

**CABRILLO COMMUNITY COLLEGE DISTRICT
REQUEST FOR QUALIFICATIONS AND FEE PROPOSALS
RFP # B12-11
ON-GOING ARCHITECTURAL SERVICES**

CABRILLO Community College District (“District”) requests that architectural services firms (“Respondents”) submit written responses to this RFP.

Request for Qualifications

- 1.1 Purpose of RFP. This RFP is a part of the process for the District’s selection and retention of one or more architectural services firms to provide architectural and related services for projects planned by the District. Timely submitted RFP Responses will be evaluated to ascertain the Respondents’ respective qualifications, based on the criteria established in this RFP. Following the determination of which Respondents meet or exceed the qualifications standards set forth in this RFP, in the sole and exclusive discretion of the District, Respondents deemed qualified may be requested to participate in an interview with District personnel as part of the process for selection and retention of one or more architectural services firms.
- 1.2 District Modifications to RFP. The District expressly reserves the right to modify any portion of this RFP prior to the latest date/time for submission of RFP Responses, including without limitation, the cancellation of this RFP. Modifications, if any, made by the District to the RFP will be in writing; potential Respondents who have obtained this RFP from the District prior to any such modifications will be issued modifications to the RFP by written addenda.
- 1.3 No Oral Clarifications/Modifications. The District will not provide any oral clarifications or modifications to the RFP or the requirements hereof; no employee, officer, agent or representative of the District is authorized to provide oral clarifications or modifications to the RFP. No Respondent shall rely on any oral clarification or modification to the RFP. Inquiries must be submitted not later than the time/date indicated in Paragraph 4.2.1 of this RFP.
- 1.4 Public Records. Except for materials deemed Trade Secrets (as defined in California Civil Code §3426.1) and materials specifically marked “Confidential” or “Proprietary,” all materials submitted in response to this RFP are deemed property of the District and public records upon submission to the District. The foregoing notwithstanding, the District may reject for non-responsiveness the RFP Response of a Respondent who indiscriminately notes that its RFP Response or portions thereof are “Trade Secret” “Confidential” or “Proprietary” and exempt from disclosure as a public record. The District is not liable or responsible for the disclosure of RFP Responses, or portions thereof, deemed to be public records, including those exempt from disclosure if disclosure is by law, by an order of Court, or which occurs through inadvertence, mistake or negligence on the part of the District or its agents or representatives. If the District is required to defend or otherwise respond to any action or proceeding wherein request is made for the disclosure of the contents of any portion of a RFP Response deemed exempt from disclosure hereunder, by submitting a response to this RFP, each Respondent agrees to defend, indemnify and hold harmless the District in any action or proceeding from and against any liability, including without limitation attorneys’ fees arising there from. The party submitting materials sought by any other party shall be solely responsible for the cost and defense in any action or proceeding seeking to compel disclosure of such materials; the District’s sole involvement in any such action shall be that of a stakeholder, retaining the requested materials until otherwise ordered by a court of competent jurisdiction.

2 The District and the Projects.

- 2.1 The District and the District’s Campuses.
- 2.2 The Projects. Design and construct works of improvements consisting of renovation/modernization of existing District facilities as well as the design and construction of

new capital improvements. The District seeks, through this RFP to select an architectural and engineering firm to provide design services for active and future General Obligation Bond and Capital Outlay projects as well as future potential Bond and Capital Outlay projects which remain to be designed and constructed.

2.2.1 Active Project: Cabrillo College, Classroom Renovation Project

This project is the Cabrillo College Building 600
Chemistry and Biology Lab Renovation

Active Project Description:

Building 600, originally constructed in 1962, currently contains unoccupied space created by the relocation of the Dental Hygiene Department to a new facility. Gross area of these spaces is approximately 3800 S.F. Cabrillo College has completed a number of accessibility projects in the last decade. It is anticipated that accessibility requirements for this project will be limited to the areas to be remodeled in the 600 Building. It is anticipated that structural changes to the 600 Building will be minimal. The Architect is expected to assist the District in finalizing its program requirements and determining a scope of work that is compatible with its budget. Utility infrastructure around and within the 600 Building to serve the remodeled spaces will require assessment by the Architect as part of its scope of services. Demolition within the remodeled spaces is a part of this project. Funding for this project is from Measure D bonds approved by the voters in 2004.

The vacated space forms the core of this project, to expand the adjacent Chemistry and Biology Departments. Program requirements for this vacated space have been determined as follows:

- A new general chemistry laboratory
- A new instrument room (relocated from elsewhere in the 600 Building)
- A large lecture room
- A smaller room to be used as either a lecture room or general use laboratory (to be determined).

In addition, space within the current Chemistry and Biology Departments requires remodeling as follows:

- Remodel of the existing organic chemistry laboratory
- Remodel of the existing instrument room (relocated...see above) to expand the adjacent stockroom
- Remodel of a small cluster of spaces within the 600 Building into a student resource area to be designated the Student Learning Center.

3 Architectural Services Contract. Incorporated as Attachment A to this RFP is a form of On-Going Architectural Services Agreement (“Architect Agreement”) which the District anticipates executing with the architectural and engineering firm selected through this RFP. The scope of Basic Services is described in the Architect Agreement; the specific scope of Basic Services for a Project shall be as set forth in the Project Assignment Amendment issued for a Project subject to the Architect Agreement.

4 RFP Response

4.1 RFP Activities; Timeline. The following table is a description of the principal activities to be completed under this RFP and the date for anticipated completion of each activity. The following notwithstanding, the District expressly reserves the right to amend the extent, nature or scope of RFP activities and/or the time for completing RFP activities.

ACTIVITY	DATE (time)
Latest date/time for Respondents' Submission of Clarifications Requests/RFP Questions	May 25, 2012, 1:00pm
Deadline for Respondents' Submission of their RFP Responses	June 4, 2012 1:00pm
District Review of RFP Responses	June 5,6 2012
Short List Candidates Interviews no later than (at District discretion)	June 7, 2012
District Board of Trustees Action to Award Architect Agreement	June 2012

4.2 Submission of RFP Response.

4.2.1 Latest Date/Time for Submission of RFP Response. **The latest date/time for Submission of RFP Responses is 1:00P.M. June 4, 2012.** RFP Responses which are not actually received in the office of the District's Director of Purchasing at or prior to the latest date/time for Submission of RFP Responses will be rejected by the District for non-responsiveness. Respondents are solely responsible for the timely Submission of RFP Responses. **Respondents are encouraged to personally delivery RFP Responses directly to the office of the District's Director of Purchasing or to retain a private courier/messenger service to personally deliver RFP Responses to the Office of the Director of Purchasing to ensure timely delivery to the proper location for Submission of RFP Responses.**

4.2.2 Location for Submission of RFP Response. RFP Responses shall be submitted to Director of Purchasing, Cabrillo College, 6500 Soquel Drive Bldg. 2030, Aptos, CA 95003

4.2.3 Errors/Discrepancies/Clarifications to RFP. If a Respondent: (i) encounters errors or discrepancies in this RFP or portions hereof; or (ii) seeks clarification of any portion of the RFP, the Respondent shall immediately notify Michael Robins, Director of Purchasing, Contracts and Risk Management via email: mirobins@cabrillo.edu . Responses of the District to the notice of any errors or discrepancies herein, or a clarification will be in writing; if in the sole judgment of the District, any clarification response affects the RFP or other Respondents, the District will issue the clarification response by a written addendum posted on the district website where the RFP was originally posted. All requests for clarification of this RFP must be submitted and actually received by Michael Robins, Director of Purchasing, Contracts and Risk Management, via email (mirobins@cabrillo.edu) **no later than 1:00 P.M., May 25, 2012.** The District will not respond to clarification requests submitted thereafter.

4.2.4 RFP Response Costs. All costs and expenses incurred by a Respondent to prepare and submit a response to this RFP and all other related activities shall be borne solely and exclusively by the Respondent.

4.3 Format of Submission of RFP Response.

4.3.1 RFP Response. All materials submitted in response to this RFP shall be on 8 ½" x 11" paper, preferably in portrait orientation. All submitted materials must be bound in either a three-ring binder or spiral bound notebook. Tabbed dividers should be used to identify and separate discrete sections of the RFP Response which correspond to the information requested in Paragraph 4.4 below.

- 4.3.2 Additional Materials. Respondents are not prohibited, but are discouraged, from submitting materials in addition to those specifically responding to the matters noted in Paragraph 4.4 below. If a Respondent elects to submit materials with its RFP Response which are in addition to the matters described in Paragraph 4.4 below, the Respondent shall separately bind all such additional materials separately from the RFP Response addressing the matters set forth in Paragraph 4.4 below.
- 4.3.3 Copies of RFP Response. Each Respondent shall submit an original and seven (7) copies of its RFP Response.
- 4.4 RFP Response Format/Contents. Each RFP Response must conform to the following described format and must include the content described below. Failure of a Respondent to submit its RFP Response in a format and with content conforming to the following requirements will be a basis for the District's rejection of such RFP Response for non-responsiveness.
- 4.4.1 Cover Sheet. Identify the submittal as the Response to this RFP and an identification of the firm submitting the RFP Response along with the firm's address, telephone/fax numbers and email addresses of the firm's principal contacts in connection with this RFP or the RFP Response. This cover sheet should be included as page 1 and bound with other materials responding to this RFP.
- 4.4.2 Table of Contents. Include a Table of Contents reflecting the Respondent's responses to each of the items set forth below:
- 4.4.3 Tab 1 - Statement of Qualifications. Complete "Attachment B" and include as Tab 1.
- 4.4.4 Tab 2 - Financial Statement. Includes a current financial statement (2010 CY or 2000/2010 FY) for the Respondent. Financial Statements must be reviewed or audited by a California licensed Certified Public Accountant.
- 4.4.5 Tab 3 - Relevant Experience. Provide details of California Community College District building projects which reflect the skills, experience and other qualifications of the Respondent and its proposed personnel to successfully complete necessary architectural services for the Projects. This section of the RFP Response shall not exceed fifteen (15) pages. The discussion of experience must specifically address: (i) measures to be implemented by the Respondent to ensure that the Design Documents for the Projects conform to requirements for the planned use/occupancy thereof, materials/equipment incorporated therein and the costs of construction; (ii) quality assurance/quality control measures to ensure: coordination of, and consistency between, the various components of the Design Documents and the mitigation of errors/omissions in Design Documents; (iii) show how the projects met budgets and timetables with little to no change orders or contractor claims; (iv) experience in communications with DSA and measures to expedite completion of DSA review/approval of Design Documents; (v) experience with the planning, review and approval processes engaged in by the California Community Colleges Chancellors Office, California Department of Finance and the California Public Works Board; and (vi) construction phase activities relating to review and response to submittals, verification of Progress Payment requests, and other similar administrative responsibilities during the construction phase.
- 4.4.6 Tab 4 - Proposed Design Team. Identify the key members of the Respondents' staff that will be assigned to completion of Basic Services described in the Architect Agreement. Identify proposed Design Consultants and their respective key personnel for the following disciplines: (i) structural; (ii) mechanical; (iii) electrical; (iv) plumbing; (v) civil; and (vi) landscape/irrigation. Include an organization chart illustrating the roles and relationships among the Respondent's proposed Design Team (including proposed Design Consultants) and between the proposed Design Team and District personnel responsible for implementing the Projects. Include resumes of the key personnel of the Respondent and its proposed Design Consultants identified in this section of the RFP Response which reflects the educational backgrounds, projects that both the Respondent's proposed Design Team and proposed Design Consultants have worked

on together, as well as the skills and experience of such personnel in performing and providing the Basic Services described in the Architect Agreement.

A. Complete "Attachment D: Design Consultants to Architect Summary and Contact Sheet."

4.4.7 Tab 5 - Insurance Certificates. Provide copies of Certificates of Insurance for the Respondent and each of its proposed Design Consultants confirming the minimum coverage amounts for each policy of insurance as set forth below.

Required Insurance Policy Certificate	Minimum Respondent Coverage Amount	Minimum Design Consultant Coverage Amount
Workers Compensation	In accordance with law	In accordance with law
Employers Liability	One Million Dollars (\$1,000,000)	One Million Dollars (\$1,000,000)
Comprehensive General Liability (including property damage and automobile liability)	Two Million Dollars (\$2,000,000) per occurrence/Four Million Dollars (\$4,000,000) aggregate	One Million Dollars (\$1,000,000) per occurrence/Two Million Dollars (\$2,000,000) aggregate
Professional Liability	One Million Dollars (\$1,000,000) per claim/Two Million Dollars (\$2,000,000) aggregate	One Million Dollars (\$1,000,000) per occurrence/Two Million Dollars (\$2,000,000) aggregate

4.4.8 Tab 6 - Architect Agreement Comments. Included with this RFP is the Architect Agreement. **Respondents must thoroughly review the Architect Agreement included herewith and must accept terms. Any Respondent whose RFP Response does not identify modifications to terms or conditions of the attached Architect Agreement will be deemed to have agreed to all terms and conditions set forth therein; if awarded the Architect Agreement, such Respondent must execute the Architect Agreement in the form and content attached hereto subject only to elements of such Respondent's RFP Response accepted by the District.**

4.4.9 Tab 7 - Fee Proposal. Please provide a detailed listing of the current hourly billing rates for all of the personnel identified in the Respondent's RFP Response. The District will accept architectural services fee proposals for a maximum of ten (10) percent for renovation/alteration/reconstruction projects and a maximum of eight (8) percent for new construction. Architectural and engineering services fee for Projects will be reviewed and negotiated on a project by project basis.

A. Complete Attachment C

4.5 Selection Criteria

4.5.1 General. Timely submitted RFP Responses will be reviewed by the District. A Response to the RFP which does not comply with the requirements of this RFP will be subject to rejection for non-responsiveness. The District reserves the right to waive immaterial deviations in a response to this RFP.

4.5.2 District Policy. It is the policy of the District that the selection of firms to provide professional services in connection with construction projects of the District be based on

the demonstrated competence and qualifications to complete the required professional services at a fair and reasonable price to the District.

- 4.5.3 Evaluation Criteria. The following set forth the criteria by which each RFP Response will be evaluated. The District and the selection committee reserve the right to exercise discretion in the weight and priority of the evaluation criteria.
- 4.5.3.1 Relevant Experience and Ability: The Respondent and its propose Design Team will be evaluated based on experience in architectural design work for California community college capital improvement/modernization projects and a minimum of five (5) years of prior experience successfully providing architectural and related services during the design, bidding and construction phases of California community college projects .
- 4.5.3.2 Sustainable Design/LEED: The Respondent and its proposed Design Team will be evaluated on their sustainable design practices as it relates to their experience. The District will be reviewing Respondents' proposals based on application of sustainable design theory.
- 4.5.3.3 California Community Colleges State Chancellor's Office: The Respondents and its proposed Design Team will be evaluated based on their experience with the planning, review and approval processes engaged in by the California Community Colleges Chancellors Office, California Department of Finance and the California Public Works Board. Please provide a complete reference list of Community College Districts and their contact information for project submittals completed to date. Please provide a description and size of project Initial Project Proposals (IPPs) and Final Project Proposals (FPPs) completed and submitted that have been approved or anticipate approval from the State Chancellor's Office.
- 4.5.3.4 Architectural Ability. Skills, experience and expertise of individual members of the Respondent's proposed Design Team will be specifically evaluated as to (i) demonstrated prior capabilities of completing architectural and related services to produce work-product which incorporate required scope and which conforms to budget/time constraints; (ii) demonstrated prior success in expediting review/approval processes for community college projects; and (iii) demonstrated prior skills in administration and other architectural services during the construction phase of a project.
- 4.5.3.5 Responsiveness to RFP and Project Requirements; Client Responsiveness. The District will evaluate the Respondent's responsiveness to the requirements of this RFP. The District will also evaluate the prior experience and successes of the Respondent and its proposed Design Team in establishing effective working relationships within the setting of a public higher education institution, including the relationships with management, administrative, technical and end-user staff of prior clients. The District will evaluate the proposed Design Team on demonstrated understanding and experience in a shared governance system within community colleges.
- 4.5.3.6 Availability. The District will evaluate the availability of the Respondent, the personnel of the Respondent, and its proposed Design Consultants to be dedicated to the Projects within the District's anticipated schedule for completing design and construction of the Projects.
- 4.6 Interviews. RFP respondents deemed qualified by the District may be required to participate in an interview with a Selection Committee established by the District. Interviews, if conducted by the Selection Committee, will generally consist of no more than fifteen (15) minutes for Respondents' presentation, followed by questions posed by the Selection Committee. Total time of each interview will not exceed one (1) hour. If requested by the Selection Committee, any Respondent invited to participate in the interview process shall have present at the interview its key personnel of the Respondent and its Project Team. The order of firms to be interviewed will be selected randomly. Successful firms placed on the short list will be required

to participate in an interview with a Selection Committee established by the District. Short listed architectural firms may be required to participate in interviews with a Selection Committee for all other active and future projects.

- 4.7 Award of Architectural Agreement. The District's Board of Trustees will have the exclusive authority to take action for the award of the Architect Agreement.

[END OF SECTION]

**“Attachment A”
AGREEMENT FOR ON_GOING ARCHITECTURAL SERVICES**

This Long Form Agreement for Architectural Services (“Agreement”) is entered into this ___ day of _____, 20__ by and between **CABRILLO COMMUNITY COLLEGE DISTRICT**, a California Community College District (“District”) and _____. (“Architect”); the District and the Architect are collectively referred to herein as “the Parties.” This Agreement is entered into with reference to the following Recitals, all of which are incorporated herein by this reference.

R E C I T A L S

WHEREAS, the District anticipates the development, design and construction of a work of improvement commonly described as **Building 600 Renovation** (“Project”) on the District’s Aptos campus.

WHEREAS, in connection with the Project, on or about _____, the District issued a Request for Proposals (“the RFP”) pursuant to which the District requested responses from architects to provide architectural and related services in connection with the design, bidding and construction of the Project.

WHEREAS, the Architect submitted a written response dated _____ to the RFP (“the RFP Response”); by this reference, the RFP Response is incorporated herein.

WHEREAS, the District desires to retain Architect to provide and perform the architectural and related services in connection with the design, bidding and construction of the Project, as set forth herein;

WHEREAS, as of the date of this Agreement, the current estimate of the costs to construct the Project is _____ Dollars (\$xxx,xxx.xx) (“Estimated Construction Costs”).

WHEREAS, as required by applicable law, personnel of the Architect and personnel of the Architect’s Design Consultants are duly licensed as architects or registered as engineers under the laws of the State of California and are otherwise qualified and capable of providing and performing the Basic Services and its other obligations under this Agreement in accordance with the terms hereof.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the District and Architect agree as follows:

AGREEMENT

1. Basic Services

- 1.1. General. Architect shall provide Basic Services and authorized Additional Services for the Project, as more particularly enumerated in this Agreement. All Basic Services and authorized Additional Services for the Project shall be performed and completed by employees of the Architect and the Architect’s Design Consultants. If Basic Services Completion Schedule is set forth in this Agreement, the Architect shall complete Basic Services in accordance therewith. All of the Architect’s obligations hereunder shall be performed and completed in a manner so as to avoid hindrance, interruption or delay to the orderly progression and completion of Project design, bidding and construction. The Architect’s Design Documents, Instruments of Service and all other Basic Services and authorized Additional Services shall comply with all current requirements of federal, state, and local laws applicable to the Project or portions thereof including, but not limited to the Public Contract Code, the most recent the California Building Code (as amended for application to the Project), the Education Code, California Code of Regulations, Title 24, and all requirements prescribed by the California Department of General Services including the Division of the State Architect (“DSA”), as well as this Agreement.

- 1.2. Relationship of Architect to Other Project Participants. The Architect's services hereunder shall be provided in conjunction with contracts between the District and other Project participants including without limitation the Contractor(s) the District's Program Manager and the District's Construction Manager, if one is retained by the District for the Project. The Contractor(s) awarded a Construction Contract for construction of the Project or any portion thereof is/are responsible for performance of the obligations under the Construction Contract. The Architect's services hereunder shall not be deemed or construed to be the Architect's assumption of responsibility for, or control over construction means, methods sequences or procedures, or for safety at the Site, all of which are and remain the responsibility of the Contractor(s).
- 1.3. Architect Standard of Care. The Architect and its Design Consultants shall provide the Basic Services and authorized Additional Services for the Project: (i) using their professional skill and judgment; (ii) acting with due care and in accordance with applicable standards of care under California law for those providing similar services for projects similar in size, scope and complexity as the Project; and (iii) the terms of this Agreement.
- 1.4. Architect Representation. The Architect shall designate a Project Architect for all Phases of Basic Services for the Project who shall: (i) be reasonably satisfactory to the District; (ii) will not be replaced without approval of the District; (iii) shall have the overall responsibility for performance of Architect's obligations hereunder; and (iv) be authorized to act on behalf of the Architect in discharge of Architect's obligations hereunder. If the Project Architect is replaced, the District shall have the right to approve of the replacement Project Architect for the Project. During the Construction Phase of the Project, the Project Architect shall be readily available to communicate by telephone, telecopier, correspondence, necessary Site visits, e-mail or other means of communication to provide design direction and decisions as necessary to avoid delay, hindrance or interruption to completion of Project construction.
- 1.5. Design Consultants: Design Disciplines.
- 1.5.1. Scope of Design Services. Basic Services are generally described in this Agreement and includes all architectural, design engineering and related services for the Project as necessary or appropriate to produce complete and accurate Construction Documents for the Project.
- 1.5.2. Design Consultants. The personnel of the Architect and its Design Consultants providing or performing any portion of the Basic Services for the Project are qualified, skilled and experienced in providing the Basic Services assigned to such personnel and licensed as an architect or registered as an engineer under California law, as required by the nature of services provided.
- 1.5.3. Design Disciplines. The design/engineering disciplines included in the scope of the Architect design services are: structural, mechanical, electrical, plumbing, telecommunications/data, landscape/irrigation and civil. The Design Consultants retained by the Architect for the foregoing design disciplines, along with the employees of the Design Consultants with responsibility for the Project and contact information are identified and set forth in Exhibit B ("Subconsultants List") attached hereto and incorporated herein by this reference.
- 1.6. Meetings and Conferences. The Basic Services of the Architect shall include the Architect and its Design Consultants' attendance and participation in meetings and conferences relating to the Project and the Basic Services of the Architect relating to the Project. Such meetings and conferences may include, without limitation those involving the end-users of the Project, District administrative/management staff, District Board of Trustees, shared governance committees and community organizations. The Contract Price due the Architect under this Agreement is inclusive of costs, fees or expenses arising out of or associated with the attendance and participation in such meetings and conferences.

2. **Basic Services; Pre-Design (Planning and Programming) Phase**

- 2.1. Project Construction Budget. The Architect shall review and accept the Project Construction Budget

and other information provided by the District regarding the Project.

- 2.2. Site Observations. The Architect and its Design Consultants shall visit the Site to become familiar with physical conditions and existing improvements at the Site as they relate to design and construction of the Project. Unless specifically indicated in this Agreement, the Site observations of the Architect and its Design Consultants shall not include observations of concealed conditions. The foregoing notwithstanding, by conducting Site observations, the Architect shall be responsible for noting and incorporating patently observable existing Site conditions into the Project Design Documents. If any portion of the Project involves modification to existing improvements, structures or facilities, the Architect shall be responsible for completely and accurately depicting such existing conditions in the Design Documents.
- 2.3. Development of Project Program Requirements. In consultation with the District, understandings shall be arrived at with respect to the scope, requirements and constraints of the Project. Architect shall provide the District with written or graphic evaluations of the District's requirements for the Project and constraints affecting the Project, including the selection of materials, building systems, equipment, the Project Construction Budget and alternative approaches to design and construction of the Project.
- 2.4. Test and Inspections. When required by applicable law, regulation or rule or when necessary or appropriate under the circumstances, the Architect and its Design Consultants shall be on site to observe special tests or inspections of components and portions of the Project. The Architect and its Design Consultants shall review test/inspection reports, analysis, summaries and other similar materials to verify that the portion or component of the Project subject to test/inspection meets or exceeds standards established by the Contract Documents or by applicable law, regulation or rule. If the Architect or Design Consultants determine that any portion or component of the Project does not meet or exceed applicable standards, the Architect shall notify the District Representative in writing of such circumstances and set forth specific recommendations for remedial measures so that such portion or component of the work when re-inspected or re-tested will meet or exceed applicable standards.

3. **Basic Services; Preliminary Plans Phase**

- 3.1. Preliminary Plans. Based upon the scope, Project Construction Budget, schedule and other requirements or constraints mutually agreed upon and understood between the District and Architect for the Project, the Architect shall prepare Preliminary Plans consisting of Drawings and other documents illustrating scale and other relationships of the various components of the Work and an outline of Specifications. Upon completion of the Preliminary Plans, or at such other intervals during Architect's development of Initial Preliminary Plans as may be agreed upon by the District and the Architect, the Architect shall submit the same to the District for information, review and comments.
- 3.2. Final Preliminary Plans. The District and Architect will confer and consult with each other to arrive at mutual understandings and agreements as to which of the District's comments to the Preliminary Plans are to be incorporated into the Working Drawings. The Architect shall prepare Working Drawings which consist of the Preliminary Plans revised to incorporate therein the mutually agreed upon changes and other comments of the District. If mutual agreement is not reached as to the incorporation of the District's comments and changes in the Working Drawings, the Architect shall incorporate such comments and/or changes as directed or authorized by the District.

4. **Basic Services; Working Drawings Phase**

- 4.1. Working Drawings. Based upon the District reviewed Final Preliminary Plans, the Architect shall prepare Working Drawings consisting of all Drawings, Specifications and other Design Documents necessary or appropriate for setting forth in detail the requirements for the Work of the Project with sufficient clarity, coordination and consistency to permit qualified and capable Contractor(s) to bid upon and construct the Work depicted therein for the Project Construction Budget.

- 4.2. Review of Working Drawings Status. At intervals mutually agreed upon by the District and the Architect, or in the absence of such mutual agreement at such intervals as reasonably determined by the District, the Architect shall provide to the District, for review and information, the Drawings, Specifications and other documents depicting the then current status of the Architect's preparation of Working Drawings. If upon such review, the District reasonably determines that the progress of completion of the Working Drawings is behind that indicated in this Agreement, without adjustment of the Contract Price due the Architect for the Project, the Architect shall implement all necessary measures to conform the actual progress of completion of the Working Drawings with the schedule for the Project.
- 4.3. Constructability and Value Engineering Reviews. The District reserves the right to conduct, or cause to be conducted, constructability and/or value engineering reviews of the Working Drawings. If the District elects to conduct either constructability or value engineering reviews, the District shall notify the Architect of the same and the Architect shall submit Working Drawings to the District for such constructability and/or value engineering reviews. The District and Architect will confer and consult with each other to arrive at mutual understandings and agreements as to which of the constructability and/or value engineering review comments are to be incorporated into the Working Drawings. If mutual agreement is not reached, the Architect shall incorporate such constructability and/or value engineering review comments as directed or authorized by the District. Architect shall revise the Working Drawings as necessary to obtain the District's reasonable acceptance thereof. The Architect's revision of the Working Drawings to conform to the constructability/value engineering review comments accepted or directed by the District shall be without adjustment to the Contract Price due the Architect under this Agreement.
- 4.4. Detailed Construction Cost Estimate. Based upon the Work of the Project depicted in the fifty percent completed Working Drawings ("the 50% Drawings"), the Architect shall prepare a detailed Construction Cost Estimate for the Work depicted in the Working Drawings. If the detailed Construction Cost Estimate exceeds the Project Construction Budget, the Architect shall revise the Working Drawings as necessary so that the detailed Construction Cost Estimate for the Work depicted therein conforms with the Project Construction Budget. Revisions of the Working Drawings to conform to the Project Construction Budget shall be without adjustment to the Contract Price due the Architect for the Project unless the District shall have directed modifications or inclusions to the scope of the Project or component parts thereof which cause the Project Construction Budget to be exceeded. If the District obtains a Construction Cost Estimate on the 50% Drawings which is prepared by others and such other Construction Cost Estimate varies from the Architect's Construction Cost Estimate by three percent (3%) or more, the Basic Services of the Architect shall include all meetings, conferences and discussions as necessary to reconcile such Construction Cost Estimates.
- 4.5. Approvals of Working Drawings. The Architect shall assist the District in obtaining all necessary approvals or permits for the Working Drawings for the Project from governmental agencies with jurisdiction over any portion of the Project as necessary for the bidding and construction of the Project including without limitation, approvals by the Division of State Architect ("DSA"). The foregoing includes without limitation: (i) submittal of the Design Documents to DSA and other governmental agencies with jurisdiction over any portion of the Project for review, comment and approval to construct the Project, discussions; and (ii) discussions and other communications with the District, DSA and other governmental agencies with jurisdiction over the Project relating to comments, modifications and other similar matters arising out of reviews of the Design Documents. Without adjustment of the Contract Price for the Project, Architect shall revise Working Drawings as required by DSA or other governmental agencies with jurisdiction over the Project, or portions thereof, to obtain their respective approval(s) or permit issuance.
- 4.6. Architect Provision of Working Drawings. The Architect shall provide the District with one clear background, reproducible copy of the Drawings included in the final approved Working Drawings for bidding and construction purposes of the Project. Reproduction of these sets of Design Documents for

the Project is at the cost of the District, except to the extent that reproduction is required by revisions or corrections arising out of errors or omissions of the Architect or its Design Consultants, in which case, the Architect shall bear all costs of preparing revisions or corrections and reproduction of Working Drawings.

5. Basic Services; Bidding Phase

- 5.1. Development of Bid Documents. In consultation with the District and the Construction Manager, if one is retained by the District for the Project, the Architect will advise and make recommendations to the District for bidding and award of the Construction Contract(s) for the Project. The Architect will generally review and comment upon the District's proposed forms of Construction Contract and General, Special and other Conditions thereof for conformity and consistency with the Construction Documents. Architect shall assist the District and the Construction Manager, if one is retained for the Project, in preparation of information, documents and forms necessary or appropriate for bidding.
- 5.2. Bidding Process. During the bidding for Construction Contract(s), Architect will: (i) attend pre-bid conference(s) and job-walks, as called by the District; (ii) assist the District in responding to bidders' inquiries, questions or clarification requests relating to the Project, the Design Documents, or the Construction Documents; and (iii) where necessary or appropriate, the Architect will prepare and assist the District in issuance of addenda to the Design Documents, Construction Contract(s), Bid Documents and/or Construction Documents for the Project. As requested by the District, the Architect will assist the District in obtaining required governmental approval(s) for award of the Construction Contract(s) for construction of the Project. The District expressly reserves the right to exercise the sole discretion as to the manner and method for construction of the Project, including without limitation, construction by a single prime contractor, construction by multiple trade contractors each under direct contract with the District, construction by the District's own forces or separate contractors or construction in phases, components or segments. The District's exercise of discretion as to the manner and method for completing Project construction shall not result in adjustment or other increase in the Contract Price due the Architect, as set forth in this Agreement.
- 5.3. Bid Costs Exceeding Project Construction Budget. If within one hundred fifty (150) days of the date upon which Architect obtains final DSA approval for the Construction Documents of the Project: (i) the District has solicited Bid Proposals from bidders for award of the Construction Contract(s); (ii) such Bid Proposals are opened by the District within said one hundred fifty (150) days; and (iii) the lowest bona fide Bid Proposal exceeds the Project Construction Budget, the District may: (a) approve of an increase in the Project Construction Budget; (b) reject all Bid Proposals and authorize re-bidding of the Project; (c) abandon or terminate the Project; or (d) revise the scope, or reduce or eliminate portions of the Project so as to limit and reduce Construction Costs. Unless the District has theretofore directed changes, modifications or inclusions in the scope of the Project or component parts thereof which cause the Bid Proposals to exceed the Project Construction Budget, if the District elects to revise the Project pursuant to (d) above, the Architect shall make all necessary revisions to the Construction Documents without adjustment of the Contract Price due the Architect under this Agreement; if the District elects to reject all Bid Proposals and re-bid the Project, for such subsequent re-bid(s), Architect shall perform the obligations set forth in Paragraphs 5.1 and 5.2 above in connection with such re-bid(s) without adjustment of the Contract Price due the Architect under this Agreement.
- 5.4. Conformed Design Documents. After conclusion of the Bidding Phase and prior to commencement of the Construction Phase of the Project, the Architect shall prepare Conformed Design Documents which consist of the Design Documents initially issued by or on behalf of the District for bidding as modified by Addenda or other changes thereto during the Bidding Phase. The Architect shall complete preparation of the Conformed Design Documents so that the Conformed Design Documents are delivered to the District sufficiently in advance of the anticipated/planned commencement date of the Construction Phase to allow the District to reproduce Conformed Design Documents for distribution to the Contractor(s) at or prior to the Construction Phase commencement date.

6. Basic Services; Construction Phase

6.1. Administration of Construction Contract(s). Architect will provide assistance to the District and the Construction Manager, if one is retained by the District for the Project, in administration of the Construction Contract(s) and construction of the Project. The scope of the Architect's services in administration of the Construction Contract(s) shall include all activities and responsibilities set forth herein and in the Construction Contract(s) for the Project. The Architect's administration of the Construction Contract(s) for the Project shall be in conjunction with the services and responsibilities of the Construction Manager, if retained by the District in connection with the Project. The Architect shall be a representative of the District and shall advise and consult with the District regarding construction of the Project until Final Payment under the Construction Contract(s) for the Project is/are due and Final Completion of construction of the Project is certified by the Architect and other Project participants including the Construction Manager and the Project Inspector. The Architect shall have the authority to act on behalf of the District only to the extent expressly provided for by the terms hereof and as may be subsequently modified in accordance with the provisions hereof. Duties, responsibilities and limitations of the Architect's authority shall not be restricted, modified or extended without written agreement of the District and the Architect along with consent by the Contractor(s) and/or Construction Manager as necessary or appropriate. Architect shall cooperate with and comply with controls, procedures, processes and reporting functions reasonably implemented by the District with respect to design or construction of the Project.

6.2. Site Observations.

6.2.1. General. The Architect shall attend weekly and other meetings relating to the Project and shall visit the Site of the Project at intervals appropriate to the stage of construction, as required by the conditions of construction or the Site, or as may be reasonably requested by the District from time to time for the purpose of becoming generally familiar with the progress and quality of the Work completed and to generally determine if the Work is being performed in a manner indicating that upon completion it will be generally in accordance with the Construction Contract(s) and the Construction Documents. On the basis of observations made during Site visits and in its capacity as an architect, the Architect shall: (i) keep the District informed of the progress and quality of the Work; and (ii) endeavor to guard the District against defects and deficiencies in the Work and the failure or refusal of the Contractor to perform the Work in accordance with the terms and intent of the Construction Contract(s) and the Construction Documents. Without limiting any other right or remedy of the District whether pursuant to this Agreement or by operation of law, if in the course of its Site observations, the Architect fails to discover or report to the District any patently observable major defect or deficiency in construction of the Work, or in the Work itself, which by exercise of due care should have been observed by the Architect and reported to the District, the Architect will provide all design services necessary for remedial or corrective measures for such conditions without additional cost or expense to the District. The foregoing shall not be deemed to obligate the Architect to observe or inspect concealed conditions, unless the nature of the visually apparent conditions are such that a prudent architect would conduct observations or inspections of related concealed conditions to confirm that there are no major defects or deficiencies in the concealed conditions. The provisions hereof shall not be construed as requiring the Architect to make exhaustive or continuous Site observations to check on the quality or quantity of the Work. The Architect shall have access to the Work wherever in preparation, fabrication or progress.

6.2.2. Test and Inspections. When required by applicable law, regulation or rule or when necessary or appropriate under the circumstances, the Architect and its Design Consultants shall be on site to observe special tests or inspections of components and portions of the Project. The Architect and its Design Consultants shall review test/inspection reports, analysis, summaries and other similar materials to verify that the portion or component of the Project subject to test/inspection meets or exceeds standards established by the Contract Documents or by applicable law, regulation or rule. If the Architect or Design Consultants determine that any portion or component of the Project does not meet or exceed applicable standards, the Architect shall notify the District Representative in writing of such circumstances and set forth specific recommendations for remedial measures so

that such portion or component of the work when re-inspected or re-tested will meet or exceed applicable standards.

6.3. Contractor(s)' Applications for Payment.

6.3.1. Development of Payment Procedures. In consultation with the District, Construction Manager and Program Manager, if one is retained by the District for the Project, the Architect shall assist in the development and implementation of procedures, forms and documents for the submittal, review, processing and disbursement of Progress Payments to the Contractor(s) for the Project.

6.3.2. Certification of Progress Payment Due. Based on the Architect's observations and evaluations and in conjunction with the observations and evaluations of others, including the Construction Manager and the Project Inspector, the Architect shall certify the amount due the Contractor(s) on each Application for Progress Payment. Such certification shall be the Architect's representation to the District that based upon the Architect's Site observations in accordance with this Agreement and the data contained in the Application for Progress Payment, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the terms of the Construction Contract(s). Issuance of a Certificate for Progress Payment shall constitute Architect's representation to the District that the Contractor(s) is/are entitled to the amount certified.

6.3.3. Limitations Upon Architect's Certification. The Architect's certifications and representations hereunder are subject to an evaluation of the Work for conformity with the terms of the Construction Contract(s) upon Substantial Completion, the results of subsequent tests and inspections, minor deviations from the terms of the Construction Contract(s) correctable prior to Final Completion and any specific qualifications expressed by the Architect. The issuance of a Certificate for Progress Payment shall not be deemed a representation that the Architect has: (i) made exhaustive or continuous Site inspections to check the quality or quantity of the Work; (ii) reviewed construction means, methods, sequences or procedures; (iii) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the District to substantiate the Contractor's right to payment, excepted as included in the materials accompanying an Application for Progress Payment transmitted to and reviewed by the Architect hereunder; or (iv) ascertained for or what purpose the Contractor has used funds previously disbursed under prior Application(s) for Progress Payment.

6.3.4. Final Payment. In conjunction with the Project Inspector and Construction Manager, if one is retained by the District for the Project, the Architect shall review, evaluate and certify for payment the Contractor(s)' Application for Final Payment.

6.3.5. Timely Action by Architect. Upon receipt of any of the Contractor(s)' Applications for Progress Payment and the Application for Final Payment, the Architect shall promptly commence and complete its review, evaluation and certification of the amount due on each such application so that the District can make payment of the amount certified within the time permitted by law without incurring liability for interest and/or the Contractor(s)' attorneys fees resulting from untimely payments of any Progress Payment or the Final Payment. If the Architect fails to take timely action pursuant to the preceding, the Architect shall be liable to the District for all costs, demands, liabilities or losses arising out of or related to such failure to timely take action.

6.4. Rejection of Work. The Architect shall have the authority, after notification to the District, to reject Work of the Project which does not conform with the requirements of the Construction Contract(s). Whenever the Architect considers it necessary or appropriate for implementation of the intent of the Construction Contract upon notice to and authorization by the District, the Architect may require additional inspection or testing of the Work in accordance with the provisions of the Construction Contract(s), whether such Work is prepared, fabricated, installed or constructed. This authority of the Architect, or the Architect's good faith determination to exercise or not exercise such authority, shall not, however, give rise to a duty or responsibility of the Architect to the District, the Contractor(s) or any others performing or providing Work of the Project to exercise or not to exercise such authority.

6.5. Submittals.

6.5.1. Submittal Procedures. In consultation with the District and the Construction Manager, if one is

retained by the District for the Project, the Architect shall assist in the development and implementation of forms, documents and procedures for the handling, review and processing the Contractor(s)' Submittals required for the Project.

6.5.2. Submittal Review. The Architect shall review, and take appropriate action upon Submittals for the purpose of checking for conformance with the information given and the design concept expressed in the Design Documents. The Architect's actions hereunder shall be taken with such reasonable promptness as to cause no delay, interruption or hindrance to the activities of the Contractor(s) or others performing construction activities at the Site affected by such Submittal while allowing sufficient time in the Architect's professional judgment to permit adequate review. The Architect shall be responsible for and liable to the District for all losses, damages or other consequences of its failure or refusal to complete its review and evaluation of Submittals in a timely manner. When professional certification of performance characteristics of materials, systems or equipment is required by the terms of the Construction Contract(s), the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Construction Contract(s).

6.5.3. Limitations Upon Submittal Review. The Architect's review of Submittals is not for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor(s), all of which remain the responsibility of the Contractor(s) in accordance with the Construction Contract(s). The Architect's review shall not constitute approval of safety precautions or, unless otherwise expressly stated by the Architect, construction means, methods, sequences or procedures.

6.6. Changes.

6.6.1. Changes Procedures and Processing. In consultation with the District and the Construction Manager, if one is retained for the Project, the Architect shall assist in the development of procedures, forms and processes for the evaluation of Changes or potential Changes to the Work of the Project.

6.6.2. Evaluation of Changes; Change Orders. The Architect shall assist the District and the Construction Manager, if one is retained for the Project, in evaluating Change Proposals of the Contractor(s) and will advise the District of the nature, extent and scope of Change Proposals along with alternatives. Where Changes are authorized by the terms of the Construction Contract(s), the Architect shall prepare, execute and forward to District a Change Order describing such Change and the adjustment if any, to the Contract Price or Contract Time of the Construction Contract(s).

6.6.3. Authority to Direct Minor Changes. The Architect may authorize and direct minor Changes in the Work of the Project which do not involve an adjustment of the Contract Time or the Contract Price of Construction Contract(s) and which are consistent with the intent of the Design Documents. Such Changes shall be effected by written order issued by the Architect and copied to the District and the Construction Manager, if one is retained for the Project.

6.7. Interpretations.

6.7.1. Procedures for Handling Contractor(s)' Requests. In conjunction with the District and the Construction Manager, the Architect shall assist in the development of forms, documents and procedures for the transmittal, handling, response and disposition of requests and inquiries relative to the Work or the Construction Documents for the Project.

6.7.2. Architect's Interpretation. The Architect shall interpret and decide matters concerning the performance of the District or the Contractor(s) on written request of either the District or the Contractor(s). The Architect shall respond to and issue clarifications as necessary to address and resolve questions or inquiries of the Contractor(s) relative to coordination, consistency and clarity of the Design Documents and the component parts thereof. The Architect's responses to the foregoing shall be made with reasonable promptness and within any time limits established in the Construction Contract(s) or which may otherwise be mutually agreed upon. The Architect shall be liable to the District for losses, costs, expenses or other charges incurred by the District as a result

of the Architect's failure to timely respond to Contractor(s)' requests and inquiries relating to the Project. The scope of the Architect's obligations to defend, indemnify and hold harmless the Indemnified Parties, as set forth in this Agreement, shall include claims and other demands of the Contractor(s)' arising out of the Architect's alleged failure to timely respond to the Contractor(s)' requests and inquiries and all losses, damages, costs, expenses or liabilities incurred by the District as a result thereof.

6.7.3. Effect of Architect's Decisions. The Architect's decisions and interpretations rendered hereunder shall be consistent with the intent of and reasonably inferable from the Construction Contract(s) or the Design Documents and shall be in writing or in the form of drawings. When making such decisions or interpretations, the Architect shall endeavor to secure faithful performance of the Contractor(s) and the District, shall show no partiality to either and shall not be liable for the results of such decisions or interpretations rendered in good faith, in accordance with the terms hereof and the Architect's discharge of due care. The Architect's decisions or interpretations in matters pertaining to aesthetic effect shall be final and binding on the Contractor(s) and District if consistent with the intent expressed in the Construction Contract(s) or Design Documents.

6.7.4. Contractor(s)' Claims. The Architect shall render written decisions regarding claims, disputes or other matters in controversy between the District and the Contractor(s) arising under the Construction Contract(s), including the execution or progress of Work thereunder. The Architect's decisions shall be in accordance with any applicable time limits set forth in the Construction Contract(s); if no time limits are set forth, the Architect shall render decisions within a reasonable time.

6.8. Records and Reports. The Architect shall maintain current, accurate and complete records relating to the construction of the Project, including without limitation, correspondence, memorandum, Change Orders, Change Order Requests, Proposal Requests and similar records for the Project. The Architect shall timely prepare and submit all reports regarding the Project construction required by applicable law, rule or regulation.

7. **Basic Services; Post Construction Phase**

7.1. Substantial Completion. Upon request of the Contractor(s) and in conjunction with the District, the Project Inspector and the Construction Manager, if one is retained for the Project, the Architect shall inspect the Work to determine if Substantial Completion has been achieved and if not the measures necessary to achieve Substantial Completion. The Architect shall determine and certify the date of Substantial Completion of the Project, or portions thereof.

7.2. Punch list. At the time of determining Substantial Completion and in conjunction with the District, the Project Inspector, the Construction Manager, if one is retained for the Project, and the Contractor(s), the Architect shall note the conditions of the Work requiring correction, replacement, removal or other action necessary to comply and conform with the requirements of the Construction Contract(s) ("the Punch list"). The Architect shall, in conjunction with the District, the Project Inspector, the Construction Manager, if any, and the Contractor(s), determine the time reasonably necessary to complete the Punch list items. If mutual agreement is not reached establishing the time for the Contractor(s)' completion of the Punch list, the Architect shall make a binding good faith determination of the time for the Contractor(s)' completion of the Punch list. The Architect shall thereafter periodically review the Contractor(s)' performance and completion of the Punch list. If the Architect determines that the Contractor is not or has not diligently proceeded to complete the Punch list so that all Punch list items are completed within the time established pursuant to the foregoing, the Architect shall notify the District Representative of such determination and make recommendations for measures to secure performance of the Contractor(s) to complete all Punch list. The Architect shall implement such measures as authorized or directed by the District.

7.3. Final Completion. In conjunction with the District and upon request of the Contractor(s), the Architect shall inspect the Work of the Project to determine that Final Completion has been achieved and that

the Work conforms and complies with the requirements of the Construction Contract(s), including completion of the Punch list prepared at Substantial Completion. The Architect shall determine and certify the date of Final Completion of the Project or portions thereof.

7.4. Close-Out Documents.

7.4.1. Assembly/Transmittal of Close-Out Documents. If the District does not retain a Construction Manager for the Project, the Architect shall compile and assemble the Contractor(s)' close-out documents for delivery to the District, including without limitation, Record As-Built Drawings, Operations and Maintenance manuals, key schedules and warranties. If the District retains a Construction Manager for the Project, the Architect shall review the close-out materials assembled by the Contractor(s) and delivered to the Construction Manager for conformity to the Close-Out requirements for the Project. If the Contractor(s) fail to fully comply with its/their close-out obligations, the Architect shall make recommendations to the District for implementation of measures to secure the Contractor(s)' compliance; as requested by the District, the Architect shall take action to enforce or implement measures to secure the Contractor(s)' compliance with close-out obligations.

7.4.2. Governmental Agency Close-Out. The Architect shall prepare and submit for processing such documentation as required by governmental agencies with jurisdiction over any portion of the Project, including DSA, in connection with completion of Project construction.

7.4.3. As-Built Drawings. The District shall require the Contractor(s) to provide the District with As-Built Record Drawings indicating the location and size of all concealed, underground or imbedded construction not covered in the original Drawings, Change Orders, Supplemental Drawings or Submittals. The Contractor(s) shall be required to record such work on reproducible drawings furnished to the Contractor(s) by the District. The Contractor(s)' As-Built Record Drawings shall be delivered by the Contractor(s) to the Architect for the Architect's review and delivery to the District. The Architect's review of the Contractor(s)' As-Built Record Drawings shall be for the limited purpose of generally determining that the Contractor has complied with its obligations to prepare As-Built Record Drawings; responsibility for the accuracy and completeness of the As-Built Record Drawings is that of the Contractor(s). The Architect shall provide the Contractor(s) engaged in the mechanical, electrical, plumbing and structural portions of the Project with all Drawings Sheets of Building Backgrounds for the Contractor(s)' preparation of its As-Built Drawings.

8. **Additional Services**

8.1. Authorization for Additional Services. The services described in this Paragraph 8 are not included in the scope of Architect's Basic Services for the Project. Additional Services which are not part of the Basic Services of the Project shall be compensated for the same in accordance with the provisions of this Agreement relating to payments for District authorized Additional Services. The foregoing notwithstanding, no payment shall be made to the Architect by the District and the District shall not be liable to the Architect for any compensation to the Architect for Additional Services performed or provided by the Architect unless the District has authorized, in advance, the Architect to provide or perform Additional Services in writing prior to the Architect's commencement of such Additional Services.

8.2. Additional Services. Additional Services described below shall be provided by Architect only upon written authorization and direction issued by the District.

8.2.1. Design Document Revisions. Making significant revisions to the Drawings, Specifications or other Design Documents where such revisions are: (i) inconsistent with approval or instructions previously given by the District, including revisions necessary due to significant adjustments in the District's Program, budget or construction completion time for the Project; (ii) required by enactment of, or revisions to codes, laws, rules or regulations applicable to the Work of the Project where such enactment or revision could not have been reasonably foreseen by Architect; or (iii) due to the District's failure to render decisions in a timely manner.

8.2.2. District/Contractor Default. Services required or necessary as a result of the default or

termination of a Contractor, failure of performance by the District or a Contractor, or major defects or deficiencies in the Work of a Contractor which were not and could not have been noted by the Architect in its Site observations under Paragraph 6.2 hereof.

- 8.2.3. Design Documents Changes. Except as provided in Paragraph 6 above, preparing Drawings, Specifications or other Design Documents, along with supporting data in connection with Changes to the Work of the Project.
- 8.2.4. Contractor(s)' Product Substitutions. Providing services in connection with the evaluation(s) or request(s) by the Contractor(s) for the Project to provide substitute or alternative systems, equipment or materials to those indicated in the Design Documents and making subsequent revisions to the Design Documents and other documentation resulting therefrom.
- 8.2.5. Damaged Work. Providing consultation or other services in connection with repairs, replacements or corrections of the Work of the Project damaged or destroyed by fire or other casualty so long as no negligent or willful acts, omissions or other conduct of Architect or its employees, agents or representatives have caused or contributed to such damage or destruction to the Project.
- 8.2.6. Excessive Contractor Claims. Providing services in connection with evaluation of an extensive and excessive number of claims submitted by the Contractor(s) for the Project, except to the extent that such claims arise out of the services, Design Documents or other work product provided or performed by or through Architect hereunder.
- 8.2.7. Expert Witness. Providing services as an expert witness in connection with a public hearing, arbitration or other legal proceeding arising out of the Project, except where Architect is a party thereto, is called as a percipient witness (in which case Architect shall be entitled to witness fees and costs as allowed by law) or is found liable for damages or other relief.
- 8.2.8. Future Improvements. Services relative to future systems, facilities or equipment not included within the scope of the Project.
- 8.2.9. Existing Conditions. Services to investigate existing conditions or facilities not included within the scope of the Project or to provide measured drawings thereof.
- 8.2.10. Furniture, Furnishings, Equipment. Services in connection with the District's selection, procurement or installation of furniture, furnishing or equipment not included within the scope of the Construction Contract(s) for the Project or identified as part of the Architect's scope of Basic Services for the Project.
- 8.2.11. Financial/Special Studies. Providing financial feasibility or other special study in connection with the Project.
- 8.2.12. Special Surveys. Providing planning surveys or special surveys for Site evaluations, comparative studies or assessment of environmental conditions, to the extent not included in the scope of Basic Services for the Project.
- 8.2.13. Verification of District Provided Information. Providing services to verify the accuracy of drawings or other information provided by the District relating to existing conditions affecting the Project.
- 8.2.14. Operational/Maintenance Cost Analysis. Analysis of ownership, operational or maintenance costs of the Project or the components thereof to the District.
- 8.2.15. Additional Design Consultants. Providing services of Design Consultants for portions of the Project and/or design disciplines not identified in Paragraph 1.5.3 of this Agreement.

9. Architect Responsibilities.

- 9.1. Existing Conditions Investigation. The Architect and its Design Consultants for the Project shall inspect the Site of the Project to ascertain existing conditions, facilities or other improvements on or about the Site of the Project as necessary to produce complete and accurate Design Documents for the Project. If the Project involves any existing improvements, the Architect shall review any materials provided to the Architect by or through the District relating to the as built and existing condition of the improvements on or about the Site. The Architect shall promptly notify the District in writing of discrepancies encountered between the existing conditions observed by the Architect and the materials provided by or through the District.
- 9.2. Design Alternatives. The Architect shall prepare and develop Design Documents for the Project

incorporating Design Alternatives which set forth additional or deleted Work of the Project which can be added to or deleted from the scope of the Project without significant revisions to the Design Documents for the Project and without significant diminution to the intended use or occupancy of the Project. Design Alternatives developed by the Architect shall be: (i) suitable for bidding by potential Contractors for the Project as Alternate Bid Items and (ii) subject to review and acceptance by the District.

- 9.3. Conformity to District Standards. Design Documents prepared by or through the Architect for the Project shall conform to District standards for materials, equipment and/or workmanship in effect as of the completion of the Construction Documents Phase of the Basic Services for the Project. Modifications of the Design Documents to conform to District materials, equipment or workmanship standards shall be without adjustment of the Contract Price for the Project. District will provide District Standards prior to the completion of the Design Development.

10. District Responsibilities.

- 10.1. Information. The District shall provide full information regarding the Project, including the District's objectives, general description of the scope, schedule requirements, Project Construction Budget, and other constraints and requirements which may affect the Project. The Architect shall be responsible for review of all materials, data and other information provided by or through the District relating to the Site, including without limitation those relating to soils investigation/geotechnical conditions. If in such review, the Architect determines that the materials, data or other information provided by or through the District is incomplete, inaccurate or otherwise insufficient for the Architect's use in preparation of the Design Documents for the Project or to perform the Architect's obligations under this Agreement, it is the affirmative obligation of the Architect to promptly notify the District Representative in writing of such determination along with a detailed description of the additional, different materials, data or other information necessary for the Architect's preparation of Design Documents or to perform its other obligations under this Agreement. If the Architect does not notify the District Representative pursuant to the preceding sentence, the Architect shall be deemed to have accepted all materials, data or other information provided by or through the District relating to the Site as being complete, accurate and sufficient for the Architect's preparation of Design Documents and performance of the Architect's other obligations under this Agreement.
- 10.2. District Representative. The District shall designate a representative to act on the District's behalf with respect to the Project and who shall be authorized to render decisions on behalf of the District and to carry out the District's responsibilities under this Agreement, all of which shall be discharged or performed in a manner so as to avoid unreasonable delay in the orderly and sequential progress of design and construction of the Project and Architect's services hereunder. The District Representative is _____.
- 10.3. District Consultants. Except for the Design Consultants retained by the Architect, the District shall furnish all legal, accounting, insurance and other consulting services as may be necessary for the Project.
- 10.4. Test and Inspections. The District shall furnish or otherwise retain inspection or testing services in connection with construction of the Project as required by applicable code, regulation, ordinance or the terms of the Construction Contract. The District shall provide, if required by applicable code, regulation or rule or by conditions encountered, tests or inspections for hazardous or toxic materials, soils and seismic investigations and Geotechnical Engineering.
- 10.5. District Notice of Non-Conformity. The District will give prompt written notice to the Architect if the District becomes aware of any fault, failure or neglect of Architect or deficiencies in the services provided by Architect hereunder; provided that the failure or delay by District in giving such written notice shall not constitute a waiver of any right or remedy of the District arising out of such fault, failure or neglect of the Architect.

11. Insurance and Indemnity

- 11.1. Architect Insurance. At all times while providing or performing services under this Agreement, the Architect and its Design Consultants shall obtain and maintain the policies of insurance described in this Paragraph 9. The minimum coverage amounts of each policy of insurance to be obtained and maintained by the Architect and its Design Consultants while providing or performing services in connection with the Project shall be as set forth in this Agreement. Policies of insurance required of the Architect and its Design Consultants will be accepted by the District only if the insurer(s) are: (i) A.M. Best rated A- or better; (ii) A.M. Best Financial Size Category VII or higher; and (iii) authorized under California law to transact business in the State of California and authorized to issue insurance policies in the State of California.
- 11.2. Workers Compensation and Employers Liability Insurance. Architect shall purchase and maintain Workers' Compensation Insurance covering claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts may be liable. Architect shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Architect. The Employer's Liability Insurance required of Architect hereunder may be obtained by Architect as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance policy.
- 11.3. Commercial General Liability and Property Insurance. Architect shall purchase and maintain Commercial General Liability and Property Insurance as will protect Architect from the types of claims set forth below which may arise out of or result from Architect's services under this Agreement and for which Architect may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than Architect's employees; (ii) claims for damages insured by usual personal injury liability coverage; (iii) claims for damages, other than to the Work of the Project itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and (v) contractual liability insurance applicable to Architect's obligations under this Agreement. District shall be an additional insured to Architect's commercial general liability insurance policy.
- 11.4. Professional Liability Insurance. Architect will procure and maintain professional liability insurance covering liabilities of the Architect arising out of the performance of services under this Agreement.
- 11.5. Design Consultants' Insurance. Each Design Consultant providing or performing a portion of the services or obligations of the Architect under this Agreement shall obtain and maintain policies of insurance for Workers Compensation, Employers Liability, Commercial General Liability/Property Damage and Professional Liability. Each policy of insurance to be obtained by each of the Architect's Design Consultants shall conform to the standards or requirements set forth in Paragraphs 9.1-9.4, above.
- 11.6. Policy Endorsements; Evidence of Insurance. The Architect shall deliver to the District Certificates of Insurance evidencing each of the policies of insurance in the coverage amounts required hereunder. All policies of insurance required hereunder shall be issued by insurer(s) admitted to issue insurance by the State of California and to the reasonable satisfaction of the District. Coverages under each policy of insurance required hereunder, whether by endorsement or otherwise, shall provide that such policy will not be modified or canceled without at least thirty (30) days advance written notice to the District.
- 11.7. Architect's Insurance Minimum Coverage Amounts. Minimum coverage amounts for policies of insurance to be obtained and maintained by the Architect and each Design Consultant are:

Workers Compensation

In accordance with applicable law

Employers Liability	\$1,000,000
Commercial General Liability (including Bodily Injury or Death and Property Damage)	
Per Occurrence	\$1,000,000
Aggregate	\$2,000,000
Automobile Liability - Bodily Injury or Death	
Per Occurrence	\$1,000,000
Aggregate	\$2,000,000
Professional Liability	
Per Claim	\$1,000,000
Aggregate	\$2,000,000

11.8. Indemnity.

11.8.1. Architect Indemnity. To the fullest extent permitted by law, the Architect shall indemnify, defend and hold harmless the District and its employees, officers, Board of Trustees, Trustees, agents and representatives (collectively "the Indemnified Parties") from any and all claims, actions, demands, losses, responsibilities or liabilities for: (i) injury or death of Architect's employees arising out of this Agreement; (ii) injury or death of persons, damage to property, or (iii) other costs or charges arising out of or attributable to the negligent or willful acts, omissions, errors and/or other conduct of Architect, its Design Consultants or the employees, agents and representatives of Architect or any of its Design Consultants in performing or providing any of the obligations, services or other work product contemplated under this Agreement. The foregoing shall include without limitation, reasonable attorneys fees and costs incurred by the Indemnified Parties. The Architect's obligations hereunder shall survive the Architect's completion of services and obligations hereunder or the earlier termination of this Agreement until any such claim, demand, loss, responsibility or liability covered by the provisions hereof is barred by the applicable Statute of Limitations.

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

12. Architect Compensation

12.1. Contract Price. The District shall pay the Architect the lump sum, fixed price Contract Price for completion of the Basic Services the sum of _____ Dollars (\$xxx,xxx.xx). The Contract Price established pursuant to the foregoing shall not be subject to adjustment unless: (i) the District authorizes or direct the completion of Additional Services which are not required as a result of any fault, neglect or failure of the Architect or any Design Consultant to the Architect; (ii) the District authorizes or direct material changes to the scope of the Project during the Preliminary Plans or the Working Drawings Phases of this Agreement which materially increase the Project Construction Budget; or (iii) there are Construction Phase Changes authorized by the District, in which case adjustment of the Contract Price on account of such District directed changes shall be pursuant to Paragraph 11.5 of this Agreement.

12.2. All-Inclusive Project Contract Price. The Contract Price for the Project includes the Architect's fee, Design Consultants' fees, personnel expense of the Architect and Design Consultants, inclusive of all benefits and burdens, travel for the personnel of the Architect and Design Consultants to and from their respective offices and the District and the Site of the Project as well as travel within the **counties of Santa Cruz, Monterey, and San Benito**, insurance and all other administrative or overhead costs associated with or arising out of performance of the Basic Services designated in this Agreement.

12.3. Construction Phase Changes; Adjustment of Contract Price. The Contract Price for the Basic Services for the Project is subject to adjustment if there are Changes authorized by the District during the Construction Phase of the Project which are not the result of errors, omissions or other defects in

the Design Documents or failures of the Architect or Design Consultants to timely and completely perform the Basic Services for the Project. If services of the Architect or Design Consultants are required in connection with Changes during the Construction Phase of the Project which do not result from errors, omissions or other defects in the Design Documents or failures of the Architect or Design Consultants to timely and completely perform the Basic Services for the Project, the Contract Price for the Project will be adjusted by the lesser of: (i) eight percent (8%) of the Construction Cost of a Change; or (ii) the time of the personnel of the Architect and/or the Architect's Design Consultants reasonably necessary to complete design services relating to the Change, multiplied by the applicable hourly rate for such personnel set forth in Exhibit A, the Rate Schedule attached hereto.. If a Change during the Construction Phase of the Project is the result of errors, omissions or other defects in the Design Documents or failures of the Architect or the Design Consultants to timely and completely perform the Basic Services, services required of the Architect or the Design Consultants in connection with such Change shall be completed without adjustment of the Contract Price due the Architect for the Project. In such event, the Architect shall remain liable to the District for all other expenses, charges and other costs arising out of or related to such errors, omissions or failure to timely or completely perform the Basic Services for the Project.

12.4. No Reimbursable Expenses. The Contract Price for Architect's Basic Services for the Project includes all costs and expenses incurred by Architect to perform the Basic Services or authorized Additional Services including without limitation expenses for telephone, postage, delivery, office supplies, reproduction of plans and prints, photographic film and development and travel to and from the offices of the Architect and Design Consultants to the Site of the Project and the District's Administrative offices. Unless expressly authorized in advance by the District, no payment will be made by the District for expenses or costs of any kind, type or nature.

12.5. Additional Services. If the District authorizes or directs the Architect to perform or provide Additional Services described generally in Paragraph 8 of this Agreement in connection with the Project, Architect shall be compensated for its personnel providing such Additional Services in accordance with the personnel rate schedule attached to this Agreement as Exhibit A. Compensation to the Architect for Additional Services authorized by the District shall be based upon the lesser of: (i) the actual time of the personnel of the Architect and/or the Architect's Design Consultants multiplied by the applicable hourly rate set forth in Exhibit A hereto; or (ii) the time of personnel reasonably determined by the District to be reasonably necessary to complete the District authorized Additional Services, multiplied by the applicable hourly rate set forth in Exhibit A hereto.

12.6. District Payments.

12.6.1. Allocation of Contract Price. The District's payment of the Contract Price for Basic Services for the Project shall be allocated amongst the various Phases of the Basic Services for the Project as follows:

Pre-Design	Five Percent (5%)
Preliminary Plans	Twenty Percent (20%)
Working Drawings	Thirty-Five Percent (35%)
Bidding	Five Percent (5%)
Construction	Thirty Percent (30%)
Post-Construction	Five Percent (5%)

The Contract Price for each Phase of the Basic Services shall be limited as set forth above; notwithstanding exhaustion of the portion of the Contract Price allocated for a Phase of the Basic Services, the Architect shall continue to complete such Phase of the Basic Services without adjustment of the Contract Price or re-allocation of the Contract Price.

12.6.2. Architect Billings to District. During the course of providing Basic Services for the Project, Architect shall submit monthly billing invoices to the District for payment of the Project Contract Price for Basic Services and authorized Additional Services performed in the immediately prior

month. Architect's billings shall be in such form and format as may be reasonably requested by District.

12.6.3. District Payments to Architect. Within thirty (30) days of receipt of Architect's billing invoices, District will make payment to Architect of undisputed amounts of the Project Contract Price due for Basic Services and authorized Additional Services for the Project. No deductions shall be made or withheld from payments due Architect hereunder on account of any penalty, assessment, liquidated damages or other amounts withheld by the District from payment to the Contractor(s) engaged by the District for construction of the Project. The District may, however, withhold or deduct from amounts otherwise due Architect hereunder if Architect shall fail to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after Architect has fully cured such failure of performance, less costs, damages or losses sustained by the District resulting therefrom. Notwithstanding any provision of this Agreement to the contrary, if the District shall, in good faith, dispute the amount due Architect under any billing invoice rendered by Architect under this Agreement, pursuant to Civil Code §3320(a), the District may withhold from payment to the Architect an amount not to exceed one hundred and fifty percent (150%) of the disputed amount.

12.6.4. Records.

12.6.4.1. Architect Accounting Records. Architect shall maintain complete and accurate records of its personnel engaged in performing any service hereunder, personnel expenses, Reimbursable Expenses and other direct costs incurred in connection with performance under this Agreement. Records shall be maintained on the basis of generally accepted accounting principles applied consistently and shall be available for inspection or reproduction by the District upon reasonable request at any time during Architect's performance hereunder. Following completion of the Project and the Agreement or the termination of this Agreement, Architect shall maintain accounting records for five (5) years or such longer period required by applicable law, code, rule or regulation, during which time such records shall be available to District or as otherwise required by law, code, rule or regulation for inspection or reproduction.

12.6.4.2. Project Records. Records, documents and other materials generated or received by Architect in the course of performing services hereunder may, following completion of the Project or termination of this Agreement, be retained by the District in its sole discretion.

13. **Term; Time.**

13.1. Term. The Term of this Agreement shall commence upon the District and the Architect each executing a counterpart copy hereof, delivery of an executed counterpart copy hereof to the other and ratification of this Agreement by the District's Board of Trustees. The Term shall expire thirty (30) days after Final Completion of Project construction.

13.2. Time. All of the Basic Services and authorized Additional Services set forth in this Agreement for the Project shall be completed by the Architect in a prompt and diligent manner as is consistent with professional skill and care. The Architect's completion of Basic Services for the Project is set forth below. The Architect's performance and completion of Basic Services shall be in accordance with such schedule. The Architect shall be liable to the District for all costs, losses, damages or other liabilities arising out of the failure of the Architect to complete Basic Services for the Project in accordance with an agreed upon schedule, provided that the Architect's liabilities hereunder shall not extend to costs, losses, damages or other liabilities caused by factors beyond the reasonable control of the Architect.

13.3. Basic Services Schedule. Basic Services under this Agreement shall be completed by the Architect in accordance with the following:

Basic Services	Commencement Date	Completion Date
Pre-Design		
Preliminary Plans		
Working Drawings		
DSA Approval of Design Documents		
Project Bidding		
Project Construction		
Project Close-Out		

14. Termination; Suspension

14.1. Termination for Default. Either the District or Architect may terminate this Agreement upon seven (7) days advance written notice to the other if there is a default by the other Party in its performance of a material obligation hereunder and such default in performance is not caused by the Party initiating the termination. Such termination shall be deemed effective the seventh (7th) day following the date of the written termination notice, unless during such seven (7) day period, the Party receiving the written termination notice shall commence to cure it default(s) and diligently thereafter prosecute such cure to completion. In addition to the District's right to terminate this Agreement pursuant to the foregoing, the District may terminate this Agreement upon written notice to Architect if: (i) Architect becomes bankrupt or insolvent, which shall include without limitation, a general assignment for the benefit of creditors or the filing by Architect or a third party of a petition to reorganize debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for Architect or any of Architect's property on account of Architect's insolvency; or (ii) if Architect disregards applicable laws, codes, ordinances, rules or regulations. If District exercises the right of termination hereunder, the Contract Price due the Architect for the Project as of the effective date of termination, if any, shall be based upon Basic Services and authorized Additional Services incurred or provided prior the effective date of the District's termination of this Agreement, reduced by: (i) the District's prior payments of the Contract Price; and (ii) losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or the cause(s) for termination of this Agreement. Payment of the amount due the Architect, if any, shall be made by District only after completion of the Post-Construction Phase of the Project. The Architect shall remain responsible and liable to District all losses, damages or other costs sustained by District arising out of termination pursuant to the foregoing or otherwise arising out of Architect's default hereunder, to the extent that such losses, damages or other costs exceed any amount due Architect hereunder for Basic Services and authorized Additional Services.

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

14.3. District's Termination for Convenience. The District may, at any time, upon seven (7) days advance written notice to Architect terminate this Agreement, in whole or in part, for the District's convenience and without fault, neglect or default on the part of Architect. In such event, the Agreement, or such portion thereof as designated by the District, shall be deemed terminated seven (7) days after the date of the District's written notice to Architect or such other time as the District and Architect may mutually agree upon. In such event, the District shall make payment of the Contract Price to Architect for Basic

Services and authorized Additional Services provided through the date of termination plus actual reasonable costs incurred by Architect directly attributable to such termination. Except for the foregoing, no other compensation shall be due the Architect from the District.

- 14.4. Architect Suspension of Services. If the District shall fail to make payment of the Contract Price for the Project when due Architect hereunder, Architect may, upon seven (7) days advance written notice to the District, suspend further performance of services relating to such Project hereunder until payment in full is received. In such event, Architect shall have no liability for any delays or additional costs of construction of the Project due to, or arising out of, such suspension.
- 14.5. Architect Obligations Upon Termination. Upon the District's exercise of the right of termination under Paragraph 12.1 or Paragraph 12.3 of this Agreement, the Architect shall take action as directed by the District relative to on-going preparation of the Design Documents or construction of the Project. If requested by the District, the Architect shall within ten (10) days of such request, assemble and deliver to the District all work product, instruments of service and other items of a tangible nature (whether in the form of documents, drawings, samples or electronic files) prepared by or on behalf of the Architect under this Agreement. The Architect shall deliver the originals of all work product, instruments of service and other items of a tangible nature requested by the District pursuant to the preceding sentence; provided, however, that the Architect may, at its sole cost and expense, make reproductions of the originals delivered to the District.

15. Miscellaneous

- 15.1. Governing Law; Interpretation. This Agreement shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against the District or Architect.
- 15.2. Marginal Headings; Captions. Marginal Headings; Captions. The titles of the various Paragraphs of the Agreement are for convenience of reference only and are not intended to and shall in no way enlarge or diminish the rights or obligations of Architect and District hereunder.
- 15.3. Severability. If any provision of this Agreement is deemed illegal, invalid unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted herefrom, but all remaining provisions will remain and continue in full force and effect.
- 15.4. Cumulative Rights; No Waiver. Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by District or Architect hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default by the other.
- 15.5. Successors; Non-Assignability. This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors of Architect and the District. Neither Architect nor District shall assign rights or obligations hereunder without the prior consent of the other, which consent may be withheld or granted in sole discretion of the Party requested to grant such consent.
- 15.6. Authority. The individual(s) executing this Agreement on behalf of Architect warrant and represent that she/he is authorized to execute this Agreement and bind Architect to all terms hereof. The individual(s) executing this Agreement on behalf of District warrant and represent that she/he is authorized to execute this Agreement and subject to approval and ratification by the District's Board of Trustees, to bind District to all terms hereof and authority granted to enter into this Agreement.
- 15.7. Notices. Notices under this Agreement shall be addressed and delivered as follows:

If to District:
Mr. Michael Robins

Director of Purchasing, Contracts & Risk Management
 Cabrillo Community College District
 6500 Soquel Drive, Bldg. 2030
 Aptos, CA 95003

If to Architect:

Project Architect
 (name of firm, address)

15.8. Disputes.

- 15.8.1. Continuation of Architect Services. Except in the event of the District's failure to make undisputed payment of the Contract Price due Architect for the Project, notwithstanding any disputes between District and Architect hereunder or in connection with the Project, Architect and District shall each continue to perform their respective obligations hereunder; including the obligation of the Architect to continue to provide and perform services hereunder pending a subsequent resolution of such disputes.
- 15.8.2. Mandatory Mediation. All claims, disputes and other matters in controversy between the Architect and the District arising out of or pertaining to this Agreement shall be submitted for resolution by non-binding mediation conducted under the auspices of the American Arbitration Association ("AAA") and the Construction Mediation Rules of the AAA in effect at the time that a Demand For Mediation is filed. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the District or the Architect commencing arbitration proceedings pursuant to Paragraph 14.8.3 below.
- 15.8.3. Arbitration. All claims, disputes or other matters in controversy between Architect and District arising out of or pertaining to this Agreement which are not fully resolved through the mandatory mediation set forth in Paragraph 14.8.2 above shall be settled and resolved by binding arbitration conducted under the auspices of the AAA Construction Industry Arbitration Rules in effect at the time of the filing of a Demand for Arbitration, as modified herein. The award rendered by the Arbitrator(s) shall be final and binding upon the District and the Contractor and shall be supported by law and substantial evidence pursuant to California Code of Civil Procedure §1296. Any written arbitration award that does not include findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296 and Rule R-43 of the AAA Construction Industry Arbitration Rules shall be invalid and unenforceable. The District and Contractor hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§1286.4 and 1296, vacate the award if, after review of the award, the Court determines either that the award is not supported by substantial evidence or that it is based on an error of law. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference. If any claim or dispute is asserted by the Architect, the Construction Manager if any, the Contractor or the District relating to the Project and arising in whole or in part out of this Agreement, the services provided by or through the Architect hereunder or the Instruments of Service prepared by or through the Architect, Architect and District agree that any arbitration proceedings initiated between Architect and District hereunder shall be consolidated with any arbitration proceedings initiated in connection with such other claim or dispute with the Architect or the Contractor. Any arbitration hereunder shall be conducted in the AAA Regional Office closest to the Site.
- 15.8.4. Compliance with Government Code §900 et seq. The foregoing provisions relating to dispute resolution procedures notwithstanding, neither this Agreement nor such provisions shall be deemed to waive, limit or modify any requirements under Government Code §900 et seq. relating to the Consultant's submission of claims to the District as a express condition precedent and prerequisite to filing a Demand for Arbitration, which shall be deemed a "claim" for money or damages under Government Code §900 et seq. The Consultant's strict compliance with all

applicable provisions of Government Code §900 et seq. in connection with any claim, dispute or other disagreement arising hereunder shall be an express condition precedent to the Consultant's initiation of the binding arbitration procedures under Paragraph 14.8.3.

15.8.5. Limitation on Arbitration. Notwithstanding any other provision of this Article, the Superior Court for the State of California for the County of Santa Cruz, shall have sole and exclusive jurisdiction, and an arbitrator shall have no authority, to hear and/or determine: (i) a challenge to the institution or maintenance of a proceeding in arbitration of a claim on the grounds that the claim is barred by the applicable statute of limitations, (ii) the claim is barred by a provision of the California Tort Claims Act, (iii) claimant has failed to satisfy any and all conditions precedent to arbitration, (iv) the right to compel arbitration has been waived by the petitioner, (v) grounds exist for the revocation of the arbitration agreement, and/or (vi) there is the prospect that a ruling in arbitration would conflict with a ruling in a pending proceeding regarding the Project on a common issue of law or fact.

15.9. Architect Independent Contractor Status. In providing services hereunder, the Architect shall be an independent contractor to the District. The express terms hereof set forth the limited extent to which Architect is authorized to act on behalf of the District in its independent contractor capacity. Architect shall be responsible to the District and third parties for the consequences of Architect's actions or conduct which exceeds the express limited scope of Architect's authority to act on behalf of the District set forth herein.

15.10. Definitions.

15.10.1. Construction Contract. The Contract for construction of the Project awarded by the District to the Contractor for the construction of the Project. If the Project is constructed by a general contractor under contract to the District, references to the Construction Contract in this Agreement shall be deemed references to such general contractor's contract with the District for the Project. If the Project is constructed by multiple trade contractors, each under contract to the District, references to the Construction Contract in this Agreement for such Project shall be such contracts individually or collectively as required by context in which such term is used.

15.10.2. Contractor. The individual or entity awarded the Construction Contract by the District for the Project. If the Project is constructed by a general contractor, references to the contractor in this Agreement for the Project shall be to such general contractor. If the Project is constructed by multiple trade contractors, references to the Contractor in the Agreement for the Project shall be to such multiple trade contractors, individually or collectively, as required by the context in which such term is used.

15.10.3. Design Documents. The Drawings, Specifications, calculations and other work product prepared by the Architect or its Design Consultants for the Project or any portion thereof. Design Documents include Drawings, Specifications and other documents prepared by the Architect or a Design Consultant for the Project.

15.10.4. Design Consultant(s). Design Consultant(s) are individuals or entities retained by Architect to provide or perform a portion of the Architect's services or work product hereunder, including any portion of the Design Documents. Design Consultants shall be duly licensed as required by law, rule or regulation and shall be qualified to perform or provide the portion of Architect's services or work product assigned by having previously provided design consulting services for California public school project design and construction. The District shall have the right to reasonably disapprove a Design Consultant. Architect shall be responsible for the adequacy, timeliness and quality of services or work product provided or performed by Design Consultants; Architect shall be liable to District for, and shall defend, indemnify and hold harmless District and its Board of Trustees, employees, officers, agents and representatives from and against, all losses, costs, damages, liabilities, actions or demands arising out of the services or work product provided or performed by Design Consultants.

15.10.5. Submittals. Shop Drawings, Product Data or Samples prepared or provided by the Contractor or its Subcontractor(s) or supplier(s) illustrating some portion of the Work of the Project.

15.10.6. Site. The physical area for construction and related activities of the Project.

- 15.10.7. Drawings and Specifications. The Drawings are the graphic and pictorial portions of the Design Documents showing generally the location, design and dimensions of the Work of the Project, including without limitation, plans, elevations, sections, details, schedules and diagrams. Specifications are the portion of the Design Documents which consist of written requirements for materials, equipment, construction systems, standards, criteria and workmanship for the Work and related services.
- 15.10.8. Work. All of the construction and other services required by the terms of the Construction Contract, including all labor, materials, equipment and other services required of the Contractor under the terms of the Construction Contract to complete the Project.
- 15.10.9. Project Construction Budget. The Project Construction Budget refers to the total costs allocated by the District for construction of the Project, exclusive of the Contract Price under this Agreement, site acquisition costs and the costs of furniture, furnishing and/or equipment for the Project. The Project Construction Budget established by the District may be modified by the District upon notice to the Architect. As used in this Agreement, the term "Project Construction Budget" refers to the then current amount allocated for construction of the Project as modified from time-to-time.
- 15.10.10. Construction Cost Estimate. Construction Cost Estimates are estimates prepared by or on behalf of the Architect of the current costs of labor, materials, equipment and services plus a reasonable allowance for the Contractor's profit, overhead and administrative cost as necessary to complete construction of the Project in accordance with the Design Documents. Construction Cost Estimates shall include a reasonable allowance for contingencies relating to market conditions at the time of solicitation of Contractor bids for the Work of the Project and Changes in the Work during construction of the Project; the allowance for contingency costs shall be consistent with the contingency established by the District in the Project Construction Budget, if any.
- 15.10.11. Construction Manager. The District's Construction Manager is the individual or entity retained by the District as an independent contractor to provide certain management, planning, and other services and/or work product in connection with the design and/or construction of the Project. Services, functions and responsibilities of the Construction Manager shall be provided in conjunction with and complementary to the Architect's services and work product under this Agreement. If the District has not retained or designated a Construction Manager as of the issuance of a Project, without adjustment of the Contract Price, the District reserves the right to subsequently retain a Construction Manager to provide services and/or work product for the Project as generally described herein.
- 15.10.12. Preliminary Construction Cost Estimate. Preliminary Construction Cost Estimates are estimates prepared by or on the behalf of the Architect of the anticipated costs of labor, materials, equipment and services plus a reasonable allowance for the Contractor's profit, overhead and administrative cost as necessary to complete construction of the Project in accordance with the Design Documents. Construction Cost Estimates shall include a reasonable allowance for contingencies relating to market conditions at the time of solicitation of Prime Contractors bids for the Work of the Project and Changes in the Work during construction of the Project; the allowance for contingency costs shall be consistent with the contingency established by the District in the Project Construction Budget, if any.
- 15.11. Confidentiality. Unless disclosure is required by applicable law or valid court order, the Architect and its Design Consultants shall maintain the confidentiality of all information provided by or through the District to the Architect or its Design Consultants. Neither the Architect nor its Design Consultants shall disclose or otherwise disseminate any information conveyed by or through the District to the Architect or its Design Consultants relating to this Agreement or the Project; the Architect shall incorporate the foregoing limitations into its agreements with Design Consultants relating to the Project.
- 15.12. Project Records. At completion of the project the Consultant shall deliver a final copy of all construction documents including drawings and specifications in paper format to the District for their use. In addition, Consultant shall deliver a final copy of all CAD drawing files in electronic format for

the District's use.

15.13. District Provided Facilities/Services for Consultant. The Consultant shall, without adjustment of the Contract Price hereunder, provide or furnish all facilities, services and other items necessary for completion of the Consultant Services and authorized Additional Consultant Services.

15.14. Use and Ownership of Design Documents.

15.14.1. Ownership. Subject to the provisions hereof, all Drawings, Specifications, estimates, Instruments of Service and other tangible items ("Project Documents") prepared by or through the Architect for the Project shall be and remain the property of the District. The Project Documents shall be and remain the property of the District regardless of the format on which said items are prepared or stored, including without limitation paper copies, original or reproducible transparencies, AutoCAD R-2002 files (or similar computer-aided drafting of design formats), or other types of computerized data. The District specifically maintains ownership of the design of each Project and the design of any buildings or other improvements which are a part thereof, notwithstanding creation/preparation of such design by or through the Architect, and such design may not be re-used by the Architect or its employees or Design Consultants without the specific prior written consent of the District which may be granted, denied or conditioned in the sole exclusive discretion of the District. Subject to the District's ownership of tangible Project Documents, the copyright and other intellectual property rights in all Project Documents shall remain with the Architect.

15.14.2. Right to Use. The Architect grants to the District a perpetual license to use and/or reuse all or any part of the Project Documents at the District's sole discretion with no additional compensation to the Architect for the purposes of: (a) construction of all or part of the Project; (b) the repair, renovation, modernization, replacement, reconstruction or expansion of the Project; or (c) the construction of another project by or for the District for the District's ownership and/or use. The District is not bound by this Agreement to employ the services of the Architect in the event any of the Project Documents are used for such purposes. The District shall be authorized to use or reuse the Project Documents for these purposes without liability to the Architect, its Design Consultants or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall be construed or interpreted to waive or limit the District's right to recover for latent defects or for errors or omissions of the Architect; provided, however, that any use or reuse by the District of the Project Documents on any project other than the Project for which the Project Documents were prepared without employing the services of the Architect shall be at the District's own risk. If the District uses or reuses the Project Documents on any project other than the Project for which the Project Documents were prepared for, the District shall remove the Architect's seal from the Project Documents and indemnify and hold harmless the Architect from claims arising out of the use or reuse of the Project Documents on such other project.

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

15.14.4. Architect Right to Grant License. The Architect represents and warrants that the Architect has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents prepared by or through the Architect under this Agreement.

15.15. Time. Time is of the essence in the performance and completion of obligations under this Agreement.

15.16. Entire Agreement. The RFP, RFP Response and Exhibit A (Personnel Rate Schedule) constitute the entire agreement and understanding between the District and the Architect concerning the subject

matter hereof, replacing and superseding all prior agreements or negotiations, whether written or verbal. No term or condition of this Agreement shall be modified or amended except by writing executed by the District and the Architect.

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

**“District”
Cabrillo Community
College District**

“Architect”

By: _____
Michel Robins
Director of Purchasing,
Contracts & Risk Management

By: _____
Title: _____

**ATTACHMENT B:
STATEMENT OF QUALIFICATIONS**

A Statement of Qualifications must be submitted with the Proposal.

Contractor's Organization

Form of entity of the Contractor, i.e., corporation, partnership, etc.

1.1 If a corporation, state the following:

State of incorporation: _____
Date of incorporation: _____
President/Chief Executive Officer: _____
Secretary: _____
Treasurer/Chief Financial Officer: _____

1.2 If a partnership, state the following:

Type of partnership, i.e., general partnership, limited partnership: _____

Names of all general partners, if any of the general partners are not natural persons, provide the information for each such general partner requested by Paragraphs 1.1, 1.2 and 1.4 as appropriate:

1.3 If a proprietorship, state the names of all proprietors:

1.4 If a joint venture, state the following:

Date of organization: .

Names of all joint venture members. For each member of the joint venture, provide the information requested by Paragraphs 1.1, 1.2 and 1.3 for each joint venture member, as applicable:

Number of years your organization has been in business as a contractor: _____

Number of years your organization has conducted business under its present name: _____

If your organization has conducted business under a name or name style different than your organization's present name, identify all prior name(s) or name style(s):

Your organization's Federal Tax Identification Number: _____

Licensing

California Contractors License: _____
Expiration Date: _____
Responsible Managing Employee/Officer: _____
License Classification(s): _____

Has a claim or other demand ever been made against your organization’s California Contractors License Bond?
_____ Yes _____ No

If yes, on a separate attachment, state the following: (i) the name, address and telephone number of each person or entity making claim or demand; (ii) the date of each claim or demand; (iii) the circumstances giving rise to each such claim or demand; and (iv) the disposition of each such claim or demand.

Has a complaint ever been filed against your organization’s California Contractors License with the California Contractors State License Board?
_____ Yes _____ No

If yes, on a separate attachment, state the following for each complaint: (i) the name, address and telephone number of each person or entity making the complaint; (ii) the date of each complaint; (iii) the circumstances giving rise to each such complaint; and (iv) the disposition of each such complaint, including without limitation, any disciplinary or other action imposed or taken by the California Contractors State License Board as a result of any such complaint.

Experience

Categories of work (other than management/supervision) your organization typically performs with your own forces:

On a separate attachment, list all construction projects completed by your organization in the past two (2) years and for each project identified, state:

- 1.A general description of the work performed by your organization on the project.
- 2.The dollar value of the work performed or to be performed by your organization.
- 3.The project owner’s name, name of the project owner’s representative and the address and telephone number of the owner and the project owner’s representative.
- 4.The project architect’s name, address, telephone number and contact person.

On a separate attachment, list all construction projects your organization has in progress and for each project listed, state:

- 1.A general description of the work performed by your organization on the project.
- 2.The dollar value of the work performed or to be performed by your organization;
- 3.The project owner’s name, name of the project owner’s representative and the address and telephone number of the project owner and the project owner’s representative.
- 4.The project architect’s name, address, telephone number and contact person.
- 5.Percent presently complete.
- 6.The current scheduled completion date.

Performance History

References (Include name, contact person, telephone/fax and address for each reference provided):

Trade References (three (3) minimum):

Bank References:

Public Works Inspectors of Record (K-12 or community college project):

Owner references, three (3) minimum, preferably California K-12 school districts and/or California community college districts:

Claims and Lawsuits

(if you answer yes to any of the following, you must attach details).

Have any lawsuits or other administrative, legal, arbitration or other proceedings, ever been brought or commenced against your organization or any of its principals, officers or equity owners in connection with any construction contract or construction project?

Yes No

If so, describe the circumstances, the amount demanded or other relief demand and the disposition of each such lawsuit or other proceeding.

Has your organization ever filed a lawsuit or commenced other administrative, legal or other proceedings in connection with any construction contract or construction project?

Yes No

If so, describe the circumstances, the amount demanded or other relief demand and the disposition of each such lawsuit or other proceeding.

Are there any judgment, orders, decrees or arbitration awards pending, outstanding against your organization or any of the officers, directors, employees or principals of your organization?

Yes No

If so, describe each such judgment, order, decree or arbitration award and the present status of the satisfaction or discharge thereof.

Has your organization ever refused to sign a construction contract awarded to it?

Yes No

If so, on a separate attachment, state the following: (i) describe each such contract; (ii) the owner's name, address, telephone number and contact person; and (iii) the circumstances of your refusal to sign such contract.

Has your organization ever failed to complete a construction contract?

Yes No

If so, on a separate attachment, state the following: (i) describe each such contract; (ii) the owner's name, address, telephone number and contact person; and (iii) the circumstances of your failure to complete such contract.

Has your organization ever been declared in default of a construction contract?

Yes No

If so, on a separate attachment, state the following: (i) describe each such contract; (ii) the owner's name, address, telephone number and contact person; and (iii) the circumstances of each such declaration of default.

Has any construction contract to which your organization is a party been terminated for the convenience of the project owner?

Yes No

If so, identify the project and project owner along with a description of the circumstances under which the convenience termination occurred.

Has a claim or other demand ever been asserted against any Bid Bond, Performance Bond, or Payment Bond posted by your organization in connection with any construction contract or your submittal of a bid proposal for a construction contract?

Yes No

If so, on a separate attachment, state the following: (i) the name, address, telephone number and contact person for each claimant; (ii) the date upon which each such demand or claim was made; and (iii) the disposition of each such demand or claim.

Accuracy and Authority

The undersigned is duly authorized to execute this Statement of Qualifications under penalty of perjury on behalf of the Firm. The undersigned warrants and represents that he/she has personal knowledge of each of the responses to this Statement of Qualifications and/or that he/she has conducted all necessary and appropriate inquiries to determine the truth, completeness and accuracy of responses to this Statement of Qualifications.

The undersigned declares and certifies that the responses to this Statement of Qualifications are complete and accurate; there are no omissions of material fact or information that render any response to be false or misleading and there are no misstatements of fact in any of the responses.

Executed this ____ day of _____ 20 ____ at _____
(City and State)

I declare under penalty of perjury under California law that the foregoing is true and correct.

(Signature)

(Printed or Typed Name)

[END OF SECTION]

**ATTACHMENT C:
RATE SCHEDULE**

Architect

Design Consultants

ATTACHMENT D:
DESIGN CONSULTANTS TO ARCHITECT SUMMARY AND CONTACT SHEET

Discipline	Design Consultant, Contact information
Structural	
Mechanical	
Electrical	
Plumbing	
Telecommunications	
Civil	
Landscape/Irrigation	