Architect's work in the previous Phase, the Architect shall:

1. At Construction Documents ("CD") 50% Stage:
 - a. Prepare from the accepted deliverables from the Design Development Phase the Construction Documents consisting of, without limitation, the following for each proposed system within Architect's scope of work:
 - i. Architectural:
 1. Site plan developed to show building location, all topographical elements and existing/proposed contour lines.
 2. Elevations (exterior and interior), sections and floor plans corrected to reflect design development review comments.
 3. Architectural details and large blow-ups started.
 4. Well-developed finish, door, and hardware schedules.
 5. Site utility plans started.
 6. Fixed equipment details and identification started.
 7. Reflected ceiling plans coordinated with floor plans and mechanical and electrical systems.
 - ii. Structural:
 1. Structural floor plans and sections with detailing well advanced.
 2. Structural footing and foundation plans, floor and roof framing plans with detailing well advanced.
 3. Completed cover sheet with general notes, symbols and legends.

iii. Mechanical:

1. Mechanical calculations in progress with all piping and ductwork sized.
2. Large scale mechanical details started.
3. Mechanical schedule for equipment substantially developed.
4. Progressing design of Environmental Management System.

iv. Electrical:

1. Lighting, power, signal and communication plans showing all switching and controls. Fixture schedule and lighting details development started.
2. Distribution information on all power consuming equipment; lighting and device branch wiring development well started.
3. All electrical equipment schedules started.
4. Special electrical system components approximately located on plans.
5. Progressing design of low voltage system. Low voltage system includes fire alarm system, security system, clock and public address system, voice data system, and telecom/technology system.

- i. Civil: Site plans, site utilities, parking, walkway, and roadway systems updated to reflect update revisions from Design Development Phase Documents. Storm Water Prevention Plan in progress (if required)

- v. Landscape: Landscape, hardscape, and irrigation plans updated to reflect update revisions from Design Development Phase Documents.

b. Specifications:

- i. More than fifty percent (50%) complete development and preparation of technical specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.
- ii. No part of the specifications shall call for a designated material, product, thing, or service by specific brand or trade name unless the specification is followed by the words "or approved equal" so that bidders may furnish any equal material, product, thing, or service, as required by Public Contract Code, section 3400, or the designation is allowable by a specific allowable exemption or exception pursuant to Public Contract Code, section 3400.

- iii. Specifications shall not contain restrictions that will limit competitive bids other than those required for maintenance convenience by the District or with District's prior approval.
- iv. Specifications shall be in CSI format.
- c. 50% Construction Documents Deliverables and Numbers of Copies: Architect shall provide to the District up to 5 hard copies (as specified by the District) of the following items produced in this phase, together with one copy of each item in electronic format:
 - Hard copies of working drawings – up to 3 full size and up to 2 half size sets.
 - Specifications
 - Statement of requirements for testing and inspection of service for compliance with Construction Documents and applicable codes.
 - A statement indicating any authorized changes made to the design from the last Phase and the anticipated cost impact of each change on the Estimated Construction Cost. If no design changes occur but shifts of costs occur between disciplines, identify for District review.
 - Updated cost estimate

2. Construction Documents – 100% /Completion Stage:

- a. Finalize Construction Documents as follows:
 - i. Architectural:
 - 1. Completed site plan.
 - 2. Completed floor plans, elevations, and sections.
 - 3. Architectural details and large blow-ups completed.
 - 4. Finish, door, and hardware schedules completed, including all details.
 - 5. Fixed equipment details and identification completed.
 - 6. Reflected ceiling plans completed.
 - 7. Attend DSA pre-application meeting.
 - 8. Architect shall review and comment on District's construction bid contracts and Construction Documents as part of its work under the Agreement.
 - ii. Structural:
 - 1. Structural floor plans and sections with detailing completed.
 - 2. Structural calculations completed.
 - iii. Mechanical:
 - 1. Large scale mechanical details complete.

2. Mechanical schedules for equipment completed.
3. Completed mechanical schematic for environmental cooling and exhaust equipment.
4. Complete energy conservation calculations and report.

iv. Electrical:

1. Lighting and power plan showing all switching and controls. Fixture schedule and lighting details completed.
2. Distribution information on all power consuming equipment, including lighting, power, signal and communication device(s) branch wiring completed.
3. All electrical equipment schedules completed.
4. Special system components plans completed.
5. Electrical load calculations completed.

v. Civil: All site plans, site utilities, parking and roadway systems completed.

b. Specifications:

- i. Complete development and preparation of technical specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.
- ii. No part of the specifications shall call for a designated material, product, thing, or service by specific brand or trade name unless the specification is followed by the words “or approved equal” so that bidders may furnish any equal material, product, thing, or service, as required by Public Contract Code, section 3400 or the designation is allowable by specific allowable exemptions or exceptions pursuant to Public Contract Code, section 3400.
- iii. Specifications shall not contain restrictions that will limit competitive bids other those required for maintenance convenience by the District or with District’s prior approval.
- iv. At one hundred percent (100%) review, District shall review the specifications and shall direct Architect to make corrections at no cost to the District, unless such changes are inconsistent with prior District directives and approvals.
- v. Coordination of the Specifications with specifications developed by other disciplines.
- vi. Specifications shall be in CSI format.

- c. **Constructability Review:** The District may conduct a constructability review. The Architect and Construction Manager shall meet and agree upon revisions to the Construction Documents based on the reviews required under this Paragraph. Any revisions or comments resulting from such constructability review shall be incorporated into the Architect's documents at no additional cost to the District, unless specifically instructed otherwise by the District in writing. Notwithstanding, if Architect is requested to make changes identified in the constructability review which conflict with prior District directives, the incorporation of such changes shall constitute an Extra Service. Any costs arising from the Architect's failure to incorporate any constructability comments shall be the responsibility of the Architect, unless otherwise directed by the District in writing. The District will not advertise the Project for bids until satisfied that the Architect has fully addressed all agreed-upon constructability comments.
- d. Architect shall review and comment on District's construction bid contracts and contract documents ("Division 0" documents and "Division 1" documents) as part of its Basic Design Services.
- e. **100% Construction Documents Deliverables and Numbers of Copies:** Architect shall provide to the District up to 5 hard copies (as specified by the District) of the following items produced in this phase, together with one copy of each item in electronic format:
 - Copies of working drawings – up to 3 full size and up to 2 half size sets.
 - Specifications.
 - Engineering calculations.
 - Statement of requirements for testing and inspection of service for compliance with Construction Documents and applicable codes.
 - DSA file including all correspondence, meeting, back check comments, checklists to date.
 - A statement indicating any authorized changes made to the design from the last Phase and the anticipated cost impact of each change on the previously Estimated Construction Cost. If no design changes occur but shifts of costs occur between disciplines, identify for District review.
 - Updated Cost Estimate

3. **Construction Documents (CD) Final Back-Check Stage:**

- a. The Construction Documents final back-check stage shall be for the purpose of the Architect incorporating all regulatory agencies' comments into the drawings, specifications, and estimate. All changes made by the Architect during this stage shall be at no additional cost to the District except to the extent required due to a change in law or changes in agency code interpretations. Architect shall notify the District in writing if Architect is

aware of any upcoming or anticipated changes to the applicable laws or other requirements affecting the Project.

- b. The final contract documents delivered to the District upon completion of the Architect's work shall be the Bid Set and shall consist of the following:
 - i. Drawings: Original drawings on Architect's plotter paper with each Architect/Consultant's State license stamp.
 - ii. Specifications: Original word-processed technical specifications on reproducible masters in CSI format.
 - iii. Electronic Copy of Drawings: Architect shall provide the District with one copy each of the conformed Final Back-Check Stage drawings in AutoCAD and PDF formats.
- c. Architect shall coordinate with the Consultants so they update and refine the Consultants' completed Construction Documents.

Bidding Phase

H. Bidding Phase. Upon District's acceptance of Architect's work in the previous Phase, the Architect shall perform Bidding Phase services for District as follows (in the case of an Alternative Delivery Method, the Services shall be adjusted, at no additional compensation, to coincide with Project requirements):

1. Assist the District with the development of the bidding documents and procedures and the construction contract documents.
2. The Architect shall provide services in connection with evaluating pre-bid substitutions proposed by the Contractor and making subsequent required revisions to drawings, specifications and other documentation. Any substitutions submitted 60 days after the award of the contract to the Contractor will be an Extra Service.
3. The Architect shall coordinate its services with the Construction Manager and to prepare all necessary bidding information and bidding forms required by the District in preparing the construction contract and general conditions, including providing, plans or specifications, which include a requirement that the selected Contractor provide operation manuals and adequate training for the District in the operation of mechanical, electrical, heating, air conditioning and other systems installed by the Contractor, all of which shall be part of the bid documents prepared by the Architect.
4. The Architect shall coordinate its services with the Construction Manager to print and distribute necessary bidding information, general conditions of the contract, and supplementary general conditions of the contract.

5. The Architect shall coordinate its services with the Construction Manager to deposit a reproducible set of Construction Documents and specifications at a reprographics company specified by District for the bid and for printing of additional sets of plans and specifications during the Project. In addition, Architect shall provide District with an AutoCAD, Revit, PDF or other approved format file.

6. While the Project is being advertised for bids, all questions concerning intent shall be referred to the Construction Manager for screening and subsequent processing through Architect.

7. In the event that items requiring interpretation of the drawings or specifications are discovered during the bidding period, those items shall be analyzed by the Architect for decision by the Construction Manager as to the proper procedure required. Corrective action will be in the form of an addendum prepared by the Architect and issued by the Construction Manager.

8. Attend bid opening(s).

9. Coordinate with Consultants.

10. Respond to District questions and clarifications.

11. Prepare deductive alternates if needed in order to bring the Project within the Construction Budget.

12. Upon completion of the Bidding Phase, Architect shall produce a Conforming Set of plans and specifications incorporating all addenda issued thus far. Architect shall supply District with up to 5 complete sets of plans and specifications marked as a Conforming Set – up to 3 full size and up to 2 half size sets, as specified by the District.

Construction Administration Phase

I. Construction Administration Phase. Upon District's acceptance of Architect's work in the previous Phase, the Architect shall perform Construction Administration Phase services for the District as follows:

1. The Architect's responsibility to provide Basic Services for the Construction Administration Phase under the Agreement commences with the award of the contract for construction and terminates upon satisfactory performance and completion of all tasks in this phase and completion of the Project and the Closeout Phase, or upon the District's terminating the Agreement, or upon 60 days after recordation of the last Notice of Completion for the Project or upon 60 days after completion of the Project as defined in Public Contract Code section 7107, whichever is earlier.

2. Architect shall advise and consult with the Construction Manager during the Construction Phase Services. The Architect shall be the interpreter of the requirements of the Construction Documents and advise the Construction Manager as to the performance by the Contractor thereunder.

3. The Architect shall have authority to act on behalf of the District only to the extent provided in the Service Agreement unless otherwise modified in writing. Except for the issuance of interpretations or clarifications as to the drawings and specifications in response to a Request for Information, Architect shall have no authority to authorize changes in the Work, whether minor or otherwise.

4. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures for safety precautions and programs in connection with the Project, nor shall Architect be responsible for the Contractor's failure to perform the work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the work.

5. The Architect shall review and certify payment applications submitted by Contractors. The Architect shall, within seven (7) days after receipt of the Contractor's application for payment, either approve such payment or notify the Contractor in writing of the Architect's reasons for withholding approval in whole or in part as provided under the Contract Documents. Recommendations of payment by Architect constitute Architect's representation to the District that, to the best of Architect's information and belief based on the Architect's observations at the site, the work has progressed to the point indicated, the work is in accordance with the Construction Documents and that the Contractor is entitled to the amount approved.

6. Site Visits:

- a. The Architect shall conduct periodic visits at the site as Architect deems necessary to render architectural observation (as is distinguished from the continuous personal inspection of the Project inspector). In no case shall the number of visits be less than once every other week during active construction. The purpose of the site visits is to determine, in general, if the work is being performed in a manner indicating that the work, when fully completed, will be in conformance with the Contract Documents.
- b. On the basis of on-site observations, the Architect shall keep the District informed of the progress and the quality of the work, and shall endeavor to guard the District against defects and deficiencies in the work. Architect shall notify the Construction Manager in writing of any defects or deficiencies in the work by any of the District's contractors that the Architect may observe and of any known deviations from the most recent construction schedule.
- c. Architect will attend weekly project meetings with District staff during active construction to review with District staff the progress of the work at each site. Architect will conduct construction meetings and prepare construction meeting minutes.

- d. Based on its observations of the Project, the Architect shall make recommendations to the District regarding the date or dates for final completion and recordation of all notices of completion.

7. The Architect shall provide direction to a full-time DSA Project inspector employed by and responsible to the District as required by applicable law. The Architect shall coordinate its Services with any other District-retained consultants.

8. During construction, the Architect shall furnish and distribute all necessary additional drawings for supplementing, clarifying, and/or correcting purposes and for change orders at no additional cost except for scope changes not due to the Architect's errors or omissions.

9. The Architect shall advise the Construction Manager to reject work which it becomes aware does not conform to the Construction Documents. The Architect shall promptly inform the Construction Manager whenever, in the Architect's opinion, it may be necessary for the District or the Inspector to stop the work to avoid the improper performance of the Contractor's contract with the District. The Architect has no authority to stop the work, only to advise and inform the Construction Manager of the need for the same. The Architect has authority to require additional inspection or testing of the work in accordance with the provisions of the Construction Documents, whether work is fabricated, installed or completed.

10. Submittals:

- a. Architect shall review and approve or take other appropriate action upon Contractor's submittals such as: shop drawings, project data, samples and change orders, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the contract documents.
- b. The Architect's action upon Contractor's submittals shall be taken as expeditiously as possible within a maximum of fourteen (14) days subject to a mutually agreed submittal schedule, so as to cause no unreasonable delay in the construction of the Project or in the work of separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. This fourteen (14) day time period shall not include time when a submittal is within the District's control or if the submittal is being reviewed by DSA.
- c. Architect's response to each submittal shall be substantive and acceptable to the District.
- d. Responses to submittals should be directed to Contractor.

11. RFIs:

- a. During the course of construction, all Requests for Information (“RFI”) must be responded to as expeditiously as possible in accordance with the professional standard of care so as not to impact and delay the construction progress. In no case shall the review period associated with an RFI exceed fourteen (14) days from the receipt by the Architect. Architect’s response to each RFI shall be in writing, substantive and acceptable to the District. This 14-day time period shall not include time when a response to an RFI is within the District’s control.
- b. The Architect shall not issue interpretations or clarifications to Contractor that it knows will commit the District to extra expenses or otherwise amend the Construction Documents without first obtaining the written approval of the District.
- c. Interpretations and clarifications of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents.
- d. Responses to RFI’s should be directed to Contractor.

12. Change Orders and Construction Change Directives:

- a. Architect shall, within a reasonable amount of time, evaluate and render written recommendations to the Construction Manager, on all change order requests or other matters at issue between the District and Contractor(s).
- b. Services related to an approved scope change to the Project may, with District’s written approval, be an Extra Service, except for those items that arise from the Architect’s errors or omissions.
- c. Architect shall prepare all change orders and construction change directives for the District’s approval and execution in accordance with the Contract Documents. Architect shall distribute the executed change orders and construction change directives to Contractor.

13. The Architect shall assist the District with gathering information and processing forms required by applicable governing authorities, including but not limited to the DSA, in a timely manner for Project close-out.

14. Record Drawings: Architect shall review the Contractor’s recorded changes which the Contractor(s) should prepare and submit as Record Drawings. Record Drawings are documents that show changes recorded by the Contractor on the Conforming Set during the construction of the Project, including changes necessitated by change orders.

15. As-Built Drawings: If requested by the District, the Architect shall incorporate the information on all Record Drawings and prepare one set of final As-Built Drawings for the District in Revit as an Extra Service. The As-Built Drawings shall incorporate onto one set of drawings the Contractor’s recorded changes from the Record Drawings, sketches, details, LEED

documentation (if applicable), and clarifications. The Architect shall deliver the as-built drawings, one as a hard copy and electronically in the latest Autocad and Revit format (or other format acceptable to District), to the District at completion of the construction. It shall be a condition precedent to the District's approval of the Architect's final payment that the Architect has provided As-Built Drawings on a timely basis. The Architect may insert the following notice on the As-Built Drawings: "These drawings or corrected specifications, if applicable, have been prepared based on information submitted, in part, by others. The Architect cannot warrant the accuracy of any information provided by others or warrant that all changes made during construction will appear in such drawings or corrected specifications. The Architect has provided a review consistent with its legal standard of care."

16. **Manuals/Warranties:** Architect shall receive and review from the Contractor equipment, operation and maintenance manuals, and a complete set of warranty documents for all equipment and installed systems, to determine whether they meet the requirements of the plans and specifications.

Project Close-Out Phase

J. Close Out Phase. As the Construction Administration Phase progresses, the Architect shall perform the following Close-Out Phase services for the District as required:

1. If the Project is being constructed under the CM- Multi Prime method, the close-out phase services shall apply to each individual trade contract at no extra cost.

2. Architect shall review the Contractor final punch lists to determine if the Contractor has substantially completed the construction of the Project (or portion thereof as per its contract with District) and shall prepare punch lists of noted items that remain in need of correction or completion. Architect shall issue a final certificate for payment based upon a final inspection indicating that the work complies with the requirements of the Contract Documents. Only one punch list review and one back-check review is contemplated as a Basic Service. In the case of a CM Multi Prime project delivery, the one punch list and one back-check review shall apply to each trade contract bid on the Project.

3. When the work is found to be substantially complete, Architect shall inform District about the balance of the contract price remaining to be paid to Contractor(s), including the amount to be retained from the contract price, if any, for final completion or correct of the work.

4. Architect shall collect from the Contractor, review, and forward to the Construction Manager all written warranties, operation manuals, spare parts, lien waivers, and Certificates of Inspection and Occupancy with Architect's recommendation as to the adequacy of these items.

5. Architect shall prepare or collect, as applicable, and provide to DSA, all reports required by DSA related to the design and construction of the Project. Architect shall gather any information and forms required for DSA close-out.

6. When the design and construction of the Project is complete, the Architect shall assist the District to prepare a Notice of Completion for the Project, and in the case of a CM Multi Prime project delivery, upon completion of the work specified in each trade contract. All Notices of Completion will be recorded by the District.

7. The Architect shall provide the District proof that the following documents described below were delivered to the DSA for review prior to issuance of a "Certificate of Completion."

- a. Copies of the Inspector of Record's semi-monthly reports.
- b. Copies of the laboratory reports on all tests or laboratory inspections as returned and done on the Project.
- c. Copy of the Notice(s) of Completion recorded by the District.
- d. Final Verified Report Form DSA-6A/E certifying all work is 100% complete from the Architect, Structural Engineer, Mechanical Engineer and Electrical Engineer.
- e. Final Verified Report Form DSA-6 certifying all work is 100% complete from the Contractor or Contractors, Inspector of Record and Special Inspector(s).
- f. Verified Reports of Testing and Inspections as specified on the approved drawings and specifications.
- g. Weighmaster's Certificate (if required by approved drawings and specifications).
- h. Copies of the signature page of all Addenda as approved by DSA.
- i. Copies of the signature pages of all Deferred Approvals as approved by DSA.
- j. Copies of the signature page of all Change Orders as approved by DSA.
- k. Verification by the I.O.R. that all items noted on any "Field Trip Notes" have been corrected.

8. Basic LEED Commissioning - Not applicable.

9. Upon request of District, and prior to the expiration of one year from the date of substantial completion, Architect shall, without additional compensation, conduct a meeting with District to review the facility operations and performance.

EXHIBIT "B"

ARCHITECT'S FEE/KEY PEOPLE (ARCHITECT'S STAFF)/ARCHITECT'S CONSULTANTS/ HOURLY RATE SCHEDULE

A. Architect's Fee for Basic Services. Architect's Fee for Basic Services as described in Article shall be based on the total Construction Cost for completion as follows:

11 ½ % of the first \$1,000,000
11% of the next \$1,000,000
10% of the next \$4,000,000
9% of the next \$4,000,000
8% of the total Construction Cost in excess of \$10,000,000

The compensation for each phase of services shall be as follows:

Project Scoping/Schematic Design Phase	8%
Design Development Phase	16%
Construction Documents Phase	37%
DSA Approval	7%
Bidding Phase	5%
Construction Administration	22%
<u>As-built drawings and DSA close out</u>	<u>5%</u>
Total Compensation for Basic Services	100%

B. Key People/Project Team (Architect's Staff):

Principal – Alan Kroeker

Project Manager – Hal Hart

C. Major Consultants:

Civil Engineering – Flowers & Associates, Inc.

Structural Engineering – Van Sande Structural Consultants

D. Hourly Rate Schedule: See Attached.

E. District's Construction Budget: Three Hundred Ninety Thousand Dollars (\$390,000).

PMSM ARCHITECTS HOURLY BILLING RATES

Principal	\$230/hr	Graphics II	\$ 95/hr
Associate Principal	\$190/hr	Government Agency Specialist	\$ 90/hr
LEED Accredited Professional II	\$190/hr	Drafter II	\$ 85/hr
Architect III / Studio Director	\$160/hr	Graphics I	\$ 85/hr
Specifications Writer	\$150/hr	Government Agency Specialist	\$ 85/hr
LEED Accredited Professional I	\$140/hr	Drafter I	\$ 75/hr
Architect II / Project Manager II / Senior Designer	\$140/hr	Administrative Staff I	\$ 75/hr
Architect I / Project Manager	\$125/hr	Technical Staff	\$ 65/hr
Drafter III	\$ 95/hr		

EXHIBIT "C" SCHEDULE OF WORK
(IF AVAILABLE AT TIME OF ENTERING CONTRACT)

EXHIBIT "D" INSURANCE

A. Minimum Coverage Amounts. Minimum coverage amounts for policies of insurance to be obtained and maintained by the Architect and each Consultant are:

Workers Compensation	In accordance with applicable law
Employers Liability	\$1,000,000
Commercial General Liability (including Bodily Injury or Death and Property Damage)	
Per Occurrence	\$2,000,000
Aggregate	\$4,000,000
Automobile Liability - Bodily Injury or Death	
Per Occurrence	\$1,000,000
Aggregate	\$2,000,000
Professional Liability	
Per Claim	\$2,000,000
Aggregate	\$4,000,000

The District may, in its sole discretion, agree to accept lesser coverage amounts for Architect's Consultants.