

## **ARCHITECTURAL SERVICES AGREEMENT**

This AGREEMENT is made and entered into this \_\_\_th day of \_\_\_\_\_ in the year 2013 by and between Sierra Sands Unified School District, hereinafter referred to as "DISTRICT", and Westberg + White, hereinafter referred to as "ARCHITECT." This AGREEMENT shall include all terms and conditions set forth herein.

WHEREAS, DISTRICT desires to obtain architectural services for the Murray Middle School Construction Project, hereinafter referred to as "PROJECT," located at 921 East Inyokern Road, Ridgecrest, California in the DISTRICT; and

WHEREAS, ARCHITECT understands that funding from the Department of Defense Program for Construction, Renovation, Repair or Expansion of Public Schools Located on Military Installations ("DOD Program") is a condition precedent to the effectiveness of this AGREEMENT. If DOD Program funding is not received for the PROJECT, this AGREEMENT is void except to the extent services have been rendered pursuant to DISTRICT Board authority; and

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

**NOW, THEREFORE**, the parties hereto agree as follows:

### **ARTICLE I - ARCHITECT'S SERVICES AND RESPONSIBILITIES**

1. The ARCHITECT's services shall consist of those services performed by the ARCHITECT, ARCHITECT's employees and ARCHITECT's consultants as enumerated in Articles II and III of this AGREEMENT.

2. The ARCHITECT's services shall be performed in a manner which is consistent with professional skill and care and the orderly progress of the work. The ARCHITECT represents that he/she will follow the standards of his/her profession in performing all services under this AGREEMENT. Upon request of the DISTRICT, the ARCHITECT shall submit for the DISTRICT's approval a schedule for the performance of the ARCHITECT's services. The schedule may be adjusted as the PROJECT proceeds by mutual written agreement of the parties and shall include allowances for time required for the DISTRICT's review and for approval by authorities having jurisdiction over the PROJECT. The time limits established by this schedule shall not, except for reasonable cause, be exceeded by the ARCHITECT.

a. **PROJECT Deadlines:** ARCHITECT acknowledges that the PROJECT's schedule and timeline is of the essence. In order to secure and maintain funding from the DOD Program, the PROJECT must meet the following deadlines: 1) The PROJECT's design and planning must be completed by July 30, 2014; 2) Construction on the PROJECT must start by December 1, 2014; and 3) All construction on the PROJECT must be completed by September 30, 2016

(collectively, the “DOD Deadlines”). Further, the DOD Program may establish additional deadlines throughout the course of the PROJECT which shall be incorporated into this AGREEMENT and shall be included as part of the DOD Deadlines as soon as they are established by the DOD Program. ARCHITECT’s schedule shall ensure that the DOD Deadlines are incorporated into all schedules for the PROJECT and shall take all steps necessary and possible to ensure the DOD Deadlines are met. Failure to meet the DOD Deadlines may subject the ARCHITECT to liquidated damages, as set forth below.

b. Internal PROJECT reports. In addition to the reporting requirements set forth herein, ARCHITECT shall provide a monthly written report to the DISTRICT summarizing its progress on the PROJECT, the PROJECT’s overall process in relation to the PROJECT schedule and the DOD Deadlines, and a summary of the costs incurred.

3. If the PROJECT includes the replacement or repair of more than 25% of a roof or the replacement or repair of a roof that has a total cost of more than \$21,000, the ARCHITECT shall comply with the requirements set forth in Public Contract Code section 3000 et seq. including signing the required certification.

4. The schematic design, design development and construction document services covered by this AGREEMENT shall be completed and submitted to the Division of the State Architect for review and approval in a timely manner to ensure the PROJECT meets the DOD Deadlines.

## **ARTICLE II - SCOPE OF ARCHITECT’S SERVICES**

1. The ARCHITECT’s services include those described in this Article, and include structural, civil, mechanical and electrical engineering and landscape architecture services and any other services necessary to produce a reasonably complete and accurate set of Construction Documents defined as including but not limited to the following: The agreement between DISTRICT and Contractor awarded the PROJECT (“Contractor”), general and supplementary conditions of the Contract between DISTRICT and Contractor, drawings, specifications, addenda and other documents listed in the Agreement, and modifications issued after execution of the DISTRICT and Contractor Contract.

2. ARCHITECT shall comply with all applicable terms, conditions, requirements and duties set forth by the DOD Program. Specifically, the Grant Agreement between the District and the Department of Defense, which forms the basis of the DISTRICT’s funding from DOD Program, is incorporated into this AGREEMENT as Exhibit “A” (the “Grant Agreement”). In addition, the DOD Program creates specific requirements for architectural services and requires all contractors providing architectural services to comply with federal regulations. These regulations and requirements, include, but are not limited to, the Architectural Contract Requirement Checklist attached hereto as Exhibit “B” (“the Federal Checklist”). ARCHITECT shall comply with requirements

necessary to ensure the PROJECT retains DOD Program funding and will provide all services necessary to ensure the PROJECT, the DISTRICT, and any and all contractors hired by the DISTRICT comply with all applicable federal regulations and DOD Program requirements including, but not limited to, those requirements as set forth in this AGREEMENT, the Grant Agreement, the Federal Checklist, and as established by any federal agency claiming jurisdiction over the PROJECT or the DOD Program.

3. The ARCHITECT shall assist the DISTRICT in obtaining required approvals from governmental agencies responsible for electrical, gas, water, sanitary or storm sewer, telephone, public utilities, as well as the Office of Public School Construction (OPSC), California Department of Education (CDE) and Division of the State Architect (DSA). ARCHITECT shall also ensure the PROJECT complies with the Department of Defense's Minimum Antiterrorism Standards for Buildings as set forth in the Unified Facilities Criteria (UFC), as applicable. When required, ARCHITECT shall explain how its services ensure compliance with any and all antiterrorism requirements including the threat force protection setbacks required by UFC 4-022-01 which requires, among other things, maximizing standoff distance, preventing building collapse, minimizing hazardous flying debris, and limiting airborne contamination. ARCHITECT shall initiate whatever steps necessary to ensure the PROJECT complies with any regulations, criteria, or other requirements related to threat force protection or antiterrorist standards as created or dictated by the Department of Defense.

4. The ARCHITECT shall be responsible for determining the capacity of existing utilities, or for any design or documentation required to make points of connection to existing utility services required for the PROJECT.

5. The ARCHITECT shall provide a PROJECT description which includes the DISTRICT's needs, program, and the requirements of the PROJECT prior to preparing preliminary designs for the PROJECT.

6. The ARCHITECT shall provide a written preliminary evaluation of the DISTRICT's PROJECT, schedule and construction budget requirements. Such evaluation shall include alternative approaches to design and construction of the PROJECT, evaluation and application of Educational specification requirements under Education Code Section 17251 and under Title 5 California Code of Regulations Section 14000 et seq.

7. The ARCHITECT shall provide planning surveys, site evaluations and comparative studies of prospective sites, buildings or locations.

8. The ARCHITECT shall attend regular PROJECT coordination meetings between the ARCHITECT, its Consultants, the DISTRICT's representative(s), and other Consultants of the DISTRICT during PROJECT development. Further, ARCHITECT shall meet with the DISTRICT in person on a bi-monthly basis to discuss the status of the PROJECT, the progress of ARCHITECT's services, the overall design of the PROJECT, and address DISTRICT questions or concerns. The bi-monthly meetings will include, but are not limited to, discussions of the contents of the plans, specifications, and additive

alternatives. The overall purpose of these bi-monthly meetings is to ensure the development of the PROJECT is a collaborative effort between the DISTRICT and the ARCHITECT. At each bi-monthly meeting, the ARCHITECT and the DISTRICT shall discuss all issues and questions brought by the DISTRICT including, but not limited to, the issues listed on the attached Bi-Monthly Meeting Checklist, attached as Exhibit "C". Representatives from the DISTRICT and the ARCHITECT will sign off on each item listed on the Bi-Monthly Meeting Checklist. If either the ARCHITECT or the DISTRICT fail to sign the Bi-Monthly Meeting Checklist, the parties shall meet immediately on the PROJECT's site to address the issue. These bi-monthly meetings shall commence as soon as this AGREEMENT is executed and shall continue up until the Construction Phase of the PROJECT, as set forth below. During the Construction Phase, ARCHITECT shall be present on the PROJECT site at least three times a week and shall make itself available for DISTRICT meetings, as required below.

9. The ARCHITECT shall make revisions in Drawings, Specifications, the PROJECT Manual or other documents when such revisions are necessary due to the ARCHITECT's failure to comply with approvals or instructions previously given by DISTRICT, including revisions made necessary by adjustments in the DISTRICT's program or PROJECT Budget.

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

11. The ARCHITECT shall provide all services necessary to coordinate its services and work on the PROJECT with all consultants, contractors, and service providers hired by the DISTRICT for the PROJECT including the DISTRICT's Project Manager.

12. The ARCHITECT shall provide detailed estimates of construction costs at no additional cost to DISTRICT as further described in Articles V and VI.

13. The ARCHITECT shall provide detailed quantity surveys which provides inventories of material, equipment or labor.

14. The ARCHITECT shall provide analyses of DISTRICT ownership and operating costs for the PROJECT.

15. The ARCHITECT shall provide interior design and other services required for or in connection with graphics and signage. All other interior design services are addressed under Article III as an additional service.

16. The ARCHITECT shall visit suppliers, fabricators, and manufacturers' facilities such as for carpet, stone, wood veneers, standard or custom furniture, to review the quality or status of items being produced for the PROJECT.

17. The ARCHITECT shall cooperate and consult with DISTRICT in use and selection of manufactured items on the PROJECT, including, but not limited to, paint,

hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials, and floor coverings. All such manufactured items shall be standardized to DISTRICT's criteria to the extent such criteria do not interfere with PROJECT design and are in compliance with the requirements of Public Contract Code §3400 as well as the Buy American Act, discussed below.

18. The ARCHITECT shall certify to the best of its information pursuant to 40 Code of Federal Regulations §763.99(a)(7), that no asbestos-containing material was specified as a building material in any construction document for the PROJECT and will ensure that contractors provide DISTRICT with certification that all materials used in the construction of any school building are free from any asbestos-containing building materials ("ACBM's"). ARCHITECT shall include statements in specifications that materials containing asbestos are not to be included. This certification shall be part of the final PROJECT submittal.

19. The ARCHITECT shall consider operating, maintenance, and life cycle costs when selecting systems for the DISTRICT. The ARCHITECT shall utilize grants and outside funding sources and work with the DISTRICT to utilize and consider funding from grants and alternative funding sources.

20. The ARCHITECT shall prepare for and make formal presentations to the Governing Board of DISTRICT, attend public hearings and other public meetings. In addition, ARCHITECT shall attend and assist in legal proceedings that arise from errors or omissions of the ARCHITECT.

21. The duties, responsibilities and limitations of authority of the ARCHITECT shall not be restricted, modified or extended without written agreement between the DISTRICT and ARCHITECT.

22. The ARCHITECT shall comply with all federal, state and local laws, rules, regulations and ordinances that are applicable to the PROJECT including, but not limited to all laws and regulations mentioned in the Grant Agreement and the Federal Checklist. In accordance with the DOD Program, ARCHITECT shall ensure compliance with all provisions of the Uniform Administration Requirements for Grants and Cooperatives Agreements to State and Local Governments ("UAR"), the National Environmental Policy Act; and the National Historic Preservation Act.

23. The ARCHITECT shall have access to the work at all times.

**24. Schematic Design Phase**

a. The ARCHITECT shall review the program furnished by the DISTRICT to ascertain the requirements of the PROJECT and shall review the understanding of such requirements with the DISTRICT.

b. The ARCHITECT shall prepare, for approval by the DISTRICT, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of PROJECT components. These

documents shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations which are applicable to these documents.

c. The ARCHITECT shall prepare schematic design studies and site utilization plans leading to a recommended solution together with a general description of the PROJECT for approval by the DISTRICT.

d. If directed by the DISTRICT at the time of approval of the schematic design, the Construction Documents shall be prepared so that portions of the work of the PROJECT may be performed under separate construction contracts, or so that the construction of certain buildings, facilities, or other portions of the PROJECT may be deferred. Alternate construction schemes made by the DISTRICT subsequent to the Schematic Design Phase which is the result of no fault of the ARCHITECT and is not the result of the PROJECT exceeding the estimated budget constraint caused by the ARCHITECT will be provided as an additional service in accordance with Article III.

e. ARCHITECT shall submit a list of qualified engineers for the PROJECT for the DISTRICT's approval in conformance with Article XII. ARCHITECT shall ensure that each engineer places his or her name, seal and signature on all drawings and specifications prepared by said engineer.

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

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

h. The ARCHITECT shall submit to the DISTRICT a written estimate of the construction cost in conformance with Articles V and VI and shall advise the DISTRICT, in writing, of any adjustments to the estimate of Construction Cost.

**25. Design Development Phase (Preliminary Plans)**

a. Upon approval by the DISTRICT of the services set forth in Article II, paragraph 23, the ARCHITECT shall prepare Design Development Documents for approval by the DISTRICT. Such documents shall consist of site and floor plans, elevations, cross sections, and other documents necessary to depict the Design of PROJECT, and shall outline specifications to fix and illustrate the size, character and quality of the entire PROJECT as to the program requirements, landscapes, architecture, civil, structural, mechanical, and electrical systems, materials, and such other essentials as may be appropriate.

b. The ARCHITECT shall establish an estimated PROJECT Construction Cost.

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

**26. Construction Document Phase (Final Plans)**

a. The ARCHITECT shall prepare, from the Design Development Documents approved by the DISTRICT, Construction Documents (in most recent AutoCAD format or other format approved by the DISTRICT in writing) and specifications setting forth, in detail, the requirements for the construction of the entire PROJECT in conformity with all applicable governmental and code requirements and requirements of OPSC and DSA. The Construction Documents shall show all the work to be done, the materials, workmanship, finishes, and equipment required for the PROJECT.

b. The ARCHITECT shall prepare and file all documents required for and obtain the required approvals of all governmental agencies having jurisdiction over the PROJECT, including the OPSC, DSA, City Design Review (DRC), County Health Department, Department of Public Works, the Department of Defense, and United States Navy and others which have jurisdiction over the PROJECT. ARCHITECT shall make itself available to meet with any agency having jurisdiction over the PROJECT to discuss the progress of the PROJECT and compliance with federal regulations. The DISTRICT shall pay all fees required by such governmental authority. ARCHITECT shall, whenever feasible, establish beforehand the exact costs due to governmental agencies and submit this cost information to DISTRICT so payments may be prepared. ARCHITECT shall not charge a mark-up on costs associated with governmental agency fees when the ARCHITECT pays such fees for the DISTRICT.

c. The ARCHITECT shall immediately notify the DISTRICT of adjustments in previous estimates of the PROJECT Construction Cost arising from market fluctuations or approved changes in scope or requirements and shall prepare proposals to help immediately address any additional costs as a result of these changes including proposed alternatives, alternations and other options to reduce costs to ensure the PROJECT remains within budget.

d. If the estimated PROJECT Construction Cost exceeds the budget constraint, the ARCHITECT shall make all necessary design revisions at no cost to the DISTRICT to comply with the budget and scope set by the DISTRICT in conformance with Articles V and VI, unless otherwise modified by written authorization of the DISTRICT.

**27. Bidding & Award Phase**

a. The ARCHITECT, following the DISTRICT's approval of the Construction Documents and of the latest estimate of Construction Cost, shall

assist the DISTRICT in obtaining bids and awarding the Contract for the construction of the PROJECT.

b. The ARCHITECT shall prepare all necessary bidding information and bidding forms required by the DISTRICT and shall assist the DISTRICT in preparing the Contractor's contract and general conditions, including providing, plans or specifications, which include a requirement that the Contractor provide operation manuals and adequate training for the DISTRICT in the operation of mechanical, electrical, heating, air conditioning and other systems installed by the Contractor, all of which shall be part of the bid documents prepared by the ARCHITECT.

c. The ARCHITECT shall print and distribute necessary bidding information, general conditions of the contract, and supplementary general conditions of the contract, and shall assist the DISTRICT's legal advisor in the drafting of proposal and contract forms.

d. The ARCHITECT shall deposit a reproducible set of Construction Documents and specifications at a reprographics company specified by DISTRICT for the bid and for printing of additional sets of plans and specifications during the PROJECT. In addition, ARCHITECT shall provide DISTRICT with an AutoCAD diskette file or another format approved by the DISTRICT in writing.

e. If the lowest bid exceeds the budget for the PROJECT, the ARCHITECT, in consultation with and at the direction of the DISTRICT, shall provide such modifications in the Construction Documents as necessary to bring the cost of the PROJECT within its budget as set forth in Articles V and VI.

f. ARCHITECT shall address all Requests for Information ("RFI") submitted throughout the course of the PROJECT. Responses to all RFIs, regardless of their validity, must be made in writing. Within 24 hours of receipt of the RFI, ARCHITECT shall either issue a complete written response or provide the DISTRICT with a written explanation as to why a complete written response cannot be issued within the 24 hour timeframe and identify when the written response will be issued.

## **28. Construction Phase**

a. The Construction Phase will commence with the award of the Construction Contract to Contractor.

b. The ARCHITECT shall reproduce fifteen (15) sets of contract documents and all progress prints for the DISTRICT's and consultant's use at the ARCHITECT's expense. The remaining sets are to be provided as reimbursable expenses in conformance with Article XI.



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

d. The ARCHITECT will endeavor to secure compliance by Contractor with the contract requirements, but does not guarantee the performance of Contractor's contracts.

e. The ARCHITECT shall provide general administration of the Construction Documents, which includes but not limited to, ensuring that at least one ARCHITECT employee with decision making authority is present at the PROJECT site at least three times per week ("Scheduled Visits"). The Scheduled Visits shall commence as soon as construction on the PROJECT starts and shall continue until construction is complete. The personnel performing the Scheduled Visit shall include Robert Espinoza. If Mr. Espinoza is unable to attend any of the Scheduled Visits, ARCHITECT shall ensure a person employed by the ARCHITECT who has the authority to make decisions with respect to the PROJECT attends the Scheduled Visit. ARCHITECT shall notify the DISTRICT, in writing, of the personnel attending the Scheduled Visit. At these Scheduled Visits, ARCHITECT personnel shall make itself available to meet with the DISTRICT to discuss the progress of construction and address DISTRICT concerns. Further, ARCHITECT shall make additional periodic visits in addition to the Scheduled Visits, at the site as ARCHITECT deems necessary to render architectural observation which is distinguished from the continuous personal inspection of the PROJECT inspector (in no case shall the number of these architectural observation visits be less than once every week); make regular reports as may be required by governing agencies; keep the DISTRICT informed of the progress of construction; review schedules and shop drawings for compliance with design; approve substitution of materials, equipment, and the laboratory reports thereof subject to DISTRICT knowledge and approval; maintain construction accounts; prepare change orders for written approval of the DISTRICT; examine Contractor's applications for payment and issue certificates for payment in amounts approved by the ARCHITECT and DISTRICT; provide a color schedule of all materials in the PROJECT for DISTRICT's review and approval; determine date of completion of the PROJECT; make final punch-list inspection of the PROJECT; assemble and deliver to the DISTRICT written guarantees, instruction books, diagrams, and charts required of the Contractor; and issue the ARCHITECT's certificate of completion and final certificate for payment. ARCHITECT shall comply with the background check requirements for any and all personnel who may enter DISTRICT property as set forth in Article XIII of this Agreement.

f. The ARCHITECT, as part of his basic services, shall advise the DISTRICT of any deficiencies in construction following the acceptance of the work and prior to the expiration of the guarantee period of the PROJECT.

g. The ARCHITECT shall be the interpreter of the requirements of the Construction Documents and advise the DISTRICT as to the performance by the Contractor thereunder.

h. The ARCHITECT shall make recommendations to the DISTRICT on claims relating to the execution and progress of the work and all matters and questions relating thereto. The ARCHITECT's recommendations in matters relating to artistic effect shall be consistent with the intent of the Construction Documents.

i. The ARCHITECT shall advise the DISTRICT to reject work which does not conform to the Construction Documents. The ARCHITECT shall promptly inform the DISTRICT, whenever, in the ARCHITECT's opinion, it may be necessary, to stop the work to avoid the improper performance of the AGREEMENT. The ARCHITECT has authority to require additional inspection or testing of the work in accordance with the provisions of the Construction Documents, whether work is fabricated, installed or completed.

j. The ARCHITECT shall not issue orders to Contractor that might commit the DISTRICT to extra expenses, impede the PROJECT schedule, or otherwise amend the Construction Documents without first obtaining the written approval of the DISTRICT.

k. The ARCHITECT shall be the DISTRICT's representative during construction and shall advise and consult with the DISTRICT. The ARCHITECT shall have authority to act on behalf of the DISTRICT only to the extent provided in this AGREEMENT unless otherwise modified in writing.

l. The ARCHITECT shall at no additional cost provide services made necessary by defect or deficiencies in the work of the Contractor which through reasonable care should have been discovered by the ARCHITECT and promptly reported to the DISTRICT and Contractor but which ARCHITECT failed to do.

m. The ARCHITECT shall review and certify the amounts due the Contractor. The ARCHITECT's certification for payment shall constitute a representation to the DISTRICT, based on the ARCHITECT's observations and inspections at the site, that the work has progressed to the level certified, that quality of the work is in accordance with the Construction Documents and that the Contractor is entitled to payment in the amount certified.

n. The ARCHITECT shall review and approve or take other appropriate action upon Contractor's submittals of shop drawings, product data, and samples for the purpose of checking for conformance with the Construction

Documents. The ARCHITECT's action shall not delay the work, but should allow for sufficient time in the ARCHITECT's professional judgment to permit adequate review.

o. The ARCHITECT shall prepare change orders with supporting documentation and data for the DISTRICT's review in accordance with the Construction Documents, and may authorize minor changes in the work not involving an adjustment in the contract sum or an extension of time. The ARCHITECT shall evaluate and make written recommendations regarding Contractor's proposals for possible change orders. ARCHITECT shall take all steps necessary throughout its services on the PROJECT to mitigate the amount of change orders required on the PROJECT. Because the DISTRICT's funding on the PROJECT is limited, ARCHITECT shall reimburse the DISTRICT for the total value of all approved change orders on the PROJECT that rise above two percent (2%) of the total Construction Cost, as established under Article V of this AGREEMENT. ARCHITECT shall, at ARCHITECT's expense, prepare a set of reproducible record drawings showing significant changes in the work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the ARCHITECT.

p. The ARCHITECT shall inspect the PROJECT to determine the date or dates of final completion, receive and forward to the DISTRICT for the DISTRICT's review all written warranties and related documents required by the Construction Documents and issue a final certificate for payment upon Contractor compliance with the requirements of the Construction Documents.

q. The ARCHITECT shall provide written evaluation of the performance of the Contractor under the requirements of the Construction Documents when requested in writing by the DISTRICT.

r. The ARCHITECT shall provide services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to drawings, specifications and other documentation resulting therefrom.

s. The ARCHITECT shall be responsible for gathering information and processing forms required by applicable governing authorities, such as building departments, OPSC, and DSA, in a timely manner and ensure proper PROJECT close-out.

t. The ARCHITECT shall evaluate and render written recommendations, within a reasonable time on all claims, disputes or other matters at issue between the DISTRICT and Contractor relating to the execution or progress of the work as provided in the construction contract. Under no circumstances should this evaluation take longer than 20 calendar days from the date the claim is received by ARCHITECT.

u. The ARCHITECT shall prepare an AutoCAD file (or another format approved by the DISTRICT in writing) of all as-built conditions at no additional cost within the timeframe set forth in Article VII(3) below.

v. Prior to start of construction, the following two documents are required:

i. Contract Information Form DSA-102.

ii. Inspector Qualification Record Form DSA-5 should be submitted 10 days prior to the time of starting construction.

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

## **29. Project Close-Out**

a. The ARCHITECT shall assure delivery of the following documents described below to the Division of the State Architect for review prior to issuance of a "Certificate of Completion".

b. During the period the PROJECT is under construction the following documents are required:

1. Copies of the Inspector of Record's semi-monthly reports.

2. Copies of the laboratory reports on all tests or laboratory inspections as returned and done on the PROJECT.

c. Upon completion of construction of the PROJECT, the following reports are required:

1. Copy of the Notice of Completion.

2. Final Verified Report Form DSA-6A/E certifying all work is 100% complete from the ARCHITECT, Structural Engineer, Mechanical Engineer and Electrical Engineer.

3. Final Verified Report Form DSA-6 certifying all work is 100% complete from the Contractor or Contractors, Inspector of Record and Special Inspector(s).

4. Verified Reports of Testing and Inspections as specified on the approved drawings and specifications, i.e., Final Laboratory Report, Welding, Glued-Laminated Timber, etc.

5. Weighmaster's Certificate (if required by approved drawings and specifications).
6. Copies of the signature page of all Addenda as approved by DSA.
7. Copies of the signature pages of all Deferred Approvals as approved by DSA.
8. Copies of the signature page of all Change Orders as approved by DSA.
9. Verification by the I.O.R. that all items noted on any "Field Trip Notes" have been corrected.

d. During Project Close Out, ARCHITECT shall ensure that at least one ARCHITECT employee with decision making authority is present at the PROJECT site at least once a week unless the DISTRICT requests more frequent visits ("Close Out Visits"). The requirements for the Scheduled Visits set forth above shall apply to the Close Out Visits. Close Out Visits must continue until the DISTRICT notifies ARCHITECT in writing that its close out services are complete and no further Close Out Visits are required.

## **29. Reporting Requirements**

a. ARCHITECT shall comply with all reporting requirements and assist the DISTRICT, as well as its consultants and contractors, to ensure the PROJECT complies with all applicable federal reporting requirements before and after the PROJECT is complete, including, but not limited to, the Federal Funding Accountability and Transparency Act. ARCHITECT shall assist the DISTRICT in the preparation of the performance reports required under section 2(K) of the Grant Agreement and the audit requirements as set forth in OMB Circular A-133 and described in Section 2(M) of the Grant Agreement. ARCHITECT shall make its records available for any audit or review by any agency with jurisdiction over the PROJECT and/or the DOD Program. ARCHITECT shall include its nine-digit Data Universal Numbering System (DUNS) number on all reporting documents, when required, and ensure it is fully authorized to comply with any and all reporting requirements necessary to maintain funding for the PROJECT, including the requirements for registration in the System for Award Management (SAM) as set forth in the Grant Agreement.

## **ARTICLE III - ADDITIONAL ARCHITECT'S SERVICES**

1. ARCHITECT shall notify the DISTRICT in writing of the need for additional services required due to circumstances beyond the ARCHITECT's control. ARCHITECT shall obtain written authorization from the DISTRICT before rendering

such services. Compensation for such services shall be negotiated and approved in writing by the DISTRICT. Such services shall include:

a. Making material revisions in drawings, specifications or other documents when such revisions are required by the enactment or revision of laws, rules or regulations subsequent to the preparation and completion of the Construction Documents.

b. Preparing drawings, specifications and other documentation and supporting data, and providing other services in connection with Change Orders required by causes beyond the control of the ARCHITECT which are not the result of the direct or indirect negligence, errors or omissions on the part of ARCHITECT.

c. Providing consultation concerning replacement of work damaged by fire and furnishing services required in connection with the replacement of such work.

d. Providing services made necessary by the default of the Contractor, which does not arise directly or indirectly from negligence, errors or omissions of ARCHITECT.

e. If the DISTRICT requests the PROJECT be let on a segregated basis after the completion of Design Development where segregation does not arise from ARCHITECT exceeding the estimated budget constraint, then plan preparation and/or contract administration work to prepare the segregated plans is an extra service subject to prior negotiation and DISTRICT approval.

f. Providing contract administration services after the construction contract time has been exceeded through no fault of the ARCHITECT, where it is determined that the fault is that of the Contractor, and liquidated damages are collected therefor. The ARCHITECT's compensation is expressly conditioned on the lack of fault of the ARCHITECT and payment will be made upon collection of liquidated damages from the Contractor. Payment of the ARCHITECT shall be made from collected liquidated damages.

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

2. If authorized in writing by DISTRICT, ARCHITECT shall provide one or more PROJECT Representatives to assist in carrying out more extensive representation at the site than is described in Article II. The PROJECT Representative(s) shall be selected, employed and directed by the ARCHITECT, and the ARCHITECT shall be compensated therefore as agreed by the DISTRICT and ARCHITECT. Through the observations of such PROJECT Representative(s), the ARCHITECT shall endeavor to provide further protection for the DISTRICT against defects and deficiencies in the work, but the furnishing of such PROJECT representation shall not modify the rights, responsibilities

or obligations of the ARCHITECT as described elsewhere in this AGREEMENT. Such services shall be negotiated and approved in writing by the DISTRICT.

3. ARCHITECT acknowledges and understands that the PROJECT subject to the Buy American Act (41 U.S.C.A. 8301 et seq.) ARCHITECT shall ensure compliance with the Buy American Act by incorporating into its services all products and materials that comply with the requirements of the Buy American Act. ARCHITECT's Construction Budget shall incorporate any additional cost to ensure materials compliant with the Buy American Act are used in the PROJECT and shall assist the DISTRICT to implement procedures to ensure, and confirm, compliance with the Buy American Act.

4. ARCHITECT shall incorporate environmentally friendly features and energy efficiency considerations into its services for the PROJECT. ARCHITECT's services shall specifically address the unique environmental issues related to the PROJECT caused by the DISTRICT's geographic location including, but not limited to, the energy and heat issues created by the high desert environment of Ridgecrest, California and issues caused by wind driven sand and dust common throughout the PROJECT's area. Upon request from the DISTRICT, ARCHITECT shall provide a written report explaining how its services include and incorporate environmental, energy, and green building elements, including, if feasible, 1) insulation for roofs, building envelopes, glazing systems and foundations; 2) use of recycled products; 3) erosion control measures; 4) heat reduction measures; 5) maximizing natural lighting throughout the Project; 6) water efficiency; and 7) installation and use of energy efficient systems.

ARCHITECT shall ensure its services comply with all applicable federal and state environmental regulations as well as any new or existing environmental requirements imposed on the PROJECT by or through the DOD Program at no additional cost.

#### **ARTICLE IV - DISTRICT'S RESPONSIBILITIES**

1. The DISTRICT shall provide to the ARCHITECT information regarding requirements for the PROJECT, including information regarding the DISTRICT's objectives, schedule, constraints and criteria.

2. The ARCHITECT shall prepare a current overall budget for the PROJECT, including the construction cost for the PROJECT and this budget must then be approved by the DISTRICT.

3. The DISTRICT shall notify the ARCHITECT of administrative procedures required and name a representative authorized to act on its behalf. The DISTRICT shall promptly render decisions pertaining thereto to avoid unreasonable delay in the progress of the PROJECT. The DISTRICT shall observe the procedure of issuing any orders to Contractors only through the ARCHITECT.

4. The DISTRICT shall give prompt written notice to the ARCHITECT if the DISTRICT becomes aware of any fault or defect in the PROJECT or nonconformance with the Construction Documents. However, the DISTRICT's failure or omission to do

so shall not relieve the ARCHITECT of ARCHITECT's responsibilities under Title 21, Title 24, and the Field Act hereunder. The DISTRICT shall have no duty to observe, inspect or investigate the PROJECT.

5. The proposed language of certifications requested of the ARCHITECT or ARCHITECT's consultants shall be submitted to the ARCHITECT for review and approval at least fourteen (14) days prior to execution.

## **ARTICLE V - COST OF CONSTRUCTION**

1. During the Schematic Design, Design Development and Construction Document phases, Construction Cost ("Construction Cost") shall be determined against the DISTRICT's budget for the PROJECT. This shall be the APPROVED BUDGET. The DISTRICT and the ARCHITECT acknowledge that the total budget for the PROJECT, as determined by the DOD Program, is THIRTY NINE MILLION FIVE HUNDRED FORTY TWO THOUSAND EIGHT HUNDRED THIRTY EIGHT DOLLARS (\$39,542,838) (the "TOTAL PROJECT BUDGET"). The DISTRICT and the ARCHITECT shall ensure that the total PROJECT costs do not rise above the TOTAL PROJECT BUDGET.

2. PROJECT Construction Cost as used in this AGREEMENT means the total cost to the DISTRICT of all work designed or specified by the ARCHITECT, including work covered by approved change orders and/or alternates approved by the DISTRICT, but excluding the following: Any payments to ARCHITECT or consultants, for costs of inspections, surveys, tests, and landscaping not included in PROJECT.

3. The Construction Cost shall be the acceptable estimate of construction costs to the DISTRICT as submitted by the ARCHITECT until such time as bids have been received, whereupon it shall be the bid amount of the lowest responsible responsive bidder.

4. Any APPROVED BUDGET or fixed limit of construction cost shall be adjusted if the bidding has not commenced within ninety (90) days after the ARCHITECT submits the Construction Documents to the DISTRICT, to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the DISTRICT and the date on which bids are sought for the PROJECT.

5. If the lowest bid received exceeds the APPROVED BUDGET:

a. The DISTRICT may give written approval of an increase of such fixed limit;

b. The DISTRICT may authorize rebidding of the PROJECT within a reasonable time;



c. If the PROJECT is abandoned, the DISTRICT may terminate this AGREEMENT in accordance with Article VIII, paragraph 2;

d. The DISTRICT may request the ARCHITECT prepare, at no additional cost, deductive change packages and alternates which bring the PROJECT into approved budget; or

e. The DISTRICT may request the ARCHITECT cooperate in revising the PROJECT scope and quality as required to reduce the construction cost.

6. If the DISTRICT chooses to proceed under Article V, paragraph 6(e), the ARCHITECT, without additional charge, agrees to redesign until the PROJECT is brought within the APPROVED BUDGET set forth in this AGREEMENT. Redesign does not mean phasing or removal of parts of the PROJECT unless agreed in writing by the DISTRICT. Redesign means redesign of the PROJECT with all its component parts to meet the budget set forth in this AGREEMENT.

#### **ARTICLE VI - ESTIMATE OF PROJECT CONSTRUCTION COSTS**

1. Estimates referred to in Article II shall be prepared on a square foot/unit costs basis, or more detailed computation if deemed necessary by the DISTRICT, considering prevailing construction costs and including all work for which bids will be received. It is understood that the PROJECT Construction Cost is affected by the labor and/or material market as well as other conditions beyond the control of the ARCHITECT or DISTRICT.

2. The ARCHITECT shall review the estimate at each phase of his services. If such estimates are in excess of the APPROVED BUDGET, the ARCHITECT shall revise the type or quality of construction to come within the budgeted limit at no additional cost to the DISTRICT. ARCHITECT's initial budget and scope limitations shall be realistic and be reviewed with the DISTRICT prior to formalization.

3. The ARCHITECT, upon request of the DISTRICT, shall prepare a detailed estimate of construction costs at no additional cost.

#### **ARTICLE VII - ARCHITECT'S DRAWINGS AND SPECIFICATIONS**

1. All documents including, but not limited to, plans, drawings, specifications, record drawings, models, mock-ups, renderings and other documents (including all computer file and/or AutoCAD files) prepared by the ARCHITECT or the ARCHITECT's Consultants for this PROJECT, shall be and remain the property of the DISTRICT pursuant to Education Code Section 17316 for the purposes of repair, maintenance, renovation, modernization or other purposes as they relate to the PROJECT. The DISTRICT, however, shall not be precluded from using the ARCHITECT's or

ARCHITECT's Consultant's documents enumerated above for the purposes of additions, alignments or other development on the PROJECT site.

2. In the event the DISTRICT reuses ARCHITECT's plans, specifications or other documents for a project or projects other than that which is the subject of this AGREEMENT, the DISTRICT agrees to indemnify, defend and hold the ARCHITECT harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorney's fees, accruing to or resulting from any and all persons, firms, or any other legal entity, on account of any damage or loss to property or persons, including, but not limited to, death, arising out of such unauthorized use, reuse or modification of the ARCHITECT's drawing, specifications or other documents. Prior to reuse of the ARCHITECT's documents, the DISTRICT agrees to notify the ARCHITECT in writing of such reuse. The DISTRICT further agrees to remove the names and seals of the ARCHITECT and the ARCHITECT's Consultants from the title block and signature pages. The DISTRICT, however, may use the ARCHITECT's plans and documents as enumerated in this Article as reference documents for the purposes of additions, alignments or other development on any PROJECT site.

3. ARCHITECT shall prepare and provide final "as-built" or record drawings to the DISTRICT within 60 days after all construction has been completed on the PROJECT and final inspection has been performed. ARCHITECT shall provide reproducible originals to the DISTRICT in a format approved by the DISTRICT.

### **ARTICLE VIII - TERMINATION**

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

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

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

convenience in accordance with Article VIII.4 below, and ARCHITECT shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by ARCHITECT.

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

5. In the event of a dispute between the parties as to performance of the work or the interpretation of this AGREEMENT, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, ARCHITECT agrees to continue the work diligently to completion. If the dispute is not resolved, ARCHITECT agrees it will neither rescind the AGREEMENT nor stop the progress of the work, but ARCHITECT's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the PROJECT has been completed, and not before.

LIQUIDATED DAMAGES. As established herein, the DOD Program requires construction to be completed by September 30, 2016 (the "Project Deadline") or the DOD Program funding will be in jeopardy. Thus, DISTRICT shall be damaged in the event ARCHITECT does not provide the services necessary to meet the DOD Deadlines and specifically the Project Deadline. It being impracticable and infeasible to determine the amount of actual damage, it is agreed that the ARCHITECT will pay the DISTRICT the sum of **Five Hundred Dollars (\$500) per calendar day** for each and every day of delay beyond the Project Deadline as liquidated damages and not as a penalty or forfeiture. In the event the same is not paid, the ARCHITECT further agrees that the DISTRICT may deduct such amount thereof from any money due or that may become due the ARCHITECT under the AGREEMENT. This Article shall not be construed as preventing the DISTRICT from the recovery of damages under provisions of the PROJECT documents.

**ARTICLE IX - ACCOUNTING RECORDS OF THE ARCHITECT**

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

**ARTICLE X - COMPENSATION TO THE ARCHITECT**

1 DISTRICT agrees to pay ARCHITECT for all the services set forth in this AGREEMENT for a total cost not to exceed ONE MILLION NINE HUNDRED TWENTY THOUSAND FIFTY SEVEN DOLLARS (\$1,920,057.00) inclusive of all reimbursable expenses, for all services performed and expenses incurred pursuant to this Agreement (“TOTAL FEE”).

1. Payment to the ARCHITECT will be made as set forth before following the successful completion of each phase:

Schematic Design:	10% of the TOTAL FEE
Design Development:	15% of the TOTAL FEE
Construction Documents:	42% of the TOTAL FEE
D.S.A. Approval:	5% of the TOTAL FEE
Bidding Phase:	3% of the TOTAL FEE
Construction Admin:	10% of the TOTAL FEE
Project Close Out RECORDATION OF NOTICE OF COMPLETION	10% of the TOTAL FEE
Approval by DOD and all federal agencies	5% of the TOTAL FEE

2. When any portions of the PROJECT are deleted or otherwise not constructed, compensation for those portions of the PROJECT shall be payable to the extent actual services are performed.

3. To the extent that the time initially established for the completion of ARCHITECT’s services is exceeded or extended through no fault of the ARCHITECT,

compensation for any services rendered during the additional period of time shall be negotiated and subject to prior approval by DISTRICT Board. Assessment and collection of liquidated damages from the Contractor is a condition precedent to payment for extra services arising from Contractor caused delays.

4. Expenses incurred by the ARCHITECT and ARCHITECT's employees and consultants in the interest of the PROJECT shall have prior DISTRICT written approval before they are incurred and records of such expenses shall be provided to DISTRICT for the DISTRICT's review.

### **ARTICLE XI - REIMBURSABLE EXPENSES**

1. The not-to-exceed amount set forth in Article X is reimbursement for all costs, anticipated or otherwise, incurred by ARCHITECT for the PROJECT, including reimbursable expenses. ARCHITECT shall not be entitled to additional compensation beyond the not-to-exceed amount unless there are unusual and unanticipated circumstances and only when approved in writing by DISTRICT, in advance of such services being provided.

### **ARTICLE XII - EMPLOYEES AND CONSULTANTS**

1. The ARCHITECT as part of its basic professional services shall furnish at his expense the services of landscape architects, structural, mechanical, and electrical, traffic, and civil engineers. ARCHITECT shall submit a list of any consultant or third party hired by ARCHITECT to provide any services on the PROJECT ("Third Party Contractor"). The DISTRICT, at its sole discretion, may reject any Third Party Contractor offered by ARCHITECT. ARCHITECT is solely responsible for ensuring any Third Party Contractor hired by ARCHITECT for the PROJECT complies with all applicable regulations including all regulations discussed within this AGREEMENT. The DISTRICT shall not be responsible for any payment to any Third Party and, in no event, shall the costs for ARCHITECT's services or the PROJECT in general, rise as a result of the Third Party Contractor hired by ARCHITECT.

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

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

4. The construction administrator or field representative assigned to this PROJECT by ARCHITECT shall be licensed as a California Architect and able to make

critical PROJECT decisions in a timely manner and shall be readily available and provide by phone, facsimile and through correspondence, design direction and decisions when the construction administrator is not at the site.

### **ARTICLE XIII - MISCELLANEOUS**

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

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

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

b. General Liability. If arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the ARCHITECT, the ARCHITECT shall indemnify and hold the DISTRICT harmless from any liability for damages for (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the ARCHITECT or the DISTRICT, or any person, firm or corporation employed by the ARCHITECT or the DISTRICT upon or in connection with the PROJECT, except for liability resulting from the sole or active negligence, or willful misconduct of the DISTRICT, its officers, employees, agents or independent Architects who are directly employed by the DISTRICT. The ARCHITECT, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the DISTRICT (other than professional negligence covered by section c below), its officers, agents or employees that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the ARCHITECT, and shall pay or satisfy any judgment that may be rendered against the DISTRICT, its officers, agents or employees in any action, suit or other proceedings as a result thereof; and

c. Professional Liability. If arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the ARCHITECT, the ARCHITECT shall indemnify and hold the DISTRICT harmless from any loss, injury to, death of persons or damage to property caused by any act, neglect, default or omission of the ARCHITECT, or any person, firm or corporation employed by the ARCHITECT, either directly or by independent contract,

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

3. ARCHITECT shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to DISTRICT which will protect ARCHITECT and DISTRICT from claims which may arise out of or result from ARCHITECT's actions or inactions relating to the AGREEMENT, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

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

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

1. Owned, non-owned and hired vehicles;
2. Blanket contractual;
3. Broad form property damage;
4. Products/completed operations; and
5. Personal injury.

c. Professional liability insurance, including contractual liability, with limits of \$1,000,000, per claim. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least five (5) years thereafter and/or at rates consistent with the time of execution of this AGREEMENT adjusted for inflation. In the event that ARCHITECT subcontracts any portion of ARCHITECT's duties, ARCHITECT shall require any such subcontractor to purchase and maintain insurance coverage as provided in

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

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

e. Each policy of insurance required in b. above shall name DISTRICT and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of ARCHITECT hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributory with such primary insurance; written notice shall be given to DISTRICT prior to cancellation; and, shall waive all rights of subrogation. ARCHITECT shall notify DISTRICT in the event of material change in, or failure to renew, each policy. Prior to commencing work, ARCHITECT shall deliver to DISTRICT certificates of insurance as evidence of compliance with the requirements herein. In the event ARCHITECT fails to secure or maintain any policy of insurance required hereby, DISTRICT may, at its sole discretion, secure such policy of insurance in the name of and for the account of ARCHITECT, and in such event ARCHITECT shall reimburse DISTRICT upon demand for the cost thereof.

f. In the event that ARCHITECT subcontracts any portion of ARCHITECT's duties, ARCHITECT shall require any such subcontractor to purchase and maintain insurance coverage for the types of insurance referenced in Article XIII 3(a)(b)(c)(d), in amounts which are appropriate with respect to that subcontractor's part of work which shall in no event be less than \$500,000 per occurrence.

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

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



5. ARCHITECT shall comply with the requirements of Education Code Section 45125.1 with respect to fingerprinting of employees who may have contact with students within the DISTRICT. The ARCHITECT shall also ensure that its consultants on the PROJECT also comply with the requirements of Section 45125.1.

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

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

8. This AGREEMENT shall be governed by the laws of the State of California.

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

The parties, through their authorized representatives, have executed this AGREEMENT as of the day and year first written above.

ARCHITECT:

DISTRICT:

Westberg + White

Sierra Sands Unified School District

By: \_\_\_\_\_

By: \_\_\_\_\_

APPROVED AS TO FORM:

Atkinson, Andelson, Loya, Ruud & Romo

\_\_\_\_\_  
Stephen M. McLoughlin, Esq.  
Attorneys for Sierra Sands Unified School District

**EXHIBIT "A"**

GRANT AGREEMENT BETWEEN DISTRICT AND DEPARTMENT OF DEFENSE

## **EXHIBIT "B"**

The Federal Checklist for Architectural Services provided for the PROJECT as established by the DOD Program

**In accordance with the requirements of the DOD Program, ARCHITECT shall comply with the following requirements throughout the course of the PROJECT.**

1. Design the PROJECT in accordance with the intent of the Grant Agreement;
2. Redesign the PROJECT in the event the preliminary cost estimate, the final cost estimate, or the lowest responsive bid less deductive alternatives, exceeds the funds available to the DISTRICT;
3. Design any sewage treatment or other sewage facility so that a certificate of adequacy of treatment can be obtained;
4. Include in all contracts and subcontracts a provision which requires compliance with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 USC 1251 et, seq., as amended);
5. Provide, in writing, a specific timetable for the following activities that meet the DOD Deadlines:
  - A. Completing preliminary plans and associated cost estimates;
  - B. Completing final plans, specifications, and cost estimates;
  - C. Securing required State and local approvals; and
  - D. Completing proposed contract documents in a form sufficient for soliciting bids for construction of the PROJECT
6. Provide surveillance of PROJECT construction to assure compliance with plans, specifications, and all other contract documents.
7. Supervise any required subsurface explorations such as borings, soil tests, and the like, to determine amounts of rock excavation or foundation conditions, no matter whether they are performed by the ARCHITECT or by others paid by the DISTRICT.
8. Attend bid openings, prepare and submit tabulations of bids, and make recommendation as to contract award.
9. Review proof of bidder's qualifications and recommend approval or disapproval.

10. Prepare and submit proposed contract change orders when applicable. There shall be no charge to the DISTRICT when the change order is required to correct errors or omissions by the ARCHITECT.
11. Review and approve the contractor's schedule of amounts for contract payment.
12. Certify partial payments to contractors.
13. Prepare "as-built" or record drawings after completion of the PROJECT. Reproducible originals will be furnished to the grantee within 60 days after all construction has been completed and the final inspection has been performed.
14. Review and approve the contractor's submission of samples and shop drawings where applicable.
15. Comply with all Federal statutes relating to non-discrimination. These include but are not limited to:
  - A. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination in the basis of race, color, or national origin;
  - B. Section 112 of P.L. 92-45 and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686) which prohibits discrimination on the basis of sex;
  - C. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) which prohibits discrimination on the basis of handicaps;
  - D. The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination because of age;
  - E. The Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended, relating to non-discrimination on the basis of drug abuse;
  - F. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to non-discrimination on the basis of alcohol abuse or alcoholism;
  - I. Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
  - J. Title VIII of the Civil Rights Act of 1968 (42 U.S.C 3601 et. Seq.), as amended, relating to non-discrimination in the sale, rental, or financing of housing.

K. Any other non-discrimination provisions in the specific statutes under which the application for Federal assistance is being made; and

L. The requirements of any other non-discrimination statute(s) which may apply.

16. Consider the establishment of compensation for any cost savings that may be realized through multiple use of the same design.

EXHIBIT C

Bi-Monthly Meeting Checklist

Pursuant to Article II, Section 7 of the Agreement, the ARCHITECT and the DISTRICT shall meet on a bi-monthly basis to discuss the progress of the PROJECT. During these bi-monthly meetings, the Parties shall discuss each of the listed items below (the “Items”). The topics to be discussed at the bi-monthly meetings are expressly not limited to the Items as the DISTRICT may bring up any issue, question, or point of clarification as it deems necessary. The Parties shall initial each Item if the Party believes the Item was adequately addressed at the meeting. If any issue relating to any Item is not discussed, or if an issue is unresolved after the Parties’ discussion, either Party may refrain from initialing the Item at which time, the Parties shall immediately schedule a separate meeting to discuss the Item in more detail. If an additional meeting is required, the DISTRICT may require any member of the ARCHITECT’s team to attend the meeting to address the remaining issues.

Date of Meeting: \_\_\_\_\_

Item	Issue Description	DISTRICT initial	ARCHITECT initial
1	Review of the Project’s Plans		
2	Review of the Project’s Specifications		
3	Review of Architect’s plan for the next month		
4	Review of potential alternatives		
5	Review of Project’s Budget		
6	Review of Project schedule		
7	Review of District concerns regarding the issues that may develop as a result of the Project’s surrounding environment		
8	Review of any issues that the Architect believes may delay or disrupt the Project		
9	Discussion of Project’s environmentally friendly features		
10	Discussion of Project’s and energy efficiency considerations		

11	Review of any District suggestions		
12	Answer all District questions		

The DISTRICT contends that the following issues / Items must be addressed through an additional meeting:

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or

The District confirms that all Items were adequately addressed at this meeting

\_\_\_\_\_  
Signature of DISTRICT representative

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The ARCHITECT contends that the following issues / Items must be addressed through an additional meeting:

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or

The ARCHITECT confirms that all Items were adequately addressed at this meeting

\_\_\_\_\_  
Signature of ARCHITECT representative