

**BERRYESSA UNION SCHOOL DISTRICT  
PURCHASING DEPARTMENT**

1376 Piedmont Road  
San Jose, CA 95132  
(408) 923-1871 (ph)  
(408) 926-8329 (fax)



*Pathway to the Future*

**REQUEST FOR QUALIFICATIONS**

**RFQ 01-2019-20**

**ARCHITECTURAL SERVICES**

DUE: Before 1:00 p.m. on Tuesday January 7, 2020

**REQUEST FOR QUALIFICATIONS  
BERRYESSA UNION SCHOOL DISTRICT**

**DUE DATE: TUESDAY JANUARY 7, 2020 BEFORE 1:00PM**

**RFQ 01-2019-20  
STATEMENT OF QUALIFICATION  
ARCHITECTURAL SERVICES**

NOTICE IS HEREBY GIVEN that the Berryessa Union School District of Santa Clara County, State of California, acting by and through its Governing Board, hereafter referred to as the "District", will receive under sealed cover BEFORE 1:00 P.M. (Pacific Daylight Time), on TUESDAY, JANUARY 7, 2020, Qualification Statements for the award of Architectural Services. A copy for download of the Request for Qualifications (RFQ) is located on the District's website at [www.berryessa.k12.ca.us](http://www.berryessa.k12.ca.us) click on the quick link "Request for Proposals" where documentation and instructions can be found.

Proposals shall be received at: Purchasing Department  
Berryessa Union School District  
1376 Piedmont Road  
San Jose, CA 95132

The School District reserves the right to accept or reject any and all proposals and to waive any irregularities or informalities in the proposals or in the proposal process. No proposers may withdraw their proposal for a period of 90 days after the date set for the opening of proposals or after approval by the Berryessa Union School District Board of Education.

The intent of this RFQ is to solicit Statements of Qualification for Architectural Services for future District-wide modernization projects should a Bond Measure be passed in March 2020.

For all questions please contact: Bonny Gregorius, Purchasing and Contracts Manager  
Berryessa Union School District  
Phone: 408 -923-1871  
Fax: 408-926-8329  
Email: [bgregorius@busd.net](mailto:bgregorius@busd.net)

# **ADMINISTRATIVE INFORMATION**

## **District Contact:**

For purchasing and legal questions please contact:  
Bonny Gregorius, Purchasing and Contracts Manager  
Berryessa Union School District  
Phone: 408 -923-1871  
Fax: 408-926-8329  
Email: [bgregorius@busd.net](mailto:bgregorius@busd.net)

## **Attachments:**

- Attachment A: List of School and Administrative Sites
- Attachment B: Professional Services Agreement

## **Proposal Due Date:**

Proposals must be submitted by January 7, 2020 before 1:00 PM (Pacific Daylight Time). See the "Instructions" in the Submission Requirements section of this document for details.

## **Schedule of Events:**

<b>Action</b>	<b>Date</b>
Request for proposal issued	November 25, 2019
Advertisement in San Jose Post Record	November 25, 2019
Advertisement in San Jose Post Record	December 2, 2019
Written questions from Proposers due before 5:00PM	December 16, 2019
Response to questions will be provided	December 19, 2019
Proposals due before 1:00PM	January 7, 2020
Proposal evaluation	January 7-10, 2020
Notification to short-listed firms	January 10, 2020
Oral presentations/ Interviews	January 15, 2020
Notification	TBD

# **OVERVIEW**

## **RFQ Intent:**

The intent of this RFQ is to solicit Statements of Qualification from qualified architectural firms to meet the District's need in the planning, design, and construction of various future projects throughout the District.

## **Services Requested:**

Berryessa Union School District (District) requests proposals and qualifications from professional services firms for architectural services. The services provided must meet the objectives as described in this Request for Qualifications (RFQ) and the Attachment B Agreement for Architectural Services,

## **Objectives:**

The District desires to expand their current pool of architects with pre-qualified firms for the District's anticipated Bond Program should a Bond be passed in March 2020.

## **District Background Information:**

Berryessa Union School District is a public K-8 school district operating ten elementary and three middle schools. The District is located in the sloping northeastern foothills of the Silicon Valley in San Jose, California. The District serves a community of approximately 45,000 homes and has approximately 7,000 students enrolled in Kindergarten thru Eighth Grade. Challenging educational programs and a strong commitment to excellence produce high pupil achievement. As such, we are constantly striving to fill District needs in the most cost-effective manner to obtain the best combination of product, quality, price, and service.

This request for proposal does not commit the Berryessa Union School District to award a contract, to pay for any costs incurred in the preparation of a proposal, or to procure or contract the services or supplies. The Berryessa Union School District reserves the right to accept or reject any or all proposals received as a result of the request, to negotiate with any qualified source, or to cancel in part or in its entirety the Request for Proposals if it is in the best interest of the Berryessa Union School District. The District may require the firm selected to participate in negotiations, and to permit such price, technical or other revision of their proposals as may result from said negotiations. The selected firm's proposal will be submitted to the Board of Trustees for consideration of award. The decision of the Board is final.

# **SUBMITTAL REQUIREMENTS**

Your Statement of Qualification must respond to each item noted below and must follow the format described below. Please limit response information to fifty (50) pages, single-sided and include relevant information only. Submitted materials are limited to 8-1/2 x 11 white paper.

1. **COVER LETTER/LETTER OF INTEREST**  
Maximum of two (2) pages. Must include name of firm, address, telephone and fax numbers, and name of Principal to contact. Letter must be signed by representative of the firm with authorization to bind the firm by contract.
  
2. **DESCRIPTION OF FIRM AND KEY SUB-CONSULTANT FIRMS**
  - A. **Architectural Firm**
    - History, number of years in business in California, staff size
    - Location of office which will perform the work
    - Size of staff, number of licensed architects and/or engineers in the office which will perform the work
  - B. **Sub-Consultant Firms**
    - Provide an organizational chart showing the District's relationship to your firm and any sub-consultants
    - For each sub-consultant firm, provide the following information:
      - Description of the services the firm will be providing
      - History, number of years in business, staff size
      - Location of office which will perform the work
      - Size of staff, number of professionals in the office which will perform the work
      - Description of extent and duration of prior working relationship with your firm (number and type of projects, number of years)
  
3. **RELEVANT EXPERIENCE**
  - A. **List relevant K-12 school projects and include:**
    - Project name and location
    - Year completed or current status
    - Client, contact person, and phone number
    - Project size: square feet and student enrollment
    - Project cost
    - Key consultant firms (structural, mechanical, electrical, civil, etc.)
  - B. **Images as you deem appropriate (minimum 5 projects, maximum 10 projects)**

4. PROJECT TEAM
  - A. List the following key Team Members for each primary discipline (structural, mechanical, electrical, civil).
    - Principal-in-Charge
    - Project Manager
    - Project Architect or Engineer
  - B. Provide qualifications of the Team Members listed above by including resumes which also list related experience
  
5. FIRM BACKGROUND AND TRACK RECORD
  - A. Has your firm ever been let go by a client or replaced by another firm during any educational and/or related project? If so, explain in detail.
  - B. Discuss your Firm's ability to meet construction schedules for projects, Firm's schedule management procedures, and how the Firm has successfully handled potential delays both for the contract documents and for field changes.
  - C. Describe by example your experience in meeting budgets. Describe by example an approach you have taken to bring a project back into budget.
  - D. Describe your firm's approach to quality control / assurance procedures, including coordination of design disciplines.
  - E. Describe Firm's philosophy and how your Firm intends to work with the District's administration officials to perform the services and respond to the unique challenges of the District
  - F. List three (3) completed school modernization projects and two (2) school new construction projects, and include their construction budgets.
  - G. Provide a statement of your firm's financial stability.
  - H. Provide a statement of ALL claim(s) filed against Firm in the past five (5) years. Briefly indicate the nature of the claim and the resolution, if any, of the claim(s).
  - I. Provide the name of the prime professional license holder exactly as on file with the requisite licensing authorities.

NOTES:

- A. The OPSC LP fee schedule will not be exceeded in determining fees for these projects.

# **SELECTION PROCESS**

All Statements of Qualifications received by the specified deadline will be reviewed by the Owner for completeness, content, experience, and qualifications. For those firms deemed most qualified, further evaluation and interviews may be conducted as part of the final selection process. However, the Owner reserves the right to complete the selection process without proceeding to an interview process, and may choose to select based on the information supplied in the Statement of Qualifications.

## **INTERVIEWS**

If selected for the short list of firms to be interviewed, Proposer should be prepared to be available on the date indicated on the schedule of events. A prepared oral presentation is requested by the Berryessa Union School District, to be no more than 30 minutes in length followed by question and answers for the review panel. The oral presentation will be evaluated on clarity of presentation, ability to answer both technical and application questions, and demonstrated understanding of the project intent.

Interviews will be conducted (if desired by District) on Wednesday January 15, 2020. Firms to be interviewed will be notified by Friday January 10, 2019.

The Owner reserves the right to select the firm(s) whose qualifications, in the Owner's sole judgment, best meet the needs of the Owner.

## **SELECTION CRITERIA**

The following criteria, listed in no particular order of importance, will be used to select the firm for the new work.

- A. Responsiveness to the RFQ – completeness and quality of the response.
- B. Firm and sub-consultant experience with similar projects.
- C. Qualifications and experience of proposed Team Members.
- D. Client satisfaction.
- E. Ability to comply with budget.
- F. Ability to comply with schedule.
- G. Stability and production capacity of firm and sub-consultant firms.
- H. Appropriate design aesthetic.
- I. Past experience on BUSD projects

# **SUBMITTAL INSTRUCTIONS**

Please submit under sealed cover one (1) original unbound copy and two (2) bound copies, and one (1) USB Flash-Drive. Faxes or emails will not be accepted.

**Submit documents BEFORE 1:00 PM (Pacific Daylight Time) on Tuesday, January 7, 2020 to:**

Bonny Gregorius, Purchasing and Contracts Manager  
Berryessa Union School District  
1376 Piedmont Road  
San Jose, CA 95132

Phone: 408 -923-1871  
Fax: 408-926-8329  
Email: [bgregorius@busd.net](mailto:bgregorius@busd.net)

Telephone, electronic or facsimile proposals will not be considered. Proposals received after the time and date of closing will not be considered.

## **SUBMISSION FORMAT**

The following table describes the required format and content for the vendor proposal:

<b>TAB NUMBER</b>	<b>CONTENTS</b>
1	Cover Letter/Letter of Interest
2	Description of Firm and Key Sub-Consultant Firms
3	Relevant Experience
4	Project Team
5	Firm Background and Track Record
6	Basic Services Hourly Rate Schedule

**Total pages not to exceed 50 pages, single sided on 8-1/2 x 11 white paper.**

**A Note on Public Records:** PROPOSALS will become the property of the DISTRICT and subject to the California Public Records Act, Government Code sections 6250 et seq. Those elements in each response that are trade secrets as that term is defined in Civil Code section 3426.1(d) or otherwise exempt by law from disclosure and which are prominently marked as "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY" may not be subject to disclosure. The DISTRICT shall not be liable or responsible for the disclosure of any such records including, without limitation, those so marked if disclosure is deemed to be required by law or by an order of the Court. A Firm that indiscriminately identifies all or most of its response as exempt from disclosure without justification may be deemed non-responsive. In the event the DISTRICT is required to defend an action on a Public Records Act request for any of the contents of a response marked "Confidential," "Proprietary," or "Trade Secret," the Firm agrees, by submission of its PROPOSAL for the DISTRICT'S consideration, to defend and indemnify the DISTRICT from all costs and expenses, including attorneys' fees, in any action or liability arising under the Public Records Act.



# ATTACHMENT A

## District School Sites and Administrative Offices

### ELEMENTARY SCHOOL SITES:

<b>Name</b>	<b>Address</b>
Brooktree Elementary School	1781 Olivetree Drive
Cherrywood Elementary School	2550 Greengate Drive
Laneview Elementary School	2095 Warmwood Lane
Majestic Way Elementary School	1855 Majestic Way
Noble Elementary School	3466 Grossmont Drive
Northwood Elementary School	2760 East Trimble Road
Ruskin Elementary School	1401 Turlock Lane
Summerdale Elementary School	1100 Summerdale Drive
Toyon Elementary School	995 Bard Street
Vinci Park Elementary School	1311 Vinci Park Way

### MIDDLE SCHOOL SITES:

<b>Name</b>	<b>Address</b>
Morrill Middle School	1970 Morrill Avenue
Berryessa Youth Center	1970 Morrill Avenue
Piedmont Middle School	955 Piedmont Road
Sierramont Middle School	3155 Kimlee Drive

### ADMINISTRATIVE AND INDUSTRIAL SITES:

<b>Name</b>	<b>Address</b>
Education Center	1376 Piedmont Road
MOT Corporation Yard	935 Piedmont Road
Maintenance Buildings and Warehouse	945 Piedmont Road
District Building	925 Piedmont Road

**ARCHITECTURAL SERVICES AGREEMENT**

**BETWEEN**

**BERRYESSA UNION SCHOOL DISTRICT**

**AND**

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**FOR**

**PERFORMANCE OF ARCHITECTURAL SERVICES**

**PROJECT:**

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**BOARD APPROVAL DATE:** \_\_\_\_\_

Berryessa Union School District  
Bond Department  
1376 Piedmont Road  
San Jose, CA 95132

## **ARCHITECTURAL SERVICES AGREEMENT**

This AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_, between BERRYESSA UNION SCHOOL DISTRICT, hereinafter referred to as “DISTRICT,” and \_\_\_\_\_, hereinafter referred to as “ARCHITECT”; this AGREEMENT shall include all terms and conditions set forth herein.

WHEREAS, DISTRICT intends to modernize the following school site (“PROJECT”):

### **PROJECT NAME**

ADDRESS

WHEREAS, the ARCHITECT is fully licensed to provide architectural services in conformity with the laws of the State of California.

NOW, THEREFORE, the parties hereto agree as follows:

### **ARTICLE I ARCHITECT’S SERVICES AND RESPONSIBILITIES**

A. This AGREEMENT shall contain the general duties and responsibilities of the parties.

B. The ARCHITECT’s basic services shall consist of those services performed by the ARCHITECT, ARCHITECT’s employees, and ARCHITECT’s consultants, as enumerated in Articles II, III, and IV of this AGREEMENT and specifically described in the PROJECT Scope of Work Description set forth in Attachment “D”.

C. The ARCHITECT agrees to perform such services as expeditiously as is consistent with professional skill and care and the orderly progress of the PROJECT. All services performed by the ARCHITECT under and required by this AGREEMENT shall be performed (a) in compliance with this AGREEMENT, and (b) in a manner consistent with the level of care and skill ordinarily exercised by architects in the same discipline, on similar projects in California with similar complexity and with similar agreements, who are specially qualified to provide the services required by the DISTRICT; and all such services shall be conducted in conformance to, and compliance with, all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the Americans with Disabilities Act (“ADA”). ARCHITECT shall be responsible for the completeness and accuracy of the plans and specifications. The schedule may be adjusted as the PROJECT proceeds by mutual written agreement of the parties and shall include allowances for time required for DISTRICT’s review and for approval by authorities having jurisdiction over the PROJECT. The time limits established by this schedule shall not, except for reasonable cause, be exceeded by the ARCHITECT. The PROJECT Schedule is set forth in Attachment “C”.

D. The ARCHITECT shall prepare schematic design, design development, and construction documents. The construction documents shall be submitted to the Division of the State Architect (“DSA”) for review and approval.

## ARTICLE II SCOPE OF ARCHITECT'S SERVICES

A. Description of Basic Services: The ARCHITECT's basic services include those services, as needed and described in this Article, and include structural, mechanical, electrical engineering, (including low voltage), landscape architecture, civil engineering services and such other services as necessary to produce a complete and accurate set of Construction Documents defined as including but not limited to the following: Review of the agreement between DISTRICT and Contractor awarded the PROJECT ("Contractor"), review of the general and supplementary conditions of the Contract between DISTRICT and Contractor, and preparation of drawings, specifications, addenda, and other documents listed in the AGREEMENT, and modifications issued after execution of the DISTRICT and Contractor Contract.

B. Construction Manager: The District shall employ a construction manager to assist it on the Project encompassed by this Agreement. The ARCHITECT and the Construction Manager will work together in a cooperative and professional manner for the orderly and timely completion of the Project, and shall coordinate their activities. ARCHITECT shall also coordinate with any other DISTRICT consultants or employees involved with the PROJECT.

C. Required Approvals: The ARCHITECT shall assist the DISTRICT in obtaining required approvals from governmental agencies responsible for electrical, gas, water, sanitary or storm sewer, telephone, as well as the Office of Public School Construction ("OPSC") and DSA.

D. Utility Review: (if required) The ARCHITECT, based on available documents from the DISTRICT and/or public agencies, shall be responsible for determining the capacity of existing utilities, or for any design or documentation required to make points of connection to existing utility services required for the PROJECT. If, in the ARCHITECT's professional opinion, there are questions or concerns regarding the reliability or accuracy of the available documents, the ARCHITECT shall notify the DISTRICT in writing.

E. Planning Surveys: The ARCHITECT shall provide planning surveys, site evaluations and comparative studies of prospective sites, buildings or locations, as needed.

F. Coordination Meetings: The ARCHITECT shall attend regular PROJECT coordination meetings between the ARCHITECT, its consultants, the DISTRICT's representative(s), and other consultants of the DISTRICT during PROJECT development.

G. Drawing Revisions: The ARCHITECT shall make revisions in Drawings, Specifications, the PROJECT Manual or other documents when such revisions are inconsistent with approvals or instructions previously given by DISTRICT, including revisions made necessary by adjustments in the DISTRICT's program or PROJECT Budget.

H. Programmatic Changes: The ARCHITECT shall provide services required due to programmatic changes in the PROJECT, including but not limited to size, quality, complexity, method of bidding, or negotiating the Contract for construction.

- I. Cost Estimates: The ARCHITECT shall review and comment upon detailed estimates of construction costs provided to it by the Construction Manager.
- J. Quantity Surveys: The ARCHITECT shall review and comment upon quantity surveys, which provide inventories of material, equipment or labor, supplied to it by the Construction Manager.
- K. Operating Costs: The ARCHITECT shall provide analyses of DISTRICT ownership and anticipated operating costs for the PROJECT.
- L. Interior Design: The ARCHITECT shall provide interior design and other services required for or in connection with graphics and signage.
- M. Material Quality: To the extent the ARCHITECT is not familiar with suppliers, fabricators or manufacturers specified in the Construction Documents, the ARCHITECT shall, in its professional discretion, visit suppliers, fabricators, and manufacturers' facilities such as for carpet, stone, wood veneers, standard or custom furniture, to review the quality or status of items being produced for the PROJECT to ensure that they meet the design intent and specifications.
- N. Material Consistency: The ARCHITECT shall cooperate and consult with DISTRICT in the use and selection of manufactured items on the PROJECT, including but not limited to paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials, and floor coverings. All such manufactured items shall be standardized to DISTRICT's criteria to the extent such criteria do not interfere with PROJECT design and are in compliance with the requirements of Public Contract Code section 3400.
- O. No Asbestos: The ARCHITECT shall certify to the best of its information pursuant to 40 Code of Federal Regulations section 763.99(a) (7), that no asbestos-containing material was specified as a building material in any construction document for the PROJECT and will require that Contractors provide DISTRICT with certification that all materials used in the construction of any school building are free from any asbestos-containing building materials ("ACBMs"). ARCHITECT shall include statements in specifications that materials containing asbestos are not to be included. This certification shall be part of the final PROJECT submittal.
- P. Maintenance Costs: The ARCHITECT shall consider operating or maintenance costs when selecting systems for the DISTRICT.
- Q. Public Presentations: The ARCHITECT shall prepare for and make formal presentations to the Governing Board of DISTRICT, the Bond Oversight Committee, and attend public hearings, and other public meetings. In addition, ARCHITECT shall attend and assist in legal proceedings that arise from errors or omissions of the ARCHITECT.
- R. Written Modifications: The duties, responsibilities and limitations of authority of the ARCHITECT shall not be restricted, modified or extended without written agreement between the DISTRICT and ARCHITECT.
- S. Legal Compliance: The ARCHITECT shall comply with all federal, state and local laws, rules, regulations and ordinances that are applicable to the PROJECT.
- T. Access to Work: The ARCHITECT shall have access to the Work at all times.

U. Scope of Services: The ARCHITECT's Basic Services include all services needed for the scope of work, including structural, mechanical and electrical engineering (including low voltage), landscape architecture, civil site engineering services, interior design, lighting, waterproofing and such other services as necessary for design of the Work.

### **ARTICLE III DESIGN AND ADMINISTRATIVE PHASES**

#### A. Planning And Schematic Design Phase

##### 1. Review of PROJECT Requirements

The ARCHITECT shall review the program, schedule, and construction budget furnished by DISTRICT to ascertain the requirements of the PROJECT and shall arrive at a mutual understanding of such requirements with DISTRICT, and at the request of the District, shall meet with education stakeholders as necessary to discuss and determine programmatic requirements. ARCHITECT shall take meeting minutes of all Design Phase meetings. The ARCHITECT shall provide to the DISTRICT minutes of any such meetings within three (3) business days of the meeting.

##### 2. Methods of PROJECT Delivery

The ARCHITECT shall review with DISTRICT proposed site use and improvements, selection of materials, and methods of PROJECT delivery.

##### 3. Specific Considerations

The ARCHITECT shall review with the DISTRICT the following specific considerations to be taken into account in the design of the PROJECT:

a. Information Technology Systems: ARCHITECT shall discuss with DISTRICT representatives the manner in which the PROJECT may be designed to include information technology systems, including wiring systems, adequate to meet the needs of both the PROJECT building systems and additional building systems that the DISTRICT may add to the PROJECT at a later date.

b. Sustainability/LEED Analysis: ARCHITECT shall be Leadership in Energy and Environmental Design ("LEED") accredited. ARCHITECT shall discuss with DISTRICT representatives regarding options for PROJECT design that is sustainable or environmentally responsible and resource-efficient. ARCHITECT shall also discuss with the DISTRICT design options which may result in LEED certification for the PROJECT, including options for different levels of LEED certification.

c. Building Maintenance: ARCHITECT shall discuss with DISTRICT representatives the ways in which the PROJECT may be designed so that it is compatible with DISTRICT maintenance resources. As discussed in Article III, Section C, subsection 9, below, the ARCHITECT shall utilize grants and outside funding services and work with DISTRICT to utilize and consider funding from grants and alternative funding services.

4. Alternative Design and Construction

The ARCHITECT shall review with DISTRICT alternative approaches to design and construction of the PROJECT.

5. Updating Schematic Documents

At intervals appropriate to the progress of the Schematic Design Phase and mutually agreeable to DISTRICT and ARCHITECT, the ARCHITECT shall provide schematic design studies for DISTRICT's review and information.

6. Schematic Design Submittal

Upon completion of the Schematic Design Phase, the ARCHITECT shall provide Schematic Design Documents consisting of drawings, specifications, descriptions of building systems and other documents illustrating the scale and relationship of PROJECT components and descriptions of building systems for DISTRICT's review. These documents shall comply with all applicable laws, statutes, ordinances, codes, rules, and regulations which are applicable to those documents and shall be sufficient for the Construction Manager to prepare PROJECT cost estimates. The documents shall also be supplied to the Construction Manager for review and preparation of the cost estimate.

7. Project Cost Estimates

a. The ARCHITECT shall review and comment upon the construction cost estimates produced by the Construction Manager.

b. The ARCHITECT shall perform Schematic Design Services to keep the PROJECT within all budget and scope constraints set by the DISTRICT, unless otherwise modified by written authorization by the DISTRICT.

8. Site Conditions and PROJECT Requirements

The ARCHITECT shall be entitled to rely on the accuracy and completeness of the information, surveys, and reports issued by the DISTRICT or the DISTRICT's consultants.

9. Investigation

The ARCHITECT shall investigate existing conditions or facilities and verify drawings of such conditions or facilities.

B. Design Development Phase

1. Design Development Documents

Based on the approved Schematic Design Documents and any adjustments authorized by the DISTRICT in the program, schedule or construction budget, the ARCHITECT shall prepare Design Development Documents for DISTRICT's approval. Such documents shall consist of site and floor plans, elevations, cross-sections, outline specifications, and other documents

necessary to depict the Design of the PROJECT, and shall outline specifications to fix and illustrate the size, character, and quality of the entire PROJECT as to the Program requirements, landscapes, civil, structural, mechanical and electrical systems, materials, and such other essentials as may be appropriate.

2. Updating Drawings

At intervals mutually agreeable to DISTRICT and ARCHITECT, the ARCHITECT shall provide drawings and other documents which depict the current status of design development for DISTRICT's review.

3. Design Development Submittal

Upon completion of the Design Development Phase, the ARCHITECT shall provide drawings, outline specifications, and other documents for DISTRICT's review and approval and for the Construction Manager's review and preparation of the cost estimate. The ARCHITECT shall review with DISTRICT the selection of building systems and equipment.

4. Project Cost Estimates

a. The ARCHITECT shall review and comment upon the construction cost estimates produced by the Construction Manager.

b. The ARCHITECT shall perform Design Development Services to keep the PROJECT within all budget and scope constraints set by the DISTRICT, unless otherwise modified by written authorization by the DISTRICT.

C. Construction Documents Phase

1. CAD Drawings

The ARCHITECT shall prepare and provide to the District, from the Design Development Documents approved by DISTRICT, Construction Documents consisting of drawings (in most recent AutoCAD or REVIT format) and specifications setting forth, in detail, the requirements for the construction of the entire PROJECT in conformity with all applicable governmental and code requirements and requirements of all governmental agencies having jurisdiction over the PROJECT including OPSC and DSA. This requirement shall be excused when the particular PROJECT includes modernization or re-use of existing designs, when portions of the documents may not be computer generated. In such case, that portion of the PROJECT employing existing drawings need not be reduced to CAD. The Construction Documents shall show all the Work to be done, the materials, workmanship, and finishes required for the PROJECT. The Construction Documents shall be stamped and signed by licensed professionals for the ARCHITECT and relevant engineers contracted by the ARCHITECT.

2. Design Elements to Prevent Water Intrusion

The parties to this Agreement recognize that the failure of trade contractors to properly seal buildings against water intrusion is a significant and growing problem in public construction. Notwithstanding the Contractor's responsibility, the ARCHITECT shall include



specific details in the Construction Documents regarding window, door, roof and any other elements of construction to protect the PROJECT from water intrusion, and shall further fully illustrate and describe all aspects of such construction to include all design components that prevent water intrusion into the completed structure.

3. Fees

The DISTRICT shall pay all fees required by such governmental authority as mentioned in Article II, Section C, above. ARCHITECT shall, whenever feasible, establish beforehand the exact costs due to governmental agencies and submit this cost information to DISTRICT so payments may be prepared. ARCHITECT shall not charge a mark-up on costs associated with governmental agency fees when the ARCHITECT pays such fees for the DISTRICT.

4. Construction Documents Submittals

Upon 90% completion of the Construction Documents Phase, the ARCHITECT shall provide Construction Documents for DISTRICT's review and the Construction Manager's review and preparation of cost estimate. The Architect shall also supply the District and the Construction Manager copies of the construction documents when they are 100% complete. The Architect shall also supply the DISTRICT and the Construction Manager copies of all documents submitted to DSA.

5. Ownership of Documents

a. Although the official copyright in all Project Documents shall remain with the ARCHITECT or other applicable Consultants, the plans, specifications, and estimates for the PROJECT shall be and remain the property of DISTRICT, pursuant to section 17316 of the Education Code, and DISTRICT may use the Project Documents during and after the PROJECT for any purposes related to the PROJECT.

b. In the event the DISTRICT completes, modifies, or uses the plans, specifications, studies, drawings, estimates, other documents, or any other works of authorship prepared by the ARCHITECT following conclusion of this PROJECT, or at such other time or circumstance, for purposes not related to the PROJECT, and the ARCHITECT is not directly supervising such use of the aforementioned documents, the DISTRICT acknowledges that such use shall be at the DISTRICT's sole risk and without liability to the ARCHITECT, its employees, and its consultants. The DISTRICT agrees to indemnify, defend, and hold harmless the ARCHITECT, its employees and consultants, from and against any and all damage, liability or cost, included but not limited to attorney's fees, litigation costs, claims, suits, or any other costs associated with such 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. Prior to re-use of the ARCHITECT's documents, the DISTRICT agrees to notify the ARCHITECT in writing of such re-use.

6. Re-Use of Documents

a. In the event DISTRICT ever desires, and it is mutually considered feasible, to erect all or part of another project which would be essentially identical to the PROJECT which is the subject of this AGREEMENT, the ARCHITECT agrees to:

- (i) Re-use as a separate project its design and the corresponding Contract documents;
- (ii) Prepare with appropriate compensation such modifications as may be dictated by current codes, topography, soils conditions, utility services, existing construction, and similar conditions;
- (iii) Perform with appropriate compensation as far as applicable all of the services provided by this AGREEMENT;
- (iv) In the event the District re-uses drawings, the ARCHITECT's fees will take into account that no royalty will be paid for the re-used documents.

b. The ARCHITECT will retain the right to use the design, plans, drawings, and specifications prepared or provided by the ARCHITECT, its consultants, or sub-consultants for re-use on other projects for other DISTRICTS or Owners. Such re-use shall not entitle the DISTRICT to any notification, payment of any royalty, license fee, or other consideration.

#### 7. Project Cost Estimates

a. The ARCHITECT shall review and comment upon the construction cost estimates produced by the Construction Manager.

b. The ARCHITECT shall perform Construction Documents Services to keep the PROJECT within all budget and scope constraints set by the DISTRICT, unless otherwise modified by written authorization by the DISTRICT.

#### 8. Survey Work

All survey and geo-technical studies will be provided by DISTRICT. Notwithstanding the provisions set forth in Article III, Section A, Subsection 8, above, ARCHITECT shall review the completed survey prior to the preparation of construction. Foundation, drainage and compacting requirements shall reflect the analysis provided in the geo-technical reports.

#### 9. Maintenance Costs

The ARCHITECT shall consider operating or maintenance costs when selecting systems for DISTRICT. The ARCHITECT shall utilize grants and outside funding services and work with DISTRICT to utilize and consider funding from grants and alternative funding services.

#### 10. Modification to Building Design Plans

Following DSA approval of PROJECT documents, ARCHITECT shall modify building designs to incorporate DSA-required revisions.

#### D. Bidding and Award Phase

##### 1. Assistance in Bid Process

The Construction Manager shall have the primary role in managing the bid process. The ARCHITECT shall assist the Construction Manager and DISTRICT, as needed, in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contracts, and the forms of agreement between DISTRICT and the Contractors. ARCHITECT, in accordance with Article III, Section C, Subsection 1, above, shall provide the PROJECT plans and specifications as part of the bid process. The ARCHITECT shall have the primary role in the preparation of the PROJECT plans and technical specifications. The ARCHITECT shall assist the Construction Manager and DISTRICT, as needed, in issuing bidding documents to bidders, conducting pre-bid conferences with prospective bidders, and responding to pre-bid questions. The ARCHITECT shall assist the Construction Manager and the DISTRICT in obtaining bids and awarding the Contract for the Construction of the PROJECT. The ARCHITECT shall respond to questions from bidders and shall issue addenda where necessary.

2. Assistance in Filing Required Documents

The ARCHITECT shall prepare and file all Construction Documents required for and obtain the approvals of all governmental agencies having jurisdiction over the PROJECT, including OPSC, DSA, California Department of Education, County Health Department, the local fire marshal, and others which have jurisdiction over the PROJECT. DISTRICT shall pay all fees required by such governmental authority. ARCHITECT shall, whenever feasible, establish beforehand the exact costs due to governmental agencies and submit this cost information to DISTRICT so that payments may be prepaid.

3. Deposit of Documents

The ARCHITECT shall 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 and pdf diskette file.

4. Re-Use and Engineers

ARCHITECT shall submit the name of the proposed PROJECT engineers for DISTRICT approval. In case DISTRICT chooses to re-use construction documents prepared for another project, this re-use choice includes pre-approval of those consultants involved in preparation of those construction documents. ARCHITECT shall ensure that each ARCHITECT and engineer places his or her name, seal, and signature on all drawings and specifications prepared by said ARCHITECT or engineer.

5. Bids Exceeding Costs

If the estimate for the cost of construction is exceeded by the lowest bona fide bid by more than ten percent (10%), DISTRICT may require the ARCHITECT, without additional compensation, to modify the documents for which the ARCHITECT is responsible under this AGREEMENT as necessary to bring new bids within ten percent (10%) of such estimate. Alternatively, DISTRICT may require the ARCHITECT to perform one or more of the following tasks at no additional cost to DISTRICT: (1) Prepare, at no additional cost, deductive change packages which bring the PROJECT within ten percent (10%) of the estimate; or (2) cooperate in

revising the PROJECT scope and quality as required to reduce the construction costs to within ten percent (10%) of the estimate.

E. Construction Phase—Administration of The Construction Contract

1. Start of Services

The ARCHITECT's responsibility to provide Basic Services for the Construction Phase under this AGREEMENT commences with the award of the Contract for construction and terminates at the earlier of the issuance to DISTRICT of the final PROJECT Contractor's Certificate for Payment or sixty (60) days after the date of Substantial Completion of the Work.

2. Quality Control Coordination

Prior to commencement of Work on the PROJECT, representatives from the ARCHITECT, the Inspector of Record, the Construction Manager, and the DISTRICT shall meet to discuss and agree to a written plan for monitoring quality control of construction on the PROJECT. The Plan shall discuss the quality control and monitoring duties of each member of the PROJECT team and the methods to be used by each member to ensure quality control of the construction on the PROJECT. The same PROJECT team member representatives shall meet periodically, no less than once a month, throughout the duration of the PROJECT to specifically discuss quality control issues and monitoring activities. Written documentation of the meetings shall be provided to the DISTRICT.

3. Administration of Contract

The ARCHITECT shall provide administration of the Contract for construction as set forth below and in conformance with General Conditions of the Contract for Construction. It is understood that any document outlining General Conditions and Supplementary Conditions of the Contract for Construction supplied by parties other than the ARCHITECT will be reviewed with the ARCHITECT within a reasonable period of time but no later than submission of construction documents to agencies having jurisdiction over the PROJECT.

4. Modification of Duties

Duties, responsibilities, and limitations of authority of the ARCHITECT shall not be restricted, modified, or extended without written agreement of DISTRICT and ARCHITECT with consent of the Contractors, which consent shall not be unreasonably withheld.

5. Technical Assistance to PROJECT Inspector

The ARCHITECT shall provide technical direction to a PROJECT Inspector employed by and responsible to DISTRICT as required by applicable law. The ARCHITECT shall advise the Inspector and/or Contractor in the preparation of a marked set of prints to be prepared by the Contractor, indicating dimensioned location of buried utility lines (record drawings) which shall be forwarded to DISTRICT upon completion of the PROJECT.

6. Site Visits

The ARCHITECT shall visit the site at intervals appropriate to the stage of construction or as otherwise agreed by DISTRICT and ARCHITECT in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Contract Documents. In no event shall the site visits be less than once a week unless agreed to by the DISTRICT. However, the ARCHITECT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

7. Work Quality

On the basis of on-site observations as an architect, the ARCHITECT shall keep DISTRICT informed in writing of the progress and quality of the Work and shall endeavor to guard the DISTRICT against defects and deficiencies in the Work, including Work on the punchlist. The ARCHITECT will issue deficient Work notices where appropriate. (More extensive site representation may be agreed to as an Additional Service, as described in Article IV.)

8. Not Responsible for Means of Construction

a. The ARCHITECT shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are the Contractors' responsibility under the Contracts for Construction. The ARCHITECT shall not be responsible for the Contractors' schedules or failure to carry out the Work in accordance with the Contract Documents. The ARCHITECT shall not have control over or charge of acts or omissions of the Contractors, subcontractors, or their agents or employees, or of any other persons performing services or portions of the Work.

b. The ARCHITECT, as part of its basic services, shall advise the DISTRICT in writing of any deficiencies in construction as they are observed and following the acceptance of the Work and prior to the expiration of the guarantee period of the PROJECT.

9. Access to Work

The ARCHITECT shall at all times have access to the Work wherever it is in preparation or progress.

10. Coordination Meetings

The ARCHITECT shall attend regular PROJECT coordination meetings between the ARCHITECT, its consultants, the Construction Manager, any DISTRICT's representative(s), and other consultants of DISTRICT. The weekly construction meetings may serve as coordination meetings.

11. Review and Certification of Applications for Payment

a. Based on the ARCHITECT's observations and evaluations of each Contractor's Application for Payment, the ARCHITECT shall review and certify the amounts due the respective Contractors. The ARCHITECT's certification for payment shall constitute a representation to DISTRICT, based on the ARCHITECT's observations at the site, and on the data comprising the Contractors' Applications for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents.

b. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon substantial completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the ARCHITECT. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the ARCHITECT has: (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences or procedures; (3) reviewed copies of requisitions received from subcontractors and materials suppliers and other data requested by the owner to substantiate the Contractor's right to payment; or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract sum.

12. Rejection of Work

The ARCHITECT shall have authority to reject Work which does not conform to the Contract Documents. Whenever the ARCHITECT considers it necessary or advisable for implementation of the intent of the Contract Documents, the ARCHITECT will have authority, upon written authorization from DISTRICT, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed, or completed. However, neither this authority of the ARCHITECT nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the ARCHITECT to the Contractors, subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

13. Submittals

The ARCHITECT shall review and approve or take other appropriate action upon Contractor's submittals, such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract documents. The ARCHITECT's action shall be taken with such reasonable promptness as to cause no delay in the Contractor's Work or in construction by DISTRICT's own forces, while allowing sufficient time in the ARCHITECT's professional judgment to permit adequate review, but in no case, no longer than seven (7) business days. Review of such submittals is not conducted for the purpose of on-site safety or for construction means, methods, techniques, sequences, or procedures, nor will ARCHITECT check for proper numbers or dimensions of the submittal. When professional certification of performance

characteristics of materials or equipment is required by the Contract Documents, the ARCHITECT shall be entitled to rely upon such certification to establish that the materials, systems, or equipment is required by the Contract Documents. Further, review of such submittals is not conducted for substantiating instructions for installation or performance of equipment or systems designed by the Contractor. The ARCHITECT shall be entitled to rely upon such certification to establish that the materials, systems, or equipment will meet the performance criteria required by the Contract Documents.

14. Change Orders and Record Drawings

a. Change Orders: The Construction Manager shall provide an initial review of all proposed change orders and provide its recommendation to the ARCHITECT. The Construction Manager shall also maintain the Change Order Request log. The ARCHITECT shall prepare and sign or take other appropriate action on Change Orders, Change Order Request, and Construction Change Directives prepared for DISTRICT's approval and execution in accordance with the Contract Documents. When the parties have agreed to the Change Order, the DISTRICT and ARCHITECT shall sign said Change Order. Both the ARCHITECT and Construction Manager shall work to provide an expedited resolution of all Change Order requests.

b. Record Drawings: ARCHITECT shall cause the Contractor to prepare a set of reproducible record drawings showing significant changes in the Work made during construction, based on marked-up prints, drawings, and other data. If the Contractor fails to maintain current record or as-built documents during construction, the ARCHITECT shall notify the DISTRICT in writing and recommend withholding of contract payments owed to the Contractor until all record or as-built documents have been fully updated. The cost of revising the drawings or specifications, or for the act of preparing change orders resulting from errors or omissions in the drawings shall not be charged to DISTRICT.

15. Review of Record Documents

ARCHITECT shall, at ARCHITECT's expense, review the Contractor's record drawings showing significant changes in the Work made during construction.

16. Request for Information Processing

The ARCHITECT shall review and respond to all Requests for Information ("RFI") in a timely manner, including the preparation of drawings or revisions to drawings as necessary to respond to said requests. The ARCHITECT shall work to provide an expedited review of RFIs, with the goal of providing responses within five (5) days of submission. The ARCHITECT shall maintain an RFI log, which shall identify the RFI by number, the date the request was received, and the date the response was given.

17. Claim Review

The ARCHITECT shall evaluate and render written recommendations, within a reasonable time on all claims, disputes, or other matters at issue between the DISTRICT and Contractor relating to the execution or progress of the Work as provided in the Construction

Contract. Any claim involving more than twenty (20) hours of ARCHITECT's services where such claim does not arise out of the ARCHITECT's error and omissions, shall be considered an additional service pursuant to Article IV. Under no circumstances should this evaluation take longer than twenty (20) calendar days from the date the claim is received by ARCHITECT.

18. Punch List

ARCHITECT shall prepare the punch list and, consistent with Article III, Section E, Subsection 6, above, concerning site visits, determine that the punch list Work performed is in accordance with the Contract requirements. The ARCHITECT will further review the punch list for completion.

19. Review of Substitutions

The ARCHITECT shall evaluate substitutions proposed by the Contractor, with the goal of providing responses to substitution requests within seven (7) days of their submission.

20. Substantial Completion and Final Certificate of Payment

The ARCHITECT shall observe the PROJECT site to determine the date or dates of Substantial Completion, if required by the construction contract, and the date of final completion. The ARCHITECT shall receive and forward to the DISTRICT warranties and similar submittals provided by the Contractor required by the Contract Documents. The ARCHITECT shall review the Contractor's final Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

21. Testing of Equipment

The ARCHITECT shall require the Contractor to provide assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance and consultation during operation.

22. Interpreting the AGREEMENT

The ARCHITECT shall interpret and decide matters concerning performance of DISTRICT and Contractor under the requirements of the Contract Documents on written request of either DISTRICT or Contractor. The ARCHITECT's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

23. Requirements for Interpretation and Decisions

Interpretations and decisions of the ARCHITECT shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the ARCHITECT shall endeavor to secure faithful performance by both DISTRICT and Contractors, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.



24. Decisions on Aesthetic Effect

The ARCHITECT's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

25. Decisions in Writing

The ARCHITECT shall render written decisions within a reasonable time on all claims, disputes, or other matters in question between the DISTRICT and Contractors relating to the execution or progress of the Work as provided in the Contract Documents.

26. PROJECT Closeout

The ARCHITECT shall be responsible for gathering information and assisting DISTRICT and Construction Manager in processing forms required by applicable governing authorities, such as OPSC and DSA, in a timely manner and to confirm proper PROJECT closeout.

27. Delivery of Final Documents

Upon completion of the PROJECT, ARCHITECT shall deliver to the DISTRICT one (1) set of the Contractor's reproducible drawings, showing the PROJECT record upon issuance of the ARCHITECT's certificate of completion, with the location of underground sewer water and all utility connections and services specially noted.

**ARTICLE IV  
ADDITIONAL ARCHITECT'S SERVICES**

A. Duty to Notify DISTRICT of Additional Services

ARCHITECT shall notify DISTRICT in writing of the need for additional services required due to circumstances beyond the control of the ARCHITECT. ARCHITECT shall obtain written authorization from DISTRICT before rendering such services. Compensation for such services shall be negotiated and subject to DISTRICT approval. Additional services shall be compensated at an hourly rate as set forth in Attachment "E". Such services shall include:

1. Making material revisions in drawings, specifications, or other documents when such revisions are required by the enactment or revision of laws, rules, or regulations subsequent to the preparation and completion of such documents.
2. Providing consultation concerning replacement of Work damaged by fire and furnishing services required in connection with the replacement of such Work.
3. Providing services made necessary by the default of the Contractor, which does not arise directly from negligent, errors, or omissions of ARCHITECT or by major defect or deficiencies in the Work of the Contractor or by significant failure of performance by the Contract.

4. If DISTRICT requests the PROJECT be let as a multiple prime contractor project after the completion of Design Development, where segregation does not arise from ARCHITECT exceeding the estimated budget constraint, then plan preparation and/or Contract administration Work to prepare the segregated plans is an extra service subject to prior negotiation and DISTRICT approval.

5. Providing Contract administration services after the Construction Contract time has been materially exceeded through no fault of the ARCHITECT.

6. In the event the DISTRICT elects to re-use designs, plans, specifications, estimates, or other documents prepared for another district, the services in connection with making significant revisions or changes to aforementioned materials to suit DISTRICT.

7. Preparing drawings and specifications associated with bid alternates, where the bid alternates are of an unusual number or amount, given the size of the PROJECT.

8. Providing services relative to future facilities, systems, and equipment.

9. Providing services required for or in connection with the selection, procurement, or installation of furniture, furnishings, and related equipment not included in the Construction Contract.

10. Providing any other services not otherwise included in this AGREEMENT or not customarily furnished in accordance with generally accepted architectural practice.

B. Provision of PROJECT Representatives, Etc.

If authorized in writing by DISTRICT, ARCHITECT shall, as an additional service, provide one or more PROJECT Representatives to assist in carrying out more extensive representation at the site than is described in Article II and III. The PROJECT Representative(s) shall be selected, employed, and directed by the ARCHITECT, and the ARCHITECT shall be compensated, therefore, as agreed by the DISTRICT and ARCHITECT. Through the observations of such PROJECT Representative(s), the ARCHITECT shall endeavor to provide further protection for the DISTRICT against defects and deficiencies in the Work, but the furnishing of such PROJECT representation shall not modify the rights, responsibilities, or obligations of the ARCHITECT as described elsewhere in this AGREEMENT. Such services shall be negotiated and approved in writing by the DISTRICT. Compensation shall be negotiated.

## **ARTICLE V DISTRICT'S RESPONSIBILITIES**

A. DISTRICT shall provide to the ARCHITECT information regarding requirements for the PROJECT, including information regarding DISTRICT's site, program, objectives, constraints, criteria, educational program, realistic budgets and schedules.

B. DISTRICT shall notify the ARCHITECT of administrative procedures required and name a representative authorized to act on its behalf. DISTRICT shall promptly render decisions pertaining thereto to avoid unreasonable delay in the progress of the PROJECT.

- C. DISTRICT shall furnish all inspection services.
- D. DISTRICT shall furnish all legal advice and services required for the PROJECT, save for those representing the ARCHITECT.
- E. DISTRICT shall give prompt written notice to the ARCHITECT if DISTRICT becomes aware of any fault or defect in the PROJECT or non-conformance with the Construction Documents. However, DISTRICT's failure or omission to do so shall not relieve the ARCHITECT of ARCHITECT's responsibilities under Title 21 and Title 24 of California Code of Regulations and the Field Act, hereunder. DISTRICT shall have no duty to observe, inspect, or investigate the PROJECT.
- F. The DISTRICT shall furnish surveys, when needed, describing physical characteristics, legal limitations and utility locations for the site of the PROJECT, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information, as available, concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a PROJECT benchmark.
- G. The DISTRICT shall furnish the services of geo-technical engineers when such services are requested by the ARCHITECT. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.
- H. The DISTRICT shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections, and reports required by law of the Contract Documents.
- I. Any auditing services the owner may require to verify the Contractor's application for payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the DISTRICT.
- J. The services, information, surveys, and reports required by Article V, Sections F through I, above, shall be furnished at the DISTRICT's expense, and the ARCHITECT shall be entitled to rely upon the accuracy and completeness thereof.
- K. The DISTRICT shall approve a current, overall budget for the PROJECT, including the construction costs for the PROJECT.

## **ARTICLE VI TERMINATION**

### **A. A Written Notice of Termination**

This AGREEMENT may be terminated by either party upon fourteen (14) days written notice to the other party in the event of a material failure of performance by such other party, including insolvency of ARCHITECT, or if the DISTRICT should decide to abandon or indefinitely postpone the PROJECT.

### **B. Abandonment of Work by DISTRICT**

1. In the event of a termination based upon abandonment or postponement by DISTRICT, DISTRICT shall pay to the ARCHITECT for all services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records and expense reports up until the date of the abandonment or postponement plus any sums due the ARCHITECT for Board approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this AGREEMENT, consideration shall be given to both completed Work and Work in process of completion and to complete and incomplete drawings and other documents whether delivered to DISTRICT or in the possession of the ARCHITECT. In the event termination is for a negligent substantial failure of performance, all damages and costs associated with the termination, including increased consultant and replacement architect costs shall be deducted from payments to the ARCHITECT.

2. In the event a termination for cause by DISTRICT is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience in accordance with Article VI, Section C, below, and ARCHITECT shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by ARCHITECT.

### **C. Terminate Without Cause During Work On PROJECT**

This AGREEMENT may be terminated without cause by DISTRICT during work on the PROJECT upon fourteen (14) days written notice to the ARCHITECT. In the event of a termination without cause, DISTRICT shall pay to the ARCHITECT for all services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination plus any sums due the ARCHITECT for Board approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this AGREEMENT, consideration shall be given to both completed Work and Work in process of completion and to complete and incomplete drawings and other documents whether delivered to DISTRICT or in the possession of the ARCHITECT. In addition, ARCHITECT will be reimbursed for reasonable termination costs through the payment of three percent (3%) beyond the sum due the ARCHITECT under this paragraph through fifty percent (50%) completion of the ARCHITECT's portion of the PROJECT, and if fifty percent (50%) completion is reached, payment of three percent (3%) of the unpaid balance of the Contract to ARCHITECT as termination cost. This three percent (3%)

payment is agreed to compensate the ARCHITECT for the unpaid profit ARCHITECT would have made under the PROJECT on the date of termination and is consideration for entry into this termination for convenience clause.

D. Work During Dispute

In the event of a dispute between the parties as to performance of the Work or the interpretation of this AGREEMENT, or payment or non-payment for Work performed or not performed, the parties shall attempt to resolve the dispute and as to payment, shall make every reasonable effort to resolve the dispute expeditiously. In the event of disputes regarding the level of completion or reimbursable expenses invoiced, the DISTRICT agrees to return the invoices with a clear description of the dispute within ten (10) working days from the date when invoice(s) are received. Unresolved payment disputes shall be subject to mediation, and the mediation shall be held no later than sixty (60) days after receipt of the notice of a dispute, unless both parties agree otherwise. Pending resolution of this dispute, ARCHITECT agrees to continue the Work diligently to completion and the DISTRICT agrees to make progress payments in accordance with this AGREEMENT, except that the DISTRICT may withhold only those funds that are in dispute. If any dispute is not resolved, ARCHITECT agrees it will neither rescind the AGREEMENT nor stop the progress of the Work, but ARCHITECT's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the PROJECT has been completed, and not before. If the DISTRICT withholds undisputed amounts in excess of forty-five (45) days from the receipt of a written demand for payment from the ARCHITECT, then the ARCHITECT shall be entitled to interest, not to exceed one percent (1%), on such outstanding balances.

**ARTICLE VII  
MEDIATION**

A. DISTRICT and ARCHITECT shall endeavor to resolve claims, disputes, and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this AGREEMENT and with the American Arbitration Association, or with such other mediation service as may be agreed upon by the DISTRICT and ARCHITECT. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

B. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the PROJECT is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**ARTICLE VIII  
ARBITRATION**

A. Questions in dispute under this AGREEMENT may be submitted to arbitration at the election of both parties. Such arbitration shall be conducted in accordance with the rules of the American Arbitration Association, or such other rules agreed upon by the District and Architect, insofar as the rules applied are not in conflict with the laws of the State of California.

B. If either party petitions to confirm, correct, or vacate an arbitration award as provided by Chapter 4 of Title 9 of the Code of Civil Procedure (commencing with Section 128.5), the prevailing party shall be entitled as part of his or its costs to a reasonable attorney's fee to be fixed by the court.

**ARTICLE IX  
ACCOUNTING RECORDS OF THE ARCHITECT**

Records of the ARCHITECT's direct personnel and reimbursable expense pertaining to the extra services of this PROJECT and records of accounts between DISTRICT and Contractor shall be kept on a generally recognized accounting basis and shall be available to DISTRICT or its authorized representative at mutually convenient times.

**ARTICLE X  
COMPENSATION TO THE ARCHITECT**

A. This Article X sets out the milestone events for the payment of the ARCHITECT's Fee. The formula by which the Fee is set out and adjusted is found in Attachment "A" to this AGREEMENT. The estimated Fee of the ARCHITECT, based on the current Construction Cost budget, is set forth in Attachment "B" to this AGREEMENT. The ARCHITECT may bill to these milestones in monthly invoices.

<u>Schematic Design (100% Completion):</u>	10% of estimated Architect Fee as set forth on Attachment "A"
<u>Design Development (100% Completion):</u>	15% of estimated Architect Fee as set forth on Attachment "A"
<u>Construction Documents (90% Completion):</u>	35% of estimated Architect Fee, to be paid monthly based on actual level of completion, not to exceed state guidelines, as set forth on Attachment "A"
<u>DSA Approval of Construction Drawings:</u>	5% of estimated Architect Fee as set forth on Attachment "A"

Bidding Phase: 5% of estimated Architect Fee as set forth on Attachment "A", when bidding is completed

Construction Administration: 30% of estimated Architect Fee, to be paid as follows:

- Bidding complete: 5%
- Construction 25% complete: 5%
- Construction 50% complete: 5%
- Construction 75% complete: 5%
- Construction 100% complete: 5%
- Submittal of final records / DSA Certification: 5%

B. To the extent that the time initially established for the completion of ARCHITECT's services is exceeded or extended through no fault of the ARCHITECT, compensation for any services rendered during the additional period of time shall be computed as follows: negotiated and not to exceed state fee guidelines prior to approval by DISTRICT Board.

## **ARTICLE XI REIMBURSABLE EXPENSES**

A. Reimbursable expenses are in addition to compensation for basic and additional services and shall be paid, not to exceed a total of Ten Thousand Dollars (\$10,000) to the ARCHITECT at one and one-tenth (1.10) times the expenses incurred by the ARCHITECT, the ARCHITECT's employees and consultants for:

1. Reproduction of drawings and specifications for required submittals and bid documents. Reproductions for ARCHITECT's internal use and meeting presentations are not reimbursable.
2. Fees advanced for securing approval of authorities having jurisdiction over the PROJECT. There shall be no mark up of these fees.
3. Items authorized in writing in advance by DISTRICT, such as the expense of models, renderings, photographs, etc.

B. Reimbursement for fees and other expenses, except for construction administration services associated with delay caused solely by the Contractor, shall be made to the ARCHITECT as incurred. ARCHITECT shall submit receipts and/or an itemized listing for reimbursables with ARCHITECT's invoice.

C. Reimbursable expenses shall not include:

1. Check prints;
2. Prints of plans or specifications made for ARCHITECT's consultants and two copies of progress prints supplied to DISTRICT;

3. Preliminary plans and specifications, unless said submittal is required;
4. Meetings with state planning officials, local or state fire departments, the DSA, State Allocation Board, or other public agencies having jurisdiction;
5. ARCHITECT's consultants' Reimbursables, unless incurred for required submittals;
6. Models or mock-ups; and
7. Mileage or fuel surcharges

## **ARTICLE XII EMPLOYEES AND CONSULTANTS**

A. The ARCHITECT, as part of the basic professional services, shall furnish at its expense the services of landscape architects, structural, mechanical, electrical, traffic and street improvements, civil engineers, and other disciplines as required for the PROJECT.

B. The ARCHITECT shall submit, for written approval by DISTRICT, the names of the consultant firms proposed for the PROJECT. Nothing in this AGREEMENT shall create any contractual relation between DISTRICT and any consultants employed by the ARCHITECT under the terms of this AGREEMENT.

C. ARCHITECT's consultants shall be licensed to practice in California and have relevant experience with California school design and construction during the last five (5) years. If any employee or consultant of the ARCHITECT is not acceptable to DISTRICT, then that individual shall be replaced with an acceptable, competent person at DISTRICT's request.

D. The construction administrator or field representative assigned to this PROJECT by ARCHITECT shall be a licensed California Architect and be able to make critical PROJECT decisions in a timely manner and shall be readily available and provide by phone, facsimile, and through correspondence, design direction and decisions when the construction administration is not at the site.

## **ARTICLE XIII MISCELLANEOUS**

### A. Indemnification

To the fullest extent permitted by law, the ARCHITECT agrees to indemnify, defend, and hold DISTRICT entirely harmless from all liability arising out of:

1. Any and all claims under Workers' Compensation acts and other employee benefit acts with respect to ARCHITECT's employees or ARCHITECT's subcontractor's employees arising out of ARCHITECT's work under this AGREEMENT; and



2. If arising out of, pertaining to, or relating to the negligence, reckless, or willful misconduct of the ARCHITECT, the ARCHITECT shall indemnify and hold the DISTRICT harmless from any liability for damages for: (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law; or (4) any other loss, damage, or expense arising under either (1), (2), or (3) in this Subsection, sustained by the ARCHITECT or the DISTRICT, or any person, firm or corporation employed by the ARCHITECT or the DISTRICT upon or in connection with the PROJECT, except to the extent the damages arose from the negligence of the DISTRICT.

3. Any claims for loss, injury to or death to persons or damage to property caused by any negligence, recklessness or willful misconduct of the ARCHITECT or any person, firm or corporation employed by the ARCHITECT, either directly or by independent contract, including all damages due to loss or theft sustained by any person, firm or corporation including the DISTRICT, arising out of or in any way connected with the PROJECT, including injury or damage either on or off DISTRICT property; but not for any loss, injury, death or damages caused by the active negligence of the DISTRICT. With regard to the ARCHITECT's obligation to indemnify for acts of professional negligence, such obligation does not include the obligation to provide defense counsel or to pay for the defense of actions or proceedings brought against the DISTRICT, but rather to reimburse the DISTRICT within thirty (30) days for attorney's fees and costs incurred by the DISTRICT in defense of claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the ARCHITECT.

4. The ARCHITECT, at its own expense, cost, and risk, shall defend any claims, actions, suits, or other proceedings that may be brought or instituted against the DISTRICT, its officers, agents or employees, other than professional negligence discussed in Article XIII, Section A, Subsection 3, above, on any such claim or liability relating to the negligence, recklessness or willful misconduct of the ARCHITECT, and shall pay or satisfy any judgment that may be rendered against the DISTRICT, its officers, agents, or employees in any action, suit or other proceedings due to the negligence of the ARCHITECT, arising from their work on the PROJECT.

**B. State Allocation Board**

ARCHITECT shall assist DISTRICT and its consultants to apply for funding for the PROJECT from the State Allocation Board; however, ARCHITECT shall not be responsible for preparation, form, submittal, monitoring, or tracking of funding applications prepared by the DISTRICT. ARCHITECT shall be responsible for submittals required of the ARCHITECT by the DSA, OPSC, and California Department of Education in connection therewith.

**C. Maintenance of Insurance**

ARCHITECT shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to DISTRICT which (acceptance will not be unreasonably withheld) will protect ARCHITECT and DISTRICT from claims which may arise out of or result from ARCHITECT's actions or inactions relating to the AGREEMENT, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

1. The ARCHITECT shall carry Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California. However, such amount shall not be less than ONE MILLION DOLLARS (\$1,000,000).

2. Commercial general and auto liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit, bodily injury and property damage liability, aggregate, including:

- a. owned, if any, non-owned and hired vehicles;
- b. blanket contractual;
- c. broad form property damage;
- d. products/completed operations; and
- e. personal injury.

3. Professional liability insurance for the ARCHITECT, including contractual liability, with limits of TWO MILLION DOLLARS (\$2,000,000) aggregate. Such insurance shall be maintained during the term of this AGREEMENT and, if a "claims-made" policy, shall be renewed for a period of at least ten (10) years thereafter and/or at rates consistent with the rates current at the time of execution of this AGREEMENT adjusted for inflation. In the event that ARCHITECT subcontracts any portion of ARCHITECT's duties, ARCHITECT shall require any such subcontractor to purchase and maintain insurance coverage as provided in this subparagraph. Failure to maintain professional liability insurance is a material breach of this AGREEMENT and grounds for immediate termination.

D. DISTRICT as Additional Insured

Each policy of insurance required in Article XIII, Section C, above, shall name DISTRICT and its officers, agents, and employees as additional insured and shall state that, with respect to the operations of ARCHITECT hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributory with such primary insurance. Each policy of insurance required in Article XIII, Section C, Subsections 1 and 2, above, shall state that not less than thirty (30) days written notice shall be given to DISTRICT prior to cancellation; and, shall waive all rights of subrogation. ARCHITECT shall notify DISTRICT in the event of material change in, or failure to renew, each policy. Prior to commencing Work, ARCHITECT shall deliver to DISTRICT certificates of insurance as evidence of compliance with the requirements herein, including certificates of insurance for the ARCHITECT's subcontractors, as discussed in Article XIII, Section E, below. In the event ARCHITECT fails to secure or maintain any policy of insurance required hereby, DISTRICT may, at its sole discretion, secure such policy of insurance in the name of and for the account of ARCHITECT, and in such event ARCHITECT shall reimburse DISTRICT upon demand for the cost thereof.

E. Insurance for Subcontractors

In the event that ARCHITECT subcontracts any portion of ARCHITECT's duties, ARCHITECT shall require any such subcontractor to purchase and maintain insurance coverage for the types of insurance referenced in Article XIII, Section C, above, in amounts which are appropriate with respect to that subcontractor's part of Work which shall in no event be less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per occurrence.

F. Lack of Insurance is Material Breach

Failure to maintain professional liability insurance is a material breach of this AGREEMENT and grounds for immediate termination.

G. Valuable Document Insurance

The ARCHITECT shall carry adequate insurance on all drawings and specifications as may be required to protect the DISTRICT in the amount of its full equity in those drawings and specifications and shall file with the DISTRICT a certificate of that insurance. The cost of that insurance shall be paid by the ARCHITECT, and the DISTRICT shall be named as an additional insured.

H. Architect is Independent Contractor

ARCHITECT, in the performance of this AGREEMENT, shall be and act as an independent contractor. ARCHITECT understands and agrees that ARCHITECT and all of ARCHITECT's employees shall not be considered officers, employees, or agents of DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of DISTRICT and/or to which DISTRICT's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. ARCHITECT assumes the full responsibility for the acts and/or omissions of ARCHITECT's employees or agents as they relate to the services to be provided under this AGREEMENT. ARCHITECT shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including unemployment insurance, social security, and income taxes for the respective ARCHITECT's employees.

I. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of any third party against either DISTRICT or ARCHITECT.

J. DISTRICT and ARCHITECT, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to this AGREEMENT with respect to the terms of this AGREEMENT. ARCHITECT shall not assign this AGREEMENT.

K. This AGREEMENT shall be governed by the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Santa Clara, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

L. The ARCHITECT shall make a written record of all meetings, conferences, discussions, and decisions made between or among the DISTRICT, ARCHITECT, and Contractor during all phases of the PROJECT and concerning any material condition in the requirements, scope, performance, and/or sequence of the Work. The ARCHITECT shall provide a copy of such record to the DISTRICT.

M. Prior to executing this agreement, the ARCHITECT shall submit a certification if required by Public Contract Code section 3006(b) for roofing projects.

N. This AGREEMENT represents the entire AGREEMENT between DISTRICT and ARCHITECT and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended or modified only by an agreement in writing signed by both DISTRICT and the ARCHITECT. This AGREEMENT may be executed in counterpart and with facsimile signatures.

O. If a party to this AGREEMENT commences a legal action against the other party to enforce a provision of this AGREEMENT or seek damages related to the services provided under this AGREEMENT, the prevailing party in the legal action will be entitled to recover all of its litigation expense, costs and fees from the other party, including reasonable attorneys' and experts' fees.

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This AGREEMENT entered into as of the day and year first written above.

BERRYESSA UNION SCHOOL DISTRICT \_\_\_\_\_.

By \_\_\_\_\_ By \_\_\_\_\_  
*Roxane Fuentes, Ed.D.*  
*Superintendent.*

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

By \_\_\_\_\_

Board Approval Date: \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

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**ATTACHMENT “A”  
ARCHITECT COMPENSATION**

**(Name of Architect)**

**PROJECT:**

The Fee due the ARCHITECT shall be based upon the DISTRICT’s estimated construction costs (i.e. the Project Budget) to calculate fees of the Project, unless the DISTRICT issues a written notice of change in the budget prior to bidding. Should a change in the Scope occur, the DISTRICT will adjust the estimated construction cost following receipt of the ARCHITECT’S schematic design estimate.

The current Construction Cost Budget and Fee Calculation, is set forth in Attachment “B” hereto.

The above referenced Fee is based on upon the following Fee Schedule:

Modernization Construction Projects:

1. Up to \$500,000 of construction costs: 12%
2. The next \$500,000 of construction costs: 11.5%
3. The next \$1,000,000 of construction costs: 11%
4. The next \$4,000,000 of construction costs: 10%
5. The next \$4,000,000 of construction costs: 9%
6. Costs in excess of \$10,000,000: 8%.

New Construction Projects:

1. Up to \$500,000 of construction costs: 8%
2. The next \$500,000 of construction costs: 7.5%
3. The next \$1,000,000 of construction costs: 7%
4. The next \$4,000,000 of construction costs: 6.5%
5. The next \$4,000,000 of construction costs: 6%
6. Costs in excess of \$10,000,000: 5%.

In addition to the amounts listed above, the cost of the following specialty consultant services, if required for the project and approved by the District, will be in addition to the sum derived from the calculations described above:

1. Food Service Design
2. Civil Engineering Design
3. Landscape Design
4. Acoustical Design
5. Fire Sprinkler Engineering
6. Storm Water Pollution Prevention Plan
7. Audio and Visual Systems Design
8. Energy Analysis and Code Compliance Documentation

## ATTACHMENT 'B'

### PROJECT CONSTRUCTION COST BUDGT AND FEE CALCULATION

ARCHITECT:

PROJECT:

CONSTRUCTION HARD COST: \$0

FEE CALCULATION (cumulative)	% Const Cost	A/E Fee
First \$500,000	12.0%	\$0
Next \$500,000	11.5%	\$0
Next \$1,000,000	11.0%	\$0
Next \$4,000,000	10.0%	\$0
Next \$4,000,000	9.0%	\$0
Over \$10,000,000	8.0%	\$0
<b>TOTAL ARCHITECTURAL FEE:</b>		<b>\$0</b>

PAYMENT SCHEDULE	% Total Fee	A/E Fee
<i>DESIGN</i>		
100% Schematic Submittal	10.0%	\$0
100% DD Submittal	15.0%	\$0
90% CD Submittal	35.0%	\$0
DSA Approval/Submittal OPSC	5.0%	\$0
Total Design Phase:	65.0%	\$0
<i>BIDDING</i>		
Bidding Phase	5.0%	\$0
Total Bidding Phase:	5.0%	\$0
<i>CONSTRUCTION</i>		
Bidding Complete	5.0%	\$0
Construction 25% Complete	5.0%	\$0
Construction 50% Complete	5.0%	\$0
Construction 75% Complete	5.0%	\$0
Construction 100% Complete	5.0%	\$0
Submittal of Final Records/ DSA Certification	5.0%	\$0
Total Construction Phase:	30.0%	\$0
<b>TOTALS FEE</b>		<b>\$0</b>

**ATTACHMENT “C”**  
**PROJECT SCHEDULE**

**PROJECT: \_\_\_\_\_**

**Name of Architect**

**Project Schedule**

Schematic Design Submittal:

Schematic Design Review Comments & Estimate:

Design Development Submittal:

Design Development Review Comments & Estimate:

90% (DSA) Construction Documents Submittal:

90% Construction Documents Review Comments & Estimate:

Bid Documents:

Bidding:

Construction Start:

Completion:

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**ATTACHMENT “D”**  
**SCOPE OF WORK**

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**ATTACHMENT “E”**

**IDENTIFICATION OF PERSONNEL  
AND BASIC SERVICES HOURLY RATES**

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