



## **Marin Community College District**

Marin Community College District  
Measure C Bond  
Capital Improvement Program

**Professional Services Agreement**

**With**

**Firm Name**

**for the**

**Gateway Complex Project**

**Board Meeting Approval Date**

# MARIN COMMUNITY COLLEGE DISTRICT

## Marin Community College District Campus-wide Measure C Update Capital Improvement Program

### AGREEMENT BETWEEN THE MARIN COMMUNITY COLLEGE DISTRICT AND

[Firm Name]

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2009, in the County of Marin, State of California, by and between **Firm Name**, hereinafter referred to as “**Architect**” and the Marin Community College District, a political subdivision of the State of California, hereinafter referred to as “**District**” .

#### 1. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

- “**Agreement**” This Agreement together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, Appendix A (Services to be Provided by Architect), Appendix B (Payments to Architect), Appendix C (Milestone Schedule), Appendix D (Not Used), and Appendix E (Insurance) attached hereto.
- “**Architect**” [Firm Name, Address, phone, fax, email]
- “**As-Built Drawings**” Any document prepared and submitted by District contractor(s) that details on a  
 (“**As-Built**s”) Conforming Set, the actual construction performed during the Project, including changes necessitated by change orders
- “**Bid Set**” The plans, drawings, and specifications at the end of the Construction Documents Phase the DSA has approved and that the District can use for bidding on the construction of the Project.
- “**Conforming Set**” The plans, drawings, and specifications, at the end of the Bidding Phase that incorporates all addenda, if any, issued during the Bidding Phase. The Architect shall ensure that DSA has approved all revisions to the Bid Set that are incorporated into the Conforming Set and for which DSA approval is required.
- “**District**” Marin Community College District.
- “**Director of Modernization**” District employee responsible for Bond Program oversight
- “**DSA**” The Division of the State Architect in the California Department of General Services
- “**Program Manager**” Swinerton Management & Consulting, Inc. – Program and Construction Manager for Bond Program.
- “**Program**” Marin Community College District Campus-wide Measure C Update – Capital Improvement Program
- “**Project[s]**” The project[s] described in Appendix A, Scope of Services.
- “**Project Inspector**” The construction inspector appointed by the District as required by the Education Code who is on the approved list from the Division of the State Architect and is satisfactory to Architect

- “Record Drawings”** Any document prepared and submitted by District contractor(s) that record changes made during the construction of the Project on a Conforming Set, including changes necessitated by change orders.
- “Services”** All work, labor, materials and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation architectural, engineering, coordination and administrative services.
- “Subconsultants”** Architect’s consultants and subconsultants of any tier.
- “Visually Verify”** Verify to the fullest extent possible by physical inspection and reasonable investigation and without any destructive action

## 2. Term of Agreement

All work comprising the Services shall be deemed performed under this Agreement. This Agreement shall conclude upon the completion of the Project[s].

## 3. Scope, Responsibility and Services to be Performed by Architect

- 3.1 Architect shall perform all Services described in Appendix A, “Services to be Provided by Architect”, attached hereto and incorporated by reference as though fully set forth herein
- 3.2 Architect shall commence performing the Services required by the Agreement upon receipt of a written Notice to Proceed signed by the District’s representative and shall complete all Services required by this Agreement within the times specified in the Milestone Schedule in Appendix C. **Time is of the essence in the performance of Services under this Agreement.** Failure of Architect to perform Services on time as specified in this Agreement is a material breach of this Agreement unless and to the extent the delay is beyond the Architect’s or its consultant(s)’ reasonable control.
- 3.3 Architect agrees that the Milestone Schedule includes reasonable allowances for completion of the Services, including all time reasonably required for District’s review and approval of deliverables and for approval of the deliverables by all authorities having jurisdiction over the Program, Project[s] and Services. Architect shall achieve its scheduled Milestones (as shown on the Milestone Schedule) unless an excusable event causes delay (excusable delay), and unless Architect gives written notice of the excusable event and requests a time extension within seven calendar days of the occurrence of the excusable event. Excusable events shall be limited to acts of neglect by District or District’s agents or consultants when acting at District’s direction, breaches of this Agreement by District, Acts of God such as fire, flood, earthquake, or epidemic, or delay by a construction contractor during the construction phase of the Project[s], or any other circumstances beyond Architect’s reasonable control. If the period of excusable delay caused by an excusable event concurs with an Architect caused or other nonexcusable delay, District may (but shall not be required to) grant a time extension without compensation.
- 3.4 Architect may recover extra costs resulting from excusable delay upon showing that the costs claimed (i) resulted from time and/or expenses actually incurred in performing Services, (ii) were incurred by Architect as a direct result of the delay and not otherwise within Architect’s scope of Services, and (iii) are documented to the District’s satisfaction.
- 3.5 Should the progress of the Services under this Agreement at any time fall behind schedule for any reason other than excusable delays, Architect shall apply such additional manpower and resources as necessary to bring progress of the Services under this Agreement back on schedule and consistent with the standard of professional skill and care required by this Agreement.

- 3.6 The Architect shall record meeting notes for all meetings Architect attended during the Design and Bidding Phase of a Project. Within two (2) Workdays after the meeting or 24 hours prior to the next meeting, whichever time is the shortest, Architect will distribute minutes to District and to those affected by decisions made at the meeting by e-mail. Attendees can either submit comments or additions to minutes prior to the next progress meeting, or may attend the next progress meeting and submit comments or additions there. Minutes meeting the approval of the District's Representative will constitute final memorialization of results of meetings.
- 3.7 A master list of all specified submittals required for the project shall be submitted, as drafts, both electronically, in MS Word, and in writing as part of the 90/95% CD submittal and again in final form with the other final bid documents.
- 3.8 Web based project management. District projects valued at \$500,000, or more, or having a scheduled duration of 6 months or longer will utilize the District's specified web based project management software. When project management software is activated the Architect will be required to perform project management activities including but not limited to the review of and response to submittals, RFIs, etc., review, creation and distribution of meeting minutes and other similar tasks, via the District's specified web based project management software. Costs associated with software licenses and any training required for the architect or their staff to perform these activities is an additional service and shall be added to the contract when project management software is selected.

#### **4. Compensation**

- 4.1 District shall pay Architect compensation according to the Compensation Schedule established in Appendix B, "Payments to Architect" which states a lump sum fee including expenses to be paid to Architect for Services performed pursuant to this Agreement. District shall pay Architect in monthly payments on or before the last day of each month for Services in an amount which the District, in its sole discretion, concludes is the value of the Services which have been properly performed as of the last day of the immediately preceding month and is due under Appendix B.
- 4.2 District shall not incur any charges under this Agreement, nor shall any payments become due to Architect for any payment period on the Project[s], until District receives all deliverables required under Appendix A, for the payment period (if any) and reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where Architect has partially completed one or more deliverables due during a payment period, and if Architect demonstrates diligent progress thereon, then District may consider a partial progress payment based upon Architect's percentage completion of the partially completed deliverables and diligent progress but taking into account any adverse impacts upon District.
- 4.3 In the event District shall challenge or question Architect's right to payment of all or any portion of any invoice submitted by Architect for payment, District will not withhold entire payment if a questioned amount is involved, but will issue payment in the amount of the total invoice less any questioned amount(s). District will make payment for questioned amount(s) only upon District's receipt of any requested documentation verifying the claimed amount(s) and District's determination that the amount is due under the terms of this Agreement. District shall advise Architect, in writing, of such determination within 15 days of receipt of the requested documentation. Final payment will be made when all Services required under this Agreement have been completed to the reasonable satisfaction of District including, without limitation, Architect's submittal and District's acceptance of all deliverables to District required by Appendix A.
- 4.4 Invoices furnished by Architect under this Agreement must be in a form acceptable to District. All amounts paid by District to Architect shall be subject to audit by District. Architect shall maintain books and support documentation and submit to audit as and when required. Payment shall be made by District to Architect at the address stated in Section 6.1.

- 4.5 District may withhold payments due Architect under this Agreement any sums that District determines that Architect owes to District because of Architect's acts, errors, omissions, breaches of this Agreement, delays or other acts which caused District monetary damages. In the event District shall exercise such right, and Architect shall dispute the District's right to the amount withheld, the dispute shall be submitted to mediation pursuant to Section 24.3 of this Agreement, to be attended by District, Architect, and any applicable insurance carriers; such mediation to occur within 30 days of demand. If the parties cannot agree upon the time, place, and mediator, within one week of the District's demand, then the Marin County Superior Court may upon application by any party make such selection for the parties. If a party other than District refuses to mediate under this Section, then District shall have satisfied its obligations under this Section. At Architect's request, District shall make an affirmative claim against Architect and its insurer. Any payments withheld under this provision shall be promptly paid to Architect upon settlement of the dispute with Architect and or its insurer.

## 5. Maximum Costs

- 5.1 District's obligation hereunder shall not at any time exceed the amount approved by the Board of Trustees and approved by the District's Vice President or designee for payment to the Architect pursuant to the terms of this Agreement.
- 5.2 Except as may be provided by applicable law governing emergency conditions, District has not authorized its Trustees, employees, officers and agents to request Architect to perform Services or to provide materials, equipment and supplies that would result in Architect performing Services or providing materials, equipment and supplies that exceed the scope of the Services, materials, equipment and supplies agreed upon in the Agreement unless the District amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.
- 5.3 District shall not reimburse Architect for Services, materials, equipment or supplies provided by Architect beyond the scope of the Services, materials, equipment and supplies agreed upon in the Agreement and unless approved by a written amendment to the Agreement having been executed and approved in the same manner as this Agreement.

## 6. Qualified Personnel

- 6.1 For purposes of this Agreement, except for notices specified under Section 17 below, District shall direct all communications to Architect through **Principal Name**, its **Principal in Charge**, at **Firm Name and Full Address**, and Architect shall direct all communications to District through Jake Skaer, its Construction Manager, Kentfield Campus, Swinerton Management & Consulting, Inc, at (physical address) 835 College Ave, Building MS-3, Kentfield, CA 94904. (mailing address) P.O. Box 144003, Kentfield, CA 94914.
- 6.2 The Architect has been selected to perform the Services herein because of the skills and expertise of key individuals. Architect agrees that all professional personnel assigned to the Project[s] will be listed in its proposal, Exhibit 1 to Appendix A, attached hereto and by this reference incorporated herein, and that the listed personnel will continue their assignments on the Project[s] and Program during the entire term of this Agreement. The Architect shall not change any of the key personnel listed Exhibit 1 to Appendix A 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. If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice the Architect shall have five (5) days to remove that person from the Project and replace that person with one acceptable to the District. All lead or key personnel for any consultant must also be designated by the consultant and are subject to all conditions previously stated in this paragraph. Any costs associated with

reassignment of personnel shall be borne exclusively by Architect.

- 6.3 Architect shall comply with Education Code Section 81138. Services under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Architect. All personnel, including those assigned at District's request, shall be supervised by Architect. Services performed by Architect shall conform to the requirements of the laws of the State of California applicable to schools construction, including, but not limited to, the requirements of the California Business and Professions Code, the California Education Code, and the California Code of Regulations. As referenced in those codes, "**Responsible Charge**" for the work shall be with a Registered Architect/Engineer currently licensed in the State of California

## 7. Representations

- 7.1 Architect represents that it has reviewed Appendix A, Services to be Provided by Architect, and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee including expenses within the maximum amount set forth in the Compensation Schedule established in Appendix B, Payments to Architect, and within the times specified in the Milestone Schedule.
- 7.2 Architect represents that it is qualified to perform the Services and that it possesses the necessary licenses and/or permits required to perform the Services or will obtain such licenses and/or permits prior to time such licenses and/or permits are required. Architect also represents that it has extensive knowledge of all applicable building codes, laws, regulations and ordinances.
- 7.3 Architect represents that it and its Subconsultants are similarly experienced in the architectural and engineering services intended for the Project[s]. Architect agrees that the Services shall be performed in a manner that conforms to the standards of architectural and engineering practice observed by a specialist in performing services similar to the Services. Architect's Statement of Qualification, dated \_\_\_\_\_, 2009, is incorporated herein by reference.
- 7.4 The granting of any progress payment by District, or the receipt thereof by Architect, or any inspection, review, approval or oral statement by any representative of District or any other governmental entity, shall in no way waive or limit the obligations under this Agreement or lessen the liability of Architect for unsatisfactory Services, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

## 8. Indemnification and General Liability

- 8.1 To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782), Architect shall defend (with legal counsel reasonably acceptable to the District), indemnify and hold harmless District and its Trustees, officers, departments, officials, representatives and employees (collectively "**Indemnitees**") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Architect or its Subconsultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent arising from (1) the performance of Services under this Agreement, or any part thereof, or (2) any act or omission of Architect, any Subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "**Liabilities**"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee, but shall apply to all other Liabilities.

- 8.2 Architect shall defend (with legal counsel reasonably acceptable to the District), indemnify and hold harmless the Indemnitees from all loss, cost, damage, expense, liability or claims, in law or in equity, including attorneys' fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by District, or any of the other Indemnitees, of articles or Services to be supplied in the performance of this Agreement.
- 8.4 Architect shall place in its subconsulting agreements and cause its Subconsultants to agree to indemnities and insurance obligations in favor of District and other Indemnitees in the exact form and substance of those contained in this Agreement.
- 8.5 District acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the [any] Project site is outside of Architect's expertise and is not included in the scope of Services Architect is to perform nor included in Architect's insurance. District shall hire an expert consultant in this field if the [any] Project involves such materials. Architect shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. Architect shall be responsible to coordinate with District's expert consultant as required by Appendix A, "Services To Be Provided By Architect".

## **9. Liability of District**

- 9.1 Except as provided in Appendix A, "Services to be Provided by Architect" and Appendix E, "Insurance", District's obligations under this Agreement shall be limited to the payment of the compensation provided for in Sections 3, 4 and 5 of this Agreement.
- 9.2 Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, including without limitation lost profits or revenue, arising out of or in connection with this Agreement, the Services, the Program or any Project.
- 9.3 District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Architect, or by any of its employees, even though such equipment be furnished, rented or loaned to Architect by District. The acceptance or use of such equipment by Architect or any of its employees shall be construed to mean that Architect accepts full responsibility for and shall exonerate, indemnify, defend and save harmless District from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the Architect, its employees, District employees or third parties, or to property belonging to any of the above.
- 9.4 Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which District may have under this Agreement or any applicable law. All rights and remedies of District, whether under this Agreement or other applicable law, shall be cumulative.

## **10. Independent Contractor; Payment of Taxes and Other Expenses**

- 10.1 Architect shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Architect performs the Services required of Architect by the terms of this Agreement. Architect shall be liable for the acts and omissions of its Subconsultants, its employees and its agents.

- 10.2 Nothing contained herein shall be construed as creating an employment, agency or joint venture relationship between District and Architect. Architect acknowledges that neither it nor any of its employees or agents shall, for any purpose whatsoever, be deemed to be District employees, and shall not be entitled to receive any benefits conferred on District employees, including without limitation workers' compensation, pension, health, insurance or other benefits.
- 10.3 Architect shall be solely responsible for payment of any required taxes, including California sales and use taxes, city business taxes and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto.
- 10.4 Architect shall be available as much as reasonably possible to District staff during the District's normal working hours or as otherwise requested by District. Terms in this Agreement referring to direction from District shall be construed as providing for direction as to policy and the result of Architect's Services only and not as to the means by which such a result is obtained.
- 10.5 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities who are not parties to this Agreement.

## **11. Insurance**

Prior to execution of this Contract, Architect shall furnish to District Certificates of Insurance showing satisfactory proof that it maintains the insurance required by this Contract as set forth in Appendix E, "Insurance," which is attached and made a part of this Contract. Architect shall maintain all required insurance throughout the term of this Agreement and as otherwise provided in Appendix E. In the event Architect fails to maintain any required insurance, District may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due Architect under this Contract (or Architect shall promptly reimburse District for such expense).

## **12. Suspension of Services**

- 12.1 District may, without cause, order Architect to suspend, delay or interrupt ("suspend" or "suspension") Services pursuant to this Agreement, in whole or in part, for such periods of time as District may determine in its sole discretion. District shall deliver to Architect written notice of the extent of the suspension at least seven (7) calendar days before the commencement thereof. Suspension shall be treated as an excusable delay and Architect shall not be compensated for such delay except to the extent provided under this Agreement.
- 12.2 Notwithstanding anything to the contrary contained in this Section, no compensation shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by a cause for which Architect is responsible.
- 12.3 Architect may stop work in the performance of Services under the Agreement if there is a material breach by the District and the District refuses to participate in the dispute resolution process as defined in Section 24.

## **13. Termination of Agreement for Cause**

- 131 If at any time District believes Architect may not be adequately performing its obligations under this Agreement or that Architect may fail to complete the Services as required by this Agreement, or has provided written notice to Architect of observed deficiencies in Architect's performance, District may request from Architect prompt written assurances of performance and a written plan to correct the observed deficiencies in Architect's performance. Such plan shall include, as applicable, evidence of necessary resources, correction plans, subconsultant commitments, schedules and recovery schedules, and affirmative commitments to correct the asserted deficiencies, meeting all applicable requirements and showing a realistic and achievable plan to cure the breach. Architect shall provide such written assurances

and written plan within ten calendar days of receipt of written request. Architect acknowledges and agrees that any failure to provide written assurances and a written plan to correct observed deficiencies, in the required time, is a material breach under this Agreement.

13.2 Architect shall be in default of this Agreement and District may, in addition to any other legal or equitable remedies available to District, terminate Architect's right to proceed under the Agreement, in whole or in part, for cause if any of the following should occur:

13.2.1 Should Architect make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged a bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of a petition filed against Architect in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Architect or of all or any substantial part of the properties of Architect, or if Architect, its directors or shareholders, take action to dissolve or liquidate Architect; or

13.2.2 Should Architect commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of notice from District to Architect demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure; or

13.2.3 Should Architect violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services and applicable to the Project[s] or Services and does not cure such violation within ten (10) days of the date of the notice from District to Architect demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure.

13.2.4 In order for Architect to avail itself of any time period in excess of ten (10) calendar days pursuant to sections 13.2.2 or 13.2.3, above, Architect must provide District within the 10 day period a written plan to cure said violation acceptable to District, and then diligently commence and continue performance of such cure according to the written plan. Such plan shall include, as applicable, evidence of necessary resources, correction plans, subconsultant commitments, schedules and recovery schedules, and affirmative commitments to correct the asserted deficiencies, meeting all applicable requirements and showing a realistic and achievable plan to cure the breach.

13.3 In the event of termination by District as provided herein for cause:

13.3.1 District shall compensate Architect for the value of the Services delivered to District upon termination as determined in accordance with the Agreement, subject to all rights of offset and backcharges, but District shall not compensate Architect for its costs in terminating the Services or any cancellation charges owed to third parties;

13.3.2 Architect shall deliver to District possession of all tangible aspects of the Services in their then condition, including but not limited to, all copies (electronic and hard copy) of designs, engineering, Project records, cost data of all types, drawings and specifications and contracts with vendors and Subconsultants, and all other documentation associated with a Project or the Program, and all supplies and aids dedicated solely to performing Services which, in the normal course of the Services, would be consumed or only have salvage value at the end of the Services period.

13.3.3 Architect shall remain fully liable for the failure of any Services completed and drawings and specifications provided through the date of such termination to comply with the provisions of the Agreement. The provisions of this Section shall not be interpreted to diminish any right which

District may have to claim and recover damages for any breach of this Agreement, but rather, Architect shall compensate District for all loss, cost, damage, expense, and/or liability suffered by District as a result of such termination and failure to comply with the Agreement.

- 13.4 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, 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.

#### **14. Termination of Agreement for Convenience**

- 14.1 District may terminate performance of the Services under the Agreement in accordance with this Section in whole, or from time to time in part, whenever District shall determine that termination is in the District's best interests. Termination shall be effected by District delivering to Architect, at least seven (7) calendar days prior to the effective date of the termination, a Notice of Termination specifying the extent to which performance of the Services under the Agreement is terminated.

- 14.2 After receipt of a Notice of Termination, and except as otherwise directed by District, Architect shall:

14.2.1 Stop Services under the Agreement on the date and to the extent specified in the Notice of Termination;

14.2.2 Place no further orders or subcontracts (including agreements with Subconsultants) for materials, Services, or facilities except as necessary to complete the portion of the Services under the Agreement which is not terminated;

14.2.3 Terminate all orders and subcontracts to the extent that they relate to performance of Services terminated by the Notice of Termination;

14.2.4 Assign to District in the manner, at times, and to the extent directed by District, all right, title, and interest of Architect under orders and subcontracts so terminated. District shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;

14.2.5 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of District to the extent District may require. District's approval or ratification shall be final for purposes of this clause;

14.2.6 Transfer title and possession to District, and execute all required documents and take all required actions to deliver in the manner, at times, and to the extent, if any, directed by District, completed and uncompleted designs and specifications, Services in process, completed Services, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of, Services terminated by the Notice of Termination (including mockups and model(s)), completed or partially completed plans, drawings, information, in whatever form (i.e., hard-copy and electronic), all intellectual property rights (including without limitation, to the extent applicable, all licenses and copyright, trademark and patent rights) and all other property and property rights which, if the Agreement had been completed, would have been required to be furnished to District; District acknowledges that said documents were prepared for the purpose of the Project[s].

14.2.7 Use its best efforts to assist District in selling, in the manner, at times, to the extent, and at a price or prices that District directs or authorizes, any property of the types referred to in Section 14.2.6, but Architect shall not be required to extend credit to any purchaser, and may acquire any such property under conditions prescribed and at a price or prices approved by District. All proceeds from the foregoing shall be applied to reduce payments to be made by District to Architect under

this Agreement, shall otherwise be credited to the price or cost of Services covered by this Agreement or be paid in such other manner as District may direct;

- 14.2.8 Complete performance of any part of the Services which were not terminated by the Notice of Termination; and
  - 14.2.9 Take such action as may be necessary, or as District may direct, for the protection and preservation of property related to this Agreement which is in Architect's possession and in which District has or may acquire an interest.
- 14.3 After receiving a Notice of Termination, Architect shall submit to District a termination claim, in the form and with the certification District prescribes. The claim shall be submitted promptly but in no event later than 3 months from the effective date of the termination, unless one or more extensions in writing are granted by District upon Architect's written request made within such 3-month period or authorized extension. However, if District determines that facts justify such action, it may receive and act upon any such termination claim at any time after such 3-month period or extension. If Architect fails to submit the termination claim within the time allowed, District may determine, on basis of information available to it, the amount, if any, due to Architect because of the termination. District shall then pay to Architect the amount so determined.
- 14.4 Subject to provisions of Section 14.3, Architect and District may agree upon the whole or part of the amount or amounts to be paid to Architect because of any termination of Services under this Section. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and Architect shall be paid the agreed amount.
- 14.5 If Architect and District fail, under Section 14.4, to agree on the whole amount to be paid to Architect because of termination of Services under this Section, then Architect's entitlement to compensation for Services specified in the Agreement which are performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of –
- 14.5.1 Reasonable value of Architect's Services performed prior to Notice of Termination, based on Architect's entitlement to compensation under Appendix B, "Payments to Architect". Such amount or amounts shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated. Deductions against such amount or amounts shall be made for deficiently performed Services, rework caused by deficiently performed Services, cost of materials to be retained by Architect, amounts realized by sale of materials, and for other appropriate credits against cost of Services. Such amount or amounts may include profit, but not in excess of 10 percent of Architect's total costs of performing the Services.
    - 14.5.1.1 When, in opinion of District, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective or rejected Services (including having to re-perform Services), reasonable value of Architect's Services will be the estimated reasonable cost of performing Services in compliance with the requirements of the Agreement, and any excessive actual cost shall be disallowed.
  - 14.5.2 Reasonable cost to Architect of handling material returned to vendors, delivered to District or otherwise disposed of as directed by District.
- 14.6 Except as provided in this Agreement, in no event shall District be liable for costs incurred by Architect (or Subconsultants) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries,

post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney's fees or other costs relating to prosecution of the claim or a lawsuit, pre-judgment interest, or any other expense which is not reasonable or authorized under Section 14.5.

14.7 This section shall not prohibit Architect from recovering costs necessary to discontinue further Services under the Agreement as provided for in Section 14.2 or costs authorized by District to settle claims from Subconsultants.

14.8 In arriving at amount due Architect under this Section there shall be deducted:

14.8.1 All unliquidated advance or other payments on account theretofore made to Architect, applicable to the terminated portion of Agreement,

14.8.2 Any substantiated claim which District may have against Architect in connection with this Agreement, and

14.8.3 The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Architect or sold under the provisions of this Section, and not otherwise recovered by or credited to District.

14.9 If the termination for convenience hereunder is partial, before settlement of the terminated portion of this Agreement, Architect may file with District a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement which is not terminated. District may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of District and Architect to agree upon amount or amounts to be paid to Architect for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit District's rights and remedies at law.

## **15. Conflicts of Interest/Other Agreements**

15.1 Architect represents that it is familiar with Section 1090 and Section 87100 et seq. of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of those sections.

15.2 Architect represents that it has completely disclosed to District all facts bearing upon any possible interests, direct or indirect, which Architect believes any member of District, or other officer, agent or employee of District or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by District for cause. Architect shall comply with all conflict of interest codes adopted by the Marin Community College District and their reporting requirements.

15.3 Architect covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Architect represents to and agrees with the District that Architect has no present, and will have no future, conflict of interest between providing the District the Services hereunder and any interest Architect may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the District, as determined in the reasonable judgment of the District. The provisions of this Section 15 shall remain fully effective indefinitely after termination of Services to the District hereunder.

## **16. Proprietary or Confidential Information of District; Publicity**

- 16.1 Architect acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Architect may have access to private or confidential information which may be owned or controlled by District and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to District. Architect agrees that any private or confidential information identified as such and disclosed by District to or discovered by Architect shall be held in strict confidence and used only in performance of the Agreement. Architect shall exercise the same standard of care to protect such information as a reasonably prudent Architect would use to protect its own proprietary data, and shall not accept employment adverse to the District's interests where such confidential information could be used adversely to the District's interests. Architect shall notify the District immediately in writing if it is requested to disclose any information made known to or discovered by Architect during the performance of or in connection with this Agreement.
- 16.2 Any publicity or press releases with respect to a Project, the Program or Services shall be under the District's sole discretion and control. Architect shall not discuss the Services, a Project or the Program, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without District's prior written consent. Architect shall have the right, however, without District's further consent, to include representations of Services among Architect's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.
- 16.3 The provisions of this Section 16 shall remain fully effective indefinitely after termination of Services to the District hereunder.

**17. Notices to the Parties**

- 17.1 All notices (including requests, demands, approvals or other communications) under this Agreement shall be in writing.
- 17.2 Notice shall be sufficiently given for all purposes as follows:
- 17.2.1 When personally delivered to the recipient, notice is effective on delivery.
  - 17.2.2 When mailed first class to the last address of the recipient known to the party giving notice, notice is effective on delivery.
  - 17.2.3 When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
  - 17.2.4 When delivered by overnight delivery service, including Federal Express, Airborne, and United Parcel Service, with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
  - 17.2.5 When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on receipt as long as the original notice is promptly given by first-class or certified mail or by overnight delivery. Any notice given by fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a nonbusiness day.
- 17.3 Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.
- 17.4 Addresses for the purpose of giving notice are set forth in Section 6.1. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this paragraph 17.

17.5 Either party may, by written notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or a representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

## **18. Ownership of Results/Work for Hire**

Consistent with Education Code Section 17316, any interest (including copyright interests) of Architect or its contractors or subconsultants (together, "**Subconsultants**"), in studies, reports, memoranda, computational sheets, drawings, plans or any other documents (including electronic media) prepared by Architect or its Subconsultants in connection with the Services, shall become the property of District. To the extent permitted by Title 17 of the United States Code, work product produced under this Agreement shall be deemed works for hire and all copyrights in such works shall be the property of District. In the event that it is ever determined that any works created by Architect or its Subconsultants under this Agreement are not works for hire under U.S. law, Architect hereby assigns to District all copyrights to such works. With District's prior written approval, Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities. Architect shall, however, retain the copyright in its standard details, and grants District an unlimited license to use such details for the purposes stated herein. Should the District desire to reuse the Documents specified above and not use the services of the Architect, then the District agrees to require the new architect to assume any and all obligations for the reuse of the documents and process the same through the Division of the State Architect as the project Architect, and the District releases Architect and its Subconsultants from liability associated with the reuse of the documents.

## **19. Audit and Inspection Records**

19.1 Architect shall maintain all drawings, specifications, calculations, cost estimates, quantity takeoffs, statements of construction costs and completion dates, schedules and all correspondence, internal memoranda, papers, writings, electronic media and documents of any sort prepared by or furnished to Architect during the course of performing the Services and providing services with respect to any Project or the Program, for a period of at least five years following final completion and acceptance of the last Project. All such records (except for materials subject to the attorney client privilege, if any) shall be available to District, and District's authorized agents, officers, and employees, upon request at reasonable times and places. Monthly records of Architect's personnel costs, Architect costs, and reimbursable expenses pertaining to both Basic Services, or Additional Services shall be kept on a generally recognized accounting basis, and shall be available to District, and District's authorized agents, officers, and employees, upon request at reasonable times and places. Architect shall not destroy any Project or Program records until after advising District and allowing District to accept and store the records.

19.2 Architect shall maintain full and adequate records in accordance with District requirements to show actual costs incurred by Architect in its performance of this Agreement, and to make available to District during business hours accurate ledgers, books of accounts, invoices, vouchers, cancelled checks, and accounting and other books, records and documents evidencing or relating to all expenditures and disbursements charged to District or relative to Architect's activities under this Agreement. Architect will furnish to District, its authorized agents, officers and employees such other evidence or information as District may request with regard to any such expenditure or disbursement charged by Architect. Architect will permit District, and District's authorized agents, officers, and employees, to audit, examine and make copies, excerpts and transcripts from such items, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement

19.3 Architect shall maintain all items described in Sections 19.1 and 19.2 above in an accessible location and condition for a period of not less than five years after final completion and acceptance of the [last] Project or until after final audit has been resolved, whichever is later. If such items are not kept and maintained by Architect within a radius of fifty (50) miles from District's offices at Kentfield, CA, Architect shall,

upon District's request and at Architect's sole cost and expense, make such items available to District, and District's authorized agents, officers, and employees, for inspection at a location within said fifty (50) mile radius, or Architect shall pay District its reasonable and necessary costs incurred in inspecting Architect's books and records, including, but not limited to, travel, lodging and subsistence costs. The State of California and any other governmental agency having an interest in the subject of this Agreement shall have the same rights conferred upon District by this Section.

19.4 The rights and obligations established pursuant to this Section shall be specifically enforceable and survive termination of this Agreement.

## **20. Subcontracting/Assignment/District Employees**

20.1 Architect and District agree that Architect's unique talents, knowledge and experience form a basis for this Agreement and that the services to be performed by Architect under this Agreement are personal in character. Therefore, Architect shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder unless approved by District in a written instrument executed and approved by the District in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.

20.2 Architect shall use the Subconsultants identified in this Agreement and shall not substitute Subconsultants unless approved by written instrument executed and approved by the District in writing.

20.3 To the extent Architect is permitted by District in writing to subcontract, assign or subcontract any portion of this Agreement or any duties or obligations hereunder, Architect shall comply with all applicable prompt payment laws and regulations (including, without limitation, California Civil Code Section California Civil Code §3321. Architect shall remain fully liable and responsible for all acts and omissions of its Subconsultants in connection with the Services, the Project[s] or the Program, as if it engaged it the acts and omissions directly.

20.4 Architect shall not employ or engage, or attempt to employ or engage, any person who is or was employed by District or any department thereof at any time that this Agreement is in effect, during the term of this Agreement and for a period of two years after the termination of this Agreement or the completion of the Services, without the written consent of District.

## **21. Non-Discrimination, Equal Employment Opportunity and Business Practices**

Architect shall not discriminate against any employee or applicant for employment, nor against any Subconsultant or applicant for a subcontract, because of race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA (as defined below) or veteran's status. To the extent applicable, Architect shall comply with all federal, state and local laws (including, without limitation, District ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time.

## **22. Drug-Free Workplace Policy**

Architect acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on District premises. Architect agrees that any violation of this prohibition by Architect, its employees, agents or assigns shall be deemed a material breach of this Agreement.

## **23. Compliance With Americans with Disabilities Act**

Architect acknowledges that, pursuant to the Americans with Disabilities Act (“**ADA**”), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Architect shall provide the Services specified in this Agreement in a manner that complies with the standard of care established under this Agreement regarding the ADA and any and all other applicable federal, state and local disability rights legislation. Architect agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Architect, its employees, agents or assigns shall constitute a material breach of this Agreement.

## **24. Disputes**

24.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the **Director of Modernization** and a principal of the Architect who shall attempt, in good faith, to resolve the dispute. Such referral may be initiated by written request from either party or a meeting between the **Director of Modernization** and principal of the Architect shall then take place within five days of the request.

24.2 Provided that District continues to compensate Architect in accordance with this Agreement, Architect shall continue its Services throughout the course of any and all disputes. Architect agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement, including but not limited to, the time to complete the Services. Architect also agrees that should Architect discontinue Services due to a dispute or disputes, District may terminate this Agreement for cause as provided herein.

24.3 In the event of claims exceeding \$50,000, as a precondition to litigation, the parties shall first participate in non-binding mediation pursuant to the construction mediation procedures of the American Arbitration Association (“**AAA**”), in San Francisco, California, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Marin County Superior Court from an approved list of AAA qualified construction mediators. The parties may agree to engage in discovery limited to document exchange prior to mediation, but if they do, they shall follow the procedures prescribed in the California Code of Civil Procedure, Section 2016.010 et. seq. as they relate to document exchanges and discovery so conducted shall apply in any subsequent litigation as if conducted in that litigation.

## **25. Agreement Made in California; Venue**

25.1 This Agreement shall be deemed to have been executed in the County of Marin, CA. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in the County of Marin, CA.

25.2 The parties shall execute one original and one copy of this Agreement, both of which shall be deemed originals thereof.

## **26. Compliance with Laws**

26.1 Architect represents that it will endeavor to comply with all applicable laws in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. Architect shall comply with all security requirements imposed by authorities with jurisdiction over any Project or the Program, and will provide all information, work histories and/or verifications as requested by such authorities for security clearances or compliance.

26.2 Architect further represents that all plans, drawings, specifications, designs and any other product of the Services will endeavor to comply with all currently applicable laws at point of submittal to DSA, codes

and regulations, current at the time of submittal to DSA consistent with the standard of care in this Agreement.

**27. Construction**

All section and paragraph captions are for reference only and shall not be considered in construing this Agreement.

**28. Miscellaneous**

- 28.1 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by District of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This section shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall commence to run on discovery of the defect and its cause. However, the applicable statutes of repose, California Code of Civil Procedure Sections §§ 337.1 and 337.15, shall continue to apply.
- 28.2 Any provisions or portion thereof of this Agreement, which is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law. In dispute resolution arising from this Agreement, the fact finder shall receive detailed instructions on the meaning and requirements of this Agreement.
- 28.3 Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.
- 28.4 Except as expressly provided in this Agreement, nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement. Time is of the essence in the performance of this Agreement.

**29. Entire Agreement; Modifications**

- 29.1 The Agreement, and any written modification to the Agreement, shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.

- 29.2 Architect, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. Architect shall require its Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany Architect's price proposals.
- 29.3 Changes in the Services made pursuant to this Section and extensions of the Agreement time necessary by reason thereof shall not in any way release Architect's representations and agreements pursuant to this Agreement.
- 29.4 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of both District and Architect expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.
- 29.5 Whenever the words **"as directed"**, **"as required"**, **"as permitted"**, or words of like effect are used, it shall be understood as the direction, requirement, or permission of District. The words **"approval"**, **"acceptable"**, **"satisfactory"**, or words of like import, shall mean approved by, or acceptable to, or satisfactory to District, unless otherwise indicated by the context.

THE REMAINDER OF THIS PAGE IS LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day first mentioned above.

“District”

MARIN COMMUNITY COLLEGE DISTRICT, a political subdivision of the State of California

By: \_\_\_\_\_  
**Al Harrison**  
**Vice President of College Operations**

“Architect”

**Firm Name**

By: \_\_\_\_\_  
Principal Name  
Principal

END OF DOCUMENT

## APPENDIX A

### SERVICES TO BE PROVIDED BY ARCHITECT

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## APPENDIX A

### SERVICES TO BE PROVIDED BY ARCHITECT

This is an Appendix attached to, and made a part of and incorporated by reference with the Agreement dated March 27, 2007, between the Marin Community College District (the “**District**”), and Firm Name (“**Architect**”) providing for professional services for the Gateway Complex Project / Project Number / \$\_\_\_\_\_ Budgeted Construction Cost

#### 1. Projects Under this Agreement

##### 1.1 General

The scope of work required under this Agreement shall include: FILL IN PROJECT DESCRIPTION/SCOPE OF WORK

##### 1.2 Construction Budgets

1.2.1 The agreed upon “**Budgeted Construction Cost,**” above, means the anticipated value of the construction contract for the Project, as estimated after completion of the Programming Phase. Architect shall treat the Budgeted Construction Cost so identified as the District’s required construction cost for the Project. In performing its Services under this Agreement, Architect shall not rely upon or refer to District’s contingency budgets either for design, construction, or any items within those contingency budgets, nor shall any such contingency budgets be referred to in determining performance under this Agreement.

1.2.2 Architect shall complete all Services required under this Agreement, including all plans, designs, drawings, specifications and other construction documents, so that the cost to construct the work designed by the Architect will not exceed the Budgeted Construction Cost, as adjusted subsequently with the District’s written approval. The Architect shall maintain cost controls throughout the Project to deliver the Project within the Budgeted Construction Cost.

##### 1.3 Criteria Governing Architect’s Services on Program and Each Project

1.3.1 The Project shall be developed and designed to meet all applicable and the most current codes, laws, regulations, and professional standards, consistent with the standard of care of an architect experienced in California schools design, and shall meet the criteria set forth below.

1.3.2 Architect shall not, unless otherwise permitted in writing by Program Manager propose or recommend any design which has the effect of shifting design responsibilities from Architect to a contractor, through performance specifications or any other means. Performance specifications will be allowed only when necessary to preclude single vendor sources.

1.3.3 Architect shall not, unless otherwise directed or permitted in writing by Program Manager and the District, specify unique, innovative, proprietary or sole source equipment, systems or materials. Whenever a proprietary or sole source design or equipment is requested by Architect, Architect shall provide District with a written evaluation of whether all periodic maintenance and replacement of parts, equipment or systems, can be performed normally and without excessive cost or time. District will consider such report in making its decision. If requested by District, as Basic Services,

Architect shall comment on any District-proposed unique, innovative, proprietary or sole source equipment, systems or materials.

- 1.3.4 Architect's design shall provide to the extent possible, that all surfaces, fixtures and equipment are readily accessible for maintenance, repair or replacement by ladders, power lifts, cat walks, and the like without exceeding the design loads of the floors, roofs, ceilings, and that such access is in conformance with Cal OSHA. Architect shall allow representatives of the District's operation and maintenance departments to review, comment, and participate in meetings regarding Architect's design as necessary to consider their requirements in design development, provided, however, that Architect shall exercise its professional judgment respecting all ultimate design decisions.
- 1.3.5 Architect must coordinate with other Architects on the Program, as directed by Program Manager, to specify designs, equipment and systems on a Program-wide basis to secure Program-wide efficiencies and economies in procurement and maintenance. Architect shall not have responsibility for the technical adequacy or accuracy of Architects separately engaged by District.

## 2. Basic Services

### 2.1 Scope

Basic Services shall include all the services and activities specified below and herein in Programming Phase, Schematic Design Phase, Design Development Phase, Construction Document Phase, Bidding Phase, Construction Phase, and Operation/Project Close-Out Phase.

### 2.2 General Description and Requirements

- 2.2.1 Performance of services will require Architect to work with, meet with, and attend meetings with District staff, with Inspectors, with Program Manager staff, with Commissioning Authority, with testing agencies, with other governmental agencies, with Contractors, and with such other Architects as Architect determines necessary, to the extent reasonably necessary for the design and construction of the Project and performance of Architect's duties under this Agreement (including, but not limited to, Architect's coordination with Subconsultants or other District Architects).
- 2.2.2 Services performed by Architect shall conform to the requirements of the laws of the State of California applicable to schools construction, including, but not limited to, the requirements of the California Business and Professions Code, the California Education Code, and the California Code of Regulations. As referenced in those codes, "**Responsible Charge**" for the work shall be with a Registered Architect/Engineer currently licensed in the State of California.
- 2.2.3 Plans, specifications, design calculations, Site data, and cost estimates, if any, required to be prepared by Architect shall be prepared by licensed personnel or personnel under the direction of licensed personnel, as required by the California Education Code and Code of Regulations, and such personnel shall also be in Responsible Charge for observation of the construction, as required by those codes.
- 2.2.4 Architect shall provide to District all professional engineering services necessary to perform the Services in all phases of the Project. Services will include, but are not limited to all engineering services and all acoustical, civil, electrical, fire protection, mechanical, and structural engineering, landscape, and cost estimating services required to perform the Services for the Project required under this Agreement.

- 2.2.5 Architect shall have adequate personnel, facilities, equipment and supplies to complete Architect's Services in accordance with the Milestone Schedule in Appendix C
- 2.2.6 Architect shall coordinate with District personnel or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project. This shall include, without limitation, coordination with the persons responsible for operation of the District's Labor Compliance Program, if any. If the Architect employs consultant(s), the Architect shall ensure that its contract(s) with its consultant(s) include language notifying the consultant(s) of the District's Labor Compliance Program, if any.
- 2.2.7 Architect shall identify the regulatory agencies that have jurisdiction over essential building and design elements and coordinate with and implement the requirements of the regulatory agencies, including, without limitation, the California Department of Education (CDE), California Community Colleges Chancellor's Office, 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 community college construction projects.
- 2.2.8 Architect shall provide Services required to obtain any local agencies' approval for off-site work related to the Project including review by regulatory agencies having jurisdiction over the Project.
- 2.2.9 Architect shall engage all appropriate specialty Subconsultants as are necessary for proper completion of the Services, at the sole expense of Architect. Architect's contracts with Subconsultants (and their contracts with their subconsultants) shall incorporate this Agreement by reference to the extent not inconsistent with Subconsultants' scope of work. Architect shall notify the District and allow sufficient time for the District to consider and approve the specialty Subconsultants. District shall have the right (but not the obligation) to approve specialty Subconsultants engaged by Architect as well as their form of contract, which approval shall not be unreasonably withheld.
- 2.2.10 Architect shall require each of its Subconsultants to execute agreements containing standard of care and indemnity provisions coextensive with those in this Agreement and which will indemnify and hold District harmless from the acts, errors or omissions of the Subconsultants.
- 2.2.11 To the extent necessary to complete its design services for the Project, Architect shall review, update and verify all as-built information supplied by District concerning existing structures, facilities and utilities.
- 2.2.12 Architect shall make any required corrections or revisions to reports, drawings or specifications which are a result of any errors or omissions by Architect, at no additional cost to District. Architect shall make or cause to be made any and all corrections to said documents necessary to comply with the requirements of the California Code of Regulations applicable to schools.
- 2.2.13 Throughout Architect's performance of the Services, Architect shall make written recommendations to District and Program Manager concerning any additional information necessary to complete the Services.
- 2.2.14 Architect shall provide District and Program Manager with written evaluations on an ongoing basis of the effect of or the change in any and all governmental and private regulations, licenses, patents, permits, and any other type of applicable restriction and associated requirements on the Services and its incorporation into the Project.

- 2.2.15 Architect shall provide District and Program Manager with a copy of all written communications and submittals to third parties regarding this Project.
- 2.2.16 Architect shall prepare all energy saving calculations and deliverables necessary for District to submit to PG&E, for energy savings rebates and unconventional energy rebates and any additional information required. Architect shall then verify that construction is in compliance with such rebate requirements and report to the District any problems encountered or anticipated.
- 2.2.17 Architect shall work within the standards and guidelines developed by the District Architect to support the Board's resolution on Environmental Stewardship. Documentation as required for LEED certification will be the responsibility and a part of the scope of work of the Architect working under this agreement and in accordance with the District's resolution No. 2004-7-12b Environmental Stewardship, any Board directives, and sustainable facilities construction, operating and implementation practices.
- 2.2.18 The Architect shall exercise sound judgment in applying both green building and commissioning procedures on a project specific basis.
- 2.2.19 Architect shall conduct at least monthly design coordination meetings with all Subconsultants employed to provide services under this contract, and shall be required to attend Program-wide design coordination meetings between consultants on different Projects as necessary to support the overall Program coordination efforts of the Program Manager. These meetings are in addition to the meetings required in this Professional Services Agreement, Appendix A, including, but not limited to, paragraphs 1.3.4, 2.2.3, 2.4.2.2, 2.4.4.1, 4.6.2, 4.10, 5.9, and 8.11.4 and any Board presentation.

### 2.3 Coordination of Engineering Consultants and Architects

- 2.3.1 Architect shall be solely responsible to coordinate all engineering disciplines and Subconsultants involved in completing the Services. Architect's Subconsultants shall fully coordinate with Architect and all engineering disciplines and Subconsultants involved in completing the Services. The objective of this coordination shall be the development of a complete, comprehensive and workable design in which the work of Architect and each Subconsultant interfaces well and is properly coordinated, sound and well engineered, with details that work together with regard to all affected disciplines. In performing under this Agreement, Architect and its Subconsultants shall adhere to District standards and guidelines and any Board directives.
- 2.3.2 Architect shall coordinate its work on the Project with District personnel and work of other architects on other projects in the Program (including Program Manager), and Commissioning Agent as directed by Program Manager, as necessary to achieve desired Program-wide efficiencies in procurement and maintenance.
- 2.3.3 Architect shall coordinate its work on the Project with work of the District's separately maintained hazardous material consultants. Such coordination shall not impose on Architect responsibility for the work of the hazardous materials consultants. However, Architect shall consider the work of the hazardous materials consultants in developing work phasing recommendations, overall cost estimates, and design and product specifications, where applicable.

### 2.4 Coordination with Master Schedule Scheduling and District Operations

- 2.4.1 Architect shall complete or cause to be completed all services required under this Agreement in accordance with the approved Milestone Schedule in Appendix C.
- 2.4.2 For each phase of the Services under this Agreement, Architect shall prepare and submit for District's acceptance a task list identifying the principal tasks (and subtasks) defining the scope of work of each phase. The main purpose of the task list shall be to promote coordination and scheduling of the District and third parties whose actions might impact Architect's progress.
  - 2.4.2.1 The task list submitted shall be coordinated with the Milestone Schedule and identifiable by Bid Set. The task list for each phase of the Services under this Agreement shall be submitted with the deliverables at the conclusion of the previous phase of the Services under this Agreement.
  - 2.4.2.2 The task list shall list all points of District and third party interface, for example, approvals, reviews, design input and supplying information. The task list shall include a listing of Architect's anticipated specific requirements for information, decisions or documents from District necessary for Architect's performance of its services, and required third party approvals and preliminary meetings required to obtain agreement in principle with agencies and third parties involved in the Project
- 2.4.3 For the Project, Architect shall prepare, submit for District's acceptance, and maintain a design schedule detailing Architect's scheduled performance of the Services. The schedule shall fit within and coordinate with the overall Milestone Schedule, including any and all design interfaces referenced.
  - 2.4.3.1 Architect shall submit a preliminary schedule within two weeks (Ten working days) days of commencement of the Programming Phase (covering in summary fashion all Services of each phase of the Project and providing a detailed schedule for the tasks (and subtasks) of the Schematic Design Phase).
  - 2.4.3.2 For each succeeding phase of Services, Architect shall supplement this schedule with a detailed schedule covering by task (and subtask) Architect's work during the succeeding phase of Services. (The required schedule supplement shall be submitted as part of Architect's deliverables at the conclusion of the current phase of Services.)
- 2.4.4 Architect's schedule shall be updated monthly, and shall meet the following requirements:
  - 2.4.4.1 Architect's schedule shall outline dates and time periods for the delivery of Architect's services, requirements for information from District for the performance of its services, and required third party approvals and preliminary meetings required to obtain agreement in principle with agencies and tenants involved in the Project.
  - 2.4.4.2 The schedule shall include appropriate District and third party design review durations for each Bid Set (design and construction documents ready to publish for bidding) (in minimum durations of one week for Schematic Phase, Design Development Phase, and 50% Construction Document phase, and two weeks for 100% Construction Documents phase.)

2.4.4.3 The schedule shall be in a computer software format compatible with District's existing computer software format.

2.4.5 Architect shall adjust and cause its Subconsultant to adjust activities, personnel levels, and the sequence, duration and relationship of services to be performed in a manner that will comply with the accepted schedules.

2.4.6 Revisions to Architect's schedules shall be prepared and submitted when requested by District, but no more frequently than once a month. District's acceptance of Architect's schedule will not create any duty of care or impose on District any responsibility for the sequence, schedule or progress of Services nor will it interfere with or relieve Architect from Architect's full responsibility therefor.

2.5 Deliverables Required Under This Agreement - Generally:

Each deliverable shall be reviewed with representatives of District. Deficiencies in deliverables and modifications to conform to program requirements and modifications to achieve acceptability of deliverables to District, shall be promptly performed, and the cost thereof included in the fee for Basic Services.

2.6 Deliverables Required Under This Agreement - By Phase:

Required Deliverables are listed in this Appendix A.

2.7 Monthly Progress Report:

Architect shall provide District with a Monthly Progress Report, in writing, reporting on Architect's progress and any problems in performing the Services of which Architect becomes aware. The Monthly Progress Report shall include, but is not limited to:

2.7.1 A narrative of the work performed (including a list of any contract deliverables) and identification of areas of concern, actions and approvals needed.

2.7.2 A schedule assessment and proposed ways to work around any problems that arise.

2.7.3 Monthly schedule status reports clearly identifying actual performance with respect to the current approved version of the schedule.

2.7.4 The original summary schedule as updated to reflect current progress, updates and revisions, submitted in a computer software format compatible with District's existing computer software format.

2.8 Compliance with Laws:

Architect shall comply with the necessary professional standard of care applicable to an Architect experienced in schools design and the work provided by Architect shall comply with all requirements of all applicable laws in effect at the time of submission to DSA as if set forth in this Agreement, including without limitation California Code of Regulations Title 24 (Public Works), Division 1 (Department of General Services), Chapter 1 (Division of the State Architect ("DSA")) ("**Title 24**"). Architect shall perform all duties which Title 24 imposes on school project architects and engineers, including those summarized generally in Section 41 of Title 24, all of which include, but are not limited to, the following:

2.8.1 Prepare all project designs to meet and exceed building standards set forth in Part 2, Title 24 of the California Code of Regulations, which are minimum standards applicable to

school construction; coordinate submission and approval of same to DSA and the State Chancellor's Office and any other public authority with jurisdiction.

- 2.8.2 Coordinate and cooperate fully with DSA and the State Chancellor's Office and any other authority with jurisdiction, to secure timely review and approval of Architect's work, including but not limited to:
  - 2.8.2.1 Determining the estimated time from submission to DSA and State Chancellor's Office of plans and specifications to approval of same, including "bin time" for initial review of plans and specifications, and incorporating same into Project schedule;
  - 2.8.2.2 Securing from DSA change order pre-approvals, where appropriate to minimize Project delays caused by delays in review and approval of change orders;
  - 2.8.2.3 Securing early review and approval by DSA of deferred approval items (for example, elevators, skylights etc.), including advising District of the need to require immediate submission after construction contract award of all necessary submittals for such items, including specifications to this effect in final design documents, and review of proposed contract documents to assure presence of necessary enforcement provisions.
  - 2.8.2.4 Determine and advise District on four weeks advance notice all necessary DSA fees, so as to avoid any delay.
  - 2.8.2.5 Participate in any collaborative review process initiated by DSA.
- 2.8.3 Coordinate and cooperate fully with the DSA in its required observation of construction.
- 2.8.4 [Not Used.]
- 2.8.5 Issue Verified Reports on the form and frequency required by Title 24, showing of Architect's personal knowledge, the work is in every material respect in conformance with the approved plans and specifications. Require that the Project Inspector's, the Contractor's, and the other Architects' and engineers' Verified Reports are submitted as required by Title 24.
- 2.8.6 Advise on:
  - 2.8.6.1 Selection of Project Inspector and testing laboratories;
  - 2.8.6.2 Preparing addenda and architects supplemental instructions/bulletins as required by conditions on the Project.
- 2.8.7 Performing general observation of the work of construction, interpreting the approved drawings and specifications.
- 2.8.8 Receive and act upon all technical correspondence from the State to the Architect or registered engineer in general responsible charge of the Project.
- 2.8.9 Perform those responsibilities imposed upon it under Title 24 including, but not limited to, observation and personal contact with the Project, Subconsultants, submitting information to DSA, and general direction of the work of the Project Inspector (as contemplated by Title 24).

2.8.10 Architect shall establish the extent of the testing of materials consistent with the needs of the Project, shall issue specific instructions to the testing agency prior to the start of construction, and shall notify DSA as to the disposition of materials noted on laboratory reports as not conforming to the approved specifications.

2.8.11 District will engage Project Inspector(s) as required by the California Education Code and Title 24, which Project Inspectors shall have been approved by Architect and submitted by Architect to DSA, as required by those codes. Said Project Inspectors shall be under the direction of Architect, as required by the California Code of Regulations.

2.9 State Communications:

Assist with and coordinate all communications with State Chancellor's Office, secure necessary approvals from Division of the State Architect, and assist with and coordinate any necessary approvals from other authorities having jurisdiction.

2.10 Architect's Scope of Services:

Architect's scope of work on each Project shall include the following work items, if required:

2.10.1 Diagram of Building Areas (SP 1-A) (if required)

2.10.2 Americans with Disabilities Act ("ADA") compliance report.

**3. Programming Phase**

3.1 Period of Service:

The services called for in the Programming verification/validation Phase, reflecting confirmation of programming data developed by others, will be completed and the required deliverables submitted within the stipulated periods of time indicated in Appendix C, "Milestone Schedule". Written authorization to proceed with the Programming Phase will be given at such time as District may direct.

3.2 Detailed Requirements:

Consult with District to establish and document the following detailed requirements for the Project:

3.2.1 Design objectives, limitations and criteria, functions, priorities;

3.2.2 Development of initial approximate gross facility areas and space requirement;

3.2.3 Space relation, requirements and restraints (including comparing requested space requirements to similar projects and space standards, diagramming space relationships by using massing diagrams, flow diagrams, stacking diagrams, bubble diagrams and other graphical methods);

3.2.4 Number of functional responsibilities and personnel;

3.2.5 Flexibility and expendability;

3.2.6 Environmental and sustainability goals;

3.2.7 Energy efficiency goals (including siting, landscaping, façade, fenestration, envelope and roof features that impact energy use;

3.2.8 Indoor environmental quality requirements;

3.2.9 Special equipment and systems;

3.2.10 Site requirements and existing conditions, and utilities services;

3.2.11 [Not Used.];

3.2.12 Operating procedure;

3.2.13 Zoning and other applicable regulations;

- 3.2.14 Expandability;
- 3.2.15 Access, parking;
- 3.2.16 Construction feasibility and phasing;
- 3.2.17 Security criteria;
- 3.2.18 Communications relationships;
- 3.2.19 Project schedule

3.3 Space Schematics/Flow Diagrams:

Prepare diagrammatic studies and pertinent descriptive text for:

- 3.3.1 Conversion of programmed requirements to net area requirements;
- 3.3.2 Internal functions;
- 3.3.3 Human, vehicular and material flow patterns;
- 3.3.4 General space allocations;
- 3.3.5 Analysis of operating functions;
- 3.3.6 Adjacency;
- 3.3.7 Special facilities and equipment;
- 3.3.8 Flexibility and expansibility.

3.4 Existing Facility Surveys:

Architect shall research, assemble, review and supplement information for Projects involving alterations and additions to existing facilities or determining new space usage in conjunction with a new building program and including:

- 3.4.1 Field measurements;
- 3.4.2 Review of existing design data;
- 3.4.3 Analysis of existing structural capabilities;
- 3.4.4 Analysis of existing mechanical capabilities;
- 3.4.5 Analysis of existing electrical capabilities;
- 3.4.6 Review of existing drawings for inaccuracies, updating where necessary and the development of required measured drawings.

3.5 Preliminary Estimate of Budgeted Construction Cost:

Based upon the Programming Phase services performed, Architect will prepare initial budget estimates by applying unit costs and other standard cost data to space and facilities requirements. Consider all foreseeable construction, utilities connections, off-Site improvements, permits, fees, furniture, and movable and installed equipment. Report to District regarding continued accuracy of initial budget estimates contained in District's Implementation Plan and, as part of that report, reconcile the Estimate of Budgeted Construction Cost with the District budget for the Project.

**4. Schematic Design Phase**

4.1 Period of Service:

The services called for in the Schematic Design Phase will be completed and the required deliverables submitted within the stipulated period of time indicated in Appendix C, "Milestone Schedule". Written authorization to proceed with the Schematic Design Phase will be given at such time as District may direct.

4.2 Consultation with District

- 4.2.1 Consult with District to clarify and define the requirements for the Services and review available data.
  - 4.2.2 Review District's conceptual program for scope, coordination requirements, criteria, budget and constructability.
  - 4.2.3 Identify, analyze and conform to the requirements of governmental and private authorities having jurisdiction to approve the design of the Project and participate in consultations with such authorities.
- 4.3 Site Visit and Investigations
- 4.3.1 Investigate existing conditions through Site visits and otherwise, to determine scope of work and effects on design and construction. Obtain from District all available information on hazardous materials and advise District immediately of any other hazardous materials Architect has observed. (This paragraph does not impose on Architect any duty to locate hazardous materials.)
  - 4.3.2 Advise Program Manager as to the necessity of obtaining additional information related to the Site, necessary for purposes of design. Such advise and statement of necessity shall be in writing and explain fully the considerations involved. Such information might include, by way of example only: description of property boundaries or as built information, rights of way, topographic, hydrographic, and utility surveys, soil mechanics, seismic and subsoil data, chemical, mechanical and other data logs of borings, etc.
  - 4.3.3 Review information generated under Paragraph 2.2.8, 4.4 and information secured pursuant to Paragraph 5.3.2 and advise Program Manager whether such data is adequate for purposes of design. Determine if additional data is necessary because of apparent errors, conflicts, incomplete information or otherwise, before Architect can proceed with design.
- 4.4 Recommendations on Required Additional Information
- 4.4.1 Advise District as to the necessity of District's providing or obtaining from others available or additional information pertinent to the Project including previous reports, as built conditions, information, and any other data relative to design or construction of the Project.
  - 4.4.2 Make recommendations on required additional information necessary to complete the design and complete the preliminary reports and schematic materials.
  - 4.4.3 Additional information required by Architect under Paragraph 4.4.2 shall be secured by Architect as directed in writing by Program Manager and compensated as Additional Services pursuant to Section 12.
- 4.5 First Update of Preliminary Estimates of Budgeted Construction Cost
- 4.5.1 Update preliminary estimates of Budgeted Construction Costs and times of completion for the Project. Report to District regarding continued accuracy of the previous budget estimate and, as part of the report, reconcile the updated Budgeted Construction Cost with the District budget
  - 4.5.2 Develop alternative conceptual plans and provide a general economic analysis of District's program requirements applicable to various design alternatives, including but

not limited to, structural, mechanical and electrical systems. Include analyses of District's program requirements. The goal will be to provide a design that costs 90% of the District budget for the Project.

4.6 Schematic Layouts, Sketches and Conceptual Design Criteria

4.6.1 Prepare reports containing schematic layouts, sketches and conceptual design criteria with appropriate exhibits.

4.6.2 Reports and exhibits shall incorporate District's program requirements and shall include structural concepts, Site utilization plans, floor plans, elevations, sections, study perspectives and other drawings necessary to describe the Project. Schematic reports shall be developed until an acceptable design concept has been approved by District. Architects shall participate in periodic progress meetings with representatives of District and shall coordinate with Program Manager formal design presentations at times indicated on the Project schedule. Architect will provide illustrative materials such as; 3D drawings / studies and presentation materials in order to convey design intent to a non-technical audience.

4.6.3 Prepare and submit to District for approval:

4.6.3.1 Outline specifications including engineering, structural, mechanical, electrical, and instrumentation systems and materials proposed;

4.6.3.2 Floor plans and elevations at a scale acceptable to District as necessary to convey the engineering design, and tabulation of both gross and assignable floor areas including a comparison to the initial program area requirements; prepare mounted presentations and rendered perspectives.

4.6.4 Reports and exhibits shall indicate clearly the considerations involved, including but not limited to applicable requirements of governmental authorities having jurisdiction or private licensing, patent, easements, or other legal restrictions. Reports and exhibits shall indicate any alternative solutions available to District and set forth Architect's findings and recommendations.

4.6.5 Architect shall provide a narrative report by each design discipline describing their proposed design philosophy with a description of, and the rationale for, the proposed structural systems, mechanical systems, electrical, electronics and security systems, types of equipment, materials, finishes, Site development and landscaping. The rationale shall include initial costs, lifecycle costs, life expectancy and maintenance considerations.

4.7 [Not Used.]

4.8 Sustainability Workshop

4.8.1 Participate with Program Manager and any other Architects designated by Program Manager in the conduct of an approximate, not to exceed eight hour Sustainability Workshop.

4.8.2 Review with user group and Program Manager achievable sustainable design measures using LEED checklist, acknowledging the Board's Resolution on Environmental Stewardship and Board directives, and providing consultant input as necessary.

- 4.8.3 Identify initial project LEED goal (certified level is minimum for Existing Building) and suggested project alternates for additional sustainable features for the project.
- 4.8.4 Identify initial project LEED goal (certified level is minimum for New Buildings) and suggested project alternates for additional sustainable features for the project.
- 4.8.5 Provide technical criteria, written descriptions and design data in order for Architect to register and file for the LEED certification on behalf of the District and for applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project, and assist District in consultations with appropriate authorities.
- 4.9 Design Schedule Report:  
Report on the anticipated schedule for Project design, including a detailed schedule of progression and submittals of drawings and specifications in the subsequent phases, verifying Architect's ability to conform to the Contract schedule.
- 4.10 Attend Required Meetings:  
Attend meetings with the community, representatives of District, interested parties governmental entities, as necessary, and provide information and diagrams to fully describe the Project.
- 4.11 Board Approval:  
Be prepared to present footprint, floor plans, elevations, and other information as appropriate, to District Board of Trustees. Presentation content previewed by and coordinated with Program Manager and the Director of Modernization.

## 5. Design Development Phase

- 5.1 Period of Service
  - 5.1.1 After acceptance by District of the required deliverables in the Schematic Design Phase, and upon written authorization from District, Architect shall proceed with the performance of the services called for in the Design Development Phase.
  - 5.1.2 Architect shall submit the deliverables required by the Design Development Phase, within the stipulated period indicated in Appendix C, "Milestone Schedule".
  - 5.1.3 Provide technical criteria, written descriptions and design data for District's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project, and assist District in consultations with appropriate authorities.
- 5.2 General Scope of Project and Final Design Criteria:  
After consultation with District and on the basis of the accepted schematic, study and report documents, determine the general scope, extent and character of the Project and establish final design criteria. Participate in periodic progress meeting with District's personnel and Subconsultants.
- 5.3 Design Development Documents:  
Prepare Design Development Documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project, together with 3D studies and

presentation materials if required. These Design Development documents shall comply with the District goals, principles, guidelines, and standards as directed by the Board and shall include, but are not limited to:

- 5.3.1 Site plans, engineering, structural, mechanical and electrical floor plans, elevations; cross sections and other mutually agreed upon drawings deemed necessary to describe the developed design; single line electrical and mechanical drawings, and structural drawings with preliminary sizing of major structural elements; and
- 5.3.2 Outline specifications for each specification, section, with Part 2 of each section completed, describing the size, character and quality of the entire Project in its essentials as to kinds and locations of materials; type of structural, mechanical and electrical systems; and
- 5.3.3 Basis of Design (BOD) report is required for all building systems (i.e. foundations, structural, mechanical, electrical, plumbing, information technology, security, fire and life safety, etc.) to be commissioned, including design assumptions (space use, redundancy, diversity, climatic design conditions, space zoning, occupancy, operations, and space environmental requirements), standards (applicable codes, guidelines, regulations, and other references that are being followed), and narrative descriptions including performance criteria for the mechanical, plumbing, lighting, power and other systems.
- 5.3.4 If appropriate, a tabulation of both gross and assignable floor areas in a comparison to the approved schematic program area requirements and to the initial program area requirements.
- 5.3.5 If appropriate, Architect shall provide to Program Manager for District's approval a color and materials board, samples of textures and finishes of all materials proposed in the Services.
- 5.3.6 Provide technical criteria, written descriptions and design data for District's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project, and assist District in consultations with appropriate authorities.
- 5.3.7 District may conduct a peer review of the Design Development Phase documents, including submittal of a list of revisions required to complete the documents.

5.4 Design Development Phase Drawings:

Provide drawings that indicate the scope of work included in the bid package with sufficient detail to enable preparation and review of an accurate cost estimate, including but not limited to, the following descriptions of minimum requirements for a design development submittal, which shall be augmented as necessary to show design intent and to prepare an accurate estimate of construction cost.

5.4.1 Architectural Drawings

5.4.1.1 Floor plans which clearly show:

- a. Finish schedule
- b. Principal dimensions
- c. Wall types clearly identified
- d. Security zones and perimeters

- e. Room and door numbers, and a numbering plan for the entire facility
- f. Sufficient sections and details to enable a reasonable material takeoff
- g. Contractor-furnished and Owner-furnished equipment list incorporated in layout

5.4.1.2 Roof plans which clearly show:

- a. Slopes
- b. Type of roofing
- c. Roof access and pathways
- d. Location of any mechanical equipment
- e. Sufficient information to determine primary and secondary means of drainage

5.4.1.3 Reflected ceiling plans which clearly show:

- a. Ceiling material
- b. Access hatches
- c. Room numbers
- d. Partitions coordinated with the floor plans
- e. Mechanical and electrical features coordinated with mechanical and electrical equipment and system drawings to verify the specified ceiling heights could be achieved during construction.

5.4.1.4 Elevations which clearly show:

- a. Types of surface materials
- b. Dimensions from finish floor to tops of walls, eaves and roof lines
- c. All openings without dimensions but coordinated with door and window schedules

5.4.1.5 Sections which clearly show:

- a. Any security considerations
- b. Firewall conditions at tops of walls
- c. All essential building parts and materials
- d. Arrangement of mechanical, electrical equipment and services in congested areas of equipment rooms, corridor ceilings etc.

5.4.1.6 All door, window, glazing and hardware schedules complete with sufficient detail to show the agreed-upon form and style

5.4.1.7 All items intended to be permanently affixed to the building.

5.4.2 Structural Drawings

5.4.2.1 Floor and foundations plans which clearly show:

- a. Principal dimensions
- b. All columns, shear walls, shafts and stairs

- c. Coordination of structure with architectural floor plans
- d. Sections cut and details to identify the proposed type of foundations
- e. Sufficient section and detail bubbles to show where sections and details can be found

5.4.2.2 Roof plans which clearly show:

- a. Principal dimensions
- b. All major framing members
- c. Sufficient sections and details to show design intent
- d. Coordination with architectural, mechanical and electrical floor plans
- e. Sufficient section and detail bubbles to show where sections and details can be found

5.4.2.3 Sections and details which clearly show:

- a. Design intent
- b. All important connections
- c. Coordination with other structural plans
- d. Logical placement to allow easy location of sections and details

5.4.3 Mechanical and Plumbing Drawings

5.4.3.1 Mechanical and Plumbing plans which clearly show:

- a. Room numbers
- b. Locations of all major pieces of equipment
- c. Layout and sizing of all ductwork and piping
- d. Symbol list coordinated with symbols on plans
- e. All points-of-connection including invert elevations
- f. Sufficient section and detail bubbles to show where sections and details can be found

5.4.3.2 Equipment and fixture schedules which clearly show:

- a. All fixtures identified
- b. All mechanical equipment identified and sized

5.4.4 Electrical Drawings

5.4.4.1 Lighting and power plans which clearly shows:

- a. Room numbers
- b. Single line diagrams of services and systems
- c. Symbol list coordinated with symbols on the plans
- d. Lighting plans coordinated with reflected ceiling plans
- e. Power, telephone and computer outlets shown and coordinated with equipment layouts in other disciplines
- f. Sufficient section and detail bubbles to show where sections and details can be found

5.4.4.2 Equipment and fixture schedules including lighting.

5.4.4.3 Security, alarm, intercom, public address (PA), closed-circuit TV (CCTV), nurse call and similar electrical and electronic systems.

5.4.5 Civil Drawings:

5.4.5.1 Site and grading plans which clearly show:

- a. Site cross sections
- b. Site contours and drainage
- c. Locations of all bench marks
- d. Precise locations of all major elements
- e. Roadways, driveways and parking areas

5.4.5.2 Site utility plans which clearly show:

- a. All connections to off-Site utilities
- b. All points-of-connection including invert elevations
- c. All drainage systems and other utilities located and sized

5.4.6 Other Items

5.4.6.1 Outline Specifications describing the size, character and quality of the entire Project, including locations of materials; types of structural, mechanical, electrical and security systems.

5.4.6.2 Engineering Calculations clearly presented for all disciplines, including realistic loads, and sufficiently complete for Construction Documents to proceed.

5.5 Additional Data or Services:

Advise District in writing if additional data or services of the following types are necessary and, as Additional Services, assist in obtaining such data and services as directed in writing by Program Manager:

5.5.1 Data prepared by or services of others, including without limitation, borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;

5.5.2 Appropriate professional interpretations of the foregoing;

5.5.3 Environmental assessment and impact statements, Site assessments;

5.5.4 Property, boundary, easement, right-of-way, topographic and utility surveys;

5.5.5 Property descriptions;

5.5.6 Zoning, deed and other land use restriction; and

5.5.7 Other special data or consultations necessary or useful in completion of the Project.

5.6 Report on Additional Information Required:

Advise in writing if any of the following are required:

5.6.1 Governmental permits of any type;

5.6.2 Reports of any type to governmental agencies;

5.6.3 [Not Used.]

5.7 Second Update of Preliminary Estimate of Budgeted Construction Cost:

Based on the information contained in the Design Development Phase documents, update preliminary estimates of Budgeted Construction Costs and times of completion for the Project. Report to District regarding continued accuracy of the previous budget estimate and, as part of the report, reconcile the updated Budgeted Construction Cost with the District budget and the Program Manger's independent estimate.

5.8 Review with District:

Prepare for approval by District written design criteria for mechanical and electrical systems (for example, temperature, humidity, lighting levels and floor live load design shall be stated for general and special occupancy areas).

5.9 Attend Required Meetings:

Attend meetings with the community, representatives of District, interested parties governmental entities, as necessary, and provide information and diagrams to fully describe the Project.

5.10 Work Phasing Recommendations:

Prepare recommendations for phasing of the construction work to minimize disruptions and interferences with District's operations and any concurrently proceeding construction activities. Meet and discuss phasing recommendations with District and Program Manager. This phasing may be incorporated into Construction Contract documents. Complete phasing recommendations as part of the Construction Documents Phase services.

5.11 Review of the Design Development Phase by District:

Participate and cooperate fully in a review of the Design Development Phase documents by District, and any other consultants engaged by District, to assess the constructability of the design. Respond to District comments and incorporate comments as necessary. Be prepared to present footprint, floor plans, elevations, and other information as appropriate for this Phase to the Board. Presentation content previewed by and coordinated with Program Manager and the Director of Modernization.

## 6. Construction Document Phase

### 6.1 Period of Service:

- 6.1.1 After acceptance by District of the Design Development Phase documents and second update of Budgeted Construction Cost, and upon written authorization from District, Architect shall proceed with the performance of the services called for in the Construction Document Phase;
- 6.1.2 Architect shall submit the deliverables required by the Construction Document Phase within the stipulated period indicated in Appendix C, "Milestone Schedule".
- 6.1.3 Provide technical criteria, written descriptions and design data for District's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project, and assist the District in consultations with appropriate authorities.

### 6.2 Final Drawings and Specifications

- 6.2.1 On the basis of the accepted Design Development documents and the comprehensive second update of the Budgeted Construction Cost and times of completion for the Project prepare for incorporation in the Contract Documents final drawings (hereinafter called "**Drawings**") and Specifications to show the work to be furnished and performed by Contractor. Drawings and Specifications shall set forth in detail the requirement for construction of all work to be performed by Contractor (collectively "Construction Documents").
- 6.2.2 Final Drawings shall be prepared in accordance with District's CAD standards. Final technical specifications shall be prepared in conformance with the CSI 2004 format of the Construction Specification Institute ("CSI"). Architect shall cooperate with District in coordinating the Drawings and technical specifications with District's Divisions 0 and 1 standard specifications and in jointly revising District's standard specifications. Architect shall provide whatever Division 1 construction contract specifications necessary for the Project and not supplied in District's standard forms.
- 6.2.3 District may conduct a peer review of the Construction Documents at 50% and 95% completion thereof and at back check from DSA, including submittal of a list of revisions required to complete the documents.
- 6.2.4 Submittal to DSA: All construction documents shall be brought to a 95% level of completion for DSA submittal. Architect shall complete drawings and specifications following DSA submittal and review, including completion of all Subconsultant services, fully coordinate drawings and specifications, and perform a quality control review. The same Architectural and Subconsultant team (and team personnel) preparing the DSA submittal shall complete the drawings and specifications.
- 6.2.5 The District will conduct a constructability review at 50% and 90% completion of the Construction Documents.

### 6.3 Compliance with Codes, Regulations and Requirements:

Comply with the standard of care of an Architect experienced in California schools design when preparing Drawings and Specifications to comply with applicable building codes, ordinances, statutes, laws, standards, governmental regulations and private restrictions, applicable to the

Services, including, but not limited to, environmental, energy conservation, and disabled access requirements, regulations and standards of the Fire Marshal having jurisdiction over the Project.

6.4 Compliance With State Standards:

Without limiting Paragraph 6.3 above, all plans, specifications, structural design calculations, Site data, and cost estimates required by State law, including without limitation the California Education Code and Code of Regulations, shall comply with State standards. Architect shall prepare and submit the application for approval of the plans and specifications by the DSA. A “check set” shall be submitted by Architect to the DSA, and any changes or corrections required by the DSA shall be made by Architect. Any other requirements of the DSA or any other authority with jurisdiction shall be complied with. Deliver to District two (2) complete sets of final DSA approved plans and specifications. Architect shall designate a contact person for the duration of the State approval process.

6.5 Drawings and Specifications:

The Drawings and Specifications must clearly identify and describe all necessary quality levels and quality control procedures such as inspections, tests, submittals or other measures that the Contractor must perform. Each specification section must include the requirements for the tests, controls, performances and certifications needed to verify the specified quality level of that section and a reference to the Division 1 commissioning section. Each work-related specification section must also dedicate a subsection to identify and list required Contractor submittals along with testing and inspection requirements.

6.6 Third Update of Estimate of Budgeted Construction Cost:

Based on the information contained in the Drawings and Specifications, submit, at 95% completion, an update of preliminary estimates of Budgeted Construction Cost and times of completion for the Project. Report to District regarding continued accuracy of the previous budget estimates and, as part of the report, reconcile the updated Budgeted Construction Cost with the District budget and the Program Manger’s independent estimate. Participate and make changes in the documents to meet a standard of 95% of District budget as reconciled.

6.7 Supplementary Conditions:

Prepare for review and approval by District, its legal counsel and other advisors, Supplementary Conditions to the construction contract, and (where appropriate) additional bidding requirements for inclusion in existing bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.

6.7.1 Make full written disclosure to District, and obtain District’s express written approval of:

6.7.1.1 Any provisions in the final drawings and specifications that operate to shift design responsibilities from Architect to Contractor, through performance specifications or any other means;

6.7.1.2 Any proposed innovative, unique, proprietary or sole source design features.

6.8 Report:

Provide a written report to District that the final design, as expressed in the final plans and specifications are complete and ready to bid, and conform with the following attributes:

6.8.1 Its constructability, workability and biddability;

- 6.8.2 The finished construction meeting the required levels of structural integrity, watertightness, durability, maintainability, and security, if faithfully carried out;
- 6.8.3 The completed Project conforming to the requirements of all applicable laws, statutes, regulations and ordinances.
- 6.8.4 Does not call for the use of hazardous materials.

6.9 Review of the Final Design by District:

Participate and cooperate fully in a review of the final design by District, including the Commissioning Agent and any consultants engaged by District, to assess the constructability of the final design. Respond to District comments and incorporate comments as necessary. Be prepared to present the revised footprint, floor plans, and elevations to the Board. Presentation content previewed by and coordinated with Program Manager and the Director of Modernization.

**7. Bidding Phase**

7.1 Bidding:

After written authorization to proceed with the Bidding Phase, Architect shall:

- 7.1.1 Attend Pre-Bid Conferences and Site Visits.
- 7.1.2 Assist District obtaining bids for prime contract for construction, materials, equipment and evaluating bids;
- 7.1.3 Consult with and advise District as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the bidders for those portions of the work as to which such acceptability is required by the bidding documents.
- 7.1.4 Consult with District concerning, and determine the acceptability of, substitute materials and equipment proposed by bidders.
- 7.1.5 Issue written addenda as appropriate to interpret, clarify or expand the bidding documents, including allowable substitutions of materials and equipment.
- 7.1.6 Attend the bid opening and assist District in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.

7.2 Where Bids Exceed Budget:

- 7.2.1 If any of the following events occur:
  - 7.2.1.1 The lowest responsive base bid received is in excess of seven percent (7%) over the Budgeted Construction Cost, or
  - 7.2.1.2 If the combined total of base bid and all additive alternates come in ten percent (10%) or more under the Budgeted Construction Cost, or
- 7.2.2 Then the District, in its sole discretion, has one or a combination of the following alternatives:
  - 7.2.2.1 Give the Architect written approval on an agreed adjustment to the Budgeted

## Construction Cost.

- 7.2.2.2 Authorize the Architect to re-negotiate, when appropriate, or re-bid the Project within three (3) months time of receipt of bids (exclusive of District and other agencies' review time) at no additional cost to the District.
- 7.2.2.3 Terminate this Agreement if the Project is abandoned by the District, without further obligation by either party.
- 7.2.2.4 Within three (3) months time of receipt of bids, instruct Architect to revise the drawings and specifications (in scope and quality as approved by the District) to bring the Project within the Budgeted Construction Cost for re-bidding at no additional cost to the District. The modification of Construction Documents shall be the limit of the Architect's responsibility arising out of the establishment of a Budgeted Construction Cost. All other obligations of the Architect, including construction administration services, remain as stated in the Agreement.

## 8. Construction Phase

### 8.1 Period of Service:

The Construction Phase will commence with the award of the construction contract for the Project, and will terminate upon issuance of a Notice of Completion of the construction contract. The anticipated construction period is indicated in Appendix C "Milestone Schedule."

### 8.2 General Administration of Construction Contract

- 8.2.1 Architect shall consult with and advise District and act as District's representative as provided in Construction Documents. Architect shall perform all duties which the Construction Documents provide will be performed by the "Architect" or "Architect/Engineer".
- 8.2.2 Architect will have authority to act on behalf of District to the extent provided in the Construction Documents, provided, however, that District may, in its sole discretion, issue instructions directly to Contractor if notice of such instructions is given to Architect as soon as practicable thereafter.
- 8.2.3 Architect will work with District, Program Manager, Commissioning Agent and any other Project Inspectors, testing agencies, and governmental agencies as set forth in the Construction Documents and this Agreement. Architect consents to District's retaining of a construction manager who may perform some or all of the functions assigned to Program Manager in this Agreement.
- 8.2.4 For purposes of this Appendix A, words and phrases having a defined meaning in the Construction Documents shall have that defined meaning in this Appendix A, including, but not limited to, the terms "Site", "defective", "Contract Documents", "Shop Drawings", "Samples", "Inspector" and "Contractor".
- 8.2.5 Architect shall attend the Preconstruction Conference and commissioning meetings, as requested.
- 8.2.6 Architect shall, after approval of the plans and specifications by the DSA, and as soon as the construction contract is awarded, but before construction is started, provide notice to the DSA as required by the California Code of Regulations.

8.3 Visits to Site and Observation of Construction

8.3.1 Architect shall make visits to the Site at intervals appropriate to the various stages of construction as Architect deems necessary in order to observe, as an experienced and qualified design professional, and sufficient to prepare the Final Verified Reports and any other reports or certifications required by the California Education Code and Code of Regulations, or by any other authority, on the progress and quality of the various aspects of Contractor's work. Architect shall provide District with copies of all records and reports of Site visits within forty-eight (48) hours of the Site visit.

8.3.2 Architect shall advise District in writing of any observations of defective work, work not in conformance with drawings and specifications, and lack of progress of work. Architect will maintain an electronic record of such notifications.

8.3.3 Architect shall not, during visits or as a result of observations of Contractor's work in progress, supervise, direct or have control over Contractor's work.

8.4 [Not Used.]

8.5 Defective Or Nonconforming Work:

Architect shall make written recommendations to Program Manager to disapprove or reject Contractor's work, or to accept Contractor's work with a reduction in Contract Cost, while it is in progress if Architect believes such work is defective or will not produce a completed Project that conforms to the Contract Documents or that such work will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.

8.6 Interpretations, Clarifications and Corrections

8.6.1 Architect shall issue necessary interpretations, clarifications and Request for Information (RFI)-Replies regarding the Contract Documents and in connection therewith assist Program Manager with supplemental instructions and change orders as required, with reasonable promptness (no longer than ~~two~~ five working days) so as to cause no delay to Contractor or the Project.

8.6.2 Architect shall, at its own expense, make all revisions and changes to the Drawings and Specifications as directed by District to correct errors, omissions or conflicts.

8.6.3 On change orders, prepare the scope of work, justifications and estimate of the cost where necessary.

8.7 Verified Reports:

Architect shall make the "verified reports" required by the California Education Code and Code of Regulations, according to the form and schedule required by those codes and the DSA.

8.8 Review of Submittals and Requests for Information

8.8.1 Architect shall review, approve or take other appropriate action as set forth in the Construction Documents in respect of Shop Drawings, Samples and other data which Contractor is required to submit under Construction Documents (collectively referred to herein as "Submittals"), and review and reply to RFI's, for conformance with the design concept of the Project and the intent of and compliance with the Contract Documents,

with reasonable promptness so as to cause no delay to Contractor or the Project. In no event shall Architect respond to submittals any longer than ten days after their receipt.

- 8.8.2 Submittals will be reviewed once for “Reviewed” and “Reviewed as Noted” status; and reviewed a second time only for “Revise and Resubmit” or “Rejected” status. Submittal reviews beyond the initial two (2) shall be provided by the Architect as an Additional Service in accordance with Paragraph 11.1.11
- 8.8.3 Architect shall incorporate comments of the Commissioning Agent into its submittal review.
- 8.8.4 Reviews, approvals and other actions taken shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto, unless same has been expressly specified by Architect.
- 8.8.5 Architect shall, for the purpose of performing its review obligations herein, employ and engage personnel who are sufficiently qualified to conduct meaningful review of the Shop Drawings, submittals and requests for clarification.
- 8.8.6 Architect shall maintain to the satisfaction of District a computer based system to record, control and manage the review of Submittals and RFI’s, which shows the interrelationships among and between such documents and requests for changes or claims, and which can be used for coordination of submittal reviews with the Project scheduling requirements, and shall make such system available to District at all reasonable times.
- 8.8.7 Architect shall provide to Program Manager for District approval two copies of a color schedule, samples of textures and finishes of all materials in the work at the Project.

8.9 Communications with Contractor

- 8.9.1 Any communications between Architect and Contractor regarding the any form of change to the construction contract’s Construction Documents (including, but not limited to, changes in price), and any other party acting on behalf of either, shall be in writing, or if not made in writing, memorialized in writing, and copies of same shall be sent immediately to Program Manager. All such communications shall be delivered to Program Manager for delivery to the contractor, except for actions on submittals, which shall be sent directly to Contractor with a copy to the District. Architect shall not communicate directly with the contractor. Conversely, Architect shall receive all written communications from the contractor through the Program Manager). The District, in its sole discretion, reserves the right to change this requirement, relax this requirement, or revise this requirement.
- 8.9.2 As required in the Construction Documents, Architect shall review all written communications from Contractor, recommend actions to be taken by District, and reply in writing to Program Manager or to Contractor with a copy to Program Manager regarding the following:
  - 8.9.2.1 Applications for payment.
  - 8.9.2.2 Requests for changes in contract costs or times of completion.
  - 8.9.2.3 Disputes with respect to technical aspects of Construction Documents.

8.9.2.4 Requests for interpretation and clarification of Construction Documents.

8.10 Substitutions

8.10.1 Architect shall evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor in consultation with the District.

8.10.2 Architect shall review quality control submittals and requests for substitution from Contractor in a timely manner and, for the purpose of performing its review obligations herein, shall employ and engage personnel who are sufficiently qualified to conduct meaningful review and make knowledgeable comparisons of proposed substitutions.

8.11 Inspections and Tests

8.11.1 Architect shall request Program Manager to require special inspection or testing of the work whenever necessary to Architect's performance of its duties hereunder.

8.11.2 Architect shall receive and review all certificates of inspections, testings and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).

8.11.3 Architect shall inspect work to determine if work or portions of work are substantially complete, and for development of punchlists, and final completion.

8.11.4 Architect shall attend all weekly construction contract progress meetings.

8.12 Disputes Between District and Contractor:

Architect shall act as initial interpreter of the requirements of technical aspects of the Construction Documents.

8.13 Applications for Payment

8.13.1 Based on Architect's on-Site observations as an experienced and qualified design professional, on information provided by the Inspector and on review of applications for payment and the accompanying data and schedules, Architect shall assist Program Manager in its determination of amounts owing to Contractor and recommend in writing payments to Contractor in such amounts.

8.13.2 Recommendations of payment by Architect will constitute a representation to District that:

8.13.2.1 The work has progressed to the point indicated;

8.13.2.2 To the best of Architect's knowledge, information and belief, the quality of the work is in accordance with the Construction Documents (subject to evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation).

8.13.3 In the case of unit price work, Architect's recommendations of payment will include its determinations of quantities and classifications of such work, along with data provided by

District and other Architects (subject to any subsequent adjustments allowed by the Construction Documents).

- 8.13.4 By recommending any payment Architect will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made by Architect to check the quality or quantity of Contractor work as it is furnished and performed, beyond the responsibilities specifically assigned to Architect in this Agreement and the General Conditions.

8.14 Contractor's Completion Documents

8.14.1 Architect shall receive and review all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by Contractor in accordance with the Construction Documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals the results certified indicate compliance with, the Construction Documents); and shall transmit them to District with written comments and recommendation on their conformance with Construction Documents requirements.

8.14.2 Architect shall employ and engage personnel who are sufficiently qualified to conduct meaningful review of maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, and tests.

8.15 Final Inspections:

Architect shall conduct inspections to determine if the work or portions of the work is substantially complete and a final inspection to determine if the completed work is acceptable, and will recommend, in writing, whether final payment shall be made to Contractor and will give written notice to District and Contractor that the work either is or is not acceptable subject to any conditions therein expressed. Architect shall participate in one (1) "post occupancy review" to occur no later than one year after completion.

8.16 [Not Used.]

**9. Operation/Project Close-Out Phase**

9.1 Operation/Project Close-Out:

During the Operation/Project Close-Out Phase, Architect shall, when requested by District:

9.1.1 Provide assistance in connection with the refining, adjusting and correcting of any equipment or systems.

9.1.2 Assist in start-up, testing and placing in operation special equipment and systems. (For all such equipment and systems, Architect shall have specified start-up and testing procedures in the contract documents.)

9.1.3 Provide assistance in connection with completion of punchlist work, including but not limited to, preparing the initial comprehensive punchlist and conducting no more than two follow up Site visits (with follow up punchlisting if necessary) in addition to other responsibilities under this contract.

9.1.4 Assist District in coordination of training District's staff to operate and maintain equipment and systems as necessary.

- 9.1.5 Assist District in developing systems and procedures for control of the operation and maintenance of and record keeping for the Project.
- 9.1.6 Together with District, visit the Project to observe any apparent defects in the completed construction, assist District and Commissioning Agent in consultations and discussions with Contractor concerning correction of such deficiencies, and make recommendations as to replacement, correction, or diminished value of defective work.
- 9.1.7 Together with District and Program Manager, coordinate, prepare and submit all final required deliverables under Title 24 and any thing else required by DSA for its final Project approval.
- 9.1.8 Prepare electronic record set and two (2) sets of reproducible record prints or Drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by Contractor to Architect.
- 9.1.9 Prepare electronic record set and two (2) sets of record prints showing those changes made during the construction process, based on the marked-up Technical Specifications and other data furnished by Contractor to Architect. Electronic data shall conform to District requirements for compatibility with District equipment and software.

**10. Payments to Architect**

- 10.1 Payments to Architect shall be made according to Appendix B, "Payments to Architect".

**11. Additional Services**

- 11.1 The following Additional Services to the Agreement shall be performed by Architect if needed and if authorized or requested by the District:
  - 11.1.1 Making revisions in drawings, specifications, or other documents when such revisions are:
    - 11.1.1.1 Inconsistent with approvals or instructions previously given by the District.
    - 11.1.1.2 Required by the enactment or revisions of codes, laws, or regulations subsequent to the preparation of the Conforming Set.
    - 11.1.1.3 Due to changes required as a result of the District's failure to respond to a written request from the Architect within a reasonable time, as requested by Architect.
  - 11.1.2 Providing services required because of significant documented changes in a Project initiated by the District, including but not limited to size, quality, complexity, the District's schedule, or method of bidding or negotiating and contracting for construction.
  - 11.1.3 Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of that work.
  - 11.1.4 Providing services made necessary by the default of contractor(s), by major defects, or deficiencies in the work of contractor(s).

- 11.1.5 In the absence of a final Certificate of Payment or Notice of Completion, providing Services more than sixty (60) days after the date of completion of work by contractor(s) and after Architect has completed all of its obligations and tasks under the Agreement.
- 11.1.6 Providing deliverables or other items in excess of the number indicated in this Appendix A. Before preparing, providing, sending, or invoicing for extra deliverables, Architect shall inform the District that expected deliverables may be in excess of the number indicated in this Appendix A so that District can procure the additional deliverables itself or direct Architect to procure the deliverables at District's expense or on District's account at a specific vendor.
- 11.1.7 Providing services as directed by the District that are not part of the Services of this Agreement.
- 11.1.8 Providing consultation and services as directed by District concerning any post-construction claim arising from the Project in which Architect did not in any way cause the claim.
- 11.1.9 Providing training, adjusting, or balancing of systems and/or equipment
- 11.1.10 Providing services as an expert and/or witness for the District in any mediation, arbitration, and/or trial in which the Architect is (1) not a party, and (2) did not in any way cause the dispute that is being adjudicated.
- 11.1.11 Providing Submittal review beyond the two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor.

**12. Periods of Service**

12.1 Milestones:

Milestones for completion of Phases and tasks within each phase are given in Appendix C. Milestones.

12.2 Commencement of Services:

Architect shall not commence work on any succeeding phase of Services until completion of services on existing and prior phases of Service and Project Manger has provided Architect with written notice to commence the succeeding phase of Service, unless Program Manager, in its sole discretion, authorizes Architect to do so.

**13. District's Responsibilities**

13.1 Program Manager:

District shall designate a Program Manager, who is authorized to act on District's behalf with respect to this Agreement. District or such authorized representative shall render required decisions promptly, to avoid unreasonable delay in the progress of Architect's services. District may delegate all or some of Program Manager's role and function to a separate contractor or to a construction manager. District may change the individual acting as Program Manager and/or the individual or entity acting as a separate contractor or construction manager at any time with notice to Architect.

13.2 Design Requirements:

District shall provide criteria and information concerning design objectives and constraints, space, capacity and performance requirements, and budgetary limitations, when known.

13.3 Property Information:

District shall provide geotechnical information, environmental impact reports, and relevant information concerning property boundaries, easements, rights of way, topographic and utility surveys, property descriptions, zoning, boundary and other land use restrictions, as needed and necessary.

13.4 Documents:

District shall make copies of available documents and drawings of existing conditions available to Architect. Architect may inspect all District's surveys and records of construction. Verification of visible on-Site facilities is the responsibility of Architect.

13.5 Surveys:

District shall provide engineering surveys to establish reference points for construction.

13.6 Hazardous Materials:

District shall provide hazardous materials surveys and perform remediation measures to eliminate hazardous materials from Project Site.

13.7 Permits and Approvals:

Architect shall assist District in its securing of all required approvals and permits from governmental authorities having jurisdiction over the Project, unless otherwise specified in this Agreement (for example, Architect's duty to secure all required design approvals from DSA).

13.8 Site Access:

District shall provide Architect reasonable access to the Site provided Architect complies with all security and safety requirements, and coordination requirements.

13.9 Project Inspector:

District shall supply the Project Inspector required by the Education Code.

13.10 Commissioning Agent:

District shall supply the Commissioning Agent.

**END OF APPENDIX A**

## APPENDIX B

### PAYMENTS TO ARCHITECT

This is an Appendix attached to, and made a part of and incorporated by reference with the Agreement dated March 27, 2007, between the Marin Community College District (the “District”), and **Firm Name** (“Architect”) providing professional services for Marin Community College District Campus-wide Measure C Update – Capital Improvement Programs, described in Appendix A.

#### 1. Maximum Payment

Excluding Additional Services only, the Maximum Payment to Architect for Work performed under this Agreement shall not exceed progress on the Projects described in Appendix A “Services to be Performed by Architect”, their stated budgets, and the percentage allowances under Paragraph 2.2 below.

- 1.1 The parties shall pay Architect based on progress on each phase of the project. Total Compensation for these Projects under this agreement shall not exceed \$\_\_\_\_\_.
- 1.2 For purposes of this Appendix B, all work performed by Architect prior to this Agreement shall be deemed performed under this Agreement and considered in calculating Architect’s fees due under this Agreement. The Maximum Payment to Architect described above shall apply in all circumstances except Additional Services.
- 1.3 [Not Used.]
- 1.4 In the event the District changes the scope of a Project referenced in Appendix A Paragraph 1.1, either increasing its size or decreasing its size, then the parties shall calculate fee based upon the revised construction value. If the District changes the scope of the Project after Architect has commenced work on a Project, then the parties shall agree upon an equitable adjustment limited by the original fee for that Project, Architect’s incurred costs and progress under Paragraph 2.2 below, and the revised scope of work and revised fee remaining.
- 1.5 For Projects where the work anticipated involves new construction and renovation construction, let under a single construction contract, thus implicating two fee schedules, the fee applicable to new construction shall apply to the new construction. For the renovation construction, the fee applicable to renovation construction shall apply as if a separate Project.
- 1.6 All expenses necessary to provide the Basic Services Architect are included in the lump sum fee, such as expenses for: transportation and subsistence incidental thereto; providing and maintaining field office facilities including firm furnishings and utilities; toll telephone calls, mail and overnight delivery services; reproduction of reports, Drawings, Specifications, Bid Sets, and similar Project-related items.

#### 2. Methods of Payment for Services and Expenses of Architect

- 2.1 For Basic Services on the Project: The District shall pay Architect for basic services rendered under Appendix A a sum not exceeding the amount allocated to the Project in Paragraph 1 above, and, for the phases listed in Paragraph 2.2 below, a sum not exceeding the amount so allocated to that phase and for each project listed thereunder. Within each contract phase listed in Paragraph 2.2 below, Architect shall be paid according to its percentage completion of each phase at each project.

2.2 Maximum Compensation to Architect by Phase.

PROJECT: Project Name / Project Number # 308B

PHASE of PROJECT	Percent of Project	Total Amount
Programming Phase	2.5%	\$
Schematic Design Phase	10 %	\$
Design Development Phase	17.5%	\$
Construction Documents Submittal to DSA	35 %	\$
Approval by DSA	5 %	\$
Bidding Phase	2 %	\$
Construction Phase	25 %	\$
Operation / Project Closeout	3 %	\$
Total Basic Services	100 %	\$

2.3 For Additional Services: The District shall pay Architect for “Additional Services” rendered under Appendix A as follows:

2.3.1 General: For Additional Services of Architect’s principals and professional and technical staff engaged directly on the Project, on the basis of a lump sum negotiated between the parties, or, at District’s option, at Architect’s Standard Billing Rates as stated below:

The following rates, which include overhead, administrative cost and profit, shall be utilized in arriving at the fee for Additional Services and shall not be changed except as stated herein for the term of the Agreement.

<b>Job Title</b>	<b>Billing Rate</b>
Principal In Charge:	\$230.00
Principal	\$200.00
Project Director:	\$160.00
Senior Professional I	\$150.00
Senior Professional II	\$130.00
Intermediate Professional	\$120.00
Junior Professional I	\$100.00
Junior Professional II	\$95.00
Administrative	\$85.00
Office Support	\$65.00
Intern	\$55.00
Junior Intern	\$35.00

The mark-up on any approved item of Additional Services shall not exceed ten percent (10%).

2.3.2 Subconsultants: For Additional Services of Subconsultants employed by Architect to render Additional Services the amount billed to Architect therefore times a factor of 1.10.

2.3.3 Hourly Basis: For Additional Services on an hourly basis, Architect agrees that all Subconsultants billing will be limited to a not-to-exceed amount upon prior written approval of the District.

- 2.3.4 Reimbursable Expenses: Except as set forth in Paragraph 2.3.5, the District shall pay Architect the actual cost of all Reimbursable Expenses incurred only in connection with Additional Services and such expenses shall be part of the lump sum fee.
- 2.3.5 Other Expenses: District shall reimburse 100 % fees paid to government agencies on behalf of the District.

### 3. Times of Payments

- 3.1 Architect shall be paid according to actual percentage of completion of designated phases of the Basic Services and additional services as specified in Paragraph 2.2.
- 3.2 Architect shall submit monthly statements for Basic and Additional Services rendered and for fee paid to government agencies on behalf of the District. The statements will be based on Architect's estimate of the proportion of completion of each phase of service set forth above, utilizing the design schedule organized by task. The District shall promptly review Architect's monthly statement, and provided it is acceptable, shall promptly make payment thereon.

### 4. Submission of Invoices

- 4.1 All invoices to be submitted on the form provided by the District with all elements completed. The requisition number, purchase order number, District project number, Architect's invoice number, and project name must appear on all invoices and correspondence. Send invoices, in duplicate, immediately upon performance to:

**By U.S. Postal Service:**

Marin Community College District  
c/o Swinerton Management & Consulting  
P.O. Box 144003  
Kentfield, CA 94914

**By overnight and express delivery services:**

Marin Community College District  
c/o Swinerton Management & Consulting  
835 College Avenue, Building MS-3  
Kentfield, CA 94904

### 5. Definitions

- 5.1 The **"Billing Rates"** for purposes of this Appendix B apply to all Architects' professional personnel (Architect's and drafters) engaged directly on the Project. Architect shall not bill for or receive compensation for other business or administrative personnel or secretarial personnel. For purposes of this Agreement, the Billing Rates may increase annually on July 1 of each year of this Agreement based on the most recent U.S. Department of Labor, Consumer Price Index (CPI), Urban Wage Earners and Clerical Workers, 1982-1984 = 100, San Francisco Bay Area, to a maximum increase of four per cent (4%) in any given year.
- 5.2 **"Reimbursable Expenses"** mean actual expenses incurred by Architect or Architect's independent professional associates or consultants, directly or indirectly in connection with Additional Services, such as expenses for: transportation and subsistence incidental thereto; providing and maintaining field office facilities including firm furnishings and utilities; toll telephone calls, mail and overnight delivery services; reproduction of reports, Drawings, Specifications, and similar Project-related items; and if authorized in advance by the District, overtime work requiring higher than regular rates.
- 5.2.1 Reimbursable Expenses shall not include Local Travel.
- 5.2.2 Travel expense beyond Local Travel for travel by automobile shall be reimbursed at the current rate set by the U.S. Government, and for travel by other means shall be the actual expense incurred by Architect.
- 5.3 **"Local Travel"** means travel between Architect's offices and Marin County, and travel to any location within a fifty-mile radius of either Architect's office and Marin County.

**END OF APPENDIX B**

**APPENDIX C**

**MILESTONE SCHEDULE**

This is an Appendix attached to, and made a part of and incorporated by reference with the Agreement dated \_\_\_\_\_, between the Marin Community College District (the “**District**”), and Firm Name (“**Architect**”) providing for professional services.

The following table(s) include a list of activities to be performed by Architect, District and other parties with regard to Services under this Agreement, for which specific time deadlines for performance are set:

**PROJECT: Project Name / Project Number [ PROJECT NUMBER: \_\_\_\_\_ ]**

<b>PROJECT ACTIVITY</b>	<b>PARTY</b>	<b>MILESTONE DATE</b>
<b>COMMENCEMENT</b>		
<b>PROGRAMMING PHASE (limited to validation only)</b>		
<b>SCHEMATIC DESIGN PHASE--end</b>		
<b>DESIGN DEVELOPMENT PHASE--end</b>		
<b>CONSTRUCTION DOCUMENT PHASE--end</b>		
<b>Submit 50% Construction Documents</b>		
<b>DSA Submittal (95% CD's)</b>		
<b>Estimated DSA Stamp-out (100% CD's)</b>		
<b>BIDDING PHASE – to NOTICE TO PROCEED</b>	<b>COM/___</b>	
<b>CONSTRUCTION PHASE – 18 MONTHS</b>	<b>COM/___</b>	
<b>OPERATION/PROJECT CLOSE-OUT PHASE—12 MONTHS</b>	<b>COM</b>	

**END OF APPENDIX C**

**APPENDIX D**  
**DELIVERABLES**

**Not Used.**

**END OF APPENDIX D**

## APPENDIX E

### INSURANCE

This is an Appendix attached to, and made a part of and incorporated by reference with the Agreement dated \_\_\_\_\_ between the Marin Community College District (the “**District**”), and **Firm Name (“Architect”)** providing for professional services.

**1. Architect’s Duty to Show Proof of Insurance.** Prior to the execution of this Agreement, Architect shall furnish to District Certificates of Insurance and Endorsements showing satisfactory proof that Architect has taken out for the entire period required by this Agreement, as further described below, the following insurance, in a form satisfactory to District and with an insurance carrier satisfactory to District, authorized to do business in California and rated by A. M. Best & Company “**A**” or better, financial category size **IX** or better, which will protect those described below from claims described below which arise or are alleged to have arisen out of or result from the acts or omissions of Architect for which Architect may be legally liable, whether performed by Architect, or by those employed directly or indirectly by it, or by anyone for whose acts Architect may be liable:

1.1 Commercial General Liability Insurance

Commercial general liability insurance, written on an “occurrence” basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, products liability, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, blanket contractual liability, broad form endorsement, products and completed operations, personal and advertising liability, with per location limits of not less than \$1 million annual general aggregate per project and \$1 million each occurrence.

1.2 Business Automobile Liability Insurance

Business automobile liability insurance with limits not less than \$1 million combined single limit including coverage for owned, non-owned and hired vehicles.

1.3 Workers’ Compensation Insurance

Workers’ Compensation Employers’ Liability limits required by the laws of the State of California. Architect’s Worker’s Compensation Insurance policy shall contain a Waiver of Subrogation. In the event Architect is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.

1.4 Professional Liability Insurance

Professional Liability Insurance, either (a) specific to this Project only, with limits not less than \$1,000,000 each claim, or (b) limits of not less than \$1 million each claim and \$2 million aggregate, all with respect to negligent acts, errors or omissions in connection with services to be provided under this Agreement. Architect agrees to maintain these coverage limits for 5 years after completion of services if such coverage is commercially available at reasonable rates.

**2. Insurance terms and conditions:**

2.1 Additional Insureds:

2.1.1 Status of MARIN COMMUNITY COLLEGE DISTRICT as Additional Insured.

On Architect's Commercial General Liability policy, the MARIN COMMUNITY COLLEGE DISTRICT, and its Trustees, officers, officials, representatives, employees, consultants, and agents, shall be named as additional insureds, but only with respect to liability arising out of the activities of the named insured.

2.2 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

2.3 Certificates of Insurance and Endorsements shall include the following statement: "Written notice of cancellation, non-renewal or of any material change in policy shall be mailed to District thirty (30) days in advance of the effective date thereof."

2.4 Original endorsements affecting general liability and automobile liability coverage shall be provided. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before Services commence.

2.5 Architect's insurance shall be primary insurance and no other insurance or self-insured retention carried or held by any named or additional insureds other than that amount Architect shall be called upon to contribute to a loss covered by insurance for the named insured.

2.6 Nothing herein contained shall be construed as limiting in any way the extent to which Architect or any of its employees may be held responsible for payment of damages resulting from their operations.

2.7 If Architect fails to maintain any required insurance, District may obtain such insurance, and deduct and retain amount of premium from any sums due Architect under this Agreement.

2.8 Architect shall require all Subconsultants to maintain the same coverages as stated herein and provide Certificates of Insurance and Endorsements to Architect, which shall be available to District for inspection and copying.

**3 Provide Proof of Insurance**

**3.1 Address Certificate Holder to:**

Marin Community College District  
835 College Avenue  
Kentfield, CA 94904

**3.2 Send Insurance Certificates and Endorsements to:**

**Copy by fax to:**

Marin Community College District  
c/o Swinerton Management & Consulting  
phone: 415-884-3142  
fax: 415-721-7039

**Original by mail to:**

Marin Community College District  
c/o Swinerton Management & Consulting  
P.O. Box 144003  
Kentfield, CA 94914

**END OF APPENDIX E**