



Date: August 29, 2023
To: Board of Directors
From: Dr. Caprice Young, CEO and Superintendent (via Kevin Sved, Senior Advisor)
Subject: Architectural Services Agreement for Gilroy Prep School

Summary

Architectural services are needed to advance the Gilroy Prep School modernization and expansion project. The approval agency for this project is the Division of the State Architect (DSA). It is recommended that the Navigator Schools Board of Directors approve the attached proposal from Artik Art and Architecture to provide architectural services for this project. Artik Art and Architecture has extensive experience with the DSA and worked previously for Gilroy Unified to expand the Gilroy Prep campus from serving K-5 to its current configuration of K-8. To help ensure that the proposed \$469,080 architectural service agreement and related procurement process meets applicable state requirements and all related expenses are eligible for reimbursement from the Charter School Facilities Program award, Navigator secured the services of law firm of Atkinson, Andelson, Loya, Ruud & Romo (AALRR) as outside counsel with specialization in state school construction bond programs. This recommendation and related materials were reviewed by David Soldani of AALRR and General Counsel Tom Peraic.

Project Background

In June 2023, the Gilroy Unified School District (GUSD) Governing Board and the Navigator Schools Board of Directors approved a Facilities Memorandum of Understanding (MOU), providing a long-term lease for Gilroy Prep School at its current campus for 50 years, contingent upon the completion of a state-funded capital improvement project. The project will be funded by a \$5.5 million state award that comes in the form of half grant and half low interest loan. The project includes:

- Adding two new modular classrooms for transitional kindergarten, expanding to serve 40 new transitional kindergarten seats
- Adding two new kindergarten classrooms to better accommodate current kindergarten seats with larger classrooms that include restrooms. The two existing kindergarten classrooms will be repurposed to meet other school needs
- Significant safety improvements, including improved accessibility, improved traffic flow, and more than 40 additional on-site parking spaces
- Creation of a new play area for the TK/K classrooms
- Creation of an upper-level play area and playing field on the south side of the campus.

In developing the scope for the project improvements which includes an additional ADA accessible entrance for TK-3 students, it was also determined that an additional office unit is also needed. This unit will also include two adult restrooms and additional meeting space to help meet identified staff needs. This added portion to the improvement project would not be funded by the \$5.5m state funding, and would rather be funded by a combination of Gilroy Prep's fund balance, fundraising, or alternative financing.

Architectural Services Proposal

Artik Art and Architecture provided the attached proposal to modernize and expand the Gilroy Prep School Campus. The fees are outlined in Table 1 below.

Table 1. Fees

Phase	Proposed Fees
Schematic Design Phase	\$86,492
DSA Submittal Phase	\$230,628
DSA Approval Phase	\$27,354
Bidding Phase	\$22,262
Construction Phase	\$90,489
Closeout Phase	\$11,855
Total	\$469,080

These costs will be reimbursed through the Charter School Facilities Program.

Recommendation

It is recommended that the Navigator Schools Board of Directors approve the attached proposal from Artik Art and Architecture for \$469,080 to provide architectural services for the Gilroy Prep School Modernization and Expansion Project.

Attachment:

-Proposal from Artik Art and Architecture



394-A Umbarger Rd
San Jose, CA 95111
Phone 408.224.9890
Fax 408.224.9891
www.Artika3.com

August 10, 2023

Caprice Young
Chief Executive Officer
Navigator Schools
650 San Benito Street Suite 230
Hollister CA 95023

Project Name: Gilroy Prep School Modernization
Project Number: TBD/C1

Dear Caprice:

I am pleased to submit this proposal for limited architectural services incorporating the following terms and conditions:

Scope of the Project

Navigator Schools (Client) intends to modernize and expand the Gilroy Prep School campus located at 277 IOOF Avenue in Gilroy, CA. The program for the modernization consists of:

- Four (4) new 36' x 40' modular TK/Kindergarten classrooms with internal student restrooms.
- One (1) new 12' x 40' modular offices and staff restrooms.
- Creation of a new play area for the TK/K classrooms.
- Demolition of the existing classroom building on the south side of the campus.
- Creation of an upper-level play area and playing field on the south side of the campus.
- Renovation of the parking lot to provide additional parking spaces and an improved drop off sequence.

This proposal assumes that the project will not require approval by the City of Gilroy Planning Department and that the project will go through the Division of the State Architect (DSA) for building and site approval.

This proposal assumes that the project will go through a full public bidding process, including establishing a prequalified contractor's list, advertisement for bids, award of bid to the lowest responsible bidder, and Department of Industrial Relations (DIR) project registration.

This proposal assumes the modular buildings will be provided by the selected modular manufacturer who will provide architectural, structural, mechanical, electrical and plumbing design for the buildings related to their DSA pre-approved (PC) designs.

The budget for the project will be established during the schematic design phase. The project is intended to be constructed during the summer of 2023.

Scope of Professional Services – Basic Services

Artik Art & Architecture will provide, and be responsible for, the following project consultants: civil engineering, landscape architecture, site electrical engineering, fire alarm, data/communications and security design, and fire sprinkler design. Any other required project consultants shall be provided by Client or by Artik Art & Architecture as an Additional Service.

Artik Art & Architecture proposes the following services to accomplish this task:

Schematic Design Phase

- ◆ Visit site to review existing conditions.
- ◆ Review existing information provided by Client and DSA.
- ◆ Develop conceptual floor plans, interior elevations, and exterior elevations for the new TK/K classrooms. Meet with Client to review drawings and receive comments.
- ◆ Refine conceptual plans and elevations and develop selections for interior finishes, equipment, and furnishings. Meet with Client to review drawings and selections and receive comments.
- ◆ Finalize drawings and selections based on Client comments.
- ◆ Develop conceptual site plans of TK/K play area, upper-grade play area, field, parking lot, and other site improvements related to the project. Meet with Client to review concepts and receive comments.
- ◆ Refine conceptual site plans and develop initial selection of playground equipment, exterior furnishings, and exterior materials. Meet with Client to review drawings and selections and receive comments.



- ◆ Based on direction from Client, develop a final Schematic Design package consisting of:
 - Cover Sheet with DSA notes
 - Overall Site Plan
 - Enlarged Site Plan
 - TK/K Classroom plans, elevations and schedules.
 - Key Architectural Details
 - Schematic Grading, Paving and Drainage Plans
 - Schematic Site Utility Plan
 - Key Civil Details
 - Schematic Planting and Irrigation Plans
 - Key Landscape Details
 - Schematic Site Electrical and Low Voltage Plan
 - Schematic Low Voltage (Fire Alarm, Data/Communications, Intercom, Paging, Clock/Speaker and Security) Plans for TK/K Classrooms
 - Outline Specifications
- ◆ Coordinate with Client's separately contracted cost estimating consultant to develop a schematic cost estimate.
- ◆ Meet with Client and cost estimator to review estimate. Identify changes to the design as directed by Client. It is anticipated that some scope items may be designated as alternate bid items.
- ◆ Develop modular building bid package based on approved design consisting of:
 - Conceptual Site Plan
 - Floor Plans
 - Interior and Exterior Elevations
 - Technical Specifications
- ◆ Assist Client to develop bidding documents, including Advertisement for Bids, Bidder Information, Bid Form, required bid attachments, General Conditions and Division 1 Specifications for modular building bid package.
- ◆ Assist Client to solicit and evaluate modular building bids received.
- ◆ Assist Client to review and execute contract with modular manufacturer.

DSA Submittal Phase

- ◆ Based on direction from Client revise, refine, and finalize design.
- ◆ Coordinate with selected modular manufacturer to develop DSA approval documentation.



- ◆ Based on the approved scope and at the direction of the Client, develop final DSA Approval, consisting of:
 - Cover Sheet with DSA notes
 - Overall Site Plan
 - Enlarged Site Plans
 - TK/K Classroom plans, elevations and schedules.
 - Architectural Details
 - Site Civil Demolition Plan
 - Site Horizontal Control Plans
 - Site Paving Plan and Paving Sections
 - Site Grading and Drainage Plan
 - Erosion Control Plan
 - Site Utility Plan
 - Civil Details
 - Landscape Layout Plan
 - Landscape Material and Reference Plan
 - Landscape Construction Details
 - Irrigation Plan
 - Irrigation Details
 - Planting Plan
 - Planting Details
 - Electrical and Low Voltage Site Plan
 - Exterior Lighting and Control Plans
 - TK/K Building Electrical and Low Voltage Plans
 - Single Line Diagrams and Control Plans
 - Fire Alarm Plans
 - Fire Alarm Single Line and Details
 - Title 24 Energy Calculations
 - Electrical and Low Voltage Details
 - Fire Service Site Plan
 - Fire Service Overhead Sprinkler Plans
 - Hydraulic Calculations
 - Modular Building Plans (by modular manufacturer)
 - Technical Specifications
- ◆ Assist Client to fill out submit DSA documentation.
- ◆ Submit documentation for DSA Review and Approval.

DSA Approval Phase

- ◆ Receive and distribute DSA comments.
- ◆ Coordinate with modular manufacturer and design team to respond to DSA comments.
- ◆ Schedule and attend DSA backcheck meeting.
- ◆ Assist Client to fill out and submit DSA documentation.



Bidding Phase

- ◆ Assist Client to develop Prequalified Contractors List.
- ◆ Assist Client to develop Bidding documents, including Advertisement for Bids, Bidder Information, Bid Form, required attachments, General and Special Conditions, and Division 1 Specifications.
- ◆ Assist Client to distribute bidding materials to Prequalified Contractors.
- ◆ Conduct prebid conference.
- ◆ Respond to prebid questions from contractors.
- ◆ Issue addenda, if required.
- ◆ Assist Client to receive and open bids and determine lowest qualified bidder.
- ◆ Assist Client to contract for General Contractor.
- ◆ Assist Client to solicit quotes and contract for Inspector of Record and Testing Lab services.

Construction Phase

- ◆ Assist Client to fill out and submit DSA documentation.
- ◆ Conduct preconstruction conference and issue minutes.
- ◆ Participate in regular construction meetings with General Contractor. General Contractor shall be responsible to provide meeting minutes.
- ◆ Review the construction progress at regular intervals to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents.
- ◆ Respond to Requests for Information (RFI's) from General Contractor.
- ◆ Review and take appropriate action on submittals from General Contractor.
- ◆ Review Applications for Payment by General Contractor.
- ◆ Develop Proposal Requests to solicit change pricing from General Contractor.
- ◆ Review and comment on Proposed Change Orders (PCO) from General Contractor.
- ◆ Assemble and issue Change Orders.
- ◆ At a time when the Client asserts that the construction is substantially complete, walk through the project with the Client and Owner to develop a Punch List of items to be completed for final completion.

Close Out Phase

- ◆ When the Client has asserted that all Punch List items are complete, walk through the project with the Client and Owner to confirm that all Punch List items have been completed to the Owner's satisfaction.
- ◆ Receive and review for completeness the Client's closeout items, including As-Built Drawings and Specifications, Warrantees, Guarantees, and extra stock. When it is determined that the closeout items are complete, transmit to Owner.
- ◆ Assist Owner to fill out and submit DSA documentation.



Optional Services

The following optional services may be provided upon written direction by Client and negotiation of a mutually acceptable additional fee:

- ◆ PG&E Service Upgrade (if Required)
- ◆ Cost Estimating Services
- ◆ Offsite improvements

Excluded from Agreement

The following services are expressly excluded from this agreement:

- ◆ Topographic and geotechnical surveys
- ◆ Testing and inspection fees
- ◆ Plan review and permit fees for regulatory agencies

Compensation for Basic Services

Artik Art & Architecture will provide the services indicated above for a Fixed Fee of **Four Hundred Sixty-Nine Thousand Eighty Dollars (\$469,080)**, plus authorized Reimbursable Expenses, paid in phases as follows:

Schematic Design Phase	86,492
DSA Submittal Phase	230,628
DSA Approval Phase	27,354
Bidding Phase	22,262
Construction Phase	90,489
Closeout Phase	11,855
Total Basic Services	\$469,080

Compensation for Optional Services

Compensation for Optional Services shall be in addition to the Compensation for Basic Services listed above. Artik Art & Architecture will provide the Optional Services listed above for the following Fixed Fees:

PG&E Service Upgrade	\$8,800
Cost Estimating Services	TBD
Offsite Improvements	TBD



Compensation for Additional Services

Additional Services shall include any service not specifically listed above and agreed to by Client and Artik Art & Architecture. Compensation for Additional Services shall be a mutually agreed upon Fixed Fee or based on the Hourly Rates listed below.

The following Hour Rates are applicable to this contract:

Principal	\$250.00	Designer III	\$140.00
Associate	\$200.00	Designer II	\$130.00
Senior Project Manager	\$180.00	Designer I	\$120.00
Project Manager	\$170.00	Project Assistant	\$110.00
Job Captain	\$160.00	Senior Technical Lead	\$170.00

Reimbursable Expenses

Reimbursable expenses, as required and approved are in addition to compensation for Basic and Additional Services and include: project consultants not provided as part of Basic Services; transportation expenses, couriers, shipping, photography, reproductions, models, renderings, or other expenses incurred in the interest of the project. These expenses shall be billed to the Client at cost of the expenses incurred by the Architect or Architect's Consultants. No Reimbursable Expense may be incurred without the prior written consent of Client.

Invoicing

Artik Art & Architecture shall invoice monthly and payment is due upon receipt. Amounts unpaid thirty (30) days after the receipt of the invoice will be subject to a service charge of twelve percent (12%) per annum. Should the Client fail to pay current invoices for more than sixty (60) days, Artik Art & Architecture may stop work on the Project until payment is received or terminate this Agreement. Artik Art & Architecture shall not be held liable for any damages or losses that may result from such suspension or termination of services according to the provisions set forth in this Agreement.

Legal Costs

In the event that legal proceedings between the parties are necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of its litigation costs and expenses, including reasonable attorney's fees.



Project Timing

If the Client for more than thirty (30) consecutive days suspends the project, Artik Art & Architecture shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, Artik Art & Architecture shall be due an equitable compensation to provide for expenses incurred in the interruption and resumption of the services. If the Client for more than ninety (90) consecutive days suspends the project, Artik Art & Architecture may terminate the agreement according to the provisions set forth below.

Termination

Either the Client or Artik Art & Architecture may, for any reason, terminate this Agreement upon not less than seven- (7) days written notice to the other party.

Client's Responsibilities

The Client shall provide full information, including a program, which sets forth the Client's objectives, schedule, constraints, and budget, with reasonable contingencies and criteria. The Client shall also furnish any reports, tests, and surveys, inspection results or other information reasonably requested by Artik Art & Architecture or its consultants to the extent currently available and in Client's possession. All of foregoing shall be furnished at the Client's expense, and Artik Art & Architecture shall be entitled to rely upon the accuracy and completeness thereof.

Ownership of Documents

The Drawings, Specifications, and other Contract Documents, as instruments of service, are and shall remain the property of Artik Art & Architecture. They shall not be used on other projects or as the basis for drawings by others without written authorization from Artik Art & Architecture.

The Client acknowledges that the documents provided by Artik Art & Architecture under this Agreement are instruments of professional service, and not a product. Nevertheless, the documents prepared under this Agreement shall become the property of the Client upon completion of the work and payment in full of all monies due to Artik Art & Architecture. The Client shall not reuse or make any modifications to the plans and specifications without the prior written authorization of Artik Art & Architecture, except as described below in this Agreement.



The Client agrees, to the fullest extent permitted by law, to indemnify, defend, and hold Artik Art & Architecture harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of the documents by the Client or any person or entity that acquires or obtains the documents from or through the Client without the written authorization of Artik Art & Architecture.

Artik Art & Architecture shall retain all common law, statutory and other reserved rights, including the copyright thereto, of all architectural work produced under this Agreement. Nevertheless, Artik Art & Architecture grants to Client a limited license to use or reuse the documents prepared under this Agreement upon completion of the work and payment in full of all monies due to Artik Art & Architecture. This license is not transferable or assignable and does not limit Artik Art & Architecture's use or reuse or any exercise of its rights of copyright ownership of the architectural work prepared under this Agreement.

Limit of Liability and Indemnification

Artik Art & Architecture agrees, to the fullest extent permitted by law, to indemnify and hold the Client harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by Artik Art & Architecture' negligent acts, errors or omissions in the performance of professional services under this Agreement and Artik Art & Architecture' Consultants or anyone for whom Artik Art & Architecture is legally liable.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold Artik Art & Architecture harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the Client's negligent acts, errors or omissions and those of the Client's contractors, subcontractors, consultants or anyone for whom the Client is legally liable, and arising from the Project that is the subject of this Agreement.

Neither party is obligated to indemnify the other in any manner whatsoever for such other party's own negligence or willful misconduct.

Mediation

In an effort to resolve any conflicts that arise during the design or construction of the Project or following the completion of the Project, the Client and Artik Art & Architecture agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise.



Artik Art & Architecture further agrees to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

Hazardous Materials

Both parties acknowledge that Artik Art & Architectures' scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event Artik Art & Architecture or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that such materials may be present at the job site or any adjacent areas that may affect the performance of Artik Art & Architectures' services, Artik Art & Architecture may, at its option and without liability for consequential or any other damages, suspend performance of services on the project until the Client retains appropriate specialist consultant(s) or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials, and warrant the job site is in full compliance with the applicable laws and regulations.

Americans with Disabilities Act (ADA) Barrier Removal

The Americans with Disabilities Act (ADA) provides that it is a violation to design and construct a facility for its first occupancy later than January 26, 1993, that does not meet the accessibility and usability requirements of the ADA except where an entity can demonstrate that it is structurally impractical to meet such requirements. In addition, the ADA requires removal of architectural barriers in existing facilities where such removal is readily achievable. The definition of "readily achievable" contained in the ADA is flexible and subject to interpretation on a case-by-case basis. The requirements of the ADA will be subject to various, and possibly contradictory interpretations. Artik Art & Architecture, therefore, will use its best professional efforts to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to your project, and to advise you as to the modifications to your existing facility that may be required to comply with the ADA.

Artik Art & Architecture, however, cannot and does not warranty or guarantee that your project will comply with all interpretations of the ADA requirements and/or the requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they apply to your project.



Authorization

If this agreement meets your approval, please sign and return one of the two originals. Keep one original for your records. When we are in receipt of the signed agreement or a **“Notice to Proceed”** referencing this agreement we can begin work on your project.

Please call if you have any questions. Your business is greatly appreciated.

Sincerely,



Martin Hochroth
Principal

ACCEPTED

Client: Navigator Schools

Name of authorized
representative: _____

Title: _____

Signature: _____

Date: _____



ARCHITECTURAL SERVICES AGREEMENT

This AGREEMENT is made and entered into this [REDACTED] day of [REDACTED] in the year 2023 by and between the NAVIGATOR SCHOOLS, hereinafter referred to as “NAVIGATOR,” and ARTIK ART & ARCHITECTURE, hereinafter referred to as “ARCHITECT.” This AGREEMENT shall include all terms and conditions set forth herein. The NAVIGATOR and the ARCHITECT are sometimes referred to herein individually as a “PARTY” and collectively as the “PARTIES.” This AGREEMENT is made with reference to the following facts:

WHEREAS, NAVIGATOR desires to obtain architectural services for the Gilroy Prep School Modernization TBD/C1, hereinafter referred to as the “PROJECT”; and

WHEREAS, ARCHITECT understands that state funding for this PROJECT is a condition precedent to the effectiveness of this AGREEMENT. If state funding is not received for the PROJECT, this AGREEMENT may be voided by the NAVIGATOR except to the extent services have been rendered pursuant to the approval of the NAVIGATOR’s Board; 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, and in the proposal in the form of ARCHITECT’S August 10, 2023 letter to NAVIGATOR, attached hereto and incorporated herein as Exhibit A (the “PROPOSAL”). In the event of a conflict between any term or condition of this AGREEMENT and the PROPOSAL, the terms and conditions of the AGREEMENT shall govern and control.

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 it will follow the standards of its profession in performing all services under this AGREEMENT. The ARCHITECT shall submit for the NAVIGATOR’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 NAVIGATOR’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.

3. The schematic design, design development and construction document services covered by this AGREEMENT shall be completed and submitted to the NAVIGATOR on or before a date to be agreed upon in writing by the NAVIGATOR. The construction document services covered by this AGREEMENT shall be completed and submitted to the Division of the

State Architect (“DSA”) for review and approval on or before a date to be agreed upon in writing by the NAVIGATOR.

4. 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.

5. The ARCHITECT has been selected based on ARCHITECT’s knowledge of California public schools and ARCHITECT’s knowledge of the educational system for funding and construction and is thoroughly familiar with the requirements of the OPSC for state funding, DSA for approvals of plans and specifications, and of the CDE for site approvals and educational requirements that are applicable to a public school project.

6. The ARCHITECT shall coordinate its services with the Contractor, Project Inspector, its consultants and other parties to ensure that all requirements under DSA’s Inspection Card (Form 152) and any subsequent revisions, supplements or updates thereto issued or required by DSA, or any other/alternate processes are being met in compliance with DSA requirements and in compliance with the PROJECT schedule. The ARCHITECT and its consultants shall take all action necessary as to not delay progress in meeting any DSA requirements. The ARCHITECT shall meet all requirements set forth in DSA’s Construction Oversight Process Procedure (PR 13-01) and any subsequent revisions, supplements or updates thereto issued or required by DSA. Any references to the DSA requirements, DSA forms, documents, manuals applicable to the PROJECT shall be deemed to include and incorporate any revisions or updates thereto.

ARTICLE II - SCOPE OF ARCHITECT’S SERVICES

1. The ARCHITECT shall provide to the NAVIGATOR, on the terms herein set forth, all of the architectural, design and/or engineering services necessary to complete the PROJECT. The ARCHITECT’s services shall include those described in this AGREEMENT, and include all 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 contract between the NAVIGATOR and the “Contractor” awarded the PROJECT (the “Contract”), general and supplementary conditions of the Contract between the NAVIGATOR and Contractor, drawings, specifications, Addenda, Revisions and other documents listed in the Contract, and modifications issued after execution of the Contract between the NAVIGATOR and Contractor.

2. The ARCHITECT shall assist the NAVIGATOR in obtaining required approvals from governmental agencies (for both on and off-site approvals) and any other entities including, but not limited to, those responsible for electrical, gas, water, sanitary or storm sewer, telephone, cable/TV, antenna-based services (e.g., Dish Network), internet providers, public utilities, the fire department, as well as the County Health Department, California Department of Education (“CDE”), the Office of Public School Construction (“OPSC”), State Water Resources Control Board (SWRCB), and DSA. If necessary, the ARCHITECT shall secure preliminary agency approvals and notify the NAVIGATOR in writing as to the actions the NAVIGATOR must take to secure formal approvals.

3. The ARCHITECT shall be responsible for determining the capacity of existing utilities, and/or for any design or documentation required to make points of connection to existing utility services that may be located on or off the PROJECT site and which are required for the PROJECT.

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

5. The ARCHITECT shall assist the NAVIGATOR in determining the phasing of the PROJECT that will most efficiently and timely complete the PROJECT. This includes phasing the PROJECT's construction and the inspection approval process so Incremental Approvals as required under DSA's Construction Oversight Process Procedure can be obtained during the completion of the PROJECT.

6. The ARCHITECT shall provide a written preliminary evaluation of the NAVIGATOR'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 NAVIGATOR's representative(s), and other consultants of the NAVIGATOR during PROJECT development.

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 the NAVIGATOR, including revisions made necessary by adjustments in the NAVIGATOR's Program or Budget as defined in Article IV.

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. The ARCHITECT shall be prepared to prioritize and prepare a priority list to address critical Program and PROJECT needs as opposed to optional items that may be dropped if there is inadequate Budget for the PROJECT. In the case where there are Budget constraints, the ARCHITECT, shall prepare a priority list of critical programmatic needs and items that may be of lesser priority and review the Program with the NAVIGATOR.

11. The ARCHITECT shall provide services in connection with the work of a Construction Manager or separate consultants retained by NAVIGATOR.

12. The ARCHITECT shall provide detailed estimates of the PROJECT's Construction Costs at no additional cost to NAVIGATOR as further described in Articles V and VI.

13. The ARCHITECT shall provide detailed quantity surveys which provide inventories of material, equipment, and labor consistent with OPSC requirements for such surveys or estimates.

14. The ARCHITECT shall provide analyses of NAVIGATOR 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. To the extent the ARCHITECT is not familiar or does not have experience with any materials or systems designed for the PROJECT, 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 NAVIGATOR 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 the NAVIGATOR'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.

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 the NAVIGATOR with a 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 the PROJECT's specifications that materials containing ACBM's shall not to be included or incorporated into the PROJECT. The ARCHITECT shall incorporate requirements into the PROJECT's specifications that indicate the above certification shall be part of the Contractor's final PROJECT submittal to the NAVIGATOR.

19. The ARCHITECT shall consider operating or maintenance costs when selecting systems for the NAVIGATOR. The ARCHITECT shall utilize grants and outside funding sources and work with the NAVIGATOR 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 the NAVIGATOR, attend public hearings and other public meetings. The ARCHITECT shall be prepared to address concept and programmatic requirements for the PROJECT in such presentations, public hearings and public meetings. In addition, the ARCHITECT shall attend and assist in legal proceedings that arise from the 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 NAVIGATOR and ARCHITECT.

22. The ARCHITECT shall comply with all federal, state, and local laws, rules, regulations and ordinances that are applicable to the PROJECT.

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

24. The ARCHITECT shall commit the same PROJECT representatives from the commencement of services under this AGREEMENT through the completion of the Project Close-Out Phase. Any change in staff will require the written approval of the NAVIGATOR.

25. Schematic Design Phase

a. The ARCHITECT shall meet with the NAVIGATOR to understand and verify the NAVIGATOR's requirements for its Program. In the cases where a Program is furnished to the ARCHITECT by the NAVIGATOR, the ARCHITECT shall review the NAVIGATOR's Program and address if the Program, in the ARCHITECT's professional opinion, is realistic. If there are issues with the Program that has been provided, as part of the Schematic Design Services, ARCHITECT shall rework the Program with the NAVIGATOR representative and the NAVIGATOR to establish a priority list of programmatic needs and items that may be within and outside of the NAVIGATOR's Budget. Once the Schematic Design, Program and Budget are reconciled with the NAVIGATOR representative, and the NAVIGATOR approves the Schematic Design, Program and Budget, the ARCHITECT may then move on to the Design Development Phase.

b. In the cases where the NAVIGATOR has not established a Program, the ARCHITECT shall work with the NAVIGATOR to help establish a Program and Budget based on available state funding, available grants, or available funds (in the cases where no funding or grants are available). The ARCHITECT's familiarity with how projects are funded by the state or through grants shall be part of the expertise the NAVIGATOR is relying upon in conjunction with the ARCHITECT's experiences with similar projects and programs for the establishment of the NAVIGATOR's Program and PROJECT under this AGREEMENT. The ARCHITECT shall not design for a Program or PROJECT that exceeds the NAVIGATOR's Budget unless the ARCHITECT obtains the written consent of the NAVIGATOR and an agreement that the ARCHITECT is permitted to exceed the available Budget.

c. The ARCHITECT shall prepare, for approval by the NAVIGATOR, Schematic Design Documents consisting of drawings, renderings, programmatic outlines, and other documents illustrating the scale and relationship of the PROJECT's components. These documents shall be prepared with the understanding that Design Development and Construction Documents Phases of this AGREEMENT shall be completed in accordance with the realistic understanding of and adherence to the Schematic Design. The Schematic Design Documents shall comply with all applicable laws, statutes, ordinances, codes, rules, and regulations of the State and local governmental agencies and/or authorities having jurisdiction over the PROJECT, including, but not limited to, the OPSC, the CDE, DSA, the County Health Department and the local fire marshal/department, which are required for the final approval of the PROJECT's completed Construction Documents.

d. The ARCHITECT shall prepare schematic design studies and site utilization plans leading to a recommended solution together with a general description of the PROJECT and PROJECT's priorities for approval by the NAVIGATOR.

e. If directed by the NAVIGATOR at the time of approval of the Schematic Design Documents, the Construction Documents shall be prepared so that portions of the work of the PROJECT may be performed under separate construction contracts, phased construction contracts, or so that the construction of certain buildings, facilities, or other portions of the PROJECT may be deferred. Careful attention is directed to DSA requirements for phasing of projects and the likelihood that DSA or other agency approvals may expire during the phases. If there is an expiration and need to obtain additional DSA approvals for future phases, the ARCHITECT shall provide the NAVIGATOR with a written notification of the PROJECT approvals that may expire due to phasing. Alternate construction schemes made by the NAVIGATOR subsequent to the Design Development Phase shall be provided as an Additional Service pursuant to Article III unless the alternate construction scheme arises out of the PROJECT exceeding the estimated Budget constraint as a result of the ARCHITECT's services under this AGREEMENT.

f. The ARCHITECT shall submit a list of qualified engineers for the PROJECT for the NAVIGATOR'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.

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

h. The ARCHITECT shall perform Schematic Design services to keep the PROJECT within all Budget and scope constraints set by the NAVIGATOR, unless otherwise modified by written authorization by the NAVIGATOR.

i. The ARCHITECT shall prepare and submit to the NAVIGATOR a written estimate of the Construction Cost in conformance with Articles V and VI and shall advise the NAVIGATOR, in writing, of any adjustments to the estimate of Construction Cost.

26. Design Development Phase (Preliminary Plans)

a. Upon approval by the NAVIGATOR of the Schematic Design services set forth above, the ARCHITECT shall prepare Design Development Documents based on the Schematic Design and based on the Program that has been approved by the NAVIGATOR. Such documents shall consist of site and floor plans, elevations, cross-sections, and other documents necessary to depict the design of the PROJECT, and shall outline specifications to fix and illustrate the size, character, and quality of the entire PROJECT as to the Program requirements, landscapes, architecture, civil, structural, mechanical, and electrical systems, materials, and such other essentials as may be appropriate. The ARCHITECT shall prepare the Design Development Documents to comply with the requirements of all governmental agencies having jurisdiction over the PROJECT including, but not limited to, the OPSC, the CDE, DSA, the County Health Department and the local fire marshal/department.

b. The ARCHITECT shall prepare and submit to the NAVIGATOR a written estimate of the Construction Cost in conformance with Articles V and VI and shall advise the NAVIGATOR, in writing, of any adjustments to the estimate of Construction Cost.

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

27. Construction Document Phase (Final Plans)

a. The ARCHITECT shall prepare, from the Design Development Documents approved by the NAVIGATOR, Construction Documents (in an acceptable Building Information Modeling format, such as Autodesk® Revit® and AutoCAD® Civil 3D®) including, but not limited to, all drawings and specifications for the PROJECT setting forth, in detail, the requirements for the construction of the entire PROJECT in conformity with all applicable (on and off site) governmental and code requirements including, but not limited to, the requirements of the OPSC, DSA, the local fire marshal/department, the County Health Department and any other governmental agency having jurisdiction over the PROJECT. The Construction Documents shall show all the work to be done in a minimum of LOD 200, as well as the materials, workmanship, finishes, and equipment required for the completion of the PROJECT. All Construction Documents prepared by the ARCHITECT shall be properly coordinated including, but not limited to, the various disciplines, dimensions, terminology, details, etc.

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, but not limited to, the OPSC, CDE, DSA, local fire marshal/department, City Design Review, County Health Department, Department of Public Works, and any other governmental agencies or authorities which have jurisdiction over the PROJECT. The NAVIGATOR shall pay all fees required by such governmental agencies and/or authorities. ARCHITECT shall, whenever feasible, establish beforehand the exact costs due any governmental agencies and/or authorities in order to submit such cost information to the NAVIGATOR so payments can be prepared by the NAVIGATOR.

c. The ARCHITECT shall identify all tests and special inspections on the Statement of Structural Tests and Special Inspections (Form DSA 103) that are required for the completion of the PROJECT as designed and submit such DSA 103 to DSA for approval along with all other Construction Documents. Upon DSA's approval of the Construction Documents, including the approved DSA 103 for the PROJECT, the ARCHITECT shall ensure that a copy of the approved DSA 103 for the PROJECT is provided to the NAVIGATOR, the Laboratory of Record, each Special Inspector working on the PROJECT, the Project Inspector and the Contractor.

d. When the ARCHITECT is preparing the Construction Documents, the ARCHITECT shall include provisions that require the Contractor to:

(1) Provide the NAVIGATOR with five (5) complete sets of operation manuals;

(2) Provide adequate training and consultation to NAVIGATOR personnel in the operation, testing, start-up, adjusting and balancing of mechanical, electrical, heating, air conditioning, and other systems installed by Contractor or its subcontractors; and

(3) Prepare a marked set of prints which indicate the dimensioned location of buried utility lines and which show changes in the work made during construction (“as-built documents”). All as-built documents shall be provided to the NAVIGATOR in a format approved by the NAVIGATOR.

e. The ARCHITECT shall immediately notify the NAVIGATOR of adjustments in previous estimates of the Construction Cost arising from market fluctuations or approved changes in scope or requirements.

f. The ARCHITECT shall perform Construction Document Services to keep the PROJECT within all Program scope constraints set by the NAVIGATOR, as well as approved Budget, unless otherwise modified by written authorization by the NAVIGATOR.

g. As part of the ARCHITECT’s professional services, ARCHITECT has coordinated the drawings on the PROJECT. It is suggested, but not mandatory, that ARCHITECT perform a clash detection review of the final Construction Documents prior to submission to DSA. However, if the Construction Manager, or Design Build entity performs a clash check, ARCHITECT shall work with the Construction Manager or Design Build entity to perform reasonable clash check resolution meetings and make revisions as necessary prior to DSA submission, during DSA review, and after DSA review (followed by CCD submission or Addenda submission to document any necessary changes).

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

28. Bidding & Award Phase

a. The ARCHITECT, following the NAVIGATOR’s approval of the Construction Documents and of the latest estimate of Construction Cost, shall assist the NAVIGATOR in obtaining bids and awarding the Contract for the construction of the PROJECT.

b. The ARCHITECT shall prepare all the necessary bidding information and bidding forms required to bid the PROJECT. The ARCHITECT shall also assist the NAVIGATOR with the preparation of the Contractor’s Contract form, the general conditions, the supplementary conditions, and all other contract documents necessary to bid the PROJECT and award a complete Contract to the lowest responsible responsive bidder. The NAVIGATOR will provide the standard general conditions and supplementary

conditions that must be incorporated into the Contract with the Contractor. The ARCHITECT shall review the general conditions, supplementary conditions, and all other contract documents provided by the NAVIGATOR for incorporation into the Contract with the Contractor and shall coordinate such documents with all other Construction Documents that are prepared by the ARCHITECT pursuant to this AGREEMENT. The ARCHITECT's coordination obligations under this Section include, but are not limited to, verifying that any and all bid instructions and requirements set forth in the specifications prepared by the ARCHITECT are also set forth in the Instructions to Bidders and the Bid Form that are distributed to the bidders in connection with the PROJECT. The ARCHITECT shall prepare and sign all written Addendums that are necessary to incorporate changes into the DSA approved Construction Documents prior to the award of the PROJECT. The ARCHITECT shall assist the NAVIGATOR in distributing all Addendums to each bidder that has obtained a set of the DSA approved Construction Documents. The ARCHITECT shall ensure that all Addendums are submitted to and approved by DSA prior to certification of the PROJECT.

c. The ARCHITECT shall deposit a reproducible set of Construction Documents including, but not limited to, all drawings and specifications for the PROJECT at a reprographics company specified by the NAVIGATOR for the bid and for printing of additional sets of the DSA approved Construction Documents during the PROJECT. In accordance with the requirements of this Section, the ARCHITECT shall forward all plans, drawings, specifications, record drawings, models, mock-ups, renderings and other documents (including all computer files and/or BIM files) prepared by the ARCHITECT or the ARCHITECT's consultants during the course of the PROJECT to the reprographics company specified by the NAVIGATOR at no additional cost to the NAVIGATOR. The NAVIGATOR may request that such documents be delivered to the reprographics company selected by the NAVIGATOR in CADD, PLOT, TIFF or other format approved by the NAVIGATOR. In addition, the ARCHITECT shall provide the NAVIGATOR with a BIM format diskette file with all layers unprotected so the NAVIGATOR may utilize with a Construction Manager or Design Build entity. It is expressly understood that the release of the underlying BIM documents is for the limited use only for the PROJECT (unless otherwise agreed to in writing) and that changes that are made to the underlying BIM documents are not the responsibility of ARCHITECT. For documentation purposes, one record set of the transmitted documents shall be placed on a CD (or other acceptable electronic media) properly labeled as the record set of documents transmitted to the NAVIGATOR. Reasonable costs for producing this record document shall be reimbursed to the ARCHITECT and ARCHITECT's consultants. ARCHITECT is also advised to make a record set of clash detection checks to record the clashes that are encountered on the set of documents distributed for future record purposes and this clash detection shall also be placed on the CD. This clash detection document is not a requirement but simply recommended.

d. Upon the NAVIGATOR's request, the ARCHITECT shall recommend an acceptable plan room, or blueprinting shop, or, in the alternative, ARCHITECT shall print the necessary bidding information, Contract forms, general conditions, supplementary general conditions and all other Construction Documents necessary to bid the PROJECT

and award a complete Contract to a successful bidder and shall deliver/distribute such printed copies to all interested bidders.

e. The ARCHITECT shall make subsequent revisions to drawings, specifications, and other DSA approved Construction Documents that result from the approval of any substitution request, RFI, or submittal. All Revisions shall be prepared in writing and signed by the ARCHITECT. The ARCHITECT shall ensure that all Revisions are submitted to and approved by DSA prior to certification of the PROJECT.

f. If the lowest bid exceeds the Budget (or if a complete detailed estimate is prepared by a certified professional cost estimator from Construction Documents that are at least 90% completed) for the PROJECT, the ARCHITECT, in consultation with, and at the direction of, the NAVIGATOR, 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.

29. **Construction Phase**

a. Prior to the start of construction, the ARCHITECT shall certify that the following documents have been submitted to DSA:

(1) Contract Information Form DSA-102.

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

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

c. The ARCHITECT shall reproduce five (5) sets of Construction Documents and all progress prints for the NAVIGATOR's and the NAVIGATOR's consultant's use at the ARCHITECT's expense.

d. The ARCHITECT shall provide technical direction to a full-time Project Inspector employed by, and responsible to, the NAVIGATOR, as required by applicable law. The ARCHITECT shall direct and monitor the work of the Laboratory of Record as required by applicable law and provide code required supervision of Special Inspectors not provided by the Laboratory of Record. Upon the NAVIGATOR's award of a Construction Contract to the Contractor, the ARCHITECT shall obtain the necessary Project Inspection Cards ("PIC") (Form DSA 152) from the DSA that are needed for the Project Inspector's use in approving and signing off work on the PROJECT as it is completed by the Contractor. The ARCHITECT shall verify that the Project Inspector has the appropriate amount of PIC's that are needed for the inspection and completion of the entire PROJECT prior to the commencement of any work by the Contractor on the PROJECT. The ARCHITECT shall provide the Project Inspector, Laboratory of Record and each Special Inspector with a copy of the DSA approved Construction Documents including, but not limited to, the approved Statement of Structural Tests and Special Inspections (Form DSA

103) prior to the commencement of any work on the PROJECT at the ARCHITECT's expense.

e. The ARCHITECT shall meet with the Project Inspector, NAVIGATOR, Contractor, Laboratory of Record and Special Inspectors as needed throughout the completion of the PROJECT to verify, acknowledge and coordinate the testing and special inspection program required by the DSA approved Construction Documents.

f. The ARCHITECT shall prepare Interim Verified Reports (Form DSA 6-AE) and submit such Interim Verified Reports to DSA, the Project Inspector and the NAVIGATOR prior to the Project Inspector's approval and sign off of any of the following sections of the PROJECT's PIC's as applicable:

- (1) Initial Site Work and Foundations Preparation;
- (2) Vertical and Horizontal Framing;
- (3) Appurtenances;
- (4) Finish Site Work and Other Work;
- (5) Final.

If the ARCHITECT has delegated responsibility for any portion of the PROJECT's design to other engineers, the ARCHITECT shall ensure that such engineers submit the necessary Interim Verified Reports (Form DSA 6-AE) to DSA, the Project Inspector and the NAVIGATOR during the course of construction and prior to the Project Inspector's approval and sign off of the above sections of the DSA Form 152 as they relate to the portions of the PROJECT that were delegated to such engineers.

g. The ARCHITECT shall be responsible for reviewing and ensuring, on a monthly basis, that the Contractor is maintaining an up-to-date set of as-built documents which will be furnished to the NAVIGATOR upon completion. The ARCHITECT shall review the as-built documents prepared by the Contractor on a monthly basis and report whether they appear to be up to date, based upon the ARCHITECT's observations of the PROJECT. If it appears the as-built documents are not being kept up to date by the Contractor, the ARCHITECT shall recommend to the NAVIGATOR, in writing, an appropriate withholding from the Contractor's monthly payment application to account for the Contractor's failure to maintain such as-built documents.

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

i. The ARCHITECT shall provide general administration of the Construction Documents including, but not limited to, the following:

- (1) Visiting the PROJECT site to maintain such personal contact with the PROJECT as is necessary to assure the ARCHITECT that the Contractor's work is being completed, in every material respect, in compliance with the DSA approved Construction Documents (in no case shall the number of visits be less

than once every week or as necessary to observe work being completed in connection with each block/section of a PIC so the ARCHITECT can verify that the work does or does not comply with the DSA approved Construction Documents, whichever is greater) in order to:

i. Become familiar with, and to keep the NAVIGATOR informed about, the progress and quality of the portion of the work completed and for the preparation of the weekly written reports the ARCHITECT will prepare and submit to the NAVIGATOR for its review;

ii. Become familiar with, and to keep DSA and Project Inspector informed about, the progress and quality of the portion of the work completed and for the preparation of the necessary Interim Verified Reports the ARCHITECT will prepare and submit to DSA and Project Inspector as necessary for the timely inspection of the PROJECT and for the approval and sign off of each block/section of the PIC's during the course of the PROJECT's construction;

iii. Endeavor to guard against nonconforming work and deficiencies in the work;

iv. Determine if the work is being performed in a manner indicating that the work, when fully completed, will be in accordance with the approved DSA Construction Documents;

v. Attend weekly on-site construction meetings, and being otherwise available to the NAVIGATOR and the Project Inspector for site meetings on an "as-needed" basis;

vi. Examine Contractor applications for payment and to issue certificates for payment in amounts approved by the necessary parties; and

vii. Verify, at least monthly, in coordination with the Project Inspector, that all as-built documents are being updated pursuant to the Contract between the NAVIGATOR and the Contractor.

(2) Making regular reports as may be required by all governmental agencies or authorities having jurisdiction over the PROJECT;

(3) Reviewing schedules and shop drawings for compliance with design;

(4) Approving substitution of materials, equipment, and the laboratory reports thereof for conformance to the NAVIGATOR's standards subject to NAVIGATOR knowledge and approval;

(5) Responding to DSA field trip notes;

- (6) Preparing Construction Change Documents for approval by DSA;
- (7) Not used.
- (8) Preparing change orders for written approval by the NAVIGATOR;
- (9) Making Punch List observations when the PROJECT reaches Substantial Completion;
- (10) Determining date of Substantial Completion and the date of final completion of the PROJECT;
- (11) Providing a color schedule of all materials for the PROJECT for the NAVIGATOR's review and approval;
- (12) Assembling and delivering to the NAVIGATOR written guarantees, instruction books, diagrams, charts, and as-built documents that will be provided by the Contractor pursuant to the Contract between the NAVIGATOR and the Contractor;
- (13) Issuing the ARCHITECT's Certificate of Substantial Completion, Certificate of Completion and final certificate for payment; and
- (14) Providing any other architectural services to fulfill the requirements of the Construction Documents and this AGREEMENT.

j. ARCHITECT shall provide the NAVIGATOR with written reports, as necessary, to inform the NAVIGATOR of any problems arising during construction, changes contemplated as a result of each problem, and the progress of work.

k. The ARCHITECT, as part of the ARCHITECT's Basic Services, shall advise the NAVIGATOR of any deficiencies in construction following the acceptance of the work and prior to the expiration of the guarantee period of the PROJECT.

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

m. The ARCHITECT shall make recommendations to the NAVIGATOR 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.

n. The ARCHITECT shall advise the NAVIGATOR to reject work which does not conform to the Construction Documents. The ARCHITECT shall promptly inform the NAVIGATOR whenever, in the ARCHITECT's opinion, it may be necessary to stop the work to avoid the improper performance of the Construction 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.

o. The ARCHITECT shall not issue orders to the Contractor that might commit the NAVIGATOR to extra expenses, or otherwise amend the Construction Documents, without first obtaining the written approval of the NAVIGATOR.

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

q. The ARCHITECT shall prepare all documents and/or drawings made necessary by errors and omissions in the originally approved drawings or specifications, and such modifications therein as may be necessary to meet unanticipated conditions encountered during construction, at no additional cost or expense to the NAVIGATOR. In addition, 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 NAVIGATOR and Contractor, but which ARCHITECT failed to do.

r. The ARCHITECT shall examine, verify, and approve the Contractor's applications for payment and issue certificates for payment for the work and materials provided by the Contractor which also reflect the ARCHITECT's recommendation as to any amount which should be retained or deducted from those payments under the terms of the Construction Documents or for any other reason. The ARCHITECT's certification for payment shall constitute a representation to the NAVIGATOR, 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 DSA approved Construction Documents, that the as-built documents are up to date, and that the Contractor is entitled to payment in the amount certified.

s. The ARCHITECT shall review and approve, or take other appropriate action, upon the Contractor's submittals of shop drawings, product data, and samples for the purpose of checking for conformance with the Construction Documents. The ARCHITECT's actions shall not delay the work, but should allow for sufficient time, in the ARCHITECT's professional judgment, to permit adequate review. The ARCHITECT shall ensure that all deferred approval submittals are resolved and approved by DSA prior to incorporation in the PROJECT.

t. After the PROJECT has been let, all changes to the DSA approved Construction Documents shall be made by means of a Construction Change Document ("CCD") unless otherwise approved by the NAVIGATOR in writing. The ARCHITECT shall be responsible for preparing each CCD related to the PROJECT and shall determine which changes affect the Structural, Access or Fire & Life Safety (collectively "SAFLS") portions of the PROJECT and ensure that such changes are documented and implemented through a written CCD-Category A (Form DSA 140). All CCD-Category A's must be

submitted to DSA by the ARCHITECT with all supporting documentation and data and must be approved by DSA before such work can commence on the PROJECT. The ARCHITECT shall obtain the NAVIGATOR's approval of all CCD-Category A's before they are submitted to DSA for review and approval. All other changes to the DSA approved Construction Documents not involving SAFLS portions of the PROJECT are not required to be submitted to DSA unless DSA specifically requires such changes to be submitted to DSA in the form of a written CCD (Form DSA 140) inclusive of all supporting documentation and data. Changes that are not determined by the ARCHITECT and/or DSA to require documentation through an approved CCD-Category A/B shall be documented through an alternative CCD form or other document approved by the NAVIGATOR or required by DSA.

u. Not used.

v. All changes to the DSA approved Construction Documents, whether set forth in a CCD, or any other document approved by the NAVIGATOR, shall be incorporated into change orders by the ARCHITECT for the NAVIGATOR's approval. Each change order shall identify: (1) the description of the change in the work; (2) the amount of the adjustment to the Contractor's Contract sum, if any; and (3) the extent of the adjustment in the Contractor's Contract Time, if any. The ARCHITECT shall prepare change orders, with supporting documentation and data, for the NAVIGATOR'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.

w. The ARCHITECT shall, at the ARCHITECT's expense, prepare a set of reproducible record drawings showing significant changes in the work made during construction based on the marked-up prints, drawings and other data furnished by the Contractor to the ARCHITECT.

x. The ARCHITECT shall inspect the PROJECT to determine the date or dates of Substantial Completion and final completion. The ARCHITECT shall receive and forward to the NAVIGATOR for the NAVIGATOR'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. In the event the approved schedule for the PROJECT has been exceeded due to the fault of the Contractor, the ARCHITECT shall issue a written notice to the NAVIGATOR and the Contractor evaluating the cause of the delay(s) and shall advise the NAVIGATOR and the Contractor of the commencement of liquidated damages under the Contract between the NAVIGATOR and Contractor.

y. The ARCHITECT shall provide written evaluation of the Contractor's performance under the requirements of the Construction Documents when requested in writing by the NAVIGATOR. When the ARCHITECT has actual knowledge of any defects, errors, or deficiencies with respect to the Contractor's performance on the

PROJECT, the ARCHITECT shall provide the NAVIGATOR and the Contractor with written notification of such defects, errors, or deficiencies.

z. The ARCHITECT shall:

(1) Review all requests for information (“RFI”), submittals, and substitution requests that are submitted by the Contractor in connection with the PROJECT;

(2) Determine the data criteria required to evaluate requests for substitutions; and

(3) Be responsible for ensuring that all RFI’s, submittals and substitution requests by the Contractor are responded to not later than fourteen (14) days, or as soon as the circumstances require.

aa. The ARCHITECT shall be responsible for gathering information and processing forms required by any applicable governing agencies and/or authorities having jurisdiction over the PROJECT including, but not limited to, the County Health Department, the local building departments, local fire departments, the OPSC, and DSA, in a timely manner and ensure proper close-out of the PROJECT.

bb. The ARCHITECT shall obtain the NAVIGATOR’s approval of all CCD’s immediately following the request for such changes by the Contractor or upon any other circumstances necessitating a change. Furthermore, the ARCHITECT shall maintain a log of all CCD’s, change orders or any other NAVIGATOR approved form documenting changes to the DSA approved Construction Documents (the “Changes Log”), including status, for the NAVIGATOR’s review and approval. The ARCHITECT shall submit the Changes Log to the NAVIGATOR with its monthly invoice. Submission of the Changes Log is a requirement for payments to the ARCHITECT during the course of construction.

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

dd. 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.

ee. The ARCHITECT shall review the list of minor defects, deficiencies, and/or incomplete items (hereinafter the “Punch List”) and the fully executed Verified Report (Form DSA-6) that are submitted to the NAVIGATOR by the Contractor when the Contractor considers the PROJECT to be Substantially Complete. The ARCHITECT shall inspect the PROJECT, in conjunction with the Contractor, in order to verify the

Contractor's Punch List, add any other items to the Punch List and to confirm that Substantial Completion has been reached on the PROJECT. In the event the Contractor does not submit a fully executed Verified Report with its proposed Punch List, the ARCHITECT shall reject the Contractor's Punch List, in writing, as premature. If Substantial Completion of the PROJECT is verified by the ARCHITECT and the required Verified Report has been submitted to the NAVIGATOR for review, the ARCHITECT shall finalize the Punch List and notify the Contractor in writing that all Punch List items must be corrected prior to acceptance of the PROJECT and final payment, and that all Punch List items must be completed within the duration set forth in the Contract between the NAVIGATOR and the Contractor. The NAVIGATOR shall also be notified in writing of all Punch List items identified by the ARCHITECT and the Contractor. The ARCHITECT shall notify the NAVIGATOR when all Punch List items have been corrected by the Contractor for the NAVIGATOR's final acceptance of the PROJECT and final payment. In the event the Contractor fails to correct any Punch List item(s) within the duration set forth in the Contract between the NAVIGATOR and the Contractor, the ARCHITECT shall inform the NAVIGATOR of such default and provide the NAVIGATOR with a reasonable valuation of the cost to correct each outstanding Punch List item for deduction from the Contractor's final payment and/or retention. For purposes of this AGREEMENT, "Substantial Completion" shall mean the following five (5) conditions have been met: (1) all contractually required items have been installed with the exception of only minor and incomplete items on the Punch List; (2) All Fire/Life Safety Systems have been installed, and are working and signed off on the DSA Form 152 Inspection Card; (3) all building systems including mechanical, electrical and plumbing are functioning; (4) all other items DSA Form 152 Inspection Card requirements for the Project have been approved and signed off; and (5) the PROJECT is fit for occupancy and its intended use.

ff. Once the ARCHITECT has verified the Substantial Completion of the PROJECT, the ARCHITECT shall issue a Certificate of Substantial Completion to the Contractor and the NAVIGATOR. Upon the issuance of the Certificate of Substantial Completion, the ARCHITECT shall prepare and submit to DSA, Project Inspector and the NAVIGATOR a written Verified Report, on Form DSA 6AE, pursuant to Section 4-336 of Title 24 of the California Code of Regulations. The ARCHITECT shall also submit a signed Verified Report to DSA, Project Inspector and the NAVIGATOR upon any of the following events:

- (1) Work on the PROJECT is suspended for a period of more than one month;
- (2) The services of the ARCHITECT are terminated for any reason prior to the completion of the PROJECT;
- (3) DSA requests a Verified Report.

gg. The ARCHITECT and its consultants shall verify that all defective, deficient, or incomplete work identified in any Notice(s) of Deviation or similar notice(s) issued by the ARCHITECT, Project Inspector, Special Inspector(s), Laboratory of Record

and/or any governmental agency or authority, is fully corrected and closed before the ARCHITECT approves any final Punch List by the Contractor. As part of the ARCHITECT's Basic Services under this Section, the ARCHITECT shall direct the applicable Inspectors, Special Inspectors, and/or engineers on the PROJECT to visually verify that each defective, deficient and/or incomplete item of work referenced in each Notice of Deviation have been rectified and closed prior to the approval of the final Punch List and the issuance of any Certificate of Substantial Completion by the ARCHITECT. In the event the ARCHITECT and/or its consultants fail to verify that such work has been corrected by the Contractor before the ARCHITECT approves the final Punch-List and such work has in fact not been corrected, the ARCHITECT shall be responsible for performing all the architectural and/or engineering services necessary, at no additional cost to the NAVIGATOR, to ensure such open and outstanding items in the Notice(s) of Deviation are addressed accordingly and that all work related to such notices is corrected in a manner acceptable to the NAVIGATOR and DSA.

30. Project Close-Out

a. Within thirty (30) days after the completion of the PROJECT's construction and the ARCHITECT's receipt of as-built documents from the Contractor, ARCHITECT will review the as-built documents prepared by the Contractor and revise the record drawings and specifications so that they include all material changes made necessary by CCD's, change orders, RFI's, change order requests ("COR's"), Bulletins, clarifications as noted by the Contractor in its as-built documents and/or any other NAVIGATOR approved document which details the changes that were made to the DSA approved Construction Documents. The ARCHITECT shall incorporate such changes into a complete AutoCAD as-built file, in the original, executable, software format, and PDF files, and provide all such documents, including five (5) hard copies, to the NAVIGATOR at no additional cost. In the event the Contractor fails to provide its as-built documents within 30 days of the PROJECT's completion, the ARCHITECT shall notify the NAVIGATOR, in writing, of the Contractor's failure and recommend the appropriate withholding from the Contractor's final payment under the Contract with the NAVIGATOR.

b. The ARCHITECT shall assist the NAVIGATOR in securing the delivery of any and all applicable documents described in Sections c and d below, to DSA for review prior to issuance of a "Certificate of Completion." The ARCHITECT shall submit all documents prepared by, or in control of, the ARCHITECT to DSA without delay.

c. During the period the PROJECT is under construction, the ARCHITECT shall certify that the following documents have been submitted to DSA:

- (1) Addenda, deferred approvals and revisions;
- (2) Copies of the Project Inspector's semi-monthly reports;
- (3) Construction deviation notices;

- (4) Copies of the laboratory reports on all tests or laboratory inspections as returned and done on the PROJECT;
- (5) Special inspection reports;
- (6) Construction Change Directives;
- (7) Copies of all the necessary PIC's which have been approved and signed off by the Project Inspector for the submission to and certification by DSA; and
- (8) All other documents required to be submitted to DSA in accordance with Title 24 and the Construction Oversight Process Procedure set forth in DSA's PR 13-01.

The ARCHITECT shall notify the NAVIGATOR, in writing, if any of the above forms are not promptly submitted to DSA by the responsible parties. If necessary, the ARCHITECT shall assist the NAVIGATOR in obtaining the delivery of the above documents to DSA.

d. Upon the completion of all construction, including all Punch List items, the ARCHITECT shall assist the NAVIGATOR in securing the delivery of the following documents to DSA:

- (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, Project Inspector, 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 pages of all Revisions as approved by DSA.

(9) Copies of the signature page of all applicable Construction Change Documents as approved by DSA.

(10) Verification by the Project Inspector that all items noted on any “Field Trip Notes” have been corrected.

The ARCHITECT shall notify the NAVIGATOR, in writing, if any of the above items are not promptly submitted to the ARCHITECT and/or the NAVIGATOR by the responsible parties for submittal to DSA. If necessary, the ARCHITECT shall assist the NAVIGATOR in obtaining the above documents for delivery to DSA.

ARTICLE III - ADDITIONAL ARCHITECT’S SERVICES

1. The ARCHITECT shall notify the NAVIGATOR in writing of the need for additional services required due to circumstances beyond the ARCHITECT’s control (“Additional Services”). The ARCHITECT shall obtain written authorization from the NAVIGATOR before rendering Additional Services. Compensation for all valid Additional Services shall be negotiated and approved in writing by the NAVIGATOR before such Additional Services are performed by the ARCHITECT. No compensation shall be paid to the ARCHITECT for any Additional Services that are not previously approved by the NAVIGATOR in writing. Additional Services may 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 the ARCHITECT;

c. Providing consultation concerning the 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 NAVIGATOR requests the PROJECT be let on a segregated basis after the completion of Design Development Phase 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 Additional Service subject to prior negotiation and written approval by the NAVIGATOR;

f. Providing contract administration services after the construction Contract time (including any Governmental Delay Float as addressed in the General Conditions of the Construction Contract with Contractor) 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 BIM documents that exceeds LOD 200; and

h. 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 the NAVIGATOR, the 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 therefor as agreed by the NAVIGATOR and ARCHITECT. Through the observations of such PROJECT representative(s), the ARCHITECT shall endeavor to provide further protection for the NAVIGATOR 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 NAVIGATOR.

ARTICLE IV - NAVIGATOR'S RESPONSIBILITIES

1. The NAVIGATOR shall provide to the ARCHITECT information regarding requirements for the PROJECT, including information regarding the NAVIGATOR's objectives, schedule, and budget constraints, as well as any other criteria provided by the NAVIGATOR.

2. Prior to the Schematic Design Phase, the ARCHITECT shall prepare a current overall budget for the PROJECT which shall include the Construction Cost budget for the PROJECT. The overall budget shall be based upon the NAVIGATOR's objectives, schedule, budget constraints, and any other criteria that are provided to the ARCHITECT by the NAVIGATOR pursuant to Article IV, Section 1, above. The NAVIGATOR shall approve the Construction Cost budget prepared by the ARCHITECT pursuant to this Section and this shall be the "Budget" for the PROJECT as set forth in this AGREEMENT.

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

4. The NAVIGATOR shall give prompt written notice to the ARCHITECT if the NAVIGATOR becomes aware of any fault or defect in the PROJECT or nonconformance with the Construction Documents. However, the NAVIGATOR's failure or omission to do so shall not relieve the ARCHITECT of the ARCHITECT's responsibilities under Title 21, Title 24, and the Field Act hereunder. The NAVIGATOR 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.

6. The NAVIGATOR shall provide a topographical survey to the ARCHITECT upon request.

ARTICLE V - COST OF CONSTRUCTION

1. During the Schematic Design, Design Development, and Construction Document Phases, the ARCHITECT's estimates of Construction Cost shall be reconciled against the Budget approved by the NAVIGATOR pursuant to Article IV, Section 2.

2. The PROJECT's "Construction Cost," as used in this AGREEMENT, means the total cost to the NAVIGATOR of all work designed or specified by the ARCHITECT, which includes the total award from the initial construction Contract(s) plus the work covered by approved change orders and/or any alternates approved by the NAVIGATOR. The Construction Cost shall not include any costs that are not specifically referenced in this Article V, Section 2, as approved costs. Costs excluded from the Construction Cost include, but are not limited to, payments to the ARCHITECT or other NAVIGATOR consultants, costs of inspections, surveys, tests, and landscaping not included in PROJECT.

3. If the PROJECT is using the multiple-prime delivery method of construction, the Construction Manager's fees and/or general conditions will only be included in the total Construction Cost used to calculate the ARCHITECT's fee only if agreed upon in writing by the NAVIGATOR. Absent any written agreement, the Construction Manager's fees or general conditions shall not be included in the total Construction Cost used to calculate the ARCHITECT's fee.

4. When labor or material is furnished by the NAVIGATOR below its market cost, the Construction Cost shall be based upon current market cost of labor and new material.

5. The Construction Cost shall be the acceptable estimate of Construction Costs to the NAVIGATOR 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.

6. Any 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 NAVIGATOR to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the NAVIGATOR and the date on which bids are sought for the PROJECT.

7. If the lowest bid received exceeds the Budget:

a. The NAVIGATOR may give written approval of an increase of such fixed limit and proceed with the construction of the PROJECT;

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

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

d. The NAVIGATOR may request the ARCHITECT prepare, at no additional cost, deductive change packages that will bring the PROJECT within the Budget; or

e. The NAVIGATOR may request the ARCHITECT cooperate in revising the PROJECT scope and quality as required to reduce the Construction Cost.

8. If the NAVIGATOR chooses to proceed under Article V, Section 7(e), the ARCHITECT, without additional charge, agrees to redesign the PROJECT until the PROJECT is brought within the Budget set forth in this AGREEMENT. Redesign does not mean phasing or removal of parts of the PROJECT unless agreed to in writing by the NAVIGATOR. Redesign means the 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 cost basis, or more detailed computation if deemed necessary by the NAVIGATOR, 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 NAVIGATOR.

2. The ARCHITECT shall prepare and review the ARCHITECT's estimates of Construction Cost at each phase of the ARCHITECT's services. The ARCHITECT shall provide the NAVIGATOR with a written evaluation of the estimates at each phase of the ARCHITECT's services. The ARCHITECT's written evaluations shall, among other things, evaluate how the estimates compare to the Budget. If such estimates are in excess of the Budget, the ARCHITECT shall revise the type or quality of construction to come within the Budget at no additional cost to the NAVIGATOR. The ARCHITECT's initial budget and scope limitations shall be realistic and be reviewed with the NAVIGATOR prior to formalization.

3. The ARCHITECT, upon request of the NAVIGATOR, 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 files, BIM files and/or AutoCAD files) prepared by the ARCHITECT or the ARCHITECT's consultants for this PROJECT, shall be and remain the property of the NAVIGATOR pursuant to Education Code section 17316 for the purposes of repair, maintenance, renovation, modernization, or other purposes as they relate to the PROJECT. The NAVIGATOR, 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. If NAVIGATOR intends to reuse ARCHITECT's plans, specifications, or other documents for a project or projects other than that which is the subject of this AGREEMENT, and for which the ARCHITECT is not the architect of record, a fee of three percent (3%) of the Construction Costs shall be paid to the ARCHITECT for such reuse. In the event of such reuse or modification of the ARCHITECT's drawings, specification, or other documents by any person, firm, or legal entity, the NAVIGATOR 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 attorneys' 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 drawings, specifications, or other documents. The NAVIGATOR further agrees to remove the names and seals of the ARCHITECT and the ARCHITECT's consultants from the title block and signature pages. The NAVIGATOR, 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 the PROJECT site. Prior to reuse of the ARCHITECT's documents for any project other than an addition, alignment, or other development on the PROJECT site, the NAVIGATOR agrees to notify the ARCHITECT in writing of such reuse.

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 the ARCHITECT, or if the NAVIGATOR should decide to abandon or indefinitely postpone the PROJECT.

2. In the event of a termination based upon abandonment or postponement by NAVIGATOR, the NAVIGATOR shall pay 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 Additional 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 NAVIGATOR 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 due 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, Section 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 the NAVIGATOR upon fourteen (14) days' written notice to the ARCHITECT. In the event of a termination without cause, the NAVIGATOR shall pay 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 Additional 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 NAVIGATOR 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 Section 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.

ARTICLE IX - ACCOUNTING RECORDS OF THE ARCHITECT

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

ARTICLE X - COMPENSATION TO THE ARCHITECT

The NAVIGATOR shall compensate the ARCHITECT as follows:

1. The ARCHITECT's fees for performing Additional Services related to change orders are paid as approved by the NAVIGATOR's Board. If a change order is approved without ARCHITECT fee, no fee will be paid to the ARCHITECT unless negotiated and approved prior to commencing the change order-related services.

2. The ARCHITECT's compensation for performing all the Basic Services required by this AGREEMENT including, but not limited to, those services detailed in Article I and II, shall be as set forth in the Proposal attached hereto as Exhibit A.

3. The ARCHITECT and its consultants shall maintain time sheets detailing information including, but not limited to, the name of the employee, date, a description of the task performed in sufficient detail to allow the NAVIGATOR to determine the services provided, and the time spent for each task. The NAVIGATOR and ARCHITECT may otherwise mutually agree, in writing, on alternative types of information and levels of detail that may be provided by the ARCHITECT and its consultants pursuant to this Article X.

4. The ARCHITECT shall invoice all fees and/or costs monthly for the Basic Services that are provided in accordance with this AGREEMENT from the time the ARCHITECT begins work on the PROJECT. The ARCHITECT shall submit one (1) invoice monthly to the NAVIGATOR detailing all the fees associated with the applicable progress to completion percentage, reimbursable expenses (if any), and Additional Services (if any) incurred for the monthly billing period. Invoices requesting reimbursement for expenses incurred during the billing period must clearly list items for which reimbursement is being requested and be accompanied by proper documentation (e.g., receipts, invoices), including a copy of the NAVIGATOR's authorization notice for the invoiced item(s), if applicable. Invoices requesting payment for Additional Services must reflect the negotiated compensation previously approved by the NAVIGATOR and include a copy of the NAVIGATOR's written authorization notice approving the Additional Services and the additional compensation approved by the NAVIGATOR. No payments will be made by the NAVIGATOR to the ARCHITECT for monthly invoices requesting reimbursable expenses or Additional Services absent the prior written authorization of the NAVIGATOR. The NAVIGATOR's prior written authorization is an express condition precedent to any payment by the NAVIGATOR for Additional Services or reimbursable expenses and no claim by the ARCHITECT for additional compensation related to Additional Services or reimbursable expenses shall be valid absent such prior written approval by the NAVIGATOR.

5. When ARCHITECT's Fee is based on a percentage of Construction Cost and 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, in accordance with the schedule set forth in Article X, Section 2, above, based on the lowest responsive bid price.

6. 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 the prior written approval of the NAVIGATOR. Assessment and collection of liquidated damages from the Contractor is a condition precedent to payment for extra services arising from Contractor-caused delays.

ARTICLE XI - REIMBURSABLE EXPENSES

1. Reimbursable expenses are in addition to compensation for basic and extra services, and shall be paid to the ARCHITECT the following specified items:

a. Approved reproduction of drawings and specifications in excess of the copies provided by this AGREEMENT which includes all the sets of the Construction Documents and all progress prints; and

- b. Approved agency fees.
2. All such expenses are subject to prior written approval from NAVIGATOR.
3. Reimbursable Expenses shall not include the following specified items or any other item not specifically identified in Article XI, Section 1 above:
 - a. Travel expenses;
 - b. Check prints;
 - c. Prints or plans or specifications made for ARCHITECT's consultants and all progress prints;
 - d. Preliminary plans and specifications;
 - e. ARCHITECT's consultants' reimbursables;
 - f. Models or mock-ups; and
 - g. Meetings with Cities, planning officials, fire departments, DSA, State Allocation Board or other public agencies.
4. The NAVIGATOR's prior written authorization is an express condition precedent to any reimbursement to ARCHITECT of such costs and expenses for items not included in Article XI, Section 1 above as an allowable reimbursable expense, and no claim for any additional compensation or reimbursement shall be valid absent such prior written approval by NAVIGATOR. Payment for these reimbursable expenses shall be made as set forth in Article X.

ARTICLE XII - EMPLOYEES AND CONSULTANTS

1. The ARCHITECT, as part of the ARCHITECT's basic professional services, shall furnish the consultant services necessary to complete the PROJECT including, but not limited to: landscape architects; theater and acoustical consultants; structural, mechanical, electrical and civil engineers; and any other necessary design professionals and/or consultants as determined by the ARCHITECT and acceptable to the NAVIGATOR. All consultant services shall be provided at the ARCHITECT's sole expense. The ARCHITECT shall be responsible for the coordination and cooperation of all architects, engineers, experts or other consultants employed by the ARCHITECT. The ARCHITECT shall ensure that its engineers and/or other consultants file the required Interim Verified Reports, Verified Report and other documents that are necessary for the PROJECT's timely inspection and close-out as required by the applicable governmental agencies and/or authorities having jurisdiction over the PROJECT including, but not limited to, DSA. The ARCHITECT shall ensure that its engineers and consultants observe the construction of the PROJECT during the course of construction, at no additional cost to the NAVIGATOR, to maintain such personal contact with the PROJECT as is necessary to assure such engineers and consultants that the Contractor's work is being completed, in every material respect, in compliance with the DSA approved Construction Documents (in no case shall the number of visits be less than once every week or as necessary to observe work being completed in connection with each block/section of a PIC so such engineers and consultants can verify that the work does or does not comply with the DSA approved Construction Documents, whichever is greater).
2. The ARCHITECT shall submit, for written approval by the NAVIGATOR, the names of the consultants and/or consultant firms proposed for the PROJECT. The ARCHITECT

shall notify the NAVIGATOR of the identity of all design professionals and/or consultants in sufficient time prior to their commencement of services to allow the NAVIGATOR a reasonable opportunity to review their qualifications and object to their participation on the PROJECT if necessary. The ARCHITECT shall not assign or permit the assignment of any design professionals, engineers, or other consultants to the PROJECT to which NAVIGATOR has a reasonable objection. Approved design professionals and/or consultants shall not be changed without the prior written consent of the NAVIGATOR. Nothing in this AGREEMENT shall create any contractual relation between the NAVIGATOR 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 NAVIGATOR, then that individual shall be replaced with an acceptable competent person at the NAVIGATOR's request.

4. The construction administrator or field representative assigned to the PROJECT by the 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 NAVIGATOR, 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 NAVIGATOR.

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

a. Workers' Compensation and Employer's Liability. 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. To the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the ARCHITECT, the ARCHITECT shall indemnify, defend and hold the NAVIGATOR 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 NAVIGATOR, or any person, firm or corporation employed by the ARCHITECT or the NAVIGATOR upon or in connection with the PROJECT, except for liability resulting from the sole or active negligence, or willful misconduct of the NAVIGATOR, its officers, employees, agents, or independent Architects who are directly

employed by the NAVIGATOR. The ARCHITECT, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings (other than professional negligence covered by Section c below) that may be brought or instituted against the NAVIGATOR, its officers, agents, or employees, to the extent such claims, actions, suits, or other proceedings 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 NAVIGATOR, its officers, agents, or employees, in any action, suit or other proceedings as a result thereof. Any costs to defend under this Section b shall not exceed the ARCHITECT's proportionate percentage of fault; and

c. Professional Liability. To the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the ARCHITECT, the ARCHITECT shall indemnify and hold the NAVIGATOR 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 NAVIGATOR, arising out of, or in any way connected with, the PROJECT, including injury or damage either on or off NAVIGATOR property; but not for any loss, injury, death, or damages caused by sole or active negligence, or willful misconduct of the NAVIGATOR. 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 NAVIGATOR, but rather to reimburse the NAVIGATOR for attorneys' fees and costs incurred by the NAVIGATOR in defending such actions or proceedings brought against the NAVIGATOR, and such fees and costs shall not exceed the ARCHITECT's proportionate percentage of fault.

d. The PARTIES understand and agree that Article XIII, Section 2, of this AGREEMENT shall be the sole indemnity, as defined by California Civil Code § 2772, between the NAVIGATOR and the ARCHITECT related to the PROJECT. Any other indemnity that is attached to this AGREEMENT as part of any EXHIBIT shall be void and unenforceable between the PARTIES.

e. Any attempt to limit the ARCHITECT's liability to the NAVIGATOR in any of the exhibits or attachments to this AGREEMENT shall be void and unenforceable between the PARTIES.

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 NAVIGATOR, which will protect ARCHITECT and NAVIGATOR 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 subconsultant, 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 TWO MILLION DOLLARS (\$2,000,000.00) 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 TWO MILLION DOLLARS (\$2,000,000.00) 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 Section. Failure to maintain professional liability insurance is a material breach of this AGREEMENT and grounds for immediate termination.

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

e. Each policy of insurance required under Article XIII, Section 3(b), above, shall name the NAVIGATOR 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 NAVIGATOR is excess and non-contributory with such primary insurance; shall state that not less than thirty (30) days' written notice shall be given to NAVIGATOR prior to cancellation, except for ten (10) days' written notice for nonpayment; and, shall waive all rights of subrogation. ARCHITECT shall notify NAVIGATOR in the event of material change in, cancellation, or failure to renew or make payment, each policy. Prior to commencing work, the ARCHITECT shall deliver to NAVIGATOR certificates of insurance as evidence of compliance with the requirements herein. In the event the ARCHITECT fails to secure or maintain any policy of insurance required hereby, the NAVIGATOR 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 NAVIGATOR upon demand for the cost thereof.

f. In the event that the ARCHITECT subcontracts any portion of the ARCHITECT's duties, the ARCHITECT shall require any such subcontractor to purchase and maintain insurance coverage for the types of insurance referenced in Article XIII, Sections 3(a), (b), (c) and (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. The ARCHITECT shall not subcontract any portion of the ARCHITECT's duties under this AGREEMENT without the NAVIGATOR's prior written approval. Specification processing consultants are the only subcontractors exempt from maintaining professional liability insurance.

g. All insurance coverage amounts specified hereinabove shall cover only risks relating to, or arising out of, the PROJECT governed by this particular AGREEMENT. The insurance and required amounts of insurance specified above shall not be reduced or encumbered on account of any other projects of the ARCHITECT.

4. The ARCHITECT, in the performance of this AGREEMENT, shall be and act as an independent contractor. The ARCHITECT understands and agrees that the ARCHITECT and all of the ARCHITECT's employees shall not be considered officers, employees, or agents of the NAVIGATOR, and are not entitled to benefits of any kind or nature normally provided employees of the NAVIGATOR and/or to which NAVIGATOR's employees are normally entitled including, but not limited to, State Unemployment Compensation or Workers' Compensation. ARCHITECT assumes the full responsibility for the acts and/or omissions of the ARCHITECT's employees or agents as they relate to the services to be provided under this AGREEMENT. The 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 employees of the ARCHITECT.

5. Notices. All notices or demands to be given under this AGREEMENT by either PARTY to the other shall be in writing and given either by: (a) personal service; or (b) U.S. Mail, mailed either by registered, overnight, or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or if mailed on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either PARTY may be changed by written notice given in accordance with the notice provisions of this Section. At the date of this AGREEMENT, the addresses of the PARTIES are as follows:

NAVIGATOR:

Navigator Schools

ATTN: CFOO

650 San Benito St., Ste. 230

Hollister, CA 95023

ARCHITECT:

Artik Art & Architecture

ATTN: Martin Hochroth

394-A Umbarger Road

San Jose, CA 95111

6. The ARCHITECT, or any person, firm, or corporation employed by the ARCHITECT, either directly or by independent contract, shall be prohibited from using tobacco products (smoking, chewing, etc.) on NAVIGATOR property at all times.

7. The ARCHITECT, or any person, firm, or corporation employed by the ARCHITECT, either directly or by independent contract, shall be prohibited from using profanity on NAVIGATOR property including, but not limited to, all school sites and this prohibition shall include, but is not limited to, all racial, ethnic and/or sexual slurs or comments which could be considered harassment.

8. Appropriate dress by the ARCHITECT, or any person, firm, or corporation employed by the ARCHITECT, either directly or by independent contract, is mandatory. Therefore, tank tops, cut-offs and shorts shall not be allowed. Additionally, what is written or pictured on clothing must comply with the requirements of acceptable language as set forth above in Section above.

9. During the entire term of this AGREEMENT, the ARCHITECT, if applicable, shall fully comply with the provision of Education Code section 45125.1 (Fingerprint Requirements) when it is determined that the ARCHITECT will have contact with the NAVIGATOR's pupils while performing any services under this AGREEMENT.

10. 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 NAVIGATOR or ARCHITECT.

11. The NAVIGATOR 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.

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

13. This AGREEMENT represents the entire AGREEMENT between the NAVIGATOR 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 NAVIGATOR and the ARCHITECT.

14. If either PARTY becomes involved in litigation arising out of this AGREEMENT or the performance thereof, each PARTY shall bear its own litigation costs and expenses, including reasonable attorneys' fees.

15. This AGREEMENT shall be liberally construed to effectuate the intention of the PARTIES with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase, or provision of this AGREEMENT, neither this AGREEMENT nor any uncertainty or ambiguity herein will be construed or resolved against either PARTY (including the PARTY primarily responsible for drafting and preparation of this AGREEMENT), under any rule of construction or otherwise, it being expressly understood

and agreed that the PARTIES have participated equally or have had equal opportunity to participate in the drafting hereof.

16. The ARCHITECT is prohibited from capturing on any visual medium images of any property, logo, student, or employee of the NAVIGATOR, or any image that represents the NAVIGATOR without express written consent from the NAVIGATOR.

17. In accordance with Education Code section 17604, this AGREEMENT is not valid, binding, or an enforceable obligation against the NAVIGATOR until approved or ratified by motion of the Governing Board, duly passed and adopted.

[Signatures to Follow on Next Page]

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

ARCHITECT:

NAVIGATOR:

Art Artik & Architecture

Navigator Schools

By: _____

By: _____

Its: _____

Its: _____

APPROVED AS TO FORM:

Atkinson, Andelson, Loya, Ruud & Romo

David A. Soldani, Esq.
Attorneys for Navigator Schools