SUGGESTED ORDER OF BUSINESS

SPECIAL MEETING OF THE GOVERNING BOARD
SOUTHWESTERN COMMUNITY COLLEGE DISTRICT

NORMA L. HERNANDEZ, GOVERNING BOARD PRESIDENT
HUMBERTO PERAZA, JR., GOVERNING BOARD VICE PRESIDENT
TIM NADER, GOVERNING BOARD MEMBER
JEAN ROESCH, ED.D., GOVERNING BOARD MEMBER
TERRI VALLADOLID, GOVERNING BOARD MEMBER
CLAUDIA DURAN, STUDENT GOVERNING BOARD MEMBER
MELINDA NISH, ED.D., SECRETARY TO THE GOVERNING BOARD AND
SUPERINTENDENT/PRESIDENT

Written notice is hereby given in accordance with Government Code Section 54956 that a special meeting of the Governing Board of the Southwestern Community College District will be held as noted below:

DATE: Wednesday, January 25, 2012
TIME: 6:30 p.m.
LOCATION: Southwestern College
Learning Resource Center, Room L238 N&S
900 Otay Lakes Road
Chula Vista, CA 91910

Compliance with Americans With Disabilities Act

Southwestern Community College District, in compliance with the American Disabilities Act (ADA), requests individuals who may need special accommodation to access, attend, and/or participate in Board meetings to contact Mary Ganio at (619) 482-6301 in advance of the meeting for information on such accommodation.

<table>
<thead>
<tr>
<th>ITEM</th>
<th>CALL TO ORDER</th>
<th>PLEDGE OF ALLEGIANCE</th>
<th>ORAL COMMUNICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>CALL TO ORDER</td>
<td>PLEDGE OF ALLEGIANCE</td>
<td>ORAL COMMUNICATION</td>
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<td></td>
<td>(Hernandez)</td>
<td>(Hernandez)</td>
<td>(Hernandez)</td>
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<td>6:30 p.m., LRC, Room L238 N&amp;S</td>
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Attendance at this special meeting (Board members arriving after meeting commences will be noted as "present" at point in this suggested order of business at which they arrive).

Present: Absent:

Persons wishing to address the Governing Board under this item should fill out a yellow request card (available at the reception table) and indicate on the card if they wish to be called under Oral Communication, or when a specific agenda item is considered. Pursuant to the Brown Act (Government Code Section 54954.3) members of the public shall be afforded the opportunity to directly address the Governing Board concerning any agenda item that has been described in the notice for the special meeting.

An oral presentation to the Board does not constitute an open discussion on the presentation topic, unless that topic is on the posted agenda. Pursuant to the Brown Act (Government Code Section 54954.2(a)): "No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3."
4. ANNOUNCEMENT OF CLOSED SESSION AGENDA
   (Hernandez)
   Members of the public may be present to hear the closed session announcements and will be
   given an opportunity to speak on any closed session items at this time. Persons wishing to
   address the Governing Board under this item should fill out a yellow request card (available
   at the reception table).

   4A. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE
       Government Code Section 54957

   4B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
       Government Code Section 54956.9(b)
       Number of potential cases (1) related to San Diego County District Attorney pending
       investigation of College construction contracts

5. ADJOURN TO CLOSED SESSION
   (Hernandez)
   LRC, L246

6. RECONVENE IN OPEN SESSION
   (Hernandez)
   7:00 p.m., LRC, L238 N&S

   Present:
   Absent:

7. CLOSED SESSION REPORT OF ACTION(S) (If Applicable)

8. AWARD/REJECTION OF BID(S)
   (Brahmbhatt)

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<thead>
<tr>
<th>Hernandez</th>
<th>Nader</th>
<th>Peraza</th>
<th>Roesch</th>
<th>Valladolid</th>
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   8A. AWARD OF BID NO. 187 (ENCLOSURE)

   Recommend award of Bid No. 187 to Dynalectric - San Diego, for general contractor
   services, for the period December 12, 2011 to March 30, 2012, inclusive, in an
   amount not to exceed $439,921.

   8B. AWARD OF BID NO. 188 (ENCLOSURE)

   Recommend award of Bid No. 188 to A.O. Reed and Company, for general
   contractor services, for the period January 26, 2012 to April 3, 2013, inclusive, in an
   amount not to exceed $9,242,200.
9. RATIFICATION / APPROVAL OF AGREEMENTS – COST TO DISTRICT (ITEMS A THROUGH B)

<table>
<thead>
<tr>
<th></th>
<th>Hernandez</th>
<th>Nader</th>
<th>Peraza</th>
<th>Roesch</th>
<th>Valladolid</th>
<th>Duran</th>
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<tbody>
<tr>
<td>9A</td>
<td>RATIFICATION OF AGREEMENTS</td>
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<tr>
<td>9A1</td>
<td>Agreement with Reliance Public Relations, Inc. (ENCLOSURE)</td>
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<td></td>
<td>Ratify Agreement No. A3436.12 with Reliance Public Relations, Inc., for services in the area of community and public communications, for the period January 13 to February 24, 2012, inclusive, in an amount not to exceed $14,400 to be billed at an hourly rate of $150 for services and mileage to be paid at the approved government rate, not to exceed $1,200.</td>
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<tr>
<td>9A2</td>
<td>Agreement with Dynalectric – San Diego (ENCLOSURE)</td>
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<td>Ratify Agreement No. A3437.12, related to Bid No. 187, with Dynalectric - San Diego, for general contractor services, for the period December 12, 2011 to March 30, 2012, inclusive, in an amount not to exceed $439,921.</td>
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<td>9B</td>
<td>APPROVAL OF AGREEMENTS</td>
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<tr>
<td>9B1</td>
<td>Agreement with Steve Dow (ENCLOSURE)</td>
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<td></td>
<td>Approve Agreement No. A3439.12 with Steve Dow, to serve as a consultant for the Director of Facilities, Operations, and Planning, for the period January 26 to March 31, 2012, inclusive, in the amount of $79 per hour, in a total amount not to exceed $26,860.</td>
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<td>9B2</td>
<td>Agreement with Robert DePew (ENCLOSURE)</td>
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<td>Approve Agreement No. A3440.12 with Robert DePew, to serve as a consultant for the Director of Facilities, Operations, and Planning, for the period January 26 to March 31, 2012, inclusive, in the amount of $69 per hour, in a total amount not to exceed $23,460.</td>
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<td>9B3</td>
<td>Agreement with NTD Architecture, Inc. (ENCLOSURE)</td>
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<td>Approve Agreement No. A3414.12, related to RFQ No. 109, with NTD Architecture, Inc., for architectural services, for the period January 26, 2012 to December 31, 2015, inclusive, in an amount not to exceed $742,500, plus $30,000 for reimbursables, for a contract total, in an amount not to exceed $772,500.</td>
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<tr>
<td>9B4</td>
<td>Agreement with A.O. Reed and Company (ENCLOSURE)</td>
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<td></td>
<td>Approve Agreement No. A3438.12, related to Bid No. 188, with A.O. Reed and Company for general contractor services, for the period January 26, 2012 to April 3, 2013, inclusive, in an amount not to exceed $9,242,200.</td>
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<tr>
<td>9B5</td>
<td>Agreement with MDA Johnson Favaro (ENCLOSURE)</td>
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<td></td>
<td>Approve Agreement No. A3412.12, related to RFQ No. 109, with MDA Johnson Favaro, for architectural services, for the period January 26, 2012 to December 31, 2015, inclusive, in an amount not to exceed $797,500, plus $52,000 for reimbursables, for a contract total, in an amount not to exceed $849,500.</td>
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</table>
## Action

10. NOMINATION TO REDVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD (ENCLOSURE)

<table>
<thead>
<tr>
<th></th>
<th>Hernandez</th>
<th>Nader</th>
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<tbody>
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<td>Student Advisory Web</td>
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</tbody>
</table>

Pursuant to the request of the Chancellor’s Office, recommend nomination of Dr. Jean Roesch, Governing Board Member, to the Redevelopment Agency for the Coronado area.

## Closed Session/Report of Action(s)

11. CLOSED SESSION / REPORT OF ACTION(S) (If Applicable)

(Hernandez)

## Adjournment

12. ADJOURNMENT

Norma L. Hernandez
Governing Board President
Southwestern Community College District
Facilities, Operations, and Planning
Recommendation of Award of Bid

Governing Board Meeting Date: January 25, 2012

Recommend Award of Bid No. 187

Title of Bid:  Recommend Award of Bid No. 187 – San Diego Gas & Electric Make Ready – General Construction

<table>
<thead>
<tr>
<th>Bidder Name</th>
<th>Bid Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dynaelectric - San Diego</td>
<td>$439,921</td>
</tr>
<tr>
<td>GEM Industrial Electric, Inc.</td>
<td>$544,272</td>
</tr>
</tbody>
</table>

- Bold text indicates recommended awarding firm.

Rejected Bids:

| G.A. Abell dba Precision Electric Co.* | $480,912     |

* Bid did not include required documents.

Withdrawn Bids:

| Saturn Electric                      | $346,780     |

John R. Brown, P.E.
Director of Facilities, Operations and Planning
Southwestern Community College District
Facilities, Operations, and Planning
Recommendation of Award of Bid

Governing Board Meeting Date: January 25, 2012

Recommend Award of Bid No. 188

Title of Bid: Recommend Award of Bid No. 188 – Central Plant Mechanical Systems and Energy Loop Project – General Construction

<table>
<thead>
<tr>
<th>Bidder Name</th>
<th>Bid Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.O. Reed and Company</td>
<td>$9,242,200</td>
</tr>
<tr>
<td>Jackson and Blanc</td>
<td>$9,967,180</td>
</tr>
<tr>
<td>University Mechanical and Engineering, Inc.</td>
<td>$10,209,744</td>
</tr>
<tr>
<td>California Comfort Systems</td>
<td>$11,970,908</td>
</tr>
</tbody>
</table>

- Bold text indicates recommended awarding firm.

Withdrawn Bids:

<table>
<thead>
<tr>
<th>Bidder Name</th>
<th>Bid Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Coast Air</td>
<td>$8,051,277</td>
</tr>
</tbody>
</table>

John R. Brown, P.E.
Director of Facilities, Operations and Planning
January 25, 2012

MEMORANDUM

TO: Members of the Governing Board  
Southwestern Community College District

SUBMITTED BY: Melinda Nish, Ed.D.  
Superintendent/President

SUBJECT: Agreement with Reliance Public Relations, Inc.

RECOMMENDATION

Ratify Agreement No. A3436.12 with Reliance Public Relations, Inc., for services in the area of community and public communications, for the period January 13 to February 24, 2012, inclusive, in an amount not to exceed $14,400 to be billed at an hourly rate of $150 for services and mileage to be paid at the approved government rate, not to exceed $1,200.

RATIONALE FOR RATIFICATION

Communications assistance is needed until the vacant position of Chief Public Information and Government Relations Officer is filled. Consultant was not identified to meet January 11 Board agenda deadline.

OVERVIEW

Reliance Public Relations, Inc., will provide services in the area of community and public communications in the absence of the Chief Public Information and Government Relations Officer. Scope of services will include development of a three-month Strategic Public Relations Plan, in collaboration with the District.

FISCAL IMPACT/ACCOUNT

Not to exceed $15,600/Account No. 1-45110-671000-000

MN:MG
SOUTHWESTERN COMMUNITY COLLEGE DISTRICT

Independent Contractor Agreement

(For short or long term contracts with a value of $3,001 and over)

WHEREAS, it is the desire of the Governing Board of the Southwestern Community College District (hereinafter referred to as "District" or "Client") to contract with Reliance Public Relations, Inc. as an Independent Contractor (hereinafter referred to as "Contractor" or "Engineer"); and whereas such service will assist the Governing Board in discharging its legal obligation to provide an adequate educational program; and whereas Government Code section 53060 authorizes the Governing Board to enter into contracts to obtain special services and advice in financial, economic, accounting, engineering, legal or administrative matters for the District; and

WHEREAS, Contractor has represented to the Governing Board that Contractor is knowledgeable and qualified in skills required for this project and covenants that Contractor is capable of performing the services required under this agreement; and

WHEREAS, the Governing Board recognizes that Contractor is acting as an independent contractor in the performance of work under this contract, and that Contractor, to the extent required by law, shall be solely responsible for the payment of any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of its employees or agents in connection with the performance of work under this contract; and

WHEREAS, Contractor understands that, for purposes of this Agreement, Contractor is not an employee of the District and does not qualify for employee benefits, including workers' compensation benefits;

NOW THEREFORE, the following is agreed:

I. SERVICES AND WORK PRODUCT(S) TO BE RENDERED BY THE INDEPENDENT CONTRACTOR.

Contractor agrees to undertake, carry out and complete for the Governing Board, in a satisfactory and competent manner, the following services:

Contractor will be providing services in the area of Community and Public Communications. For further description of services, please see Attachment A.

II. COMPENSATION, MAXIMUM COST, AND PAYMENT.

(a) In consideration of the service to be rendered by Contractor as outlined in this agreement, the Governing Board agrees to pay Contractor a total amount not to exceed $14,400.00 to be billed at an hourly rate of $150.00 for services and mileage to be paid at the approved government rate, at an additional cost not to exceed $1,200. Product delivery and subsequent receipt of invoice for services rendered and products delivered by Contractor.

(b) Invoice shall be processed within thirty (30) days upon receipt and approval by Southwestern Community College District of an invoice, in triplicate, showing services rendered for the period covered by the invoice.
(c) All invoices submitted must contain the following certification statement: “I certify that payment requested is for appropriate purposes and in accordance with the provisions of the Contract.” All invoices must be signed by Contractor’s Chief Financial Officer or designee.

(d) Contractor certifies that Contractor has not and will not receive pay for the same services or days of service by any other public agency.

(e) District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing services for District, unless otherwise specifically stated in this Contract.

III. PERIOD OF PERFORMANCE.

This period covered by this agreement shall begin on January 13, 2012 and shall terminate on February 24, 2012.

IV. CONFLICT OF INTEREST.

If the District determines that Contractor is a “Consultant” under Political Reform Act of 1974, Contractor shall comply with all applicable Conflict of Interest laws, including the filing of a Statement of Economic Interest, pursuant to the District’s Conflict Code, under a disclosure category or categories as determined by the District’s Superintendent/President.

V. INDEPENDENT CONTRACTOR.

Contractor, in the performance of this Contract, shall be and act as an independent contractor. Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District’s employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker’s Compensation. Contractor assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the service to be provided under this Contract.

VI. TAXES.

Contractor acknowledges and agrees that it is the sole responsibility of Contractor to report as income its compensation received from District and to make the requisite tax filings and payments to the appropriate federal, state or local tax authority. No part of Contractor’s compensation shall be subject to withholding by District for the payment of social security, unemployment, or disability insurance or any other similar state or federal tax obligation.
VII. MATERIALS.

Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Contract unless otherwise specifically stated in the Contract. Contractor’s services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession.

VIII. AUDIT AND INSPECTION OF RECORDS.

At any time during the normal business hours and as often as District may deem necessary, Contractor shall make available to District for examination at District’s place of business as specified herein, all data, records, investigation reports and all other materials respecting matters covered by this Contract and Contractor will permit the District to audit, and to make audits of all invoices, materials, payrolls, records of personnel and other data related to all matters covered by this Contract.

IX. CONFIDENTIALITY AND USE OF INFORMATION.

(a) Contractor shall hold in trust for the District, and shall not disclose to any person, any confidential information. Confidential information is information which is related to the District’s research, development, trade secrets and business affairs; but does not include information which is generally known or easily ascertainable by nonparties through available public documentation.

(b) Contractor shall advise the District of any and all materials used, or recommended for use by consultant to achieve the project goals, that are subject to any copyright restrictions or requirements. In the event Contractor shall fail to so advise the District and as a result of the use of any programs or materials developed by Contractor under this Contract the District should be found in violation of any copyright restrictions or requirements, or the District should be alleged to be in violation of any copyright restrictions or requirements, Contractor agrees to indemnify, defend and hold harmless, District against any action or claim brought by the copyright holder.

X. EQUAL OPPORTUNITY/NON-DISCRIMINATION.

Contractor shall not discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment; or discriminate in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual’s race, color, religion, sex, national origin, age, disability, medical condition, or marital status.

Contractor shall ensure that services and benefits are provided without regard to race, color, religion, sex, age, or national origin. Contractor shall comply with the Americans with Disabilities Act and the Rehabilitation Act of 1973, as amended.
XI. HOLD HARMLESS.

Contractor agrees to indemnify, but shall have no obligations to, defend the District, its officers employees from liability or damages any and all contractors, suppliers, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies to the extent actually caused by with the negligent performance of this Contract, and liability for damages, accruing or resulting to any person, firm or corporation who may be injured (including death) or damaged by the acts or omissions of the Contractor to the extent actually caused by the negligent performance of this Contract. The District agrees to indemnify, defend and hold harmless Contractor from any and all liability, claims and losses accruing or resulting to any and all contractors, suppliers, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the negligent performance of this Contract, and from any and all liability, claims and losses accruing or resulting to any person, firm or corporation who may be injured (including death) or damaged by the acts of omissions or the District in the negligent performance of this Contract.

XII. TERMINATION.

The District or the Contractor may, at any time, with or without reason, terminate this Contract upon the giving of thirty (30) days prior written notice to the other party. In the event of termination, the Contractor shall be entitled to payment only for acceptable and allowable work performed under this Contract through the date of termination. Written notice by the District shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by Contractor or not later than five (5) days after the day of mailing, whichever is sooner.

District may also terminate this Contract upon giving of written notice of intention to terminate for cause. Cause shall include: (a) material violation of this Contract by the Contractor; (b) any act by Contractor exposing the District to liability to others for personal injury or property damage; or (c) if Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's Insolvency. Written notice by District of termination for cause shall contain the reasons for such intention to terminate and unless within ten (10) days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the ten (10) days cease and terminate. In the event of such termination, the District may secure the required services from another contractor. If the cost to the District of obtaining the services from another contractor exceeds the cost of providing the service pursuant to this Contract, the excess cost shall be charged to and collected from the Contractor. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District. Written notice by District shall be deemed given when received by the other party, or no later than five (5) days after the day of mailing, whichever is sooner.
XIII. INSURANCE

Contractor agrees to carry a comprehensive or commercial general liability insurance with limits of one-million dollars ($1,000,000) per occurrence and $2,000,000 aggregate combined single limit for bodily injury and property damage in a form mutually acceptable to both parties to protect Contractor and District against liability or claims of liability which may arise out of this Contract. In addition, Contractor agrees to provide an endorsement to this policy stating, “Such insurance as is afforded by this policy shall be primary, and any insurance carried by District shall be excess and noncontributory.” Prior to commencing the performance of services hereunder, Contractor shall provide District with certificates of insurance evidencing all coverages and endorsements required hereunder including a thirty (30) day written notice of cancellation or reduction in coverage. Contractor agrees to name District and its officers, agents and employees as additional insureds under said policy.

XIV. WORKER’S COMPENSATION INSURANCE.

Contractor agrees to procure and maintain in full force and effect Worker’s Compensation Insurance covering its employees and agents while these persons are participating in the activities hereunder. In the event a claim under the provisions of the California Workers’ Compensation Act is filed against District by a bona fide employee of Contractor participating under this Contract, Contractor agrees to defend and hold harmless the District from such claim.

XV. ORIGINALITY.

Contractor agrees that all material produced by the Contractor and delivered to Southwestern Community College District hereunder shall be original, except for such portion as is included with permission of the copyright owners thereof, that it shall contain no libelous or unlawful statements or materials, and will not infringe upon any copyright, trademark, patent, statutory or other proprietary rights of others and that it will hold harmless the Governing Board from any costs, expenses and damages resulting from any breach of this representation.

XVI. WORKS FOR HIRE.

Contractor understands and agrees that all matters produced under this Contract shall be works for hire and shall become the sole property of District and cannot be used without District’s express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District.

Contractor consents to use of Contractor name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
XVII. RIGHTS IN DATA.

Contractor grants to the Governing Board the right to publish, translate, reproduce, deliver, use and dispose of, and to authorize others to do so, all data, including reports, drawings, blueprints, and technical information resulting from the performance of work under this Contract.

XVIII. COMPLIANCE WITH APPLICABLE LAWS.

The service completed herein must meet the approval of the District and shall be subject to the District's general right of inspection to secure the satisfactory completion thereof. Contractor agrees to comply with all federal, state and local laws, rules, regulations, and ordinances that are now or may in the future become applicable to Contractor, Contractor's business, equipment and personnel engaged in operations covered by this Contract or accruing out of the performance of such operations.

XIX. PERMITS/LICENSES.

Contractor and all Contractor's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Contract.

XX. NON-WAIVER.

The failure of District or Contractor to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Contract shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

XXI. SEVERABILITY.

If any term, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.

XXII. ASSIGNMENT.

This Contract is not assignable by Contractor either in whole or in part, nor shall the Contractor further contract for the performance of any of its obligations hereunder, without the prior written consent of the Governing Board.

XXIII. LAWS GOVERNING.

This Contract shall be governed by and construed in accordance with the laws of the State of California.
XXIV. ENTIRE AGREEMENT/MODIFICATION.

This Contract and the Attachments hereto contain the entire agreement of the parties, and no representation, provision, warranty, term, condition, promise, duty or liability, expressed or implied, shall be binding upon or applied to either party, except as herein stated. No amendment or modification of any term, provision or condition of this Contract shall be binding or enforceable unless in writing and signed by each of the parties.

XXV. NOTICES.

All notices to any party hereunder shall be in writing, signed by the party giving it, and shall be sufficiently given or served, if personally served or if sent by registered mail addressed to the parties at their address indicated in this Contract.

This Contract is entered into this 8th day of February, 2012.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date thereof.

Reliance Public Relations, Inc.

Name: Bill Gay  
SS#/Federal Tax ID: 71-0986514  
Address: P.O. Box 1944  
City/State/Zip: El Centro, CA 92244  
Telephone: (760) 427-2314  
Fax:

Are you a District employee? □ Yes  X No  
Is a Credential or Special License required for this consultancy? □ Yes  X No  
If yes, please specify and attach a copy of current License.

Signature: ___________________________  
Date: January 13, 2012

Southwestern Community College District

Melinda Nish, Ed.D.  
Superintendent/President  
900 Otay Lakes Road  
Chula Vista, CA 91910-7299  
Telephone: 619 482-6301/Fax: 619 482-6413

Signature: ___________________________  
Date: January 13, 2012

Originator: Melinda Nish, Ed.D.

Account No.: 1-45110-671000-000

Approved as to form by the office of the Purchasing, Contracting & Central Services Director  
Approval No.: 43438:12  
Date: 1/15/12
Reliance Public Relations, Inc., in partnership with Valley Solutions Group, Inc., is pleased to submit this scope of services to Southwestern Community College District (the District) for comprehensive short-term public relations services. The primary purpose of this scope is to advise and assist the Superintendent/President of the District and the Board of Trustees in the development of transparent two-way dialogue with its public until a permanent public information officer is hired.

The Scope of Services and Projects to be provided by the Reliance Team include:

- Development of a three-month Strategic Public Relations Plan, in collaboration with the District’s Board and management;

- 16 hours per week of on-site assistance;

- Identification of messages and target audiences;

- Media relations, including coordination of queries, news release writing, editorial board visits and coordination of other media issues as needed;

- Identification of community relations opportunities to introduce the new District Superintendent/President to the community;

- Management of issues and crisis communications planning;

- On-site crisis communications management as necessary;

- Media training on an individual or collective basis as mutually determined with District management;

- Governmental relations assistance as needed;

- Collaboration with the District’s communications department staff;

- Other assignments as requested by the District’s Superintendent/President and mutually agreed upon by Reliance.
MEMORANDUM

TO: Members of the Governing Board
Southwestern Community College District

APPROVED BY: Melinda Nish, Ed.D.
Superintendent/President

SUBMITTED BY: C.M. Brahmbhatt
Interim Vice President for Business and Financial Affairs

INITIATED BY: John R. Brown, P.E.
Director of Facilities, Operations, and Planning

SUBJECT: Agreement with Dynalectric - San Diego

RECOMMENDATION

Ratify Agreement No. A3437.12, related to Bid No. 187, with Dynalectric - San Diego, for general contractor services, for the period December 12, 2011 to March 30, 2012, inclusive, in an amount not to exceed $439,921.

RATIONALE FOR RATIFICATION

In order to not disrupt campus activities it was necessary to begin construction on December 18, 2011. Due to bid opening in mid December, it was not possible to meet Governing Board deadlines in order to forward this agreement to the December 14, 2011 or January 11, 2012 Governing Board meetings.

OVERVIEW

There is an existing San Diego Gas & Electric (SDG&E) electrical feed that cuts through the Corner Lot from Otay Lakes Road to the campus' "loop road". This line feeds several facilities on the northern end of the campus (including the Learning Resource Center). In order for the Corner Lot's earthwork operations to begin, this line needs to be abandoned and a new line needs to be constructed to service the impacted facilities. Once constructed, power transfer onto the new feed can occur and the existing line can be removed with the Corner Lot's earthwork operations.

On December 5, 2011, Southwestern Community College District received a total of four contractor bids for Bid No. 187 related to the San Diego Gas & Electric "Make Ready" project. Based on the bids received, Dynalectric - San Diego is the lowest responsible bidder and is being recommended for award of the San Diego Gas & Electric "Make Ready" project.

Dynalectric - San Diego will furnish all equipment, materials and labor necessary the San Diego Gas & Electric "Make Ready" project. These services will be funded by Proposition R.

FISCAL IMPACT/ACCOUNT

NTE $439,921 Cost to the District/Account No.: 5-46210-718741-970 (Corner Lot - Proposition R Funds)

JRB:jr
DOCUMENT 005000
AGREEMENT

THIS AGREEMENT, made this 12 day of Dec. in the County of San Diego State of California, by and between the Southwestern Community College District, hereinafter called the District, and Dynalectric, hereinafter called the Contractor,

WITNESSETH that the District and the Contractor for the considerations stated herein agree as follows:

ARTICLE 1 - SCOPE OF WORK. The Contractor shall perform within the time stipulated the contract as herein defined, and shall provide all labor, materials, tools, utility services, and transportation to complete in a workmanlike manner all of the work required in connection with the following titled project: Bid No. 187 Bid Package ______ SDG&E Make Ready _______ in strict compliance with the contract documents as specified in Article 4 below.

ARTICLE 2 - TIME FOR COMPLETION. (a) The work shall be commenced on the date stated in the District's notice to proceed, as provided in Section A of the Special Conditions. As specified in District's notice to proceed, the work shall be completed within one hundred and two (102) calendar days from and after the date stated in such notice, which shall include zero (0) working days for normal bad weather, taking into consideration the seasonal weather for the time when construction will be undertaken.

(b) In entering into this Agreement, Contractor acknowledges and agrees that the construction duration stipulated herein is adequate and reasonable for the size and scope of the project.

ARTICLE 3 - CONTRACT PRICE. The District shall pay to the Contractor as full consideration for the faithful performance of the contract, subject to any additions or deductions as provided in the contract documents, and including any applicable sales, use or other taxes or costs, the sum of ________________________ Dollars ($439,921.00), said sum being the total amount of the following amounts stipulated in the bid:

ARTICLE 4 - COMPONENT PARTS OF THE CONTRACT. The contract entered into by this Agreement consists of the following contract documents (referred to herein as the contract or contract documents), all of which are component parts of the contract as if herein set out in full or attached hereto:

- Notice to Contractors Calling for Bids
- Information for Bidders
- Bid, as accepted
- Bid Bond
- Designation of Subcontractors
- Site Visit Certification
- Non-collusion Affidavit
- Contractor's Certificate Regarding Workers' Compensation Agreement
- Notice of Intent to Award

AGREEMENT
Copyright 2011 Gensler
Notice to Proceed
Performance Bond
Payment Bond for Public Works
General Conditions
Special Conditions
Supplemental General Conditions
Hazardous Materials Procedures and Requirements
Specification Addenda Nos. 1, N/A, N/A, as issued
Specifications
Drawings
Technical Hazardous Material Abatement Specifications
Labor Compliance Program

All of the above-named contract documents are intended to be complementary. Work required by one of the above-named contract documents and not by others shall be done as if required by all. This agreement shall supersede any prior agreement of the parties.

IN WITNESS WHEREOF, this Agreement has been duly executed by the above-named parties, on the day and year first above written.

CONTRACTOR:  
Dynalectric- San Diego

License No. 749757

By ____________________________
Its Channey Boud, EVP

DISTRICT:  

By ____________________________

Its

END OF DOCUMENT

Approved as to form by the office of the Purchasing, Contracting & Central Services Director

Approval No.: A3437.12
Date: 12/01/11 - No Access Review
MEMORANDUM

TO: Members of the Governing Board
Southwestern Community College District

APPROVED BY: Melinda Nish Ed.D.
Superintendent/President

SUBMITTED BY: C.M. Brahmbhatt
Interim Vice President for Business and Financial Affairs

INITIATED BY: John R. Brown, P.E.
Director of Facilities, Operations, and Planning

SUBJECT: Agreement with Steve Dow

RECOMMENDATION

Approve Agreement No A3439.12 with Steve Dow, to provide program and project controls, program management and construction management as well as serve as a consultant for the Director of Facilities, Operations, and Planning, for the period January 26, 2012 to March 31, 2012, inclusive, in the amount of $79 per hour, in a total amount not to exceed $26,860.

OVERVIEW

The Superintendent/President issued a suspension letter January 12, 2012 to Seville Construction Services, Inc., (SCS). Program actions are required to maintain adequate data and information.

In particular project controls in the form of use of Prologue (Program/Construction Management Software) and Primavera P3 (scheduling software) as well as other typical program/construction management services known in industry vernacular as “project controls” must be maintained and accessible for Staff.

Mr. Dow was the recent Deputy Program manager and Project Controls expert from SCS, but is no longer employed by SCS.

FISCAL IMPACT/ACCOUNT

NTE $20,860 Cost to the District/Account No. 0-45110-718701-970 (Prop R)
NTE $6,000 Cost to the District/Account No. 0-45110-718647-000 (Prop AA)

JRB:jr
SOUTHEASTERN COMMUNITY COLLEGE DISTRICT
Independent Contractor Agreement
(For short or long term contracts with a value of $3,001 and over)

WHEREAS, it is the desire of the Governing Board of the Southwestern Community College District (hereinafter referred to as "District" or "Client") to contract with Steve Dow as an Independent Contractor (hereinafter referred to as "Contractor" or "Engineer"); and whereas such service will assist the Governing Board in discharging its legal obligation to provide an adequate educational program; and whereas Government Code section 53060 authorizes the Governing Board to enter into contracts to obtain special services and advice in financial, economic, accounting, engineering, legal or administrative matters for the District; and

WHEREAS, Contractor has represented to the Governing Board that Contractor is knowledgeable and qualified in skills required for this project and covenants that Contractor is capable of performing the services required under this agreement; and

WHEREAS, the Governing Board recognizes that Contractor is acting as an independent contractor in the performance of work under this contract, and that Contractor, to the extent required by law, shall be solely responsible for the payment of any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of its employees or agents in connection with the performance of work under this contract; and

WHEREAS, Contractor understands that, for purposes of this Agreement, Contractor is not an employee of the District and does not qualify for employee benefits, including workers' compensation benefits;

NOW THEREFORE, the following is agreed:

I. SERVICES AND WORK PRODUCT(S) TO BE RENDERED BY THE INDEPENDENT CONTRACTOR.

Contractor agrees to undertake, carry out and complete for the Governing Board, in a satisfactory and competent manner, the following services:

To provide program and project controls, program management and construction management as well as serve as a consultant for the Director of Facilities, Operations, and Planning.

II. COMPENSATION, MAXIMUM COST, AND PAYMENT.

(a) In consideration of the service to be rendered by Contractor as outlined in this agreement, the Governing Board agrees to pay Contractor a total amount not to exceed $26,860 for services and product delivery and subsequent receipt of invoice for services rendered and products delivered by Contractor.

(b) Invoice shall be processed within thirty (30) days upon receipt and approval by Southwestern Community College District of an invoice, in triplicate, showing services rendered for the period covered by the invoice.

(c) All invoices submitted must contain the following certification statement: "I certify that payment requested is for appropriate purposes and in accordance with the provisions of the Contract." All invoices must be signed by Contractor's Chief Financial Officer or designee.
(d) Contractor certifies that Contractor has not and will not receive pay for the same services or days of service by any other public agency.

(e) District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing services for District, unless otherwise specifically stated in this Contract.

III. PERIOD OF PERFORMANCE.

This period covered by this agreement shall begin on January 26, 2012 and shall terminate on March 31, 2012.

IV. CONFLICT OF INTEREST.

If the District determines that Contractor is a "Consultant" under Political Reform Act of 1974, Contractor shall comply with all applicable Conflict of Interest laws, including the filing of a Statement of Economic Interest, pursuant to the District's Conflict Code, under a disclosure category or categories as determined by the District's Superintendent/President.

V. INDEPENDENT CONTRACTOR.

Contractor, in the performance of this Contract, shall be and act as an independent contractor. Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the service to be provided under this Contract.

VI. TAXES.

Contractor acknowledges and agrees that it is the sole responsibility of Contractor to report as income its compensation received from District and to make the requisite tax filings and payments to the appropriate federal, state or local tax authority. No part of Contractor's compensation shall be subject to withholding by District for the payment of social security, unemployment, or disability insurance or any other similar state or federal tax obligation.

VII. MATERIALS.

Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Contract unless otherwise specifically stated in the Contract. Contractor's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession. District will provide computer, software (Prolog, P3, MS Office) and office space.

VIII. AUDIT AND INSPECTION OF RECORDS.

At any time during the normal business hours and as often as District may deem necessary, Contractor shall make available to District for examination at District's place of business as specified herein, all data, records, investigation reports and all other materials respecting matters covered by this Contract and Contractor will permit the
District to audit, and to make audits of all invoices, materials, payrolls, records of personnel and other data related to all matters covered by this Contract.

IX. CONFIDENTIALITY AND USE OF INFORMATION.

(a) Contractor shall hold in trust for the District, and shall not disclose to any person, any confidential information. Confidential information is information which is related to the District's research, development, trade secrets and business affairs; but does not include information which is generally known or easily ascertainable by nonparties through available public documentation.

(b) Contractor shall advise the District of any and all materials used, or recommended for use by consultant to achieve the project goals, that are subject to any copyright restrictions or requirements. In the event Contractor shall fail to so advise the District and as a result of the use of any programs or materials developed by Contractor under this Contract the District should be found in violation of any copyright restrictions or requirements, or the District should be alleged to be in violation of any copyright restrictions or requirements, Contractor agrees to indemnify, defend and hold harmless, District against any action or claim brought by the copyright holder.

X. EQUAL OPPORTUNITY/NON-DISCRIMINATION.

Contractor shall not discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment; or discriminate in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, sex, national origin, age, disability, medical condition, or marital status.

Contractor shall ensure that services and benefits are provided without regard to race, color, religion, sex, age, or national origin. Contractor shall comply with the Americans with Disabilities Act and the Rehabilitation Act of 1973, as amended.

XI. HOLD HARMLESS.

Contractor agrees to indemnify, but shall have no obligations to, defend the District, its officers employees from liability or damages any and all contractors, suppliers, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies to the extent actually caused by with the negligent performance of this Contract, and liability for damages, accruing or resulting to any person, firm or corporation who may be injured (including death) or damaged by the acts or omissions of the Contractor to the extent actually caused by the negligent performance of this Contract. The District agrees to indemnify, defend and hold harmless Contractor from any and all liability, claims and losses accruing or resulting to any and all contractors, suppliers, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the negligent performance of this Contract, and from any and all liability, claims and losses accruing or resulting to any person, firm or corporation who may be injured (including death) or damaged by the acts of omissions or the District in the negligent performance of this Contract.

XII. TERMINATION.

The District or the Contractor may, at any time, with or without reason, terminate this Contract upon the giving of one day prior Email notice to the other party. In the event of
termination, the Contractor shall be entitled to payment only for acceptable and allowable work performed under this Contract through the date of termination. Email notification by the District Director of Facilities, Operations, and Planning shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by Contractor via Email or not later than five (5) days after the day of mailing of written Notice, whichever is sooner.

District may also terminate this Contract upon giving of written notice of intention to terminate for cause. Cause shall include: (a) material violation of this Contract by the Contractor; (b) any act by Contractor exposing the District to liability to others for personal injury or property damage; or (c) if Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency. Written notice by District of termination for cause shall contain the reasons for such intention to terminate and unless within ten (10) days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the ten (10) days cease and terminate. In the event of such termination, the District may secure the required services from another contractor. If the cost to the District of obtaining the services from another contractor exceeds the cost of providing the service pursuant to this Contract, the excess cost shall be charged to and collected from the Contractor. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District. Written notice by District shall be deemed given when received by the other party, or no later than five (5) days after the day of mailing, whichever is sooner.

XIII. INSURANCE

Not required.

XIV. WORKER'S COMPENSATION INSURANCE.

Contractor agrees to procure and maintain in full force and effect Worker's Compensation Insurance covering its employees and agents while these persons are participating in the activities hereunder. In the event a claim under the provisions of the California Workers' Compensation Act is filed against District by a bona fide employee of Contractor participating under this Contract, Contractor agrees to defend and hold harmless the District from such claim. If Contractor is sole agent Workman's Compensation Insurance is not applicable.

XV. ORIGINALITY.

Contractor agrees that all material produced by the Contractor and delivered to Southwestern Community College District hereunder shall be original, except for such portion as is included with permission of the copyright owners thereof, that it shall contain no libelous or unlawful statements or materials, and will not infringe upon any copyright, trademark, patent, statutory or other proprietary rights of others and that it will hold harmless the Governing Board from any costs, expenses and damages resulting from any breach of this representation.

XVI. WORKS FOR HIRE.

Contractor understands and agrees that all matters produced under this Contract shall be works for hire and shall become the sole property of District and cannot be used without District's express written permission. District shall have all right, title and interest
in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District.

Contractor consents to use of Contractor name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

XVII. RIGHTS IN DATA.

Contractor grants to the Governing Board the right to publish, translate, reproduce, deliver, use and dispose of, and to authorize others to do so, all data, including reports, drawings, blueprints, and technical information resulting from the performance of work under this Contract.

XVIII. COMPLIANCE WITH APPLICABLE LAWS.

The service completed herein must meet the approval of the District and shall be subject to the District’s general right of inspection to secure the satisfactory completion thereof. Contractor agrees to comply with all federal, state and local laws, rules, regulations, and ordinances that are now or may in the future become applicable to Contractor, Contractor’s business, equipment and personnel engaged in operations covered by this Contract or accruing out of the performance of such operations.

XIX. PERMITS/LICENSES.

Contractor and all Contractor’s employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Contract. None required for these services.

XX. NON-WAIVER.

The failure of District or Contractor to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Contract shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

XXI. SEVERABILITY.

If any term, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.

XXII. ASSIGNMENT.

This Contract is not assignable by Contractor either in whole or in part, nor shall the Contractor further contract for the performance of any of its obligations hereunder, without the prior written consent of the Governing Board.

XXIII. LAWS GOVERNING.

This Contract shall be governed by and construed in accordance with the laws of the State of California.
XXIV. ENTIRE AGREEMENT/MODIFICATION.

This Contract and the Attachments hereto contain the entire agreement of the parties, and no representation, provision, warranty, term, condition, promise, duty or liability, expressed or implied, shall be binding upon or applied to either party, except as herein stated. No amendment or modification of any term, provision or condition of this Contract shall be binding or enforceable unless in writing and signed by each of the parties.

XXV. NOTICES.

All notices to any party hereunder shall be via Email followed up in writing, signed by the party giving it, and shall be sufficiently given or served, if personally served or if sent by registered mail addressed to the parties at their E mail address indicated in this Contract.

This Contract is entered into this 26th day of January, 2012.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date thereof.

Southwestern Community College District

Name: Steve Dow
SS# /Federal Tax ID: ________________________________
Address: _______________________________________
City/State/Zip: _____________________________
Telephone: _____________________________
Email: _____________________________

Are you a District employee?  ☐ Yes  ☒ No
Is a Credential or Special License required for this consultancy?  ☐ Yes  ☒ No
If yes, please specify and attach a copy of current License. _____________________________

Signature: _____________________________
Date: _____________________________

Melinda Nish, Ed.D.
Superintendent/President
900 Otay Lakes Road
Chula Vista, CA  91910-7299
Email: mnish@swccd.edu
Telephone: 619 482-6301/Fax: 619 482-6413

Signature: _____________________________
Date: _____________________________

Originator: John R. Brown

Account No.:

$20,860 No. 0-45110-718701-970
$ 6,000 No. 0-45110-718647-000

Approved as to form by the office of the
Purchasing, Contracting & Central Services
Director
Approval No.: 43439 12
Date: ________________
January 25, 2012

MEMORANDUM

TO: Members of the Governing Board
Southwestern Community College District

APPROVED BY: Melinda Nish Ed.D
Superintendent/President

SUBMITTED BY: C.M. Brahmbhatt
Interim Vice President for Business and Financial Affairs

INITIATED BY: John R. Brown, P.E.
Director of Facilities/Operations, and Planning

SUBJECT: Agreement with Robert DePew

RECOMMENDATION

Approve Agreement No A3440.12 with Robert DePew, to provide program and project controls, program management and construction management as well as serve as a consultant for the Director of Facilities, Operations, and Planning, for the period January 26, 2012 to March 31, 2012, inclusive, in the amount of $69 per hour, in a total amount not to exceed $23,460.

OVERVIEW

The Superintendent/President issued a suspension letter January 12, 2012 to Seville Construction Services, Inc. (SCS). Program and project actions are required to maintain adequate coordination and communication.

In particular there continue to be active construction contracts on the campus that require construction management services. Also Mr. DePew was the primary project manager for Gensler Architect Inc. design contract. This contract for the Field House/Central Plant/Athletic Fields is still in the design process and requires management.

Mr. DePew was the recent Senior Project Manager in charge of these actions for SCS, but is no longer employed by SCS.

FISCAL IMPACT/ACCOUNT

NTE $18,460 Cost to the District/Account No. 0-45110-718701-970 (Prop R)
NTE $2,500 Cost to the District/Account No. 0-45110-718647-000 (Prop AA)
NTE $2,500 Cost to the District/Account No. 0-45110-718648-000 (Prop AA)

JRB:jr
SOUTHWESTERN COMMUNITY COLLEGE DISTRICT
Independent Contractor Agreement
(For short or long term contracts with a value of $3,001 and over)

WHEREAS, it is the desire of the Governing Board of the Southwestern Community College District (hereinafter referred to as "District" or "Client") to contract with Robert DePew as an Independent Contractor (hereinafter referred to as "Contractor" or "Engineer"); and whereas such service will assist the Governing Board in discharging its legal obligation to provide an adequate educational program; and whereas Government Code section 53060 authorizes the Governing Board to enter into contracts to obtain special services and advice in financial, economic, accounting, engineering, legal or administrative matters for the District; and

WHEREAS, Contractor has represented to the Governing Board that Contractor is knowledgeable and qualified in skills required for this project and covenants that Contractor is capable of performing the services required under this agreement; and

WHEREAS, the Governing Board recognizes that Contractor is acting as an independent contractor in the performance of work under this contract, and that Contractor, to the extent required by law, shall be solely responsible for the payment of any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of its employees or agents in connection with the performance of work under this contract; and

WHEREAS, Contractor understands that, for purposes of this Agreement, Contractor is not an employee of the District and does not qualify for employee benefits, including workers' compensation benefits;

NOW THEREFORE, the following is agreed:

I. SERVICES AND WORK PRODUCT(S) TO BE RENDERED BY THE INDEPENDENT CONTRACTOR.

Contractor agrees to undertake, carry out and complete for the Governing Board, in a satisfactory and competent manner, the following services:

To provide program and project controls, program management and construction management as well as serve as a consultant for the Director of Facilities, Operations, and Planning.

II. COMPENSATION, MAXIMUM COST, AND PAYMENT.

(a) In consideration of the service to be rendered by Contractor as outlined in this agreement, the Governing Board agrees to pay Contractor a total amount not to exceed $23,490 for services and product delivery and subsequent receipt of invoice for services rendered and products delivered by Contractor.

(b) Invoice shall be processed within thirty (30) days upon receipt and approval by Southwestern Community College District of an invoice, in triplicate, showing services rendered for the period covered by the invoice.

(c) All invoices submitted must contain the following certification statement: "I certify that payment requested is for appropriate purposes and in accordance with the provisions of the Contract." All invoices must be signed by Contractor's Chief Financial Officer or designee.
(d) Contractor certifies that Contractor has not and will not receive pay for the same services or days of service by any other public agency.

(e) District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing services for District, unless otherwise specifically stated in this Contract.

III. PERIOD OF PERFORMANCE.

This period covered by this agreement shall begin on **January 26, 2012** and shall terminate on **March 31, 2012**.

IV. CONFLICT OF INTEREST.

If the District determines that Contractor is a “Consultant” under Political Reform Act of 1974, Contractor shall comply with all applicable Conflict of Interest laws, including the filing of a Statement of Economic Interest, pursuant to the District’s Conflict Code, under a disclosure category or categories as determined by the District’s Superintendent/President.

V. INDEPENDENT CONTRACTOR.

Contractor, in the performance of this Contract, shall be and act as an independent contractor. Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the service to be provided under this Contract.

VI. TAXES.

Contractor acknowledges and agrees that it is the sole responsibility of Contractor to report as income its compensation received from District and to make the requisite tax filings and payments to the appropriate federal, state or local tax authority. No part of Contractor’s compensation shall be subject to withholding by District for the payment of social security, unemployment, or disability insurance or any other similar state or federal tax obligation.

VII. MATERIALS.

Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Contract unless otherwise specifically stated in the Contract. Contractor's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession. District will provide computer, software (Prolog, P3, MS Office), hardhat, and office space.

VIII. AUDIT AND INSPECTION OF RECORDS.

At any time during the normal business hours and as often as District may deem necessary, Contractor shall make available to District for examination at District's place of business as specified herein, all data, records, investigation reports and all other
materials respecting matters covered by this Contract and Contractor will permit the District to audit, and to make audits of all invoices, materials, payrolls, records of personnel and other data related to all matters covered by this Contract.

IX. CONFIDENTIALITY AND USE OF INFORMATION.

(a) Contractor shall hold in trust for the District, and shall not disclose to any person, any confidential information. Confidential information is information which is related to the District's research, development, trade secrets and business affairs; but does not include information which is generally known or easily ascertainable by nonparties through available public documentation.

(b) Contractor shall advise the District of any and all materials used, or recommended for use by consultant to achieve the project goals, that are subject to any copyright restrictions or requirements. In the event Contractor shall fail to so advise the District and as a result of the use of any programs or materials developed by Contractor under this Contract the District should be found in violation of any copyright restrictions or requirements, or the District should be alleged to be in violation of any copyright restrictions or requirements, Contractor agrees to indemnify, defend and hold harmless, District against any action or claim brought by the copyright holder.

X. EQUAL OPPORTUNITY/NON-DISCRIMINATION.

Contractor shall not discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment; or discriminate in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, sex, national origin, age, disability, medical condition, or marital status.

Contractor shall ensure that services and benefits are provided without regard to race, color, religion, sex, age, or national origin. Contractor shall comply with the Americans with Disabilities Act and the Rehabilitation Act of 1973, as amended.

XI. HOLD HARMLESS.

Contractor agrees to indemnify, but shall have no obligations to, defend the District, its officers employees from liability or damages any and all contractors, suppliers, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies to the extent actually caused by with the negligent performance of this Contract, and liability for damages, accruing or resulting to any person, firm or corporation who may be injured (including death) or damaged by the acts or omissions of the Contractor to the extent actually caused by the negligent performance of this Contract. The District agrees to indemnify, defend and hold harmless Contractor from any and all liability, claims and losses accruing or resulting to any and all contractors, suppliers, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the negligent performance of this Contract, and from any and all liability, claims and losses accruing or resulting to any person, firm or corporation who may be injured (including death) or damaged by the acts of omissions or the District in the negligent performance of this Contract.
XII. TERMINATION.

The District or the Contractor may at any time with or without reason, terminate this Contract upon the giving of one day prior Email notice to the other party. In the event of Termination, the Contractor shall be entitled to payment only for acceptable and allowable work performed under this Contract through the date of termination. Email notification by the District Director of Facilities, Operations, and Planning shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by Contractor via Email or not later than five (5) days after the day of mailing of written Notice, whichever is sooner.

District may also terminate this Contract upon giving of written notice of intention to terminate for cause. Cause shall include: (a) material violation of this Contract by the Contractor; (b) any act by Contractor exposing the District to liability to others for personal injury or property damage; or (c) if Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency. Written notice by District of termination for cause shall contain the reasons for such intention to terminate and unless within ten (10) days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the ten (10) days cease and terminate. In the event of such termination, the District may secure the required services from another contractor. If the cost to the District of obtaining the services from another contractor exceeds the cost of providing the service pursuant to this Contract, the excess cost shall be charged to and collected from the Contractor. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District. Written notice by District shall be deemed given when received by the other party, or no later than five (5) days after the day of mailing, whichever is sooner.

XIII. INSURANCE

Not required.

XIV. WORKER'S COMPENSATION INSURANCE.

Contractor agrees to procure and maintain in full force and effect Worker's Compensation Insurance covering its employees and agents while these persons are participating in the activities hereunder. In the event a claim under the provisions of the California Workers' Compensation Act is filed against District by a bona fide employee of Contractor participating under this Contract, Contractor agrees to defend and hold harmless the District from such claim. If Contractor is sole agent Workman's Compensation Insurance is not applicable.

XV. ORIGINALITY.

Contractor agrees that all material produced by the Contractor and delivered to Southwestern Community College District hereunder shall be original, except for such portion as is included with permission of the copyright owners thereof, that it shall contain no libelous or unlawful statements or materials, and will not infringe upon any copyright, trademark, patent, statutory or other proprietary rights of others and that it will hold harmless the Governing Board from any costs, expenses and damages resulting from any breach of this representation.
XVI. WORKS FOR HIRE.

Contractor understands and agrees that all matters produced under this Contract shall be works for hire and shall become the sole property of District and cannot be used without District’s express written permission. District shall have all right, title and interest

In said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District.

Contractor consents to use of Contractor name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

XVII. RIGHTS IN DATA.

Contractor grants to the Governing Board the right to publish, translate, reproduce, deliver, use and dispose of, and to authorize others to do so, all data, including reports, drawings, blueprints, and technical information resulting from the performance of work under this Contract.

XVIII. COMPLIANCE WITH APPLICABLE LAWS.

The service completed herein must meet the approval of the District and shall be subject to the District’s general right of inspection to secure the satisfactory completion thereof. Contractor agrees to comply with all federal, state and local laws, rules, regulations, and ordinances that are now or may in the future become applicable to Contractor, Contractor’s business, equipment and personnel engaged in operations covered by this Contract or accruing out of the performance of such operations.

XIX. PERMITS/LICENSES.

Contractor and all Contractor’s employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Contract. None required for these services.

XX. NON-WAIVER.

The failure of District or Contractor to seek recourses for violation of, or to insist upon, the strict performance of any term or condition of this Contract shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

XXI. SEVERABILITY.

If any term, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.

XXII. ASSIGNMENT.

This Contract is not assignable by Contractor either in whole or in part, nor shall the Contractor further contract for the performance of any of its obligations hereunder, without the prior written consent of the Governing Board.
XXIII. LAWS GOVERNING.

This Contract shall be governed by and construed in accordance with the laws of the State of California.

XXIV. ENTIRE AGREEMENT/MODIFICATION.

This Contract and the Attachments hereto contain the entire agreement of the parties, and no representation, provision, warranty, term, condition, promise, duty or liability, expressed or implied, shall be binding upon or applied to either party, except as herein stated. No amendment or modification of any term, provision or condition of this Contract shall be binding or enforceable unless in writing and signed by each of the parties.

XXV. NOTICES.

All notices to any party hereunder shall be via Email followed up in writing, signed by the party giving it, and shall be sufficiently given or served, if personally served or if sent by registered mail addressed to the parties at their Email address indicated in this Contract.

This Contract is entered into this 26th day of January, 2012.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date thereof.

Southwestern Community College District

Name: Robert DePew
SS#/Federal Tax ID:
Address:
City/State/Zip:
Telephone:
Email:

Are you a District employee? □ Yes X No
Is a Credential or Special License required for this consultancy? □ Yes X No
If yes, please specify and attach a copy of current License. ________________________________

Signature: ________________________________
Date: ________________________________

Melinda Nish, Ed.D.
Superintendent/President
900 Otay Lakes Road
Chula Vista, CA 91910-7299
Email: mnish@swccd.edu
Telephone: 619 482-6301/Fax: 619 482-6413

Signature: ________________________________
Date: ________________________________

Originator: John R. Brown

Account No.:
$18,460 No. 0-45110-718701-970
$ 2,500 No. 0-45110-718647-000
$ 2,500 No. 0-45110-718648-000

Approved as to form by the office of the Purchasing, Contracting & Central Services Director
Approval No. 3440.12
Date: 12/2012
MEMORANDUM

TO: Members of the Governing Board
Southwestern Community College District

APPROVED BY: Melinda Nish, Ed.D.
Superintendent/President

SUBMITTED BY: C.M. Brahmbhatt
Interim Vice President for Business and Financial Affairs

INITIATED BY: John R. Brown, P.E.
Director of Facilities, Operations, and Planning

SUBJECT: Agreement with NTD Architecture, Inc.

RECOMMENDATION

Approve Agreement No. A3414.12, related to RFQ No. 109, with NTD Architecture, Inc., for architectural services, for the period January 26, 2012 to December 31, 2015, inclusive, in an amount not to exceed $742,500, plus $30,000 for reimbursables, for a contract total, in an amount not to exceed $772,500.

OVERVIEW

NTD Architecture, Inc. is being recommended for award of the Building 900 - Mayan Hall Theater Renovation and ADA Access project. Section 3.13.2 of Agreement No. A3414.12 states that the “Designer shall not proceed with performance of any Services under this Agreement unless and until the District provides a written notice to proceed.” District Staff will only provide NTD Architecture, Inc. with a notice to proceed on Task Order No. 1 – Programming, inclusive, in an amount not to exceed $80,000. Once the programming phase is complete, District Staff will present the Governing Board with a recommendation to proceed with the remaining Task Orders. If at programming completion District Staff and/or the Governing Board deem the remaining Task Orders unnecessary, the agreement will be terminated.

On December 15, 2009, Southwestern Community College District released RFQ No. 109 to the General Public in a request for architectural services for the Proposition R Bond Program. NTD Architecture, Inc. submitted a qualifications packet on January 19, 2010. On April 20, 2010, the Governing Board approved NTD Architecture, Inc. along with six other firms as eligible to provide architectural services for Proposition R projects. On October 11, 2011, firms were then asked to prepare proposals for the Building 900 – Mayan Hall Theater Renovation and ADA Access project. On October 27, 2011, proposals were received and reviewed by both Bond Program Management and District staff. Three firms were then invited for interviews in which Bond Management staff, District staff and District end users unanimously selected NTD Architecture, Inc. for award of the Building 900 - Mayan Hall Theater Renovation and ADA Access project. NTD Architecture, Inc. is being recommended as the firm that will provide the best value in relation to this project scope.

NTD Architecture, Inc. will provide professional architectural design services and construction documents for the Building 900 – Mayan Hall Theater Renovation and ADA Access project. This project will be funded by Proposition R.

FISCAL IMPACT/ACCOUNT

NTE $772,500 Cost to the District/Account No.: 5-45123-718721-970 (Building 900 – Mayan Hall Theater Renovation and ADA Access – Proposition R Funds)

JRB:jr
DESIGN, CONSTRUCTION ADMINISTRATION, AND CLOSEOUT SERVICES
MAYAN HALL THEATER RENOVATION AND ADA ACCESS
BY AND BETWEEN
NTD ARCHITECTURE, INC.
AND
SOUTHWESTERN COMMUNITY COLLEGE DISTRICT

1. Parties and Date

This Agreement is made and entered into this 25th day of January, 2012, by and between the Southwestern Community College District (DISTRICT), a public school DISTRICT organized under the laws of the State of California with its principal place of business at 900 Otay Lakes Road, Chula Vista, CA 91910 ("DISTRICT") and NTD ARCHITECTURE, INC., with its principal place of business at 9655 Granite Ridge Drive, Suite 400, San Diego, CA 92123 ("Designer"). DISTRICT and Designer are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

2. Recitals

2.1 The DISTRICT is a public agency school DISTRICT organized under the laws of the State of California, with power to contract for the services provided for herein.

2.2 The DISTRICT intends to provide a complete renovation of the Mayan Hall Theater, Building 900. The existing facility was constructed in 1969 and is proposed to be completely renovated. The project potentially includes structural upgrades, remediation of soil issues below the building, new restrooms, ADA compliance upgrades, classroom renovations, etc.

2.3 DISTRICT requires the services of a duly qualified and licensed Designer to perform the services required by this Agreement. Designer represents that it is aware of the DISTRICT's plans with respect to the Project.

2.4 Designer warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Designer is a corporation or other organization, the Project Designer designated pursuant to Section 3.2, and not the Designer itself, shall be fully licensed to practice as a Designer in the State of California.

3. Terms

3.1 Employment of Designer. Designer promises and agrees to furnish to DISTRICT all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional Design and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). Each Service will be further defined by
individual task orders listed in Exhibit ‘A’. The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Designer shall be subject to the sole and discretionary approval of the DISTRICT, which approval shall not be unreasonably withheld.

3.2 **Project Designer: Key Personnel.** Designer shall name a specific person to act as Project Designer, subject to the approval of DiSTRICT. Designer hereby designates

Leigh Anne Jones, AIA, LEED AP, License Number 33062

to act as the Project Designer for the Project. The Project Designer shall: (1) maintain oversight of the Project at all times; (2) have full authority to represent and act on behalf of the Designer for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with DISTRICT and all contractors, consultants, engineers and inspectors on the Project. Any change in the Project Designer shall be subject to the DISTRICT's prior written approval, which approval shall not be unreasonably withheld. The new Project Designer shall be of at least equal competence as the prior Project Designer. In the event that DISTRICT and Designer cannot agree as to the substitution of a new Project Designer, DISTRICT shall be entitled to terminate this Agreement.

In addition to the Project Designer, Designer has represented to the DISTRICT that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Designer may substitute others of at least equal competence upon written approval of the DISTRICT. In the event that DISTRICT and Designer cannot agree as to the substitution of key personnel, engineers or consultants, DISTRICT shall be entitled to terminate this Agreement for cause. As discussed below, any personnel, engineers or consultants who fail or refuse to perform the Services in a manner acceptable to the DISTRICT, or who are determined by the DISTRICT to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Designer at the request of the DISTRICT. The key additional personnel, engineers and consultants for performance of this Agreement are as follows:

**DESIGNER' TEAM: (LIST KEY PERSONNEL AND LICENSE NOS.)**

1. **Architect of Record:** Jordan Knighton, AIA, CA License #15848
2. **Project Designer:** Leigh Anne Jones, AIA, LEED AP, CA License #33062
3. **Project Architect:** Bruce Thomas, AIA, CA License #18323

Initial Each Page:

NTD Architecture, Inc.
Mayan Hall Theater Renovation and ADA Access
4. Design Leader: Shoji Takeshima, AIA, CA License #27887
5. Structural Engineer – KNA Structural Engineers – Larry Kaprielian, PE, SE, CA License #2795
6. Mechanical / Plumbing Engineer – Dufoe Engineering – Alexander Podesta, PE, LEED AP, CA License #32837
7. Electrical Engineer – Johnson Consulting Engineers – Gary Johnson, CA License #11512
8. Civil Engineer – RBF Civil Engineers – Kevin Vogelsang, PE, CA License #C41213
9. Landscape Architect – Nowell Landscape Architects – Brad Lenahan, CA License #G4470
10. Theater Consultant – The Ruzika Company – Tom Ruzika
11. Acoustical Engineer – Veneklasen Associates, James A. Good

3.3 Hiring of Consultants and Personnel.

3.3.1 Right to Hire or Employ. Designer shall have the option, unless DISTRICT objects in writing after notice, to employ at its expense Designers, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Designer may delegate without relieving Designer from administrative or other responsibility under this Agreement. Designer shall be responsible for the coordination and cooperation of Designer's Designers, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by DISTRICT in its sole and reasonable discretion. Designer shall notify DISTRICT of the identity of all consultants at least fourteen (14) days prior to their commencement of work in order to allow DISTRICT time to review their qualifications and decline consent to their participation on the Project if deemed necessary by DISTRICT in its sole and reasonable discretion.

3.3.2 Qualification and License. All Designers, engineers, experts and other consultants retained by Designer in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All Designers, engineers, experts and other consultants hired by Designer shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the DISTRICT in writing. Unless changes are approved in writing by the DISTRICT, Designer's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.
3.3.4 **Assignments or Staff Changes.** Designer shall promptly obtain written DISTRICT approval of any assignment, reassignment or replacement of such Designers, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Designer's consultants and key personnel shall be subject to approval by DISTRICT.

3.3.5 **Draftsmen and Clerical Support.** Draftsmen and clerical personnel shall be retained by Designer at Designer's sole expense.

3.4 **Standard of Care; Performance of Employees.**

3.4.1 **Standard of Care.** Designer shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform the Services in the same discipline in the State of California, and shall be fully responsible to DISTRICT for any damages to DISTRICT and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Designer shall be fully responsible to the DISTRICT for any increased costs incurred by the DISTRICT as a result of any such delays in the design or construction of the Project. Designer represents and maintains that it is skilled in the professional calling necessary to perform the Services. Designer warrants that all of its employees, Designers, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Designer represents that it, its employees, Designers, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them, and that such licenses and approvals shall be maintained throughout the term of this Agreement.

3.4.2 **Performance of Employees.** Any employee or consultant who is reasonably determined by the DISTRICT to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the DISTRICT, shall be promptly removed from the Project by the Designer and shall not be re-employed to perform any of the Services or to work on the Project.

3.5 **Laws and Regulations.**

3.5.1 **Knowledge and Compliance.** Designer shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Designer by law. Designer shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. If the Designer performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the DISTRICT, Designer shall be liable for all costs and expenses incurred by the DISTRICT in recovering the Services or the Project in connection with such violation.
shall be solely responsible for all costs arising therefrom. Designer shall defend, indemnify and
hold DISTRICT, its officials, officers, employees and agents free and harmless, pursuant to the
indemnification provisions of this Agreement, from any claim or liability arising out of any
failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 **Drawings and Specifications.** Designer shall cause all drawings and
specifications to conform to any applicable requirements of federal, state and local laws, rules
and regulations, including, but not limited to, the California Building Code, the California
Education Code, Titles 19, 21 and 24 of the California Code of Regulations, and any
requirements of the Division of State Architect (including structural safety, fire/life safety and
access compliance section), the State Department of Education and the California Department of
General Services, in effect as of the time the drawings and specifications are prepared or revised
during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant
revisions made necessary by changes in such laws, rules and regulations after this time, which
were not known or reasonably should not have been known, by Designer may be compensated as
Additional Services. Designer shall cause the necessary copies of such drawings and
specifications to be filed with any governmental bodies with approval jurisdiction over the
Project, in accordance with the Services described in Exhibit "A" attached hereto.

3.5.3 **Americans with Disabilities Act.** Designer will use its best professional
efforts to interpret all applicable federal, state and local laws, rules and regulations with respect
to access, including those of the Americans with Disabilities Act ("ADA"). Designer shall
inform DISTRICT of the existence of inconsistencies of which it is aware or reasonably should
be aware between federal and state accessibility laws, rules and regulations, as well as any other
issues which are subject to conflicting interpretations of the law, and shall provide DISTRICT
with its interpretation of such inconsistencies and conflicting interpretations. Unless Designer
brings such inconsistencies and conflicting interpretations to the attention of the DISTRICT and
requests DISTRICT's direction on how to proceed, the Designer's interpretation of such
inconsistencies and conflicting interpretations shall be the sole responsibility and liability of
Designer, and the Designer shall correct all plans, specifications and other documents prepared
for the Project at no additional cost if its interpretations are shown to be incorrect. If Designer
brings such inconsistencies and conflicting interpretations to the attention of the DISTRICT and
requests DISTRICT's direction on how to proceed, Designer shall be responsible to the
DISTRICT pursuant to the indemnification provision of this Agreement. DISTRICT
acknowledges that the requirements of the federal and state accessibility laws are subject to
various and possibly contradictory interpretations, and that the Designer cannot warrant or
guarantee that its interpretation will be correct. Designer will adhere to the standard of care
provided for in this Agreement and will use its reasonable professional efforts and judgment in
making its interpretations.

3.5.4 **Permits, Approvals and Authorizations.** Designer shall provide
DISTRICT with a list of all permits, approvals or other authorizations required for the Project
from all federal, state or local governmental bodies with approval jurisdiction over the Project.
Designer shall then assist the DISTRICT in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the DISTRICT.

3.6 **Independent Contractor.** DISTRICT retains Designer on an independent contractor basis and Designer is not an employee of DISTRICT. Designer is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to DISTRICT's employees. Any additional personnel performing the Services under this Agreement on behalf of Designer shall also not be employees of DISTRICT, and shall at all times be under Designer's exclusive direction and control. Designer shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Designer shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.7 **Schedule of Services.**

3.7.1 **Timely Performance Standard.** Designer shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Designer shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the DISTRICT and within any completion schedules adopted for the Project. Designer agrees to coordinate with DISTRICT's staff, contractors and consultants in the performance of the Services, and shall be available to DISTRICT's staff, contractors and consultants at all reasonable times.

3.7.2 **Performance Schedule.** Designer shall prepare a schedule for the performance of Designer's Services, including required elements of paragraph 3.5.4, to be adjusted as the Project proceeds. Such schedule shall be subject to the DISTRICT's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for DISTRICT's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If DISTRICT and Designer cannot mutually agree on a performance schedule, DISTRICT shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Designer, without the prior written approval of DISTRICT. If the Designer's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the DISTRICT will suffer damage for which the Designer will be responsible pursuant to the indemnification provision of this Agreement.

The design schedule shall list specific milestone dates for each deliverable and shall also allow reasonable timeframes for constructability reviews by District consultants. Designer, along with

Initial Each Page:

NTD Architecture, Inc.
Mayan Hall Theater Renovation and ADA Access

DESIGNER________
DISTRICT________
its subconsultants, shall analysis the proposed scope prior to schedule creation to determine if a significant benefit can be derived by the District in splitting design deliverables into multiple increments for Division of State Architect (DSA) submission and it shall make its recommendation to the District accordingly. If the District determines that separate increments are beneficial, the designer shall provide separate packages to DSA at no additional cost to the District, provided such notice from the District comes prior to commencement of the Design Development phase.

3.7.3 Excusable Delays. Any delays in Designer's work caused by the following shall be added to the time for completion of any obligations of Designer: (1) the sole actions or failure to act of DISTRICT or its employees; (2) the actions of those in direct contractual relationship not changed by the designer with DISTRICT, except those under this contract; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Designer; and (5) any act of God or other unforeseen occurrence not due to any fault or negligence on the part of Designer. Neither the DISTRICT nor the Designer shall be liable for damages, liquidated or otherwise, to the other on account of such excusable delays.

3.7.4 Request for Excusable Delay Credit. The Designer shall, within ten (10) calendar days of the beginning of any excusable delay, notify the DISTRICT in writing of the causes of delay. DISTRICT will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The DISTRICT's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Designer for extensions of time shall be an extension of the performance time at no cost to the DISTRICT. If Additional Services are required as a result of an excusable delay, the parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Designer make an application for an extension of time, Designer shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.8 Designer Services. Designer shall fully and adequately complete the Services described in this Agreement and in Exhibit "A" attached hereto and incorporated herein by reference.

3.9 Project Land and/or Geotechnical Engineering Survey. If required pursuant to the scope of the Project, the Designer shall prepare or order to be prepared a land survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other
such pertinent information. If required pursuant to the scope of the Project, the Designer shall prepare or order to be prepared a geotechnical engineering (soil) survey including but not limited to soil borings of the Project site prepared by a registered geotechnical or civil engineer, any other record documents which shall indicate existing soils conditions, foundation designs and recommendations for structures and land features, and any other pertinent information per Title 24 and the building code. If these services are required pursuant to the scope of the Project, costs for these services are to be part of the base contract amount.

3.9.1 Testing. Retain consultant(s) to conduct soils, geological or other tests required for proper design and inspection of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.10 Additional Designer Services. At DISTRICT's request, Designer may be asked to perform in-scope services not otherwise included in this Agreement, not included within the basic services listed in Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted Design practice. As used herein, "Additional Services" mean: (1) any work which is determined by DISTRICT to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary for the Designer to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached hereto. Designer shall not perform, nor be compensated for, Additional Services without prior written authorization from DISTRICT and without an agreement between the DISTRICT and Designer as to the compensation to be paid for such services. DISTRICT shall pay Designer for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Designer pursuant to the indemnification provision of this Agreement. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Designer was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above.

3.11 DISTRICT Responsibilities. DISTRICT's responsibilities shall include the following:

3.11.1 Data and Information. DISTRICT shall make available to Designer all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget limitation information, the DISTRICT shall provide the Designer with a preliminary construction budget ("DISTRICT's Preliminary Construction Budget").

3.11.2 Inspector of Record. Appoint and pay, upon mutual agreement with Designer, an Inspector of Record as provided by state law. The Inspector of Record shall be

Initial Each Page:

NTD Architecture, Inc.
Mayan Hall Theater Renovation and ADA Access

DESIGNER_______
DISTRICT_______
qualified and approved by Designer and by the Division of State Architect, shall be under direction of the Designer, and shall be responsible to, and act in accordance with, the policies of DISTRICT and Title 24. The Inspector of Record shall be compensated by the DISTRICT and shall be under direct contract with the DISTRICT. The construction administration by Designer and its engineers or other consultants shall complement the continuous personal supervision of the Inspector of Record.

3.11.3 **Bid Phase.** Distribute construction documents to bidders and conduct the opening and review of bids for the Project.

3.11.4 **Testing.** Retain consultant(s) to conduct HAZMAT, chemical, mechanical, or other tests required for proper design and inspection of the Project to ensure the proper development of the required drawings and specifications. District is not responsible for the final testing & balancing of the HVAC systems. This service is to be provided by the designer and/or its consultant.

3.11.5 **Required Inspections and Tests.** Retain consultant(s) to conduct materials testing and inspection, as required by Title 21 of the California Code of Regulations, or to conduct any other environmental or hazardous materials testing and inspection pursuant to any other applicable laws, rules or regulations. Provide test results to the Designer during the course of construction.

3.11.6 **Fees of Reviewing or Licensing Agencies.** Directly pay or reimburse the payment of all fees directly related to this Project as required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.11.7 **DISTRICT’s Representative.** Designate a person to act as its representative for the performance of this Agreement ("DISTRICT’s Representative"). The DISTRICT's Representative shall be authorized to act as liaison between Designer and DISTRICT in the administration of this Agreement and the Construction Documents, and shall have the power to act on behalf of the DISTRICT for all purposes under this Agreement. Such person shall assist Designer in observing construction of the Project and participating in the preparation of the Punch List Items required by Exhibit "A" attached hereto. DISTRICT may designate new and/or different individuals to act as DISTRICT's Representative from time to time. The DISTRICT’s Representative shall render decisions in a timely manner so as to avoid unreasonable delay in the orderly and sequential progress of the Services, as provided in the excusable delay provisions of this Agreement above. Unless and until otherwise noted in writing by the District, the Director of Facilities, Operations, and Planning shall act as the District’s representative for this project.

3.11.8 **Review and Approved Documents.** Review all documents submitted by Designer, including change orders and other matters requiring approval by the DISTRICT’s Board of Trustees or other officials. DISTRICT shall advise Designer of decisions pertaining to

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such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.12 **Compensation.**

3.12.1 **Designer’s Compensation for Basic Services.** Subject to adjustment under Exhibit "B" attached hereto, DISTRICT shall pay to Designer, for the performance of all Services rendered under this Agreement, the total amount of **SEVEN HUNDRED FOURTY TWO THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS ($742,500.00) PLUS $30,000 FOR REIMBURSABLES** ("Total Compensation"). This Total Compensation amount shall be based upon the scope of services in Exhibit “A” and task order(s) in Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement pursuant to Exhibits "A" and "B" attached hereto, shall constitute complete and adequate payment for the Services provided under this Agreement.

3.12.2 **Payment for Additional Services.** Additional Services may be authorized pursuant to the applicable provisions of this Agreement. If authorized, such Additional Services will be compensated at a flat rate or not to exceed fee based upon hourly rates in Exhibit “C” as mutually agreed upon by the parties. Designer shall be paid for Additional Services, as defined by this Agreement, so long as they have been approved in advance by the DISTRICT. If DISTRICT requires Designer to hire consultants to perform any Additional Services, Designer shall be compensated therefor at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the parties. DISTRICT shall have the authority to review and approve the rates of any such consultants. In addition, Designer shall be reimbursed for any expenses incurred by the Designer or consultants pursuant to the terms and conditions of Section 3.12.3.

The designer shall include within its total contract value an allowance amount equal to 15% of its total contract value cost. This design allowance may be used for design changes only upon written direction from the District. The balance of the allowance amount will be returned to the District via a deductive amendment at contract close-out.

Designer shall understand that any and all amendments that cannot be addressed within the design allowance must be approved and/or ratified by the Board of Trustees prior to the release of payment for work performed on said amendment(s). The duration of the Board of Trustees process depends significantly upon the timing of when the amendments are received by and negotiated with the District. Upon acceptance of pricing, the District will expedite all relevant documents to the Board of Trustees.

3.12.3 **Reimbursable Expenses.** Reimbursable expenses are in addition to compensation for the Services and Additional Services. Designer shall not be reimbursed for any expenses unless authorized in writing by DISTRICT, which approval may be evidenced by

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inclusion in Exhibit "C" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Designer in the interest of the Project. Designer shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of the numbers listed in Exhibit “A”; and (5) other costs, fees and expenses.

3.12.4 Payment to Designer. Designer's compensation and reimbursable expenses shall be paid by DISTRICT to Designer no more often than monthly, unless mutual agreed in writing otherwise by both the designer and District. Such periodic payments shall be made based upon received deliverables of work completed and the compensation rates indicated in Exhibit "C" attached hereto and incorporated herein by reference. In order to receive payment, Designer shall present to DISTRICT an itemized statement which indicates Services completed and the amount to be paid. The statement shall clearly show the schedule of values, previously billed against the schedule of values, currently billed against the schedule of values, total billed against the schedule of values, the percentage of billed to date against the schedule of values, plus clearly show any changes to the Agreement which have modified the schedule of values. DISTRICT shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments in such other manner as the parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Designer shall present to DISTRICT an itemized statement which indicates the Additional Services completed, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. DISTRICT shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Designer shall be compensated as set forth in the termination provision herein.

3.12.5 Withholding Payment to Designer. The DISTRICT may withhold payment, in whole or in part, to the extent reasonably necessary to protect the DISTRICT from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the intentional or negligent acts, errors or omissions protected under the indemnification provisions of this Agreement. Failure by DISTRICT to deduct any sums from a progress payment shall not constitute a waiver of the DISTRICT's right to such sums. The DISTRICT may keep any moneys which would otherwise be payable at any

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time hereunder and apply the same, or so much as may be necessary therefore, to the payment of any expenses, losses, or damages as determined by the DISTRICT, incurred by the DISTRICT for which Designer is liable under the Agreement or state law. Payments to the Designer for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Designer shall not be withheld, postponed, or made contingent upon receipt by the DISTRICT of offsetting reimbursement or credit from parties not within the Designer's reasonable control.

3.12.6 **Prevailing Wages.** Designer is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is $1,000 or more, Designer agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. DISTRICT shall provide Designer with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Designer shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Designer's principal place of business and at the Project site. Designer shall defend, indemnify and hold the DISTRICT, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Designer or its consultants to comply with the Prevailing Wage Laws.

3.12.7 **Labor Compliance Program.** Pursuant to Labor Code section 1771.7, the DISTRICT has implemented, staffed, and shall enforce a Labor Compliance Program ("LCP"). The Designer shall be required to comply with all the requirements of the DISTRICT's LCP and all applicable provisions of the California Labor Code.

3.13 **Contract Term.**

3.13.1 **Term.** The term of this Agreement shall be from February 9, 2012 until December 31, 2015 or until one of the following occurs: (i) the Project(s) is terminated or suspended by the District prior to completion; or (ii) the District terminates this Agreement pursuant to paragraph 3.14 herein.

3.13.2 **Notice to Proceed.** Designer shall not proceed with performance of any Services under this Agreement unless and until the DISTRICT provides a written notice to proceed. Designer shall not proceed with a given phase as scoped in Exhibit A until the DISTRICT provides a written notice to proceed.

3.14 **Termination, Suspension and Abandonment.**

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3.14.1 **DISTRICT’s Termination for Convenience.** DISTRICT hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Designer shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Designer shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by DISTRICT as a result of the default, if any, by Designer. Upon the DISTRICT’s request and authorization, Designer shall perform any and all Additional Services necessary to wind up the work performed to the date of suspension, abandonment or termination. Designer hereby expressly waives any and all claims for damages or compensation arising under this Section, except as set forth herein, in the event of such suspension, abandonment or termination.

3.14.2 **DISTRICT’s Termination for Cause.** If DISTRICT determines that the Designer has failed to perform in accordance with the terms and conditions of this Agreement or an Designer Default has occurred, DISTRICT may terminate all or part of the Agreement for cause.

This termination shall be effective if Designer does not cure its failure to perform within fifteen (15) Days or, if the failure to perform cannot be cured within that period, if Designer does not commence to cure within fifteen (15) Days (or longer, if authorized in writing by DISTRICT) after notice of intention to terminate is given by DISTRICT. Such notice shall specify the failure in performance.

If a termination for cause occurs, DISTRICT will have the right to withhold monies otherwise payable to Designer until DISTRICT acceptance of all the documents contracted at the time of termination have been provided. If after termination, DISTRICT incurs additional costs, expenses or other damages in connection with the Services for which payment was withheld; such costs, expenses or other damages shall be deducted from the amounts withheld. If after delivery of contracted documents to the satisfaction of DISTRICT, the amounts withheld exceed cost incurred by DISTRICT to complete the Designer services, the balance will be paid to Designer. If the costs, expenses or other damages incurred by DISTRICT exceed the amounts withheld, Designer shall be liable to DISTRICT for the difference. The provisions of this paragraph are in addition to, and not a limitation upon, any other rights and remedies of DISTRICT under law or in equity.

3.14.3 **Designer’s Termination for Cause** This Agreement may be terminated by the Designer upon thirty (30) days written notice to the DISTRICT only when the DISTRICT has substantially failed to perform its obligations under this Agreement. The written notice shall include a detailed description of the DISTRICT’s failure to perform, status of the work completed as of the date of termination together with a description and a cost estimate of the
effort necessary to complete work in progress. In such event, the Designer shall be compensated for services completed to the date of termination, together with compensation for such approved Additional Services performed after termination which are authorized by the DISTRICT to conclude the work performed to the date of termination. Upon the DISTRICT's request and authorization, Designer shall perform any and all Additional Services necessary to wind up the work performed to the date of termination.

3.14.4 **DISTRICT's Suspension of Work.** If Designer's Services are suspended by DISTRICT, DISTRICT may require Designer to resume such Services within ninety (90) days after written notice from DISTRICT. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the DISTRICT and Designer.

3.14.5 **Documents and Other Data.** Within seven (7) calendar days following suspension, abandonment or termination of this Agreement, Designer shall provide to DISTRICT all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined in Section 3.15.1 below, to which DISTRICT would have been entitled at the completion of Designer's Services under this Agreement. Upon payment of the amount required to be paid to Designer pursuant to the termination provisions of this Agreement, DISTRICT shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Designer under this Agreement. In the event of a dispute regarding the amount of compensation to which the Designer is entitled under the termination provisions of this Agreement, Designer shall provide all Project Documents to DISTRICT upon payment of the undisputed amount. Designer shall have no right to retain or fail to provide to DISTRICT any such documents pending resolution of the dispute. Designer shall make such documents available to DISTRICT without additional compensation other than as may be approved as a reimbursable expense.

3.14.6 **Employment of other Designers.** In the event this Agreement is terminated in whole or in part as provided herein, DISTRICT may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.15 **Ownership and Use of Documents; Confidentiality.**

3.15.1 **Ownership.** Pursuant to California Education Code section 17316 and the requirements of the DISTRICT, all plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, preliminary and final Building Information Modeling (BIM) models (in Revit format), Design presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on electronically (hereinafter referred to as the "Project Documents") shall be and remain the property of DISTRICT. Although the official copyright in all Project Documents shall remain

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with the Designer or other applicable subcontractors or consultant, the Project Documents shall be the property of DISTRICT whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Designer shall provide to DISTRICT copies of all Project Documents required by DISTRICT. In addition, Designer and all subconsultants shall retain copies of all Project Documents on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to DISTRICT upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, Designer shall make a reasonable effort to notify DISTRICT and provide DISTRICT with the opportunity to obtain the documents.

3.15.2 Right to Use. Designer grants to DISTRICT the right to use and reuse all or part of the Project Documents, at DISTRICT’s sole discretion and with no additional compensation to Designer, for the following purposes:

(A) The construction of all or part of this Project;
(B) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;
(C) The construction of another project by or on behalf of the DISTRICT for its ownership and use;

DISTRICT is not bound by this Agreement to employ the services of Designer in the event such documents are used or reused for these purposes. DISTRICT shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Designer or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit DISTRICT’s right to recover for latent defects or for errors or omissions of the Designer.

Any use or reuse by DISTRICT of the Project Documents on any project other than this Project without employing the services of Designer shall be at DISTRICT’s own risk with respect to third parties. If DISTRICT uses or reuses the Project Documents on any project other than this Project, it shall remove the Designer’s seal from the Project Documents and indemnify and hold harmless Designer and its officers, directors, Board of Trustees, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

Designer shall not be responsible or liable for any revisions to the Project Documents made by any party other than the Designer, a party for which the Designer is legally responsible or liable, or anyone approved by the Designer.

3.15.3 License. This Agreement creates a non-exclusive and perpetual license for DISTRICT to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Designer shall require any and all subcontractors and consultants to agree

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in writing that DISTRICT is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.15.4 Right to License. Designer represents and warrants that Designer has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Designer prepares or causes to be prepared pursuant to this Agreement. Designer shall indemnify and hold DISTRICT harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Designer makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Designer and provided to Designer by DISTRICT.

3.15.5 Confidentiality. All Project Documents, either created by or provided to Designer in connection with the performance of this Agreement, shall be held confidential by Designer to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of DISTRICT, be used or reproduced by Designer for any purposes other than the performance of the Services. Designer shall not disclose, cause or facilitate the disclosure of the Project Documents to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Designer which is otherwise known to Designer or is generally known, or has become known, to the related industry shall be deemed confidential. Designer shall not use DISTRICT's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, website/internet, television or radio production or other similar medium without the written consent of DISTRICT.

3.16 Indemnification. Designer shall defend, indemnify and hold DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligence, recklessness, or willful misconduct of Designer, its officials, officers, employees, subcontractors, consultants or agents in the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and reasonable attorneys fees, expert witness fees and other related costs and expenses of defense. Designer shall defend, with counsel of DISTRICT's choosing and at Designer's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents. Designer shall pay and satisfy any judgment, award or decree that may be rendered against DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents in any such suits, actions or other legal proceedings. Designer shall also reimburse DISTRICT for the cost of any settlement paid by DISTRICT arising out of any such claims, demands, causes of action, costs, expenses, liabilities, loses, damages, injuries, suits, actions, or other legal proceedings. Such reimbursement shall include payment for DISTRICT's attorney's fees and costs, including expert witness fees. Designer shall reimburse

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DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents for any and all legal expenses and costs, including expert witness fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Designer's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents.

3.17 **Insurance.**

3.17.1 **Time for Compliance.** Designer shall not commence Services under this Agreement until it has provided evidence satisfactory to the DISTRICT that it has secured all insurance required under this Section. In the event Designer fails to provide or maintain all required insurance, DISTRICT may, in its sole discretion, obtain such insurance and deduct the amount therefor from the Total Compensation.

3.17.2 **Minimum Requirements.** Designer shall, at its expense, procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Designer, its officials, officers, agents, representatives, employees or subcontractors. Such insurance shall meet at least the following minimum levels of coverage:

(A) **Minimum Scope of Insurance.** Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); (3) Workers' Compensation and Employers' Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; and (4) Professional Liability: Coverage which is appropriate to the Designer's profession, or that of its consultants or subcontractors.

(B) **Minimum Limits of Insurance.** Coverages shall provide limits no less than: (1) General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit; (2) Automobile Liability: $1,000,000 per accident for bodily injury and property damage; (3) Workers' Compensation and Employers' Liability: Workers' compensation limits as required by the Labor Code of the State of California. Employers Liability limits of $1,000,000 per accident for bodily injury or disease; and (4) Professional Liability: Not less than $1,000,000 per claim.

3.17.3 **Professional Liability.** Designer and its consultants and subcontractors shall procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance with limits discussed in this Section. This insurance shall be endorsed to include contractual liability.

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3.17.4 **Insurance Endorsements.** The insurance policies shall contain the following provisions, or Designer shall provide endorsements on forms supplied or approved by the DISTRICT to add the following provisions to the insurance policies:

(A) **General Liability.** The general liability policy shall be endorsed to state that: (A) the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents shall be covered as additional insureds with respect to the performance of the Agreement by the Designer, its officials, officers, agents, representatives, employees or subcontractors, including materials, parts or equipment furnished in connection with such services; and (B) the insurance coverage shall be primary insurance as respects the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Designer's scheduled underlying coverage. Any insurance or self-insurance maintained by the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents shall be excess of the Designer's insurance and shall not be called upon to contribute with it in any way.

(B) **Automobile Liability.** The automobile liability policy shall be endorsed to state that: (A) the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Designer or for which the Designer is responsible; and (B) the insurance coverage shall be primary insurance as respects the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Designer's scheduled underlying coverage. Any insurance or self-insurance maintained by the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents shall be excess of the Designer's insurance and shall not be called upon to contribute with it in any way.

(C) **Workers' Compensation and Employers Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents for losses paid under the terms of the insurance policy which arise from work performed by the Designer.

(D) **All Coverages.** Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the DISTRICT; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents.

3.17.5 **Separation of Insureds; No Special Limitations.** All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such

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insurance shall not contain any special limitations on the scope of protection afforded to the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents.

3.17.6 **Deductibles and Self-Insurance Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the DISTRICT. Designer shall guarantee that, at the option of the DISTRICT, either: (A) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents; or (B) the Designer shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.17.7 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the DISTRICT.

3.17.8 **Verification of Coverage.** Designer shall furnish DISTRICT with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the DISTRICT. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the DISTRICT, if requested. All certificates and endorsements must be received and approved by the DISTRICT before work commences. The DISTRICT reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.17.9 **Subcontractor and Consultant Insurance Requirements.** Designer shall not allow any of its Designers, engineers, experts or other consultants to commence work on any subcontract until they have provided evidence satisfactory to the DISTRICT that they have secured all insurance required under this Section. If requested by Designer, DISTRICT may approve different scopes or minimum limits of insurance for particular Designers, engineers, experts or other consultants. Unless otherwise approved by the DISTRICT, the Designers, engineers, experts and other consultants shall comply with each and every provision of this Section.

3.18 **Records.** Designer shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Designer shall allow a representative of DISTRICT during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Designer shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

3.19 **Standardized Manufactured Items.** Designer shall cooperate and consult with DISTRICT in the use and selection of manufactured items on the Project, including but not
limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to DISTRICT's criteria to the extent such criteria do not interfere with building design.

3.20 **Limitation of Agreement.** This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other DISTRICT site, will be covered by, and be the subject of, a separate Agreement for Design services between DISTRICT and the Designer chosen therefor by DISTRICT.

3.21 **Mediation.** Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the parties.

3.22 **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Designer shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of DISTRICT. Any attempted assignment without such consent shall be invalid and void.

3.23 **Asbestos Certification.** Designer shall certify to DISTRICT, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Designer prepares for the Project. Designer shall require all consultants who prepare any other documents for the Project to submit the same written certification. Designer shall also assist the DISTRICT in ensuring that contractors provide DISTRICT with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Designer shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.24 **Disabled Veteran Business Enterprise Certification.** If required for this Project, Designer shall provide proof of DVBE compliance, in accordance with any applicable policies of the DISTRICT or the State Allocation Board, within thirty (30) days of its execution of this Agreement. If Designer fails to comply with this requirement, the Agreement shall be deemed canceled.

3.25 **No Third Party Rights.** This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

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3.26 **Governing Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in San Diego County.

3.27 **Entire Agreement.** This Agreement, with its exhibits, contains the entire agreement of the parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which is not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.

3.28 **Severability.** Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.29 **Non-Waiver.** None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is expressly specified in writing.

3.30 **Safety.** Designer shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Designer shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.31 **Delivery of Notices.** All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**DISTRICT:**

Southwestern Community College District  
900 Otay Lakes Road  
Chula Vista, CA 91910

Attn:  John R. Brown  
Director of Facilities, Operations, and Planning

**DESIGNER:**

NTD Architecture, Inc.  
9655 Granite Ridge Drive Suite 400  
San Diego, CA 92123

Attn: Jordan Knighton  
Partner, NTD Architecture, Inc.

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.
3.32 **Attorney's Fees.** If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party a percentage of reasonable attorney's fees and all other reasonable costs of such action, including expert witness fees and expenses, equal to the percentage of the total judgement lost.

3.33 **Time of Essence.** Time is of the essence for each and every provision of this Agreement.

3.34 **DISTRICT's Right to Employ Other Consultants.** DISTRICT reserves right to employ other consultants, including Designers, in connection with this Project or other projects.

3.35 **Prohibited Interests.**

3.35.1 **Solicitation.** Designer maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Designer, to solicit or secure this Agreement. Further, Designer warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Designer, any fee, commission, percentage, brokerage fee, worked on or contributed to DISTRICT facility bond campaigns, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, DISTRICT shall have the right to rescind this Agreement without liability.

3.35.2 **Conflict of Interest.** For the term of this Agreement and for two (2) years after the conclusion of this contract, no director, official, officer or employee of DISTRICT, during the term of his or her service with DISTRICT, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.36 **Equal Opportunity Employment.** Designer represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Designer shall also comply with all relevant provisions of DISTRICT's minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.37 **Labor Certification.** By its signature hereunder, Designer certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

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NDT Architecture, Inc.
Mayan Hall Theater Renovation and ADA Access

DESIGNER

DISTRICT
3.38 **Drug/Tobacco-Free Facilities.** All DISTRICT facilities are drug and tobacco-free facilities. Any drug and/or tobacco use (smoked or smokeless) is prohibited at all times on all areas of DISTRICT facilities.

3.39 **Fingerprinting Requirements.** Unless exempted, Designer shall comply with the requirements of Education Code Section 45125.1 with respect to fingerprinting of employees who may have contact with the DISTRICT's pupils. The Designer shall also ensure that its consultants on the Project also comply with the requirements of Section 45125.1. To this end, the Designer and its consultants must provide for the completion of the certification form attached hereto as Exhibit "D" and incorporated herein by reference prior to any of the Designer's employees, or those of any other consultants, coming into contact with the DISTRICT's pupils.

3.40 **Subcontracting.** As specified in this Agreement, Designer shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of DISTRICT. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.

3.41 **Supplemental Conditions.** Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.42 **Exhibits and Recitals.** All Exhibits and Recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth herein by this reference.

3.43 **Authority to Execute.** The persons executing this Agreement on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

SOUTHWESTERN COMMUNITY COLLEGE DISTRICT

By:

Name: Melinda Nish, Ed.D.
Title: Superintendent/President
Date: ______________

Attest:

Name: __________________________
Date: __________________________

Approved as to form by the office of the Purchasing, Contracting & Central Services Director
Approval No.: A3414.12
Date: 11/20/12

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DESIGNER
DISTRICT
January 25, 2012

DESIGNER

By: ________________________________
Name: Jordan Knighton
Title: Partner, NTD Architecture, Inc.
Date: ________________________________

95-2512082
Federal Tax Identification Number

Originator: John R. Brown
Director of Facilities, Operations and Planning

Account No.: 5-45123-718721-970 (Building 900 – Mayan Hall
Theater Renovation and ADA Access – Proposition R Funds)

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DESIGNER______
DISTRICT______
EXHIBIT "A"

DESIGNER'S SCOPE OF SERVICES

1. GENERAL REQUIREMENTS.

1.1 Basic Services. Designer agrees to perform all the necessary professional Design, landscape Design, engineering (e.g. civil, mechanical, electrical, plumbing, structural, site engineering, land surveying, geotechnical and any other necessary engineering services) and construction administration services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

Designer shall be responsible to provide an accurate as-built of all existing structures and systems that are to be impacted by construction or modernization activity and/or are connected to the proposed design. This includes mechanical, electrical, and plumbing systems. Designer shall utilize underground utility locating services if deemed necessary by the designer. This also includes checking all existing structures to verify that existing ADA paths of travel are to the current codes and that the Project ADA transitions into the existing ADA paths of travel are per code. This as-built information is to be incorporated into the design. Access will be provided to the designer in the event that it chooses to use current technologies available (i.e. "point-cloud" scan surveys) to assist with this requirement.

1.2 Exclusions from Basic Services. The following services shall be excluded from the basic services listed above: As built drawing of existing structure(s), surveying of site, and new geotechnical reports were excluded in proposed cost (October 27, 2011). These design deliverables will be handled by allowances included in this Agreement. Hazardous Material Consulting work is also excluded from this Agreement. Coordination with Hazardous Material Consultant although may be required.

1.3 Additional Services. Designer shall perform the following Additional Services for the Project:

The Designer shall perform the following additional services under this Agreement only if said services are authorized in advance in writing by the DISTRICT. Said additional services shall be compensated in accordance with schedule in Exhibit "C" or by separate addendum.

A. Revisions and changes in approved drawings and the preparation of alternate and/or deductive change orders requested by the DISTRICT, except as otherwise required by this contract, and excluding corrections of design errors, conflicts, and/or omissions by Designer in the work performed under this Agreement.
B. Supervision of repair of damage to the Project not resulting from fault of the Designer.

C. The additional services caused by the delinquency or insolvency of the contractor.

D. If directed or requested by the DISTRICT, the employment of special consultants, preparation of special delineation of models, and overtime work by the Designer's employees, except as otherwise required by this contract.

E. Providing contract administration services after the construction contract time has been exceeded through no fault of the Designer where it is determined that the fault is that of the contractor and liquidated damages are collected therefore. The Designer, however, shall budget for a separate "extended construction administration allowance" to cover an additional 20% of construction duration as determined by the District. If the construction period is less than this, the District reserves the right to receive a credit for construction-administration not performed.

1.4 Cooperation and Communication with DISTRICT. Designer shall cooperate and participate in consultations and conferences with DISTRICT, DISTRICT's consultants, authorized representatives of DISTRICT, and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and the DISTRICT. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Designer shall take direction only from the DISTRICT's Representative, or any other representative specifically designated by the DISTRICT for this Project, including any construction manager hired by the DISTRICT.

Designer shall coordinate its design as needed with District consultants and/or vendors that address fixtures, furniture, and equipment. Designer shall meet the requirements of the District's design standards and shall coordinate with the District when its design standards are in the process of being updated.

Designer shall be available for design meetings at District offices when deemed necessary by the District, but on a bi-weekly basis at a minimum.

Designer shall take part in user group meetings and are expected to take an active role in guiding the groups towards consensus regarding planning and design decisions. Designer shall provide meeting minutes for each user group meeting and shall incorporate user group feedback into the design when directed by the District. Designer shall plan for one user group meeting for each design phase and shall allot time for these meetings in its design schedule. Designer and District will work together to ensure that the appropriate user group personnel (or appropriate stand-ins) are invited and attend the meetings. This includes maintenance and operations staff.

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NTD Architecture, Inc.
Mayan Hall Theater Renovation and ADA Access

DESIGNER_______
DISTRICT_______
1.5 **Coordination and Cooperation with Program Manager and/or Construction Manager.** The DISTRICT may hire a program manager and/or construction manager to administer and coordinate all or any part of the Project on its behalf. If the DISTRICT does so, it shall provide a copy of its agreement with the program manager and/or construction manager so that the Designer will be fully aware of the duties and responsibilities of the program manager and/or construction manager. The Designer shall cooperate with the program manager and/or construction manager and respond to any requests or directives authorized by the DISTRICT to be made or given by the program manager and/or construction manager. The Designer shall request clarification from the DISTRICT in writing if the Designer should have any questions regarding the authority of the program manager and/or construction manager.

1.6 **In conjunction with the other duties described herein, the Designer shall continuously monitor construction costs and provide detailed estimates at the completion of the programming phase, schematic plan phase, the design development phase, and any time during the final working drawings and specifications phase when design revisions or market conditions result in a potential change to the previously provided estimate. These estimates should include a breakdown of the work elements as well as contingencies in an amount that corresponds to the level of design completion.**

1.7 **Leadership in Energy and Environmental Design (LEED) Services** – Unless otherwise noted, the designer shall target ‘LEED Silver’ per the U.S. Green Building Council (USGBC) rating system. Designer shall coordinate with the District to incorporate design elements that will result in this rating. Designer shall identify and propose qualifying design elements to the District in each phase listed herein, provide updates as to the status of the LEED scorecard at each phase, and provide analysis to the District when requested regarding the cost versus benefit of individual design elements. Designer shall be responsible for initiating the LEED process with USGBC and for implementing and guiding the process throughout the design, construction, and close-out of the project. The designer shall review submittals to ensure compliance with LEED goals and shall report on LEED status in each design and construction meeting.

2. **PROGRAMMING PHASE.**

During the programming phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

2.1 **Educational Programming.** Assist DISTRICT in the preparation of educational programming for the Project to define the scope, size, space relationship and site development.

2.2 **Project Feasibility.** Provide advice and assistance to DISTRICT in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be
selected, the site location, and other programming matters, including, but not limited to, developing a building program identifying and confirming the facility functions, square footage requirements, adjacency relationships, flow diagrams and equipment needs (including a preliminary construction cost estimate based on area costs). Existing equipment needs, data and inventory to be provided by the DISTRICT.

2.3 **Meeting Budget and Project Goals.** Designer shall notify DISTRICT in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project budget and timeline, including the DISTRICT's Preliminary Construction Budget. Designer shall use its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Project's budget and construction allowance. It shall be the duty of the Designer to suggest alternatives to DISTRICT which would reduce costs and to design the Project within budget and State Allocation Board cost standards, if any. As discussed below in Section 7 of this Exhibit, if the lowest responsive and responsible bid for the Project exceeds the budget by the stated percentage amount, Designer may be required to make the necessary changes in the drawing and specifications, at its sole cost and expense, to bring the bids within the required budget.

2.4 **Permits, Approvals and Authorizations.** As indicated in Section 3.5.4, Designer shall assist DISTRICT in securing easements, encroachment permits, rights of way, dedications, infrastructures and road improvements, as well as coordinating with utilities and adjacent property owners.

2.5 **Programmatic Square Footage Compilation and Tracking** – Designer shall create a matrix listing gross and assignable square footage for the various functions to be utilized by the proposed design (x SF office space, etc.). In the case of a building modernization, this information shall be compared against the functionality in the current structure. For all projects, the designer shall update this matrix with each design deliverable and compare it against the initial matrix. This comparison shall be submitted to the District with each design deliverable.

2.6 **Program Schedule.** Designer shall propose and update accordingly a program schedule for the programming phase inclusive of all required meeting, approvals and research required.

2.7 **Review of Existing Structure and Geotechnical Issues.** Designer shall review the existing building structure and make recommendations on potential upgrades to building structure. This includes potential DSA required seismic upgrades. Designer shall review existing geotechnical issues and take lead on overseeing various tests, additional soil corings, review of existing building and site utilities, leak detections, etc. to better understand the cause of the geotechnical issues. Designer shall then make recommendations on how to remediate the current soil conditions.

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3. **SCHEMATIC PLAN PHASE.**

During the schematic plan phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

3.1 **Approval and Revisions.** DISTRICT shall review, study, and check the work product developed during the Programming Phase and presented to it by Designer, and request any necessary revisions or obtain any necessary approvals by the DISTRICT's Board of Trustees, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Designer shall make all DISTRICT requested changes, additions, deletions, and corrections in such work product at no additional cost, so long as they are not inconsistent with earlier DISTRICT direction.

3.2 **Funding Documents.** If applicable, Designer shall provide a site plan and all other Project-related information necessary and required for an application by DISTRICT to any federal, state, regional, or local agencies for funds to finance the construction Project.

3.3 **Schematic Plans.** In cooperation with DISTRICT, Designer shall prepare the conceptual design of the Project, illustrating the scale and relationship of the Project components ("Schematic Plans"). The Schematic Plans shall include a conceptual site plan, if appropriate, and preliminary plans and studies, sections, elevations, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed Design concept of the buildings. Designer shall incorporate the educational programs and the functional requirements of DISTRICT into the Schematic Plans. At the Designer's option, the Schematic Plans may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. The Schematic Plans shall meet all laws, rules and regulations of the State of California, including but not limited to, the regulations of the State Department of Education (5 Cal. Code Regs. § 14000 et seq.) or the Office of Public School Construction ("OPSC"), as well as any guidelines implemented by the State Department of Education. All Schematic Plans shall be prepared in a form which may be submitted to the State Department of Education and OPSC for approval. The Schematic Plans shall show all rooms incorporated in each building of the Project in single-line drawings, and shall include all revisions required by DISTRICT or by any federal, state, regional or local agency having jurisdiction over the Project. All Design drawings for the Project shall be in a form suitable for reproduction.

Integrate all phasing requirements (associated with the renovated facility, adjacent building coordination requirements and site issues) into the schematic plans to assure that the phasing and project sequencing has been properly planned and documented for the bid phase of the project as a deliverable requirement in an effort to reduce impact to educational and operational processes.

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Within one week after Schematic Plan document submission to the District, the Designer shall lead a “page-turning-plan review” meeting with the District. Plans, specifications, and costs shall be reviewed in this meeting. Designer shall summarize the discussions held in this meeting in minutes to be approved by the District. Designer shall provide a minimum of 5 (five) 3-D renderings reflecting the current design to the District for its use.

3.4 Preliminary Project Budget. Designer shall use the DISTRICT's Preliminary Construction Budget and its own expertise and experience with the Project to establish a preliminary project budget or allowance in a format required by DISTRICT or, if applicable, by any school construction funding agency identified by DISTRICT ("Designer's Preliminary Project Budget"). The purpose of the Designer's Preliminary Project Budget is to show the probable Project cost in relation to DISTRICT's Preliminary Construction Budget and the construction standards of any applicable funding agency. If Designer perceives site considerations which render the Project expensive or cost prohibitive, Designer shall disclose such conditions in writing to DISTRICT immediately. As stated below in Section 7 of this Exhibit, if the lowest responsive and responsible bid for the Project exceeds the budget by more than the stated percentage amount, Designer may be required to make the necessary changes in the drawings and specifications, at its sole cost and expense, to bring the bids within the required budget Designer shall provide a preliminary written time schedule for the performance of all construction work on the Project.

3.5 Copies of Schematic Plans and Other Documents. Designer, at its own expense, shall provide a complete set of the Schematic Plans described herein for DISTRICT's review and approval. Additionally, at DISTRICT's expense, Designer shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project, including but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services or any other appropriate federal, state, regional or local regulatory bodies. Any additional copies required by DISTRICT shall be provided at actual cost to DISTRICT.

4. DESIGN DEVELOPMENT PHASE. During the design development phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

4.1 Approval and Revisions. DISTRICT shall review, study, and check the Schematic Plans presented to it by Designer, and request any necessary revisions or obtain any necessary approvals by the DISTRICT's Board of Trustees, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Designer shall make all DISTRICT requested changes, additions, deletions, and corrections in the Schematic Plans at no additional cost, so long as they are not inconsistent with earlier DISTRICT direction.

4.2 Design Development Documents. Once DISTRICT provides Designer with specific written approval of the Schematic Plans described herein, Designer shall prepare design

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development documents consisting of: (1) site and floor plans; (2) elevations; (3) sections; (4) typical construction details; (5) equipment layouts; and (6) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the scope, relationships, forms, size, appearance and character of the Project's structural, mechanical and electrical systems, and to outline the Project specifications ("Design Development Documents"). The Design Development Documents shall be prepared in sufficient form to present to the DISTRICT's Board of Trustees for approval.

Integrate all phasing requirements (associated with the renovated facility, adjacent building coordination requirements and site issues) into the design development documents to assure that the phasing and project sequencing has been properly planned and documented for the bid phase of the project as a deliverable requirement in an effort to reduce impact to educational and operational processes.

Designer shall utilize BIM modeling as the basis of its design. All sub-consultants working under the designer shall also use BIM modeling as the basis of their designs. The designer is responsible for running clash detections as needed to ensure proper coordination between its own work and the work of its sub-consultants. Designer shall provide clash detection results to the Owner when requested. At a minimum, clash detection results shall be submitted to the Owner at the completion of the design development and final working drawing and specifications phases, and at 90 percent completion of the construction contract document phase. Clash detection results shall also be provided to the Owner upon DSA approval if the Owner determines it to be warranted due to changes that may have occurred during the DSA back-check process.

Within one week after Design Development document submission to the District, the Designer shall lead a minimum 8-hour "page-turning-plan review" meeting with the District. Plans, specifications, and costs shall be reviewed in this meeting. BIM modeling shall be provided in conjunction with this meeting, with a review of the 3D model included. Designer shall summarize the discussions held in this meeting in minutes to be approved by the District.

Designer shall provide a minimum of 5 (five) 3-D renderings reflecting the current design to the District for its use.

4.3 Copies of Design Development and Other Documents. Designer, at its own expense, shall provide three (3) complete sets of the Design Development Documents described herein for DISTRICT's review and approval. Additionally, at DISTRICT's expense, Designer shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project, including but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services or any other appropriate federal, state, regional or local regulatory bodies. Any additional copies required by DISTRICT shall be provided at actual cost to DISTRICT.
4.4 **Updated Project Budget.** Designer shall use its Preliminary Project Budget and expertise and experience with the Project to establish an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents as set forth herein and containing a breakdown based on types of materials and specifications identified herein ("Designer's Updated Project Budget").

4.5 **Timetable.** Designer shall provide a written timetable for full and adequate completion of the Project to DISTRICT.

4.6 **Application for Approvals.** Designer shall assist DISTRICT in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project, including but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services or any other appropriate federal, state, regional or local regulatory bodies. Designer shall furnish and process all design and engineering information required to prepare and process applications to applicable utilities in order to secure priorities and materials, to aid in the construction of the Project and to obtain final Project approval and acceptance by any of the above agencies as may be required.

4.7 **Color and Other Aesthetic Issues.** Designer shall provide, for DISTRICT's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project.

4.8 **Contract Delivery Method.** Designer shall advise DISTRICT on contract delivery methods for the Project and provide Project drawings, specifications and bid documents, discussed in sections 5 and 6 to support DISTRICT's approved delivery method.

4.9 **Constructability Review of Design Development Documents.** The DISTRICT or an agent of the District will supply a detailed constructability review of the Design Development Documents to the Designer. The Designer shall be tasked with responding to the constructability review no later than 30 days after the receipt of the constructability review. The Designer shall provide revised drawings, specifications, etc. for all revision when applicable and always reference drawings, details, specifications sections, etc. when addressing a constructability review item. The Designer is tasked with closing out all of the constructability review items and time, meetings, conference calls, etc. required to do so shall be part of this Agreement.

The District or an agent of the District may request a number of clarifications (design review) on design intent, systems specified, overall design layout, overall design quality, etc. The Designer shall be tasked with responding to the design review no later than 30 days after the receipt of the design review. The Designer shall provide revised drawings, specifications, etc. for all revision when applicable and always reference drawings, details, specifications sections, etc. when addressing the constructability review item. The Designer is tasked with closing out all of the constructability review items and time, meetings, conference calls, etc. required to do so shall be part of this Agreement.

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addressing a design review item. The Designer is tasked with closing out all of the design review items and time, meetings, conference calls, etc. required to do so shall be part of this Agreement.

4.10 **Incorporation of Post-Construction Stormwater Design Standards.** The Designer shall incorporate post-construction design standards into the Project as follows:

A. **Basic Requirements**

As part of the basic Services provided pursuant to this Agreement, the Designer shall include in the design prepared for the Project as appropriate, the post-construction best management practices (HBMPs") necessary to ensure that the District and the contractor(s) comply with the State Water Resources Control Board (State Water Board) stormwater regulations applicable to the Project, including, but not limited to Water Quality Order No. 2009-0009-DWQ National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002. The Designer shall include all costs associated with incorporating such BMPs into the design of the Project at no additional cost to the District.

B. **Incorporation of Design Standards**

In order to ensure such compliance, the Designer shall incorporate the following four Design Standards as goals for the design of the Project:

1. **Conserve Natural Areas:** Conservation of existing natural areas on the Project site to the maximum extent possible.

2. **Volume and Flow (Hydromodofcation) Control:** Incorporation of non-structural and structural measures to manage the volume and flow of stormwater runoff from the completed Project site, and replicate the pre-project water balance (defined as the volume of rainfall that ends up as nmoft) for the smallest storms up to the 85th percentile storm event. For sites whose disturbed area exceeds two acres, preserve the pre-construction drainage density (miles of stream length per square mile of drainage area) for all drainage areas within the area serving a first order streaml4 or larger stream and ensure that post-project time of nmoft concentration is equal or greater than pre-project time of concentration.

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3. **Minimization or Pollutants or Concern:** Use of BMPs to reduce the discharge of pollutants from the completed Project site as described in Section C below.

4. **Provide Ongoing BMP Maintenance:** Incorporate and describe maintenance required for BMPs in Project plans so that District can ensure that the BMPs and stormwater system are performing as designed.

C. **Specific Requirements for BMP’s**

The BMPs the Designer incorporates as part of the Design Standards described above, shall be designed to minimize pollutants of concern and shall focus on mitigating the impacts caused by impervious surfaces by implementing BMPs that stress: (i) low impact development (LID) designs that infiltrate and treat stormwater on the Project site; (ii) source controls; and (iii) treatment controls. BMPs which may be used to comply with the above-described design standards may be found in U.S. EPA’s Toolbox of BMPs at:

http://cfpll.bl.epa.gov/npdes/stormwater/swphase2.cfm?program_id=6

or in the County of San Diego’s Low Impact Development Handbook which can be found at:


The Regional Water Quality Control Board may also have lists of approved references and resources.

5. **FINAL WORKING DRAWINGS AND SPECIFICATIONS.**

During the final working drawings and specifications phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

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5.1 **Approval and Revisions.** DISTRICT shall review, study, and check the Design Development Documents presented to it by Designer, and request any necessary revisions or obtain any necessary approvals by the DISTRICT's Board of Trustees, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Designer shall make all DISTRICT requested changes, additions, deletions, and corrections in the Design Development Documents at no additional cost, so long as they are not inconsistent with earlier DISTRICT direction.

5.2 **Final Working Drawings and Specifications.** Once DISTRICT provides Designer with specific written approval of the Design Development Documents described herein, Designer shall prepare such complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be developed from the Schematic Plans and Design Development Documents approved by DISTRICT. The Final Working Drawings and Specifications shall set forth in detail all of the following: (1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the Design, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. DISTRICT may be requested to supply Designer with the necessary information to determine the proper location of all improvements on and off site, including existing record drawings ("existing record drawings") in DISTRICT's possession. Designer will verify the accuracy of such information by means of a thorough interior and exterior visual survey and investigation of site conditions. DISTRICT shall verify the accuracy of the existing record drawings and provide any supplemental information to Designer which may not be shown on the existing record drawings. Access will be provided to the designer in the event that it chooses to use current technologies available (i.e. “point-cloud” scan surveys) to assist with this requirement. After its analysis of the existing site conditions, Designer shall notify the District in writing of any apparent deficiencies that are noticeable or likely based on its review of the site information. Designer shall properly address such deficiencies in its design. The final design shall also be based on meetings with District maintenance staff to confirm the potential need to relocate existing utilities. Designer shall be responsible for confirming in the field that existing mechanical, electrical, and plumbing systems are adequate to address the needs of the design or the designer shall address such deficiencies in its design.

Designer shall utilize BIM modeling as the basis of its design. All sub-consultants working under the designer shall also use BIM modeling as the basis of their designs. The designer is responsible for running clash detections as needed to ensure proper coordination between its own work and the work of its sub-consultants. Designer shall provide clash detection results to the Owner when requested. At a minimum, clash detection results shall be submitted to the Owner at the completion of the design development and final working drawing and specifications phases, and at 90 percent completion of the construction contract document phase. Clash detection results shall also be provided to the Owner upon DSA approval if the Owner determines it to be warranted due to changes that may have occurred during the DSA back-check process.

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DESIGNER ___
DISTRICT ___
Within one week after Final Working Drawings submission to the District, the Designer shall lead a minimum 8-hour “page-turning-plan review” meeting with the District. Plans, specifications, and costs shall be reviewed in this meeting. BIM modeling shall be provided in conjunction with this meeting, with a review of the 3D model included. Designer shall summarize the discussions held in this meeting in minutes to be approved by the District. Designer shall provide a minimum of 5 (five) 3-D renderings reflecting the current design to the District for its use.

The final working drawings shall address all design requirements and shall not defer any portion of the design approval to another party (i.e. deferred approval submittals).

The final working drawings shall address construction phasing required to ensure that the District and its facilities maintain functionality during the construction phase. This does not apply to specific facilities as they undergo construction/renovation, but it does apply to the continuation of systems (mechanical, electrical, plumbing, data, etc) to neighboring facilities to ensure that no services are interrupted. Temporary services shall be designed if required. The designer shall be responsible to coordinate with the published District schedule and in the event that design or construction activity is expected to continue into the following year, the designer shall use the current year’s schedule to make assumptions regarding the school schedule for the following year. Integrate all phasing requirements (associated with the renovated facility, adjacent building coordination requirements and site issues) into the final working drawing and specifications to assure that the phasing and project sequencing has been properly planned and documented for the bid phase of the project as a deliverable requirement in an effort to reduce impact to educational and operational processes.

5.3 Form. The Final Working Drawings and Specifications must be in such form as will enable Designer and DISTRICT to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project, including but not limited to the State Department of Education, the Division of State Architect, the Department of General Services or any other appropriate federal, state, regional or local regulatory bodies. In addition, the Final Working Drawings and Specifications must be in such form as will enable DISTRICT to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard Design size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Designer.

5.4 Approval and Revisions. DISTRICT shall review, study, and check the Final Working Drawings and Specifications presented to it by Designer, and request any necessary revisions or obtain any necessary approvals by DISTRICT’s Board of Trustees, subject to the approval of all federal, state, regional or local agencies concerned with the Project, including but

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not limited to, the State Department of Education, the Division of State Architect, the Department of General Services or any other appropriate federal, state, regional or local regulatory bodies. Designer shall submit Project Documents to government authorities for approval and DISTRICT will pay any fees as reimbursable expenses. Any required or requested changes by authorities having jurisdiction, including the Division of State Architect (DSA), shall be made by the designer at no additional cost to the District. This includes structural updates. Designer shall be proactive with its follow-up with DSA to ensure a continued and coordinated understanding of the DSA review status and an expedited review when possible.

Designer shall make all DISTRICT-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier DISTRICT direction or Designer's professional judgment. Designer shall bring any such conflicts and/or inconsistencies to the attention of DISTRICT. The parties agree that Designer, and not the DISTRICT, possesses the requisite expertise to determine the constructibility of the Final Working Drawings and Specifications. However, the DISTRICT reserves the right to conduct one or more constructibility review processes with the Final Working Drawings and Specifications, and to hire an independent Designer or other consultant to perform such reviews. Any such independent constructibility review shall be at DISTRICT'S expense. Designer shall make all DISTRICT-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications which may result from any constructibility review, at no additional cost to the DISTRICT, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier DISTRICT direction or Designer's professional judgment. If such changes, additions, deletions or corrections are inconsistent with prior DISTRICT direction, Designer shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

5.5 Costs of Construction. It is understood by Designer that should the Final Working Drawings and Specifications be ordered by DISTRICT, DISTRICT shall specify the sum of money set aside to cover the total cost of construction of the work, exclusive of Designer's fees. Should it become evident that the total construction cost will exceed the specified sum, Designer shall at once present a statement in writing to the DISTRICT's Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based.

5.6 Copies of Final Working Drawings and Specifications and Other Documents. Designer, at its own expense, shall provide three (3) complete sets of the Final Working Drawings and Specifications described herein for DISTRICT's review and approval. Designer shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project, including but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services or any other appropriate federal,

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state, regional or local regulatory bodies. Any additional copies required by DISTRICT shall be provided at actual cost to DISTRICT.

5.7 Constructability Review of Final Working Drawings and Specifications. The DISTRICT or an agent of the District will supply a detailed constructability review of the Final Working Drawings and Specifications to the Designer. The Designer shall be tasked with responding to the constructability review no later than 30 days after the receipt of the constructability review. The Designer shall provide revised drawings, specifications, etc. for all revision when applicable and always reference drawings, details, specifications sections, etc. when addressing a constructability review item. The Designer is tasked with closing out all of the constructability review items and time, meetings, conference calls, etc. required to do so shall be part of this Agreement.

The District or an agent of the District may request a number of clarifications (design review) on design intent, systems specified, overall design layout, overall design quality, etc. The Designer shall be tasked with responding to the design review no later than 30 days after the receipt of the design review. The Designer shall provide revised drawings, specifications, etc. for all revision when applicable and always reference drawings, details, specifications sections, etc. when addressing a design review item. The Designer is tasked with closing out all of the design review items and time, meetings, conference calls, etc. required to do so shall be part of this Agreement.

6. CONSTRUCTION CONTRACT DOCUMENTS.

During the construction contract documents phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

6.1 Bid and Contract Documents. Designer shall assist DISTRICT in the completion of all bid and construction documents, including but not limited to, the Notice Inviting Bids, Instructions to Bidders, Contract Bid Forms (including Alternate Bids as requested by DISTRICT), Contract, General Conditions, Supplementary General Conditions, Special Conditions, other necessary conditions of the contract, Project Manual (e.g. conditions of the contract, specifications, and bidding requirements and sample forms), Disabled Veteran Business Enterprise (DVBE) and other applicable affirmative action documents, Performance Bond, Payment Bond, Escrow Agreement for Security Deposits, and any other certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of DISTRICT and DISTRICT's legal counsel.

Designer shall utilize Building Information Modeling (BIM) modeling as the basis of its design. All sub-consultants working under the designer shall also use BIM modeling as the basis of their designs. The designer is responsible for running clash detections as needed to ensure proper coordination between its own work and the work of its sub-consultants. Designer shall provide
clash detection results to the District when requested. At a minimum, clash detection results shall be submitted to the Owner at the completion of the design development and final working drawing and specifications phases, and at 90 percent completion of the construction contract document phase. Clash detection results shall also be provided to the District upon DSA approval if the District determines it to be warranted due to changes that may have occurred during the DSA back-check process. Likewise, the designer shall provide a minimum of 5 (five) 3-D renderings reflecting the current design to the District for its use if the District determines that significant changes were made in the DSA back-check process. At the District’s request, the designer agrees to provide the full BIM model (in Revit software format) to the District or any of its agents at this or any previous design phase. Release of software will require a limitation of liability indemnifying Designer to be signed District.

Integrate all phasing requirements (associated with the renovated facility, adjacent building coordination requirements and site issues) into the schematic plans to assure that the phasing and project sequencing has been properly planned and documented for the bid phase of the project as a deliverable requirement in an effort to reduce impact to educational and operational processes.

6.2 **Final Estimate.** At the time of delivery of these bid and construction documents, which shall include the Final Working Drawings and Specifications (collectively referred to herein as the "Construction Documents"), Designer shall provide DISTRICT with its final estimate of probable construction cost ("Designer's Final Estimate"). As stated above, it shall be the Designer's duty to design the Project within budget.

6.3 **SWPPP Design.** Designer shall include a Storm Water Pollution Prevention Plan (SWPPP) in the construction documents that has been designed by a Qualified SWPPP Developer (QSD) as required by State Water Resources Control Board Order No. 2010-0014-DWQ. The QSD shall be responsible for answering Requests For Information related to the SWPPP from the contractor during the bid and construction phases.

6.4 **Constructability Review of Construction Contract Documents.** The DISTRICT or an agent of the District will supply the final detailed constructability review of the Project to the Designer. The Designer shall be tasked with responding to the constructability review no later than 10 days after the receipt of the constructability review. The Designer shall provide revised drawings, specifications, etc. for all revision when applicable and always reference drawings, details, specifications sections, etc. when addressing a constructability review item. The Designer is tasked with closing out all of the constructability review items and time, meetings, conference calls, etc. required to do so shall be part of this Agreement. If any constructability items are not closed to the satisfaction of the District or the agent of the District the Designer shall work with the agent of the District and create a written summary of all outstanding items and a path forward to closing the outstanding items as the Project moves through the forthcoming phases.

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7. BID PHASE.

During the bid phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

7.1 Reproducible Construction Documents. Once DISTRICT provides Designer with specific written approval of the Construction Documents and Designer's Final Estimate, Designer shall provide to DISTRICT three (3) sets of reproducible Construction Documents.

7.2 Distribution of Contract Documents and Review of Bids. Designer shall assist DISTRICT in distributing the Construction Documents to bidders including to plan rooms and electronically, and conducting the opening and review of bids for the Project. DISTRICT will reimburse the Designer for the cost of reproducing bid sets, addenda and related delivery charges.

7.3 Overbudget. If the apparent lowest responsive and responsible bid on the Project exceeds the Designer's Final Estimate by more than five percent (5%), DISTRICT may request Designer to amend, at Designer's sole cost and expense, the Final Drawings and Specifications in order to rebid the Project and receive a lowest responsive and responsible bid equal to or less than the Designer's Final Estimate. All revisions necessary to bring the lowest responsible and responsive bid within the Designer's Final Estimate, including any omissions, deferrals or alternates, shall be made in consultation with, and subject to the approval of, the DISTRICT.

8. CONSTRUCTION PHASE.

During the construction phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

8.1 Observation. The Project Designer shall observe work executed from the Final Working Drawings and Specifications in person, unless provided that DISTRICT may, in its discretion, consent to such observation by another competent representative of Designer.

8.2 General Administration. Designer shall provide general administration of the Construction Documents and the work performed by the contractors. Designer shall provide staffing to ensure that all designer obligations during the construction administration phase are met in a professional and timely manner as indicated herein.

8.3 Pre-Construction Meeting. Designer shall conduct one or more pre-construction meetings, as the DISTRICT determines is needed for the Project, with all interested parties.

8.4 Site Visits of Contractor's Work. Designer shall conduct site visits to observe each contractor's work for general conformance with the Construction Documents and with any approved construction schedules or milestones. Such site visits shall be conducted as often as are necessary.
necessary and appropriate to the stage of construction, according to the DISTRICT's sole discretion, but in no event less than weekly. While on site, the designer must abide by all applicable OSHA, CAL-OSHA, and SWC safety regulations. All site visits by the designer and its team shall be at no additional cost to the District.

8.5 **Site Visits of Inspector's Work.** Designer shall conduct site visits to communicate and observe the activities of the Project inspectors, including the Inspector of Record. Such site visits shall be conducted as often as is mutually acceptable to Designer and DISTRICT. Designer shall direct the Project inspectors and the Project contractors, and shall coordinate the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.

8.6 **Coordination of Designer's Consultants.** Designer shall cause all Designers, engineers and other consultants, as may be hired by Designer or DISTRICT, to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

8.7 **Reports.** Designer shall make regular reports as may be required by applicable federal, state or local laws, rules or regulations, as well as the federal, state, regional or local agencies concerned with the Project, including but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services, the County in which the Project is located, the City in which the Project is located or any other appropriate federal, state, regional or local regulatory bodies.

8.8 **Construction Meetings: Minutes.** Designer shall attend all construction meetings and provide detailed written reports/minutes to the DISTRICT after each construction meeting in order to keep DISTRICT informed of the progress of the work within five (5) days of the construction meeting. Such meetings shall occur at a frequency necessary for the progress of the Project work, according to the DISTRICT's sole discretion, but no less than weekly.

8.9 **Written Reports.** Designer shall make written reports to DISTRICT, at least monthly, to inform DISTRICT of problems arising during construction, changes contemplated as a result of each such problem, and the progress of the Project work. The Designer shall not have control over the acts or omissions of the contractors, subcontractors or their agents or employees, or of any other persons or entities performing or supplying portions of the work which were not employed or hired by Designer. The contractor shall not be relieved of its obligation to perform the work in accordance with the Contract Documents either by activities or duties of the Designer, or by tests, inspections or approvals required or performed by persons other than the contractor.

8.10 **Written Records.** Designer shall keep accurate written records of the progress and quality of the Project work and the time schedules, and shall advise the contractors and

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DISTRICT of any deviations from the time schedule which could delay timely completion of the Project.

8.11 Material and Test Reports. Designer shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Designer shall provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the contractors, DISTRICT and federal, state, regional or local agencies concerned with the Project, including but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services or any other appropriate federal, state, regional or local regulatory bodies.

8.12 Review and Response to Submissions. Designer shall review and respond, in a timely manner, to all schedules, submittals, shop drawings, samples, information requests, change requests, and other submissions of the contractor and subcontractors for compliance with, or alterations and additions to, the Construction Documents. Designer's review and response shall be completed within five (5) days or less after receipt to ensure the timely and uninterrupted progress of the Project work. Submission requests which involve more work or time than is normally required for routine submissions, as mutually determined by the Parties, may be the subject of additional compensation as Additional Services.

8.13 Rejection of Work. Designer shall promptly reject, as discussed with DISTRICT, work or materials which do not conform to the Construction Documents. Designer shall immediately notify the DISTRICT and contractor(s) of such rejections. Designer shall also have the authority to recommend to the DISTRICT that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

8.14 Substitutions. Designer shall consult with DISTRICT, in a timely manner (within five (5) days or less), with regard to substitution of materials, equipment and laboratory reports thereof, prior to the DISTRICT's final written approval of such substitutions. Designer's consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work. Substitution requests which involve more work or time than is normally required for routine substitutions, as mutually determined by the Parties, may be the subject of additional compensation as Additional Services.

8.15 Revised Documents and Drawings. Designer shall prepare, at no additional expense to DISTRICT, all documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

8.16 Change Requests and Material Changes. Designer shall evaluate and advise DISTRICT, in a timely manner and in writing, of any change requests and material change(s) which may be requested or necessary in the Project plans and specifications. Designer shall provide the DISTRICT with its opinion as to whether such change requests should be approved,

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denied or revised. If the DISTRICT has not hired a construction manager or other person to do so, the Designer shall prepare and execute all change orders and submit them to the DISTRICT for authorization. If the DISTRICT has designated a construction manager or other person to prepare all change orders, the Designer shall review all change orders prepared by such person, execute them and deliver them to the DISTRICT for authorization if they meet with the Designer's approval, or submit them to the DISTRICT with recommendations for revision or denial if necessary. Likewise, the Designer shall thoroughly review and provide comment on all documents sent to its office that may be considered precursors to official change orders. These may include Field Instructions and/or Change Order Proposals. Designer shall include adequate written information (take-offs, references to drawing sheets / specification sections, etc.) supporting its review comments. Designer shall not order contractors to make any changes affecting the contract price or duration without approval by DISTRICT of such a written change order, pursuant to the terms of the Construction Documents. Designer may order, on its own responsibility and pending the DISTRICT's Board of Trustees approval, changes necessary to meet construction emergencies, if written approval of DISTRICT's Representative is first secured. Designer may also authorize minor changes in the work, pending DISTRICT's approval, so long as such changes are not inconsistent with the intent of the Construction Documents and do not involve an adjustment in the contract sum or an extension of the contract time.

8.17 Applications for Payment. Designer shall examine, verify and approve contractor's applications for payment, and shall issue certificates for payment in amounts approved by the Project Inspector of Record or the DISTRICT's Representative, based on the Designer's observations at the site. The issuance of a certificate for payment shall not be a representation that the Designer has: (1) made exhaustive or continuous on site inspections of the work for which payment is sought; (2) reviewed construction means, methods, techniques, sequences or procedures for the work for which payment is sought; (3) ascertained how and for what purpose the contractor has used money previously paid; or (4) certified that the work for which payment is sought is without defects.

8.18 Final Color and Product Selection. Designer shall coordinate final color and product selection with DISTRICT's original design concept. Designer shall clearly indicate to the District which, if any, color / product selections made are not standard to the given manufacturer, which selections cost more money than the given manufacturer's standard, and which selections come with a heightened risk of not actually attaining the selection for the project (due to potential availability issues).

8.19 Substantial Completion. Designer shall determine the date of substantial completion, in consultation with the DISTRICT.

8.20 Punch List. After determining that the Project is substantially complete, Designer shall participate in the inspection by the IOR of the Project and shall review all

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remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the contractor ("Punch List Items"). Designer shall notify contractor in writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Designer shall also notify DISTRICT of all Punch List Items.

8.21 **Warranties.** Designer shall review materials assembled by the contractor and subcontractors with regard to all written warranties, guarantees, owners’ manuals, instruction books, diagrams, record "as built" drawings, and any other materials required from the contractors and subcontractors pursuant to the Construction Documents. Designer shall coordinate and provide these materials to the DISTRICT.

8.22 **Certificate of Completion.** Designer shall participate in any further inspections of the Project necessary to issue Designer's Certificate of Completion and final certificate for payment.

8.23 **Documents for Project Close-Out.** Designer shall cause all other Designers, engineers and other consultants, as may be hired by Designer, to file any and all required documentation with the DISTRICT or other governmental authorities necessary to close out the Project. Designer shall assist the DISTRICT in obtaining such documentation from all other Designers, engineers, or other consultants. Designer acknowledges that obtaining final certification and closure on the project from the Division of State Architect (DSA) can take an extended period of time – even after all relevant documents have been submitted by the designer to DSA. The District reserves the right to withhold final payment to the designer until the official project certification and closure documentation has been received by the District. Designer acknowledges that the District may choose to use a multi-prime delivery method and the designer agrees to absorb any additional cost due to additional DSA documentation required (i.e. DSA 102 forms, DSA 6 forms).

8.24 **District's Document Control.** Designer shall use the District's web-based document control system (ProLog/Converge) when requested by the District as no additional cost to the District. This may apply to RFI's, submittals, meeting minutes, or any other construction-phase document.

8.25 **Coordination with Department of State Architect (DSA) During Construction.** Designer shall keep a log of all design change documentation that requires submission to DSA. This may include addenda to the contract documents during the bid phase and changes made during construction. The designer will provide and review this log at all construction meetings and will provide an update on the approval of each noted change with DSA.
8.26 **Contractor Delays** – In the event that contractor is delayed due to their own negligence, weather, or acts of god, etc. shall entitle the architect to additional fees or compensation.

9. **RECORD DRAWINGS.**

During the record drawings phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

9.1 **Record Drawings and Specifications.** Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Designer shall review and forward the Final Working Drawings and Specifications, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing a "record" set of Final Working Drawings and Specifications ("Record Drawings and Specifications"). The Record Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Designer shall personally review and certify that the Record Drawings and Specifications are a correct representation of the information supplied to Designer by the Inspector of Record and the contractor, and shall obtain certifications from the Inspector of Record and the contractor that the drawings are correct.

The record drawings shall be accompanied with a record BIM model (in Revit software format) incorporating all relevant data listed above. The designer shall provide 40 hours of training to the District regarding how to view, operate, and manipulate the BIM model. Pdf files of the BIM model printouts shall also be included with the record documents.

Designer shall provide 3 "record" color boards to the District. Color, finish, and manufacturers for each major finish item shall be included.

9.2 **Approval.** Once DISTRICT provides Designer with specific written approval of the Record Drawings and Specifications, Designer shall forward to DISTRICT the complete set of original Record Drawings and Specifications or a complete set of reproducible duplicate Record Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

9.3 **Documents for Final Payment.** Prior to the receipt of Designer's final payment, Designer shall forward to DISTRICT all of the following: (1) one clear and legible set of reproductions of the computations; (2) the original copy of the specifications; (3) the Record Drawings and Specifications and other required record documentation as required herein; (4) the final verified progress report required pursuant to Title 24 of the California Code of Regulations; and (5) Designer's Certificate of Completion.
10. **WARRANTY PERIOD.**

During the warranty period phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

10.1 **Advice.** Designer shall provide advice to DISTRICT on apparent deficiencies in the Project during any applicable warranty periods for the Project.
EXHIBIT "B"

FEE AND PHASING SCHEDULES/TASK ORDER(S)

1. **Fee and Phasing Schedule.**

   The Designer shall be compensated based upon the following Fee Schedule:

   A. **Programming Compensation**

      Payments on account of the agreed compensation shall be made within thirty (30) days of the DISTRICT's acceptance of programming phase service in accordance with the hourly rates shown in Exhibit "C". Billings be lump sum in arrears based upon hours of work performed.

      1. Programming Phase Completed – Hours of work performed

   B. **Design, Construction Administration, and Closeout Services Compensation**

      Payments on account of the agreed compensation shall be made within thirty (30) days of the DISTRICT's acceptance of design, construction administration, and closeout service in accordance with the percentages set forth below. Billings be lump sum in arrears based upon work completed.

      1. Schematic Plan Phase – 10% of total task order sum.
      2. Design Development Phase - 25% of total task order sum
      3. Final Working Drawings and Specifications – 30% of total task order sum
      4. Final Working Drawings and Specifications Approved by DSA – 5% of total task order sum
      5. Bid Phase – 5% of total task order sum
      6. Construction Phase – 20% of total task order sum
      7. DSA Project Certification – 5% of task order sum

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2. **Task Order(s).**

**SCOPE OF SERVICES**

**General:** Pursuant to Education Code Section 17316, all materials, plans, specifications and estimates prepared pursuant to this Agreement shall be and remain the property of the DISTRICT. Such drawings and specifications supplied as herein required shall be the property of the DISTRICT whether or not the work for which they were made is executed. The Designer shall furnish to the DISTRICT one computer file in .PPT or .PDF format, or other format as requested by the DISTRICT, one presentation copy and seven handout copies of all work products required. Any other copies of the drawings, specifications, work products, etc. other than those listed in this Agreement shall be supplied to the DISTRICT by the Designer at a 1.1 percentage multiplier of the cost of reproduction.

A. **Task Order No. 1 – Mayan Hall Theater Renovation and ADA Access - Provide Complete Programming Services (Programming Phase) for the Project in Order to Confirm Scope of Work:**

Designer will be required to meet with a designated user group to develop a space and functional program for a complete renovation of the Mayan Hall Theater, Building 900. The existing facility was constructed in 1969 and is proposed to be completely renovated. A new lobby will be added to the south side of the existing structure (space is currently a covered patio area). The addition of the proposed lobby will provide an appropriate entrance sequence for all events. As a part of the programming effort, you will need to hire a structural engineer to provide a preliminary structural assessment of the existing facility. The lower floor concrete slab shows evidence of an existing geotechnical issue that has cause the existing concrete slab to significantly bow. Your structural engineer will be required to review all pertinent geotechnical reports, visually inspect the structure, make a determination as to whether the structural integrity of the facility has been compromised or whether the issue is primarily cosmetic. The report will also make recommendations for the program as to how to rectify the issue for the purposes of recommending further study or recommending a preliminary structural scope to be pursued in the design phase of the project. Funding for the project is from Proposition R sources.

The required program will allow the Designer to proceed into the design phase of the project. The program will be utilized as a benchmark for assuring that the design square footage is staying within scope. The Designer shall also have preliminary discussions with the local agencies regarding the project to assure that there is general agreement on the direction of the design solution and coordinate with the State and Local Fire Marshall. The scope of work defined during the program phase shall be complete and all inclusive.

The scope of the proposed new building may include (but is not limited to) the following items:

1. Potential replacement of the existing lower level slab (in accordance with the structural engineer’s recommendations)
2. ADA compliance upgrades

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3. New public restrooms
4. New theater seating
5. New (theater) furniture and equipment
6. New exterior window systems
7. Classroom renovations
8. Wireless internet
9. New Smart Room Technology
10. New light fixtures
11. New ceilings
12. New finishes (floors and walls including wall and corner guard protection)
13. New graphics and signage
14. Security and communications
15. Additional geotechnical surveys or reports (if required)
16. Seismic upgrades as required by Divisions of State Architect

Program Schedule

Designer shall propose a schedule for the programming process inclusive of all required meetings, approvals and research required.

The program schedule shall not exceed 60 consecutive calendar days (from notice to proceed identified in section 3.13.2 of this agreement to completion of programming phase)

Programming Fee Budget

Fees for the Programming Phase of the project shall not exceed $50,000.

The Programming Phase shall also include a $30,000 allowance for a review of existing structure and geotechnical issues. Designer shall review the existing building structure and make recommendations on potential upgrades to building structure. This includes potential DSA required seismic upgrades. Designer shall review existing geotechnical issues and take lead on overseeing various tests, additional soil corings, review of existing building and site utilities, leak detections, etc. to better understand the cause of the geotechnical issues. Designer shall than make recommendations on how to remediate the current soil conditions. This allowance is subject to the requirement of the Agreement and specifically noted in Section 3.12.3.

Programming Deliverables

Designer is responsible for all deliverable requirements listed in this agreement, whether or not it is included in the list below:

1. Programming phase
Reimbursable Expenses (at a 1.1 percentage multiplier of cost and not included in Agreement)

1. Printing – Other than listed in deliverables
2. Delivery – Other than listed in deliverables
3. Other – fees, unforeseen items, etc.
4. Consultants’ fees are not reimbursable as they are included in the not to exceed fee

Task Order No. 1 Not To Exceed Fee: $50,000.00 plus $30,000.00 not to exceed amount structural and geotechnical allowance.

B. Task Order No. 2 – Mayan Hall Theater Renovation and ADA Access - Provide design (schematic plan phase, design development phase, final working drawings and specifications, construction contracts documents & bid phase), construction administration (construction phase), and closeout services (construction phase, record drawings & warranty period):

Provide design, construction administration, and closeout services for renovation of the Mayan Hall Theater, Building 900 on the existing Southwestern CCD Campus including all utilities, site and campus entitlement requirements.

Design Schedule

Designer shall propose a performance schedule for the design process inclusive of all required meetings, reviews, and approvals and required. The design schedule shall not exceed 150 consecutive calendar days (from completion of programming phase to submission to DSA).

Design, Construction Administration, and Closeout Services Fee Budget

Fees for the design, construction administration, and closeout services for the project shall be a lump sum fee of $550,000.00. The lump sum fee includes but is not limited to the following as called out in the NTD Architecture, Inc. Proposal dated October 27, 2011:

1. Architectural Design
2. Landscape Design
3. Structural Engineering
4. Civil Engineering
5. MEP Engineering
6. Audio Visual Design
7. Acoustical Design
8. Theatrical Design

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The lump sum fee for the design, construction administration, and closeout services for the project represent 11 percentage of construction costs. The construction budget anticipated for this project is $5,000,000.

The design, construction administration, and closeout services for the project shall also include a design allowance of $82,500. This allowance is subject to the requirement of the Agreement and specifically noted in Section 3.12.3.

The design, construction administration, and closeout services for the project shall also include a as-built/surveying allowance of $30,000. This allowance is subject to the requirement of the Agreement and specifically noted in Section 3.12.3.

This Agreement takes precedence over RFQ #109 and its addenda as it pertains to services, deliverables, etc. The Agreement places additional services, deliverables, etc. as part of the design, construction administration, and closeout services fee which were not specified as part of RFQ #109 and its addenda.

This Agreement takes precedence over any and all proposals to date. This includes the NTD Architecture, Inc. Proposal dated October 27, 2011.

Design, Construction Administration, and Closeout Services Deliverables

Designer is responsible for all deliverable requirements listed in this agreement, whether or not it is included in the list below:

a. Schematic Plan Phase
b. Design Development Phase
c. Final Working Drawings and Specifications
d. Construction Contracts Documents
e. Bid Phase
f. Construction Phase
g. Record Drawings
h. Warranty Period

Reimbursable Expenses (at a 1.1 percentage multiplier of cost and not included in “General” above)

1. Printing – Other than listed in deliverables
2. Delivery – Other than listed in deliverables
3. Other – fees, unforeseen items, etc.
4. Consultants’ fees are not reimbursable as they are included in the lump sum fee

In the event that monies are not used from the reimbursable not to exceed amount this will be credited back to the District via a deductive change order to the Agreement.
Task Order No. 2 Lump Sum Fee: $550,000.00 plus $82,500.00 not to exceed amount design allowance plus $30,000.00 not to exceed amount as-built and surveying allowance plus $30,000.00 not to exceed amount for miscellaneous reimbursables.
EXHIBIT "C"

HOURLY COMPENSATION RATES

**NTD ARCHITECTURE, INC.**

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<td>QA Director</td>
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<td>Project Manager</td>
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<td>Project Architect</td>
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<td>Sr. Project Leader</td>
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**KNA**

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NTD Architecture, Inc.

Mayan Hall Theater Renovation and ADA Access

Initial Each Page:

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Initial Each Page:

-C2-

NTD Architecture, Inc.
Mayan Hall Theater Renovation and ADA Access

DA____
DISTRIC____
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**Cumming**

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**The Ruzika Company**

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**Veneklasen**

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<td>Associate VII</td>
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EXHIBIT "D"

CONTRACTOR FINGERPRINTING REQUIREMENTS

Designer Certification

With respect to the Agreement dated ______________ 20__ by and between the DISTRICT ("DISTRICT") and DESIGNER ("Designer") for the provision of Design services, Designer hereby certifies to the DISTRICT's Board of Trustees that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with DISTRICT pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Contractor's Representative ___________________________ Date ___________________________

Designer Exemption

Pursuant to Education Code section 45122.1, the DISTRICT ("DISTRICT") has determined that DESIGNER ("Designer") is exempt from the criminal background check certification requirements for the service Agreement dated __________ by and between the DISTRICT and Designer ("Agreement") because:

☐ The Designer's employees will have limited contact with DISTRICT students during the course of the Agreement; or

☐ Emergency or exceptional circumstances exist.

DISTRICT Official ___________________________ Date ___________________________

Initial Each Page:

-D1-

NDI Architecture, Inc.
Mayan Hall Theater Renovation and ADA Access

DESIGNER ______
DISTRICT ______
Designer's Consultant Certification

The DISTRICT ("DISTRICT") entered into an agreement for Design services with DESIGNER ("Designer") on or about ________ ("Agreement"). This certification is submitted by __________________, a consultant to the Designer for purposes of that Agreement ("Consultant"). Consultant hereby certifies to the DISTRICT's Board of Trustees that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with DISTRICT pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

____________________________________  ________________________
Consultant's Representative                          Date

Designer's Consultant Exemption

The DISTRICT ("DISTRICT") entered into an agreement for Design services with DESIGNER ("Designer") on or about ________ ("Agreement"). Pursuant to Education Code section 45122.1, the DISTRICT has determined that ____________________, a consultant to the Designer for purposes of that Agreement ("Consultant"), is exempt from the criminal background check certification requirements for the Agreement because:

☐ The Consultant's employees will have limited contact with DISTRICT students during the course of the Agreement; or

☐ Emergency or exceptional circumstances exist.

____________________________________  ________________________
DISTRICT Official                          Date
MEMORANDUM

TO: Members of the Governing Board  
Southwestern Community College District

APPROVED BY: Melinda Nish, Ed.D.  
Superintendent/President

SUBMITTED BY: C.M. Brahmbhatt  
Interim Vice President for Business and Financial Affairs

INITIATED BY: John R. Brown, P.E.  
Director of Facilities, Operations, and Planning

SUBJECT: Agreement with A.O. Reed and Company

RECOMMENDATION

Approve Agreement No. A3438.12, related to Bid No. 188, with A.O. Reed and Company for general contractor services, for the period January 26, 2012 to April 3, 2013, inclusive, in an amount not to exceed $9,242,200.

OVERVIEW

On January 5, 2012, Southwestern Community College District received a total of five contractor bids for Bid No. 188 related to the Central Plant Mechanical System and Energy Loop project. Based on the bids received, A.O. Reed and Company is the lowest responsible bidder. A.O. Reed and Company is being recommended for award of the Central Plant Mechanical System and Energy Loop project.

A.O. Reed and Company will furnish all equipment, materials and labor necessary the Central Plant Mechanical System and Energy Loop project. This agreement will be novated to construction manager at risk, Balfour Beatty Construction. These services will be funded by Proposition R.

FISCAL IMPACT/ACCOUNT

NTE $9,242,200 Cost to the District/Account No.:  
5-46210-718722-970 (Central Plant, Field House, Fields - Proposition R Funds)

JRB/jr
Date: January 12, 2012

To: A.O. Reed and Company
(Contractor)
4777 Ruffner Street
(Address)
San Diego, CA 92111

From: Southwestern Community College District ("District")

Based upon the review of bid results for the Southwestern Community College Central Plant Mechanical Systems and Energy Loop Project, the District intends to award a Contract to your firm for the scope of work listed in the bid documents.

You must comply with the following conditions precedent within TEN (10) calendar days of the date of this Notice of Intent to Award.

The Bidder to whom the Contract is awarded shall execute and submit the following documents by 4:00 p.m. of the TENTH (10th) calendar day following the date of the Notice of Intent to Award, or if the tenth day shall fall on a non-business day, then on the next business day thereafter. Failure to properly and timely submit these documents entitles District to reject the bid as non-responsive.

1. Document 00500 Agreement: To be executed by successful Bidder. Submit four (4) copies, each bearing an original signature
2. Document 00540 Escrow Bid Documentation. Submit one (1) copy
3. Document 00550 Escrow Agreement in Lieu of Retention
4. Document 00600 Performance Bond (100%): On the form provided in the Contract Documents and fully executed as indicated on the form. Submit one (1) copy
5. Document 00610 Payment Bond (100%) (Contractor's Labor and Material Bond): On the form provided in the Contract Documents and fully executed as indicated on the form, Submit one (1) copy
6. Document 00910 Recycled Content Certification
7. Document 00920 Asbestos-Free Materials Certification
9. Document 00930 Lead-Based Paint Certification
10. Document 00935 Imported Material Certification
11. Document 00950 Drug-Free Workplace Certification
13. Document 00980 Prevailing Wage Certification
NOTICE OF INTENT TO AWARD

14. Document 00990 Workers Compensation Certification

15. Insurance Certificates and Endorsements, indicating the amounts and expiration dates for each type of insurance required by contract in Document 00700 General Conditions, naming the District as certificate holder

16. Submit completed W9 form

17. Prevailing Wage Determination Sheets for Journeyman, Foreman, and Apprentice

18. Resumes of Proposed Site Personnel (Superintendent, Project Manager)

Failure to comply with those conditions within the time specified will entitle the District to consider your bid abandoned, to annul this Notice of Intent to Award, and to declare your Bid Security forfeited, as well as any other rights the District may have against the Contractor.

After you comply with these conditions, District will return to you one fully signed counterpart of the Agreement.

Southwestern Community College District

By: ____________________________

(Signature)

Name: John R. Brown, PE

Title: Director of Facilities, Operations and Planning

END OF DOCUMENT
DOCUMENT 00500
AGREEMENT

THIS AGREEMENT, made this 25 day of January, 2012 in the County of San Diego, State of California, by and between the Southwestern Community College District, hereinafter called the District, and A.O. Reed and Company, hereinafter called the Contractor,

WITNESSETH that the District and the Contractor for the considerations stated herein agree as follows:

ARTICLE 1 - SCOPE OF WORK. The Contractor shall perform within the time stipulated the contract as herein defined, and shall provide all labor, materials, tools, utility services, and transportation to complete in a workmanlike manner all of the work required in connection with the following titled project: Southwestern College Central Plant Mechanical Systems and Energy Loop Project, in strict compliance with the contract documents as specified in Article 4 below.

ARTICLE 2 - TIME FOR COMPLETION. (a) The work shall be commenced on the date stated in the District's notice to proceed, as provided in the Special Conditions. As specified in District's notice to proceed, the work shall be completed within Four Hundred Twenty One (421) calendar days from and after the date stated in such notice, which shall include Twelve (12) working days for normal bad weather, taking into consideration the seasonal weather for the time when construction will be undertaken.

(b) In entering into this Agreement, Contractor acknowledges and agrees that the construction duration stipulated herein is adequate and reasonable for the size and scope of the project.

ARTICLE 3 - CONTRACT PRICE. The District shall pay to the Contractor as full consideration for the faithful performance of the contract, subject to any additions or deductions as provided in the contract documents, and including any applicable sales, use or other taxes or costs, the sum of Nine Million Two Hundred Forty-Two Thousand Two Hundred Dollars ($9,242,200), said sum being the total amount of the amounts stipulated in the bid.

ARTICLE 4 - COMPONENT PARTS OF THE CONTRACT. The contract entered into by this Agreement consists of the following contract documents (referred to herein as the contract or contract documents), all of which are component parts of the contract as if herein set out in full or attached hereto:

Notice Calling for Bidders (DOCUMENT 00100)
Instruction to Bidders (DOCUMENT 00200)
Bid Form (DOCUMENT 00300)
Bid Bond (DOCUMENT 00410)
Information Required of Bidders (DOCUMENT 00420)
Designation of Subcontractors (DOCUMENT 00430)
Site-Visit Certification (DOCUMENT 00450)
Non-collusion Affidavit (DOCUMENT 00480)
Contract (DOCUMENT 00500)
Novation Agreement (DOCUMENT 00505)
Notice of Intent to Award (DOCUMENT 00510)
Notice to Proceed (DOCUMENT 00520)
Escrow Bid Documentation (DOCUMENT 00540)
Escrow Agreement in Lieu of Retention (DOCUMENT 00550)
Performance Bond (DOCUMENT 00600)
Payment Bond (DOCUMENT 00610)

SOUTHWESTERN COMMUNITY COLLEGE DISTRICT
Southwestern College Central Plant Mechanical Systems and Energy Loop Project

AGREEMENT
00500-1
January 25, 2011
All of the above-named contract documents are intended to be complementary. Work required by one of the above-named contract documents and not by others shall be done as if required by all. This agreement shall supersede any prior agreement of the parties.

IN WITNESS WHEREOF, this Agreement has been duly executed by the above-named parties, on the day and year first above written.

CONTRACTOR:  
A.O. REED AND COMPANY

License No.: 7731

DISTRICT:  
SOUTHWESTERN COMMUNITY COLLEGE DISTRICT

Name ____________________________________________
Title ____________________________________________
Date ____________________________________________

Name Melinda Nish, Ed.D.
Title Superintendent/President
Date ____________________________________________

(Corporate Seal)

Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a contractor may be referred to the registrar of the board whose address is:

Contractors' State License Board  
9821 Business Park Drive  
Sacramento CA 95827  
(916)255-3900; http://www2.cscb.ca.gov/  
(Business & Professions Code, section 7030)

Page 2 OF 2
MEMORANDUM

TO: Members of the Governing Board
    Southwestern Community College District

APPROVED BY: Melinda Nish, Ed.D. ( ), Superintendent/President

SUBMITTED BY: C.M. Brahmbhatt ( ), Interim Vice President for Business and Financial Affairs

INITIATED BY: John R. Brown, P.E. ( ), Director of Facilities, Operations, and Planning

SUBJECT: Agreement with MDA Johnson Favaro

RECOMMENDATION

Approve Agreement No. A3412.12, related to RFQ No. 109, with MDA Johnson Favaro, for architectural services, for the period January 26, 2012 to December 31, 2015, inclusive, in an amount not to exceed $797,500, plus $52,000 for reimbursables, for a contract total, in an amount not to exceed $849,500.

OVERVIEW

MDA Johnson Favaro is being recommended for award of the New National City Two-Story Facility project. Section 3.13.2 of Agreement No. A3412.12 states that “Designer shall not proceed with performance of any Services under this Agreement unless and until the District provides a written notice to proceed.” District staff will only provide MDA Johnson Favaro with a notice to proceed on Task Order No. 1 – Programming, inclusive, in an amount not to exceed $50,000. Once the programming phase is complete, District staff will present the Governing Board with a recommendation to proceed with the remaining Task Orders. If at programming completion District staff and/or the Governing Board deem the remaining Task Orders unnecessary, the agreement will be terminated.

On December 15, 2009, Southwestern Community College District released RFQ No. 109 to the General Public in a request for architectural services for the Proposition R Bond Program. Of the forty-one firms that submitted qualifications packets, MDA Johnson Favaro was one of the top three ranked firms by the steering committee, comprised of both District and Bond Management staff. Based upon the Steering Committee’s ranking, qualifications, references, and recent completion of other similar projects, MDA Johnson Favaro is being recommended for award of the New National City Two-Story Facility project.

MDA Johnson Favaro will provide professional architectural design services and construction documents for the New National City Two-Story Facility project. MDA Johnson Favaro has relevant project experience in similar size, scope, and complexity. This project will be funded by Proposition R.

FISCAL IMPACT/ACCOUNT

NTE $849,500 Cost to the District/Account No.: 5-45123-718742-970 (National City New Two-Story Facility – Proposition R Funds)

JRB:jr
DESIGN, CONSTRUCTION ADMINISTRATION, AND CLOSEOUT SERVICES
NATIONAL CITY NEW TWO STORY FACILITY
BY AND BETWEEN
MDA JOHNSON FAVARO
AND
SOUTHWESTERN COMMUNITY COLLEGE DISTRICT

1. **Parties and Date**

   This Agreement is made and entered into this 25\textsuperscript{th} day of January, 2012, by and between the Southwestern Community College District (DISTRICT), a public school DISTRICT organized under the laws of the State of California with its principal place of business at 900 Otay Lakes Road, Chula Vista, CA 91910 ("DISTRICT") and MDA Johnson Favaro, with its principal place of business at 5898 Blackweller Street, Culver City, CA 90232 ("Designer"). DISTRICT and Designer are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

2. **Recitals**

   2.1 The DISTRICT is a public agency school DISTRICT organized under the laws of the State of California, with power to contract for the services provided for herein.

   2.2 The DISTRICT intends to build a new two story mixed use, approximately 10,500 ASF Science/Lab Classroom facility located at the corner of Plaza Boulevard and National City Boulevard on the Southwestern Community College District's National City Campus.

   2.3 DISTRICT requires the services of a duly qualified and licensed Designer to perform the services required by this Agreement. Designer represents that it is aware of the DISTRICT's plans with respect to the Project.

   2.4 Designer warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Designer is a corporation or other organization, the Project Designer designated pursuant to Section 3.2, and not the Designer itself, shall be fully licensed to practice as a Designer in the State of California.

3. **Terms**

   3.1 **Employment of Designer.** Designer promises and agrees to furnish to DISTRICT all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional Design and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). Each Service will be further defined by individual task orders listed in Exhibit 'A'. The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by
reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Designer shall be subject to the sole and discretionary approval of the DISTRICT, which approval shall not be unreasonably withheld.

3.2 **Project Designer: Key Personnel.** Designer shall name a specific person to act as Project Designer, subject to the approval of DISTRICT. Designer hereby designates

**James Favaro, State of California License No. C32185**

to act as the Project Designer for the Project. The Project Designer shall: (1) maintain oversight of the Project at all times; (2) have full authority to represent and act on behalf of the Designer for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with DISTRICT and all contractors, consultants, engineers and inspectors on the Project. Any change in the Project Designer shall be subject to the DISTRICT’s prior written approval, which approval shall not be unreasonably withheld. The new Project Designer shall be of at least equal competence as the prior Project Designer. In the event that DISTRICT and Designer cannot agree as to the substitution of a new Project Designer, DISTRICT shall be entitled to terminate this Agreement.

In addition to the Project Designer, Designer has represented to the DISTRICT that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Designer may substitute others of at least equal competence upon written approval of the DISTRICT. In the event that DISTRICT and Designer cannot agree as to the substitution of key personnel, engineers or consultants, DISTRICT shall be entitled to terminate this Agreement for cause. As discussed below, any personnel, engineers or consultants who fail or refuse to perform the Services in a manner acceptable to the DISTRICT, or who are determined by the DISTRICT to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Designer at the request of the DISTRICT. The key additional personnel, engineers and consultants for performance of this Agreement are as follows:

**DESIGNER’ TEAM: (LIST KEY PERSONNEL AND LICENSE NOS.)**

1. James Favaro, C32185
2. Steven Johnson, C17181
3. Brain Davis

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4. **Ernesto Barron**

5. **Amber Langlois**

3.3 **Hiring of Consultants and Personnel.**

3.3.1 **Right to Hire or Employ.** Designer shall have the option, unless DISTRICT objects in writing after notice, to employ at its expense Designers, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Designer may delegate without relieving Designer from administrative or other responsibility under this Agreement. Designer shall be responsible for the coordination and cooperation of Designer's Designers, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by DISTRICT in its sole and reasonable discretion. Designer shall notify DISTRICT of the identity of all consultants at least fourteen (14) days prior to their commencement of work in order to allow DISTRICT time to review their qualifications and decline consent to their participation on the Project if deemed necessary by DISTRICT in its sole and reasonable discretion.

3.3.2 **Qualification and License.** All Designers, engineers, experts and other consultants retained by Designer in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 **Standards and Insurance.** All Designers, engineers, experts and other consultants hired by Designer shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the DISTRICT in writing. Unless changes are approved in writing by the DISTRICT, Designer's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 **Assignments or Staff Changes.** Designer shall promptly obtain written DISTRICT approval of any assignment, reassignment or replacement of such Designers, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Designer's consultants and key personnel shall be subject to approval by DISTRICT.

3.3.5 **Draftsman and Clerical Support.** Draftsmen and clerical personnel shall be retained by Designer at Designer's sole expense.

3.4 **Standard of Care; Performance of Employees.**

3.4.1 **Standard of Care.** Designer shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally
recognized as being employed by professionals qualified to perform the Services in the same discipline in the State of California, and shall be fully responsible to DISTRICT for any damages to DISTRICT and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Designer shall be fully responsible to the DISTRICT for any increased costs incurred by the DISTRICT as a result of any such delays in the design or construction of the Project. Designer represents and maintains that it is skilled in the professional calling necessary to perform the Services. Designer warrants that all of its employees, Designers, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Designer represents that it, its employees, Designers, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them, and that such licenses and approvals shall be maintained throughout the term of this Agreement.

3.4.2 **Performance of Employees.** Any employee or consultant who is reasonably determined by the DISTRICT to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the DISTRICT, shall be promptly removed from the Project by the Designer and shall not be re-employed to perform any of the Services or to work on the Project.

3.5 **Laws and Regulations.**

3.5.1 **Knowledge and Compliance.** Designer shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Designer by law. Designer shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. If the Designer performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the DISTRICT, Designer shall be solely responsible for all costs arising therefrom. Designer shall defend, indemnify and hold DISTRICT, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 **Drawings and Specifications.** Designer shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including, but not limited to, the California Building Code, the California Education Code, Titles 19, 21 and 24 of the California Code of Regulations, and any requirements of the Division of State Architect (including structural safety, fire/life safety and access compliance section), the State Department of Education and the California Department of General Services, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant

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revisions made necessary by changes in such laws, rules and regulations after this time, which were not known or reasonably should not have been known, by Designer may be compensated as Additional Services. Designer shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto.

3.5.3 **Americans with Disabilities Act.** Designer will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Designer shall inform DISTRICT of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide DISTRICT with its interpretation of such inconsistencies and conflicting interpretations. Unless Designer brings such inconsistencies and conflicting interpretations to the attention of the DISTRICT and requests DISTRICT's direction on how to proceed, the Designer's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Designer, and the Designer shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. If Designer brings such inconsistencies and conflicting interpretations to the attention of the DISTRICT and request's DISTRICT's direction on how to proceed, Designer shall be responsible to the DISTRICT pursuant to the indemnification provision of this Agreement. DISTRICT acknowledges that the requirements of the federal and state accessibility laws are subject to various and possibly contradictory interpretations, and that the Designer cannot warrant or guarantee that its interpretation will be correct. Designer will adhere to the standard of care provided for in this Agreement and will use its reasonable professional efforts and judgment in making its interpretations.

3.5.4 **Permits, Approvals and Authorizations.** Designer shall provide DISTRICT with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Designer shall then assist the DISTRICT in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the DISTRICT.

3.6 **Independent Contractor.** DISTRICT retains Designer on an independent contractor basis and Designer is not an employee of DISTRICT. Designer is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to DISTRICT's employees. Any additional personnel performing the Services under this Agreement on behalf of Designer shall also not be employees of DISTRICT, and shall at all times be under Designer's exclusive direction and control. Designer shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Designer shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security
taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.7 **Schedule of Services.**

3.7.1 **Timely Performance Standard.** Designer shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Designer shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the DISTRICT and within any completion schedules adopted for the Project. Designer agrees to coordinate with DISTRICT's staff, contractors and consultants in the performance of the Services, and shall be available to DISTRICT's staff, contractors and consultants at all reasonable times.

3.7.2 **Performance Schedule.** Designer shall prepare a schedule for the performance of Designer's Services, including required elements of paragraph 3.5.4, to be adjusted as the Project proceeds. Such schedule shall be subject to the DISTRICT's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for DISTRICT's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If DISTRICT and Designer cannot mutually agree on a performance schedule, DISTRICT shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Designer, without the prior written approval of DISTRICT. If the Designer's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the DISTRICT will suffer damage for which the Designer will be responsible pursuant to the indemnification provision of this Agreement.

The design schedule shall list specific milestone dates for each deliverable and shall also allow reasonable timeframes for constructability reviews by District consultants. Designer, along with its subconsultants, shall analysis the proposed scope prior to schedule creation to determine if a significant benefit can be derived by the District in splitting design deliverables into multiple increments for Division of State Architect (DSA) submission and it shall make its recommendations to the District accordingly. If the District determines that separate increments are beneficial, the designer shall provide separate packages to DSA at no additional cost to the District, provided such notice from the District comes prior to commencement of the Design Development phase.

3.7.3 **Excusable Delays.** Any delays in Designer's work caused by the following shall be added to the time for completion of any obligations of Designer: (1) the sole actions or failure to act of DISTRICT or its employees; (2) the actions of those in direct contractual relationship not changed by the designer with DISTRICT, except those under this contract; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the

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actions of any parties not within the reasonable control of the Designer; and (5) any act of God or other unforeseen occurrence not due to any fault or negligence on the part of Designer. Neither the DISTRICT nor the Designer shall be liable for damages, liquidated or otherwise, to the other on account of such excusable delays.

3.7.4 Request for Excusable Delay Credit. The Designer shall, within ten (10) calendar days of the beginning of any excusable delay, notify the DISTRICT in writing of the causes of delay. DISTRICT will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The DISTRICT's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Designer for extensions of time shall be an extension of the performance time at no cost to the DISTRICT. If Additional Services are required as a result of an excusable delay, the parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Designer make an application for an extension of time, Designer shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.8 Designer Services. Designer shall fully and adequately complete the Services described in this Agreement and in Exhibit "A" attached hereto and incorporated herein by reference.

3.9 Project Land and/or Geotechnical Engineering Survey. If required pursuant to the scope of the Project, the Designer shall prepare or order to be prepared a land survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information. If required pursuant to the scope of the Project, the Designer shall prepare or order to be prepared a geotechnical engineering (soil) survey including but not limited to soil borings of the Project site prepared by a registered geotechnical or civil engineer, any other record documents which shall indicate existing soils conditions, foundation designs and recommendations for structures and land features, and any other pertinent information per Title 24 and the building code. If these services are required pursuant to the scope of the Project, costs for these services are to be part of the base contract amount.

3.9.1 Testing. Retain consultant(s) to conduct soils, geological or other tests required for proper design and inspection of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.
3.10 **Additional Designer Services.** At DISTRICT's request, Designer may be asked to perform in-scope services not otherwise included in this Agreement, not included within the basic services listed in Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted Design practice. As used herein, "Additional Services" mean: (1) any work which is determined by DISTRICT to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary for the Designer to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached hereto. Designer shall not perform, nor be compensated for, Additional Services without prior written authorization from DISTRICT and without an agreement between the DISTRICT and Designer as to the compensation to be paid for such services. DISTRICT shall pay Designer for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Designer pursuant to the indemnification provision of this Agreement. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Designer was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above.

3.11 **DISTRICT Responsibilities.** DISTRICT's responsibilities shall include the following:

3.11.1 **Data and Information.** DISTRICT shall make available to Designer all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget limitation information, the DISTRICT shall provide the Designer with a preliminary construction budget ("DISTRICT's Preliminary Construction Budget").

3.11.2 **Inspector of Record.** Appoint and pay, upon mutual agreement with Designer, an Inspector of Record as provided by state law. The Inspector of Record shall be qualified and approved by Designer and by the Division of State Architect, shall be under direction of the Designer, and shall be responsible to, and act in accordance with, the policies of DISTRICT and Title 24. The Inspector of Record shall be compensated by the DISTRICT and shall be under direct contract with the DISTRICT. The construction administration by Designer and its engineers or other consultants shall complement the continuous personal supervision of the Inspector of Record.

3.11.3 **Bid Phase.** Distribute construction documents to bidders and conduct the opening and review of bids for the Project.

3.11.4 **Testing.** Retain consultant(s) to conduct HAZMAT, chemical, mechanical, or other tests required for proper design and inspection of the Project to ensure the proper development of the required drawings and specifications. District is not responsible for the final testing & balancing of the HVAC systems. This service is to be provided by the designer and/or its consultant.

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3.11.5 **Required Inspections and Tests.** Retain consultant(s) to conduct materials testing and inspection, as required by Title 21 of the California Code of Regulations, or to conduct any other environmental or hazardous materials testing and inspection pursuant to any other applicable laws, rules or regulations. Provide test results to the Designer during the course of construction.

3.11.6 **Fees of Reviewing or Licensing Agencies.** Directly pay or reimburse the payment of all fees directly related to this Project as required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.11.7 **DISTRICT’s Representative.** Designate a person to act as its representative for the performance of this Agreement ("DISTRICT’s Representative"). The DISTRICT’s Representative shall be authorized to act as liaison between Designer and DISTRICT in the administration of this Agreement and the Construction Documents, and shall have the power to act on behalf of the DISTRICT for all purposes under this Agreement. Such person shall assist Designer in observing construction of the Project and participating in the preparation of the Punch List Items required by Exhibit "A" attached hereto. DISTRICT may designate new and/or different individuals to act as DISTRICT’s Representative from time to time. The DISTRICT’s Representative shall render decisions in a timely manner so as to avoid unreasonable delay in the orderly and sequential progress of the Services, as provided in the excusable delay provisions of this Agreement above. Unless and until otherwise noted in writing by the District, the Director of Facilities, Operations, and Planning shall act as the District’s representative for this project.

3.11.8 **Review and Approved Documents.** Review all documents submitted by Designer, including change orders and other matters requiring approval by the DISTRICT’s Board of Trustees or other officials. DISTRICT shall advise Designer of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.12 **Compensation.**

3.12.1 **Designer’s Compensation for Basic Services.** Subject to adjustment under Exhibit "B" attached hereto, DISTRICT shall pay to Designer, for the performance of all Services rendered under this Agreement, the total amount of **SEVEN HUNDRED NINETY SEVEN THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS ($797,500.00) PLUS $52,000 FOR REIMBURSABLES** ("Total Compensation"). This Total Compensation amount shall be based upon the scope of services in Exhibit “A” and task order(s) in Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement pursuant to Exhibits "A" and "B" attached hereto, shall constitute complete and adequate payment for the Services provided under this Agreement.

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3.12.2 Payment for Additional Services. Additional Services may be authorized pursuant to the applicable provisions of this Agreement. If authorized, such Additional Services will be compensated at a flat rate or not to exceed fee based upon hourly rates in Exhibit "C" as mutually agreed upon by the parties. Designer shall be paid for Additional Services, as defined by this Agreement, so long as they have been approved in advance by the DISTRICT. If DISTRICT requires Designer to hire consultants to perform any Additional Services, Designer shall be compensated therefore at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the parties. DISTRICT shall have the authority to review and approve the rates of any such consultants. In addition, Designer shall be reimbursed for any expenses incurred by the Designer or consultants pursuant to the terms and conditions of Section 3.12.3.

The designer shall include within its total contract value an allowance amount equal to 15% of its total contract value cost. This design allowance may be used for design changes only upon written direction from the District. The balance of the allowance amount will be returned to the District via a deductive amendment at contract close-out.

Designer shall understand that any and all amendments that cannot be addressed within the design allowance must be approved and/or ratified by the Board of Trustees prior to the release of payment for work performed on said amendment(s). The duration of the Board of Trustees process depends significantly upon the timing of when the amendments are received by and negotiated with the District. Upon acceptance of pricing, the District will expedite all relevant documents to the Board of Trustees.

3.12.3 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Designer shall not be reimbursed for any expenses unless authorized in writing by DISTRICT, which approval may be evidenced by inclusion in Exhibit "C" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Designer in the interest of the Project. Designer shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of the numbers listed in Exhibit “A”; and (5) other costs, fees and expenses.

3.12.4 Payment to Designer. Designer’s compensation and reimbursable expenses shall be paid by DISTRICT to Designer no more often than monthly, unless mutual agreed in writing otherwise by both the designer and District. Such periodic payments shall be made based upon received deliverables of work completed and the compensation rates indicated in Exhibit "C" attached hereto and incorporated herein by reference. In order to receive payment, Designer shall present to DISTRICT an itemized statement which indicates Services completed and the amount to be paid. The statement shall clearly show the schedule of values, previously

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billed against the schedule of values, currently billed against the schedule of values, total billed against the schedule of values, the percentage of billed to date against the schedule of values, plus clearly show any changes to the Agreement which have modified the schedule of values. DISTRICT shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments in such other manner as the parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Designer shall present to DISTRICT an itemized statement which indicates the Additional Services completed, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. DISTRICT shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Designer shall be compensated as set forth in the termination provision herein.

3.12.5 Withholding Payment to Designer. The DISTRICT may withhold payment, in whole or in part, to the extent reasonably necessary to protect the DISTRICT from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the intentional or negligent acts, errors or omissions protected under the indemnification provisions of this Agreement. Failure by DISTRICT to deduct any sums from a progress payment shall not constitute a waiver of the DISTRICT's right to such sums. The DISTRICT may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the DISTRICT, incurred by the DISTRICT for which Designer is liable under the Agreement or state law. Payments to the Designer for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Designer shall not be withheld, postponed, or made contingent upon receipt by the DISTRICT of offsetting reimbursement or credit from parties not within the Designer's reasonable control.

3.12.6 Prevailing Wages. Designer is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is $1,000 or more, Designer agrees to fully comply with and to require its

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consultants to fully comply with such Prevailing Wage Laws. DISTRICT shall provide Designer with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Designer shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Designer's principal place of business and at the Project site. Designer shall defend, indemnify and hold the DISTRICT, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Designer or its consultants to comply with the Prevailing Wage Laws.

3.12.7 **Labor Compliance Program.** Pursuant to Labor Code section 1771.7, the DISTRICT has implemented, staffed, and shall enforce a Labor Compliance Program (“LCP”). The Designer shall be required to comply with all the requirements of the DISTRICT's LCP and all applicable provisions of the California Labor Code.

3.13 **Contract Term.**

3.13.1 **Term.** The term of this Agreement shall be from February 9, 2012 until December 31, 2015 or until one of the following occurs: (i) the Project(s) is terminated or suspended by the District prior to completion; or (ii) the District terminates this Agreement pursuant to paragraph 3.14 herein.

3.13.2 **Notice to Proceed.** Designer shall not proceed with performance of any Services under this Agreement unless and until the DISTRICT provides a written notice to proceed. Designer shall not proceed with a given phase as scoped in Exhibit A until the DISTRICT provides a written notice to proceed.

3.14 **Termination, Suspension and Abandonment.**

3.14.1 **DISTRICT's Termination for Convenience.** DISTRICT hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Designer shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Designer shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by DISTRICT as a result of the default, if any, by Designer. Upon the DISTRICT's request and authorization, Designer shall perform any and all Additional Services necessary to wind up the work performed to the date of suspension, abandonment or termination. Designer hereby expressly waives any and all claims for damages or compensation arising under this Section, except as set forth herein, in the event of such suspension, abandonment or termination.

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3.14.2 **DISTRICT's Termination for Cause.** If DISTRICT determines that the Designer has failed to perform in accordance with the terms and conditions of this Agreement or an Designer Default has occurred, DISTRICT may terminate all or part of the Agreement for cause.

This termination shall be effective if Designer does not cure its failure to perform within fifteen (15) Days or, if the failure to perform cannot be cured within that period, if Designer does not commence to cure within fifteen (15) Days (or longer, if authorized in writing by DISTRICT) after notice of intention to terminate is given by DISTRICT. Such notice shall specify the failure in performance.

If a termination for cause occurs, DISTRICT will have the right to withhold monies otherwise payable to Designer until DISTRICT acceptance of all the documents contracted at the time of termination have been provided. If after termination, DISTRICT incurs additional costs, expenses or other damages in connection with the Services for which payment was withheld; such costs, expenses or other damages shall be deducted from the amounts withheld. If after delivery of contracted documents to the satisfaction of DISTRICT, the amounts withheld exceed cost incurred by DISTRICT to complete the Designer services, the balance will be paid to Designer. If the costs, expenses or other damages incurred by DISTRICT exceed the amounts withheld, Designer shall be liable to DISTRICT for the difference. The provisions of this paragraph are in addition to, and not a limitation upon, any other rights and remedies of DISTRICT under law or in equity.

3.14.3 **Designer's Termination for Cause.** This Agreement may be terminated by the Designer upon thirty (30) days written notice to the DISTRICT only when the DISTRICT has substantially failed to perform its obligations under this Agreement. The written notice shall include a detailed description of the DISTRICT's failure to perform, status of the work completed as of the date of termination together with a description and a cost estimate of the effort necessary to complete work in progress. In such event, the Designer shall be compensated for services completed to the date of termination, together with compensation for such approved Additional Services performed after termination which are authorized by the DISTRICT to conclude the work performed to the date of termination. Upon the DISTRICT's request and authorization, Designer shall perform any and all Additional Services necessary to wind up the work performed to the date of termination.

3.14.4 **DISTRICT's Suspension of Work.** If Designer's Services are suspended by DISTRICT, DISTRICT may require Designer to resume such Services within ninety (90) days after written notice from DISTRICT. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the DISTRICT and Designer.

3.14.5 **Documents and Other Data.** Within seven (7) calendar days following suspension, abandonment or termination of this Agreement, Designer shall provide to DISTRICT

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DISTRICT______
all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined in Section 3.15.1 below, to which DISTRICT would have been entitled at the completion of Designer's Services under this Agreement. Upon payment of the amount required to be paid to Designer pursuant to the termination provisions of this Agreement, DISTRICT shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Designer under this Agreement. In the event of a dispute regarding the amount of compensation to which the Designer is entitled under the termination provisions of this Agreement, Designer shall provide all Project Documents to DISTRICT upon payment of the undisputed amount. Designer shall have no right to retain or fail to provide to DISTRICT any such documents pending resolution of the dispute. Designer shall make such documents available to DISTRICT without additional compensation other than as may be approved as a reimbursable expense.

3.14.6 Employment of other Designers. In the event this Agreement is terminated in whole or in part as provided herein, DISTRICT may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.15 Ownership and Use of Documents; Confidentiality.

3.15.1 Ownership. Pursuant to California Education Code section 17316 and the requirements of the DISTRICT, all plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, preliminary and final Building Information Modeling (BIM) models (in Revit format), Design presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on electronically (hereinafter referred to as the "Project Documents") shall be and remain the property of DISTRICT. Although the official copyright in all Project Documents shall remain with the Designer or other applicable subcontractors or consultant, the Project Documents shall be the property of DISTRICT whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Designer shall provide to DISTRICT copies of all Project Documents required by DISTRICT. In addition, Designer and all subconsultants shall retain copies of all Project Documents on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to DISTRICT upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, Designer shall make a reasonable effort to notify DISTRICT and provide DISTRICT with the opportunity to obtain the documents.

3.15.2 Right to Use. Designer grants to DISTRICT the right to use and reuse all or part of the Project Documents, at DISTRICT’s sole discretion and with no additional compensation to Designer, for the following purposes:

(A) The construction of all or part of this Project;

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(B) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;

(C) The construction of another project by or on behalf of the DISTRICT for its ownership and use;

DISTRICT is not bound by this Agreement to employ the services of Designer in the event such documents are used or reused for these purposes. DISTRICT shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Designer or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit DISTRICT's right to recover for latent defects or for errors or omissions of the Designer.

Any use or reuse by DISTRICT of the Project Documents on any project other than this Project without employing the services of Designer shall be at DISTRICT's own risk with respect to third parties. If DISTRICT uses or reuses the Project Documents on any project other than this Project, it shall remove the Designer's seal from the Project Documents and indemnify and hold harmless Designer and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

Designer shall not be responsible or liable for any revisions to the Project Documents made by any party other than the Designer, a party for which the Designer is legally responsible or liable, or anyone approved by the Designer.

3.15.3 **License.** This Agreement creates a non-exclusive and perpetual license for DISTRICT to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Designer shall require any and all subcontractors and consultants to agree in writing that DISTRICT is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.15.4 **Right to License.** Designer represents and warrants that Designer has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Designer prepares or causes to be prepared pursuant to this Agreement. Designer shall indemnify and hold DISTRICT harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Designer makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Designer and provided to Designer by DISTRICT.

3.15.5 **Confidentiality.** All Project Documents, either created by or provided to Designer in connection with the performance of this Agreement, shall be held confidential by Designer to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of DISTRICT, be used or reproduced by Designer for any purposes other than the performance of the Services. Designer shall not

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disclose, cause or facilitate the disclosure of the Project Documents to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Designer which is otherwise known to Designer or is generally known, or has become known, to the related industry shall be deemed confidential. Designer shall not use DISTRICT'S name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, website/internet, television or radio production or other similar medium without the written consent of DISTRICT.

3.16 Indemnification. Designer shall defend, indemnify and hold DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligence, recklessness, or willful misconduct of Designer, its officials, officers, employees, subcontractors, consultants or agents in the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and reasonable attorneys fees, expert witness fees and other related costs and expenses of defense. Designer shall defend, with counsel of DISTRICT'S choosing and at Designer's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents. Designer shall pay and satisfy any judgment, award or decree that may be rendered against DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents in any such suits, actions or other legal proceedings. Designer shall also reimburse DISTRICT for the cost of any settlement paid by DISTRICT arising out of any such claims, demands, causes of action, costs, expenses, liabilities, loses, damages, injuries, suits, actions, or other legal proceedings. Such reimbursement shall include payment for DISTRICT'S attorney's fees and costs, including expert witness fees. Designer shall reimburse DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents for any and all legal expenses and costs, including expert witness fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Designer's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents.

3.17 Insurance.

3.17.1 Time for Compliance. Designer shall not commence Services under this Agreement until it has provided evidence satisfactory to the DISTRICT that it has secured all insurance required under this Section. In the event Designer fails to provide or maintain all required insurance, DISTRICT may, in its sole discretion, obtain such insurance and deduct the amount therefrom from the Total Compensation.

3.17.2 Minimum Requirements. Designer shall, at its expense, procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the

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Agreement by the Designer, its officials, officers, agents, representatives, employees or subcontractors. Such insurance shall meet at least the following minimum levels of coverage:

(A) **Minimum Scope of Insurance.** Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); (3) Workers’ Compensation and Employers’ Liability: Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance; and (4) Professional Liability: Coverage which is appropriate to the Designer’s profession, or that of its consultants or subcontractors.

(B) **Minimum Limits of Insurance.** Coverages shall provide limits no less than: (1) General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit; (2) Automobile Liability: $1,000,000 per accident for bodily injury and property damage; (3) Workers’ Compensation and Employer’s Liability: Workers’ compensation limits as required by the Labor Code of the State of California. Employers Liability limits of $1,000,000 per accident for bodily injury or disease; and (4) Professional Liability: Not less than $1,000,000 per claim.

3.17.3 **Professional Liability.** Designer and its consultants and subcontractors shall procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance with limits discussed in this Section. This insurance shall be endorsed to include contractual liability.

3.17.4 **Insurance Endorsements.** The insurance policies shall contain the following provisions, or Designer shall provide endorsements on forms supplied or approved by the DISTRICT to add the following provisions to the insurance policies:

(A) **General Liability.** The general liability policy shall be endorsed to state that: (A) the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents shall be covered as additional insureds with respect to the performance of the Agreement by the Designer, its officials, officers, agents, representatives, employees or subcontractors, including materials, parts or equipment furnished in connection with such services; and (B) the insurance coverage shall be primary insurance as respects the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Designer’s scheduled underlying coverage. Any insurance or self-insurance maintained by the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents shall be excess of the Designer’s insurance and shall not be called upon to contribute with it in any way.

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(B) **Automobile Liability.** The automobile liability policy shall be endorsed to state that: (A) the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Designer or for which the Designer is responsible; and (B) the insurance coverage shall be primary insurance as respects the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Designer's scheduled underlying coverage. Any insurance or self-insurance maintained by the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents shall be excess of the Designer's insurance and shall not be called upon to contribute with it in any way.

(C) **Workers' Compensation and Employers Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents for losses paid under the terms of the insurance policy which arise from work performed by the Designer.

(D) **All Coverages.** Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the DISTRICT; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents.

3.17.5 **Separation of Insureds; No Special Limitations.** All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents.

3.17.6 **Deductibles and Self-Insurance Retentions.** Any deductibles or self-insured retainments must be declared to and approved by the DISTRICT. Designer shall guarantee that, at the option of the DISTRICT, either: (A) the insurer shall reduce or eliminate such deductibles or self-insured retainments as respects the DISTRICT, its directors, Board of Trustees, officials, officers, employees and agents; or (B) the Designer shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.17.7 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the DISTRICT.

3.17.8 **Verification of Coverage.** Designer shall furnish DISTRICT with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the DISTRICT. The certificates and endorsements for each

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insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the DISTRICT, if requested. All certificates and endorsements must be received and approved by the DISTRICT before work commences. The DISTRICT reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.17.9 Subcontractor and Consultant Insurance Requirements. Designer shall not allow any of its Designers, engineers, experts or other consultants to commence work on any subcontract until they have provided evidence satisfactory to the DISTRICT that they have secured all insurance required under this Section. If requested by Designer, DISTRICT may approve different scopes or minimum limits of insurance for particular Designers, engineers, experts or other consultants. Unless otherwise approved by the DISTRICT, the Designers, engineers, experts and other consultants shall comply with each and every provision of this Section.

3.18 Records. Designer shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Designer shall allow a representative of DISTRICT during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Designer shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

3.19 Standardized Manufactured Items. Designer shall cooperate and consult with DISTRICT in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to DISTRICT's criteria to the extent such criteria do not interfere with building design.

3.20 Limitation of Agreement. This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other DISTRICT site, will be covered by, and be the subject of, a separate Agreement for Design services between DISTRICT and the Designer chosen herefor by DISTRICT.

3.21 Mediation. Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the parties.

3.22 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Designer shall not assign or transfer by operation of law or otherwise
any or all of its rights, burdens, duties or obligations without the prior written consent of DISTRICT. Any attempted assignment without such consent shall be invalid and void.

3.23 **Asbestos Certification.** Designer shall certify to DISTRICT, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Designer prepares for the Project. Designer shall require all consultants who prepare any other documents for the Project to submit the same written certification. Designer shall also assist the DISTRICT in ensuring that contractors provide DISTRICT with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Designer shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.24 **Disabled Veteran Business Enterprise Certification.** If required for this Project, Designer shall provide proof of DVBE compliance, in accordance with any applicable policies of the DISTRICT or the State Allocation Board, within thirty (30) days of its execution of this Agreement. If Designer fails to comply with this requirement, the Agreement shall be deemed canceled.

3.25 **No Third Party Rights.** This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

3.26 **Governing Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in San Diego County.

3.27 **Entire Agreement.** This Agreement, with its exhibits, contains the entire agreement of the parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which is not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.

3.28 **Severability.** Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.29 **Non-Waiver.** None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is expressly specified in writing.

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3.30 **Safety.** Designer shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Designer shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.31 **Delivery of Notices.** All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**DISTRICT:**

Southwestern Community College District  
900 Otay Lakes Road  
Chula Vista, CA 91910

Attn: John R. Brown  
Director of Facilities, Operations, and Planning

**DESIGNER:**

MDA Johnson Favaro  
5898 Blackwelder Street  
Culver City, CA 90232

Attn: James Favaro  
Principal, MDA Johnson Favaro

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.32 **Attorney's Fees.** If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party a percentage of reasonable attorney's fees and all other reasonable costs of such action, including expert witness fees and expenses, equal to the percentage of the total judgement lost.

3.33 **Time of Essence.** Time is of the essence for each and every provision of this Agreement.

3.34 **DISTRICT's Right to Employ Other Consultants.** DISTRICT reserves right to employ other consultants, including Designers, in connection with this Project or other projects.

3.35 **Prohibited Interests.**

3.35.1 **Solicitation.** Designer maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Designer, to solicit or secure this Agreement. Further, Designer warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for

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Designer, any fee, commission, percentage, brokerage fee, worked on or contributed to DISTRICT facility bond campaigns, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, DISTRICT shall have the right to rescind this Agreement without liability.

3.35.2 **Conflict of Interest.** For the term of this Agreement and for two (2) years after the conclusion of this contract, no director, official, officer or employee of DISTRICT, during the term of his or her service with DISTRICT, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.36 **Equal Opportunity Employment.** Designer represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Designer shall also comply with all relevant provisions of DISTRICT's minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.37 **Labor Certification.** By its signature hereunder, Designer certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.38 **Drug/Tobacco-Free Facilities.** All DISTRICT facilities are drug and tobacco-free facilities. Any drug and/or tobacco use (smoked or smokeless) is prohibited at all times on all areas of DISTRICT facilities.

3.39 **Fingerprinting Requirements.** Unless exempted, Designer shall comply with the requirements of Education Code Section 45125.1 with respect to fingerprinting of employees who may have contact with the DISTRICT's pupils. The Designer shall also ensure that its consultants on the Project also comply with the requirements of Section 45125.1. To this end, the Designer and its consultants must provide for the completion of the certification form attached hereto as Exhibit "D" and incorporated herein by reference prior to any of the Designer's employees, or those of any other consultants, coming into contact with the DISTRICT's pupils.

3.40 **Subcontracting.** As specified in this Agreement, Designer shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of DISTRICT. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.

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3.41 **Supplemental Conditions.** Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.42 **Exhibits and Recitals.** All Exhibits and Recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth herein by this reference.

3.43 **Authority to Execute.** The persons executing this Agreement on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

**SOUTHWESTERN COMMUNITY COLLEGE DISTRICT**

By:  
Name: Melinda Nish, Ed.D.  
Title: Superintendent/President  
Date:  

Attest:  
Name:  
Date:  

**DESIGNER**

By:  
Name: James Favaro  
Title: Principal, MDA Johnson Favaro  
Date:  

Federal Tax Identification Number 95-416143  

Originator: John R. Brown  
Director of Facilities, Operations and Planning  
Account No.: 5-45123-718742-970  

Approved as to form by the office of the Purchasing, Contracting & Central Services  
Director  
Approval No.: A-34/12  
Date: 12/12/11  

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EXHIBIT "A"

DESIGNER'S SCOPE OF SERVICES

1. GENERAL REQUIREMENTS.

1.1 Basic Services. Designer agrees to perform all the necessary professional Design, landscape Design, engineering (e.g. civil, mechanical, electrical, plumbing, structural, site engineering, land surveying, geotechnical and any other necessary engineering services) and construction administration services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

Designers shall be responsible to provide an accurate as-built of all existing structures and systems that are to be impacted by construction or modernization activity and/or are connected to the proposed design. This includes mechanical, electrical, and plumbing systems. Designers shall utilize underground utility locating services if deemed necessary by the designer. This also includes checking all existing structures to verify that existing ADA paths of travel are to the current codes and that the Project ADA transitions into the existing ADA paths of travel are per code. This as-built information is to be incorporated into the design. Access will be provided to the designer in the event that it chooses to use current technologies available (i.e. “point-cloud” scan surveys) to assist with this requirement.

1.2 Exclusions from Basic Services. The following services shall be excluded from the basic services listed above: Commissioning and generation/creation of environmental documents. Both commissioning and the generation/creation of environmental documents will be performed by the District. However, coordination with these consultants will be required by the Designer.

1.3 Additional Services. Designer shall perform the following Additional Services for the Project:

The Designer shall perform the following additional services under this Agreement only if said services are authorized in advance in writing by the DISTRICT. Said additional services shall be compensated in accordance with schedule in Exhibit "C" or by separate addendum.

A. Revisions and changes in approved drawings and the preparation of alternate and/or deductive change orders requested by the DISTRICT, except as otherwise required by this contract, and excluding corrections of design errors, conflicts, and/or omissions by Designer in the work performed under this Agreement.

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B. Supervision of repair of damage to the Project not resulting from fault of the Designer.

C. The additional services caused by the delinquency or insolvency of the contractor.

D. If directed or requested by the DISTRICT, the employment of special consultants, preparation of special delineation of models, and overtime work by the Designer’s employees, except as otherwise required by this contract.

E. Providing contract administration services after the construction contract time has been exceeded through no fault of the Designer where it is determined that the fault is that of the contractor and liquidated damages are collected therefor. The Designer, however, shall budget for a separate “extended construction administration allowance” to cover an additional 20% of construction duration as determined by the District. If the construction period is less than this, the District reserves the right to receive a credit for construction-administration not performed.

1.4 Cooperation and Communication with DISTRICT. Designer shall cooperate and participate in consultations and conferences with DISTRICT, DISTRICT’s consultants, authorized representatives of DISTRICT, and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and the DISTRICT. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Designer shall take direction only from the DISTRICT’s Representative, or any other representative specifically designated by the DISTRICT for this Project, including any construction manager hired by the DISTRICT.

Designer shall coordinate its design as needed with District consultants and/or vendors that address fixtures, furniture, and equipment. Designer shall meet the requirements of the District’s design standards and shall coordinate with the District when its design standards are in the process of being updated.

Designer shall be available for design meetings at District offices when deemed necessary by the District, but on a bi-weekly basis at a minimum.

Designer shall take part in user group meetings and are expected to take an active role in guiding the groups towards consensus regarding planning and design decisions. Designer shall provide meeting minutes for each user group meeting and shall incorporate user group feedback into the design when directed by the District. Designer shall plan for one user group meeting for each design phase and shall allot time for these meetings in its design schedule. Designer and District will work together to ensure that the appropriate user group personnel (or appropriate stand-ins) are invited and attend the meetings. This includes maintenance and operations staff.

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1.5 Coordination and Cooperation with Program Manager and/or Construction Manager. The DISTRICT may hire a program manager and/or construction manager to administer and coordinate all or any part of the Project on its behalf. If the DISTRICT does so, it shall provide a copy of its agreement with the program manager and/or construction manager so that the Designer will be fully aware of the duties and responsibilities of the program manager and/or construction manager. The Designer shall cooperate with the program manager and/or construction manager and respond to any requests or directives authorized by the DISTRICT to be made or given by the program manager and/or construction manager. The Designer shall request clarification from the DISTRICT in writing if the Designer should have any questions regarding the authority of the program manager and/or construction manager.

1.6 In conjunction with the other duties described herein, the Designer shall continuously monitor construction costs and provide detailed estimates at the completion of the programming phase, schematic plan phase, the design development phase, and any time during the final working drawings and specifications phase when design revisions or market conditions result in a potential change to the previously provided estimate. These estimates should include a breakdown of the work elements as well as contingencies in an amount that corresponds to the level of design completion.

1.7 Leadership in Energy and Environmental Design (LEED) Services – Unless otherwise noted, the designer shall target ‘LEED Silver’ per the U.S. Green Building Council (USGBC) rating system. Designer shall coordinate with the District and incorporate design elements that will result in this rating. Designer shall identify and propose qualifying design elements to the District in each phase listed herein, provide updates as to the status of the LEED scorecard at each phase, and provide analysis to the District when requested regarding the cost versus benefit of individual design elements. Designer shall be responsible for initiating the LEED process with USGBC and for implementing and guiding the process throughout the design, construction, and close-out of the project. The designer shall review submittals to ensure compliance with LEED goals and shall report on LEED status in each design and construction meeting.

2. PROGRAMMING PHASE.

During the programming phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

2.1 Educational Programming. Assist DISTRICT in the preparation of educational programming for the Project to define the scope, size, space relationship and site development.

2.2 Project Feasibility. Provide advice and assistance to DISTRICT in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be
selected, the site location, and other programming matters, including, but not limited to, developing a building program identifying and confirming the facility functions, square footage requirements, adjacency relationships, flow diagrams and equipment needs (including a preliminary construction cost estimate based on area costs). Existing equipment needs, data and inventory to be provided by the DISTRICT.

2.3 **Meeting Budget and Project Goals.** Designer shall notify DISTRICT in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project budget and timeline, including the DISTRICT's Preliminary Construction Budget. Designer shall use its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Project's budget and construction allowance. It shall be the duty of the Designer to suggest alternatives to DISTRICT which would reduce costs and to design the Project within budget and State Allocation Board cost standards, if any. As discussed below in Section 7 of this Exhibit, if the lowest responsive and responsible bid for the Project exceeds the budget by the stated percentage amount, Designer may be required to make the necessary changes in the drawing and specifications, at its sole cost and expense, to bring the bids within the required budget.

2.4 **Permits, Approvals and Authorizations.** As indicated in Section 3.5.4, Designer shall assist DISTRICT in securing easements, encroachment permits, rights of way, dedications, infrastructures and road improvements, as well as coordinating with utilities and adjacent property owners.

2.5 **Programmatic Square Footage Compilation and Tracking** – Designer shall create a matrix listing gross and assignable square footage for the various functions to be utilized by the proposed design (x SF office space, etc). In the case of a building modernization, this information shall be compared against the functionality in the current structure. For all projects, the designer shall update this matrix with each design deliverable and compare it against the initial matrix. This comparison shall be submitted to the District with each design deliverable.

2.6 **Program Schedule.** Designer shall propose and update accordingly a program schedule for the programming phase inclusive of all required meeting, approvals and research required.

3. **SCHEMATIC PLAN PHASE.**

During the schematic plan phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

3.1 **Approval and Revisions.** DISTRICT shall review, study, and check the work product developed during the Programming Phase and presented to it by Designer, and request any necessary revisions or obtain any necessary approvals by the DISTRICT's Board of Trustees.
subject to the approval of all federal, state, regional or local agencies concerned with the Project. Designer shall make all DISTRICT requested changes, additions, deletions, and corrections in such work product at no additional cost, so long as they are not inconsistent with earlier DISTRICT direction.

3.2 **Funding Documents.** If applicable, Designer shall provide a site plan and all other Project-related information necessary and required for an application by DISTRICT to any federal, state, regional, or local agencies for funds to finance the construction Project.

3.3 **Schematic Plans.** In cooperation with DISTRICT, Designer shall prepare the conceptual design of the Project, illustrating the scale and relationship of the Project components ("Schematic Plans"). The Schematic Plans shall include a conceptual site plan, if appropriate, and preliminary plans and studies, sections, elevations, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed Design concept of the buildings. Designer shall incorporate the educational programs and the functional requirements of DISTRICT into the Schematic Plans. At the Designer's option, the Schematic Plans may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. The Schematic Plans shall meet all laws, rules and regulations of the State of California, including but not limited to, the regulations of the State Department of Education (5 Cal. Code Regs. § 14000 et seq.) or the Office of Public School Construction ("OPSC"), as well as any guidelines implemented by the State Department of Education. All Schematic Plans shall be prepared in a form which may be submitted to the State Department of Education and OPSC for approval. The Schematic Plans shall show all rooms incorporated in each building of the Project in single-line drawings, and shall include all revisions required by DISTRICT or by any federal, state, regional or local agency having jurisdiction over the Project. All Design drawings for the Project shall be in a form suitable for reproduction.

Integrate all phasing requirements (associated with the renovated facility, adjacent building coordination requirements and site issues) into the schematic plans to assure that the phasing and project sequencing has been properly planned and documented for the bid phase of the project as a deliverable requirement in an effort to reduce impact to educational and operational processes.

Within one week after Schematic Plan document submission to the District, the Designer shall lead a “page-turning-plan review” meeting with the District. Plans, specifications, and costs shall be reviewed in this meeting. Designer shall summarize the discussions held in this meeting in minutes to be approved by the District. Designer shall provide a minimum of 5 (five) 3-D renderings reflecting the current design to the District for its use.

3.4 **Preliminary Project Budget.** Designer shall use the DISTRICT's Preliminary Construction Budget and its own expertise and experience with the Project to establish a

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preliminary project budget or allowance in a format required by DISTRICT or, if applicable, by any school construction funding agency identified by DISTRICT ("Designer's Preliminary Project Budget"). The purpose of the Designer's Preliminary Project Budget is to show the probable Project cost in relation to DISTRICT's Preliminary Construction Budget and the construction standards of any applicable funding agency. If Designer perceives site considerations which render the Project expensive or cost prohibitive, Designer shall disclose such conditions in writing to DISTRICT immediately. As stated below in Section 7 of this Exhibit, if the lowest responsive and responsible bid for the Project exceeds the budget by more than the stated percentage amount, Designer may be required to make the necessary changes in the drawings and specifications, at its sole cost and expense, to bring the bids within the required budget Designer shall provide a preliminary written time schedule for the performance of all construction work on the Project.

3.5 **Copies of Schematic Plans and Other Documents.** Designer, at its own expense, shall provide a complete set of the Schematic Plans described herein for DISTRICT's review and approval. Additionally, at DISTRICT's expense, Designer shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project, including but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services or any other appropriate federal, state, regional or local regulatory bodies. Any additional copies required by DISTRICT shall be provided at actual cost to DISTRICT.

4. **DESIGN DEVELOPMENT PHASE.**

During the design development phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

4.1 **Approval and Revisions.** DISTRICT shall review, study, and check the Schematic Plans presented to it by Designer, and request any necessary revisions or obtain any necessary approvals by the DISTRICT's Board of Trustees, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Designer shall make all DISTRICT requested changes, additions, deletions, and corrections in the Schematic Plans at no additional cost, so long as they are not inconsistent with earlier DISTRICT direction.

4.2 **Design Development Documents.** Once DISTRICT provides Designer with specific written approval of the Schematic Plans described herein, Designer shall prepare design development documents consisting of: (1) site and floor plans; (2) elevations; (3) sections; (4) typical construction details; (5) equipment layouts; and (6) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the scope, relationships, forms, size, appearance and character of the Project's structural, mechanical and electrical systems, and to outline the Project specifications ("Design Development Documents").

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The Design Development Documents shall be prepared in sufficient form to present to the DISTRICT's Board of Trustees for approval.

Integrate all phasing requirements (associated with the renovated facility, adjacent building coordination requirements and site issues) into the design development documents to assure that the phasing and project sequencing has been properly planned and documented for the bid phase of the project as a deliverable requirement in an effort to reduce impact to educational and operational processes.

Designer shall utilize BIM modeling as the basis of its design. All sub-consultants working under the designer shall also use BIM modeling as the basis of their designs. The designer is responsible for running clash detections as needed to ensure proper coordination between its own work and the work of its sub-consultants. Designer shall provide clash detection results to the Owner when requested. At a minimum, clash detection results shall be submitted to the Owner at the completion of the design development and final working drawing and specifications phases, and one month prior to the completion of the construction contract document phase. Clash detection results shall also be provided to the Owner upon DSA approval if the Owner determines it to be warranted due to changes that may have occurred during the DSA back-check process.

Within one week after Design Development document submission to the District, the Designer shall lead a minimum 8-hour "page-turning-plan review" meeting with the District. Plans, specifications, and costs shall be reviewed in this meeting. BIM modeling shall be provided in conjunction with this meeting, with a review of the 3D model included. Designer shall summarize the discussions held in this meeting in minutes to be approved by the District.

Designer shall provide a minimum of 5 (five) 3-D renderings reflecting the current design to the District for its use.

4.3 Copies of Design Development and Other Documents. Designer, at its own expense, shall provide three (3) complete sets of the Design Development Documents described herein for DISTRICT's review and approval. Additionally, at DISTRICT's expense, Designer shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project, including but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services or any other appropriate federal, state, regional or local regulatory bodies. Any additional copies required by DISTRICT shall be provided at actual cost to DISTRICT.

4.4 Updated Project Budget. Designer shall use its Preliminary Project Budget and expertise and experience with the Project to establish an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents as set
forth herein and containing a breakdown based on types of materials and specifications identified herein ("Designer's Updated Project Budget").

4.5 **Timetable.** Designer shall provide a written timetable for full and adequate completion of the Project to DISTRICT.

4.6 **Application for Approvals.** Designer shall assist DISTRICT in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project, including but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services or any other appropriate federal, state, regional or local regulatory bodies. Designer shall furnish and process all design and engineering information required to prepare and process applications to applicable utilities in order to secure priorities and materials, to aid in the construction of the Project and to obtain final Project approval and acceptance by any of the above agencies as may be required.

4.7 **Color and Other Aesthetic Issues.** Designer shall provide, for DISTRICT’s review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project.

4.8 **Contract Delivery Method.** Designer shall advise DISTRICT on contract delivery methods for the Project and provide Project drawings, specifications and bid documents, discussed in sections 5 and 6 to support DISTRICT’s approved delivery method.

4.9 **Constructability Review of Design Development Documents.** The DISTRICT or an agent of the District will supply a detailed constructability review of the Design Development Documents to the Designer. The Designer shall be tasked with responding to the constructability review no later than 30 days after the receipt of the constructability review. The Designer shall provide revised drawings, specifications, etc. for all revision when applicable and always reference drawings, details, specifications sections, etc. when addressing a constructability review item. The Designer is tasked with closing out all of the constructability review items and time, meetings, conference calls, etc. required to do so shall be part of this Agreement.

The District or an agent of the District may request a number of clarifications (design review) on design intent, systems specified, overall design layout, overall design quality, etc. The Designer shall be tasked with responding to the design review no later than 30 days after the receipt of the design review. The Designer shall provide revised drawings, specifications, etc. for all revision when applicable and always reference drawings, details, specifications sections, etc. when addressing a design review item. The Designer is tasked with closing out all of the design review items and time, meetings, conference calls, etc. required to do so shall be part of this Agreement.
4.10 **Incorporation of Post-Construction Stormwater Design Standards.** The Designer shall incorporate post-construction design standards into the Project as follows:

A. **Basic Requirements**

As part of the basic Services provided pursuant to this Agreement, the Designer shall include in the design prepared for the Project as appropriate, the post-construction best management practices (HBMPs") necessary to ensure that the District and the contractor(s) comply with the State Water Resources Control Board (State Water Board) stormwater regulations applicable to the Project, including, but not limited to Water Quality Order No. 2009-0009-DWQ National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002. The Designer shall include all costs associated with incorporating such BMPs into the design of the Project at no additional cost to the District.

B. **Incorporation of Design Standards**

In order to ensure such compliance, the Designer shall incorporate the following four Design Standards as goals for the design of the Project:

1. **Conserve Natural Areas:** Conservation of existing natural areas on the Project site to the maximum extent possible.

2. **Volume and Flow (Hydromodification) Control:** Incorporation of non-structural and structural measures to manage the volume and flow of stormwater runoff from the completed Project site, and replicate the pre-project water balance (defined as the volume of rainfall that ends up as nmooff) for the smallest storms up to the 85th percentile storm event. For sites whose disturbed area exceeds two acres, preserve the pre-construction drainage density (miles of stream length per square mile of drainage area) for all drainage areas within the area serving a first order stream14 or larger stream and ensure that post-project time of nmooff concentration is equal or greater than pre-project time of concentration.

3. **Minimization or Pollutants or Concern:** Use of BMPs to reduce the discharge of pollutants from the completed Project site as described in Section C below.

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4. **Provide Ongoing BMP Maintenance:** Incorporate and describe maintenance required for BMPs in Project plans so that District can ensure that the BMPs and stormwater system are performing as designed.

C. **Specific Requirements for BMP’s**

The BMPs the Designer incorporates as part of the Design Standards described above, shall be designed to minimize pollutants of concern and shall focus on mitigating the impacts caused by impervious surfaces by implementing BMPs that stress: (i) low impact development (LID) designs that infiltrate and treat stormwater on the Project site; (ii) source controls; and (iii) treatment controls. BMPs which may be used to comply with the above-described design standards may be found in U.S. EPA's Toolbox of BMPs at:


or in the County of San Diego's Low Impact Development Handbook which can be found at:


The Regional Water Quality Control Board may also have lists of approved references and resources.

5. **FINAL WORKING DRAWINGS AND SPECIFICATIONS.**

During the final working drawings and specifications phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

5.1 **Approval and Revisions.** DISTRICT shall review, study, and check the Design Development Documents presented to it by Designer, and request any necessary revisions or obtain any necessary approvals by the DISTRICT’s Board of Trustees, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Designer shall make all DISTRICT requested changes, additions, deletions, and corrections in the Design Development

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5.2 Final Working Drawings and Specifications. Once DISTRICT provides Designer with specific written approval of the Design Development Documents described herein, Designer shall prepare such complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be developed from the Schematic Plans and Design Development Documents approved by DISTRICT. The Final Working Drawings and Specifications shall set forth in detail all of the following: (1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the Design, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. DISTRICT may be requested to supply Designer with the necessary information to determine the proper location of all improvements on and off site, including existing record drawings ("existing record drawings") in DISTRICT's possession. Designer will verify the accuracy of such information by means of a thorough interior and exterior visual survey and investigation of site conditions. DISTRICT shall verify the accuracy of the existing record drawings and provide any supplemental information to Designer which may not be shown on the existing record drawings. Access will be provided to the designer in the event that it chooses to use current technologies available (i.e. "point-cloud" scan surveys) to assist with this requirement. After its analysis of the existing site conditions, Designer shall notify the District in writing of any apparent deficiencies that are noticeable or likely based on its review of the site information. Designer shall properly address such deficiencies in its design. The final design shall also be based on meetings with District maintenance staff to confirm the potential need to relocate existing utilities. Designer shall be responsible for confirming in the field that existing mechanical, electrical, and plumbing systems are adequate to address the needs of the design or the designer shall address such deficiencies in its design.

Designer shall utilize BIM modeling as the basis of its design. All sub-consultants working under the designer shall also use BIM modeling as the basis of their designs. The designer is responsible for running clash detections as needed to ensure proper coordination between its own work and the work of its sub-consultants. Designer shall provide clash detection results to the Owner when requested. At a minimum, clash detection results shall be submitted to the Owner at the completion of the design development and final working drawing and specifications phases, and one month prior to the completion of the construction contract document phase. Clash detection results shall also be provided to the Owner upon DSA approval if the Owner determines it to be warranted due to changes that may have occurred during the DSA back-check process.

Within one week after Final Working Drawings submission to the District, the Designer shall lead a minimum 8-hour “page-turning-plan review” meeting with the District. Plans, specifications, and costs shall be reviewed in this meeting. BIM modeling shall be provided in

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conjunction with this meeting, with a review of the 3D model included. Designer shall summarize the discussions held in this meeting in minutes to be approved by the District. Designer shall provide a minimum of 5 (five) 3-D renderings reflecting the current design to the District for its use.

The final working drawings shall address all design requirements and shall not defer any portion of the design approval to another party (i.e. deferred approval submittals).

The final working drawings shall address construction phasing required to ensure that the District and its facilities maintain functionality during the construction phase. This does not apply to specific facilities as they undergo construction/renovation, but it does apply to the continuation of systems (mechanical, electrical, plumbing, data, etc) to neighboring facilities to ensure that no services are interrupted. Temporary services shall be designed if required. The designer shall be responsible to coordinate with the published District schedule and in the event that design or construction activity is expected to continue into the following year, the designer shall use the current year’s schedule to make assumptions regarding the school schedule for the following year. Integrate all phasing requirements (associated with the renovated facility, adjacent building coordination requirements and site issues) into the final working drawing and specifications to assure that the phasing and project sequencing has been properly planned and documented for the bid phase of the project as a deliverable requirement in an effort to reduce impact to educational and operational processes.

5.3 **Form.** The Final Working Drawings and Specifications must be in such form as will enable Designer and DISTRICT to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project, including but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services or any other appropriate federal, state, regional or local regulatory bodies. In addition, the Final Working Drawings and Specifications must be in such form as will enable DISTRICT to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard Design size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Designer.

5.4 **Approval and Revisions.** DISTRICT shall review, study, and check the Final Working Drawings and Specifications presented to it by Designer, and request any necessary revisions or obtain any necessary approvals by DISTRICT's Board of Trustees, subject to the approval of all federal, state, regional or local agencies concerned with the Project, including but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services or any other appropriate federal, state, regional or local regulatory bodies. Designer shall submit Project Documents to government authorities for approval and DISTRICT will pay any fees as reimbursable expenses. Any required or requested

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changes by authorities having jurisdiction, including the Division of State Architect (DSA), shall be made by the designer at no additional cost to the District. This includes structural updates. Designer shall be proactive with its follow-up with DSA to ensure a continued and coordinated understanding of the DSA review status and an expedited review when possible.

Designer shall make all DISTRICT-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier DISTRICT direction or Designer's professional judgment. Designer shall bring any such conflicts and/or inconsistencies to the attention of DISTRICT. The parties agree that Designer, and not the DISTRICT, possesses the requisite expertise to determine the constructibility of the Final Working Drawings and Specifications. However, the DISTRICT reserves the right to conduct one or more constructibility review processes with the Final Working Drawings and Specifications, and to hire an independent Designer or other consultant to perform such reviews. Any such independent constructibility review shall be at DISTRICT's expense. Designer shall make all DISTRICT-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications which may result from any constructibility review, at no additional cost to the DISTRICT, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier DISTRICT direction or Designer's professional judgment. If such changes, additions, deletions or corrections are inconsistent with prior DISTRICT direction, Designer shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

5.5 Costs of Construction. It is understood by Designer that should the Final Working Drawings and Specifications be ordered by DISTRICT, DISTRICT shall specify the sum of money set aside to cover the total cost of construction of the work, exclusive of Designer's fees. Should it become evident that the total construction cost will exceed the specified sum, Designer shall at once present a statement in writing to the DISTRICT's Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based.

5.6 Copies of Final Working Drawings and Specifications and Other Documents. Designer, at its own expense, shall provide three (3) complete sets of the Final Working Drawings and Specifications described herein for DISTRICT's review and approval. Designer shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project, including but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services or any other appropriate federal, state, regional or local regulatory bodies. Any additional copies required by DISTRICT shall be provided at actual cost to DISTRICT.

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5.7 **Constructability Review of Final Working Drawings and Specifications.** The DISTRICT or an agent of the District will supply a detailed constructability review of the Final Working Drawings and Specifications to the Designer. The Designer shall be tasked with responding to the constructability review no later than 30 days after the receipt of the constructability review. The Designer shall provide revised drawings, specifications, etc. for all revision when applicable and always reference drawings, details, specifications sections, etc. when addressing a constructability review item. The Designer is tasked with closing out all of the constructability review items and time, meetings, conference calls, etc. required to do so shall be part of this Agreement.

The District or an agent of the District may request a number of clarifications (design review) on design intent, systems specified, overall design layout, overall design quality, etc. The Designer shall be tasked with responding to the design review no later than 30 days after the receipt of the design review. The Designer shall provide revised drawings, specifications, etc. for all revision when applicable and always reference drawings, details, specifications sections, etc. when addressing a design review item. The Designer is tasked with closing out all of the design review items and time, meetings, conference calls, etc. required to do so shall be part of this Agreement.

6. **CONSTRUCTION CONTRACT DOCUMENTS.**

During the construction contract documents phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

6.1 **Bid and Contract Documents.** Designer shall assist DISTRICT in the completion of all bid and construction documents, including but not limited to, the Notice Inviting Bids, Instructions to Bidders, Contract Bid Forms (including Alternate Bids as requested by DISTRICT), Contract, General Conditions, Supplementary General Conditions, Special Conditions, other necessary conditions of the contract, Project Manual (e.g. conditions of the contract, specifications, and bidding requirements and sample forms), Disabled Veteran Business Enterprise (DVBE) and other applicable affirmative action documents, Performance Bond, Payment Bond, Escrow Agreement for Security Deposits, and any other certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of DISTRICT and DISTRICT's legal counsel.

Designer shall utilize BIM modeling as the basis of its design. All sub-consultants working under the designer shall also use BIM modeling as the basis of their designs. The designer is responsible for running clash detections as needed to ensure proper coordination between its own work and the work of its sub-consultants. Designer shall provide clash detection results to the District when requested. At a minimum, clash detection results shall be submitted to the Owner at the completion of the design development and final working drawing and specifications phases, and one month prior to the completion of the construction contract document phase.
Clash detection results shall also be provided to the District upon DSA approval if the District determines it to be warranted due to changes that may have occurred during the DSA back-check process. Likewise, the designer shall provide a minimum of 5 (five) 3-D renderings reflecting the current design to the District for its use if the District determines that significant changes were made in the DSA back-check process. At the District’s request, the designer agrees to provide the full Building Information Modeling (BIM) model (in Revit software format) to the District or any of its agents at this or any previous design phase.

Integrate all phasing requirements (associated with the renovated facility, adjacent building coordination requirements and site issues) into the schematic plans to assure that the phasing and project sequencing has been properly planned and documented for the bid phase of the project as a deliverable requirement in an effort to reduce impact to educational and operational processes.

6.2 **Final Estimate.** At the time of delivery of these bid and construction documents, which shall include the Final Working Drawings and Specifications (collectively referred to herein as the “Construction Documents”), Designer shall provide DISTRICT with its final estimate of probable construction cost (“Designer’s Final Estimate”). As stated above, it shall be the Designer’s duty to design the Project within budget.

6.3 **SWPPP Design.** Designer shall include a Storm Water Pollution Prevention Plan (SWPPP) in the construction documents that has been designed by a Qualified SWPPP Developer (QSD) as required by State Water Resources Control Board Order No. 2010-0014-DWQ. The QSD shall be responsible for answering Requests For Information related to the SWPPP from the contractor during the bid and construction phases.

6.4 **Constructability Review of Construction Contract Documents.** The DISTRICT or an agent of the District will supply the final detailed constructability review of the Project to the Designer. The Designer shall be tasked with responding to the constructability review no later than 10 days after the receipt of the constructability review. The Designer shall provide revised drawings, specifications, etc. for all revision when applicable and always reference drawings; details, specifications sections, etc. when addressing a constructability review item. The Designer is tasked with closing out all of the constructability review items and time, meetings, conference calls, etc. required to do so shall be part of this Agreement. If any constructability items are not closed to the satisfaction of the District or the agent of the District the Designer shall work with the agent of the District and create a written summary of all outstanding items and a path forward to closing the outstanding items as the Project moves through the forthcoming phases.

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7. **BID PHASE.**

During the bid phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

7.1 **Reproducible Construction Documents.** Once DISTRICT provides Designer with specific written approval of the Construction Documents and Designer's Final Estimate, Designer shall provide to DISTRICT three (3) sets of reproducible Construction Documents.

7.2 **Distribution of Contract Documents and Review of Bids.** Designer shall assist DISTRICT in distributing the Construction Documents to bidders including to plan rooms and electronically, and conducting the opening and review of bids for the Project. DISTRICT will reimburse the Designer for the cost of reproducing bid sets, addenda and related delivery charges.

7.3 **Overbudget.** If the apparent lowest responsive and responsible bid on the Project exceeds the Designer's Final Estimate by more than five percent (5%), DISTRICT may request Designer to amend, at Designer's sole cost and expense, the Final Drawings and Specifications in order to rebid the Project and receive a lowest responsive and responsible bid equal to or less than the Designer's Final Estimate. All revisions necessary to bring the lowest responsible and responsive bid within the Designer's Final Estimate, including any omissions, deferrals or alternates, shall be made in consultation with, and subject to the approval of, the DISTRICT.

8. **CONSTRUCTION PHASE.**

During the construction phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

8.1 **Observation.** The Project Designer shall observe work executed from the Final Working Drawings and Specifications in person, unless provided that DISTRICT may, in its discretion, consent to such observation by another competent representative of Designer.

8.2 **General Administration.** Designer shall provide general administration of the Construction Documents and the work performed by the contractors. Designer shall provide staffing to ensure that all designer obligations during the construction administration phase are met in a professional and timely manner as indicated herein.

8.3 **Pre-Construction Meeting.** Designer shall conduct one or more pre-construction meetings, as the DISTRICT determines is needed for the Project, with all interested parties.

8.4 **Site Visits of Contractor's Work.** Designer shall conduct site visits to observe each contractor's work for general conformance with the Construction Documents and with any approved construction schedules or milestones. Such site visits shall be conducted as often as are necessary to ensure compliance with the Design and Construction Documents.

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necessary and appropriate to the stage of construction, according to the DISTRICT’s sole discretion, but in no event less than weekly. While on site, the designer must abide by all applicable OSHA, CAL-OSHA, and District safety regulations. All site visits by the designer and its team shall be at no additional cost to the District.

8.5 **Site Visits of Inspector’s Work.** Designer shall conduct site visits to communicate and observe the activities of the Project inspectors, including the Inspector of Record. Such site visits shall be conducted as often as is mutually acceptable to Designer and DISTRICT. Designer shall direct the Project inspectors and the Project contractors, and shall coordinate the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.

8.6 **Coordination of Designer’s Consultants.** Designer shall cause all Designers, engineers and other consultants, as may be hired by Designer or DISTRICT, to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

8.7 **Reports.** Designer shall make regular reports as may be required by applicable federal, state or local laws, rules or regulations, as well as the federal, state, regional or local agencies concerned with the Project, including but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services, the County in which the Project is located, the City in which the Project is located or any other appropriate federal, state, regional or local regulatory bodies.

8.8 **Construction Meetings; Minutes.** Designer shall attend all construction meetings and provide detailed written reports/minutes to the DISTRICT after each construction meeting in order to keep DISTRICT informed of the progress of the work within five (5) days of the construction meeting. Such meetings shall occur at a frequency necessary for the progress of the Project work, according to the DISTRICT’s sole discretion, but no less than weekly.

8.9 **Written Reports.** Designer shall make written reports to DISTRICT, at least monthly, to inform DISTRICT of problems arising during construction, changes contemplated as a result of each such problem, and the progress of the Project work. The Designer shall not have control over the acts or omissions of the contractors, subcontractors or their agents or employees, or of any other persons or entities performing or supplying portions of the work which were not employed or hired by Designer. The contractor shall not be relieved of its obligation to perform the work in accordance with the Contract Documents either by activities or duties of the Designer, or by tests, inspections or approvals required or performed by persons other than the contractor.

8.10 **Written Records.** Designer shall keep accurate written records of the progress and quality of the Project work and the time schedules, and shall advise the contractors and

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8.11 **Material and Test Reports.** Designer shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Designer shall provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the contractors, DISTRICT and federal, state, regional or local agencies concerned with the Project, including but not limited to, the State Department of Education, the Division of State Architect, the Department of General Services or any other appropriate federal, state, regional or local regulatory bodies.

8.12 **Review and Response to Submissions.** Designer shall review and respond, in a timely manner, to all schedules, submittals, shop drawings, samples, information requests, change requests, and other submissions of the contractor and subcontractors for compliance with, or alterations and additions to, the Construction Documents. Designer's review and response shall be completed within five (5) days or less after receipt to ensure the timely and uninterrupted progress of the Project work. Submission requests which involve more work or time than is normally required for routine submissions, as mutually determined by the Parties, may be the subject of additional compensation as Additional Services.

8.13 **Rejection of Work.** Designer shall promptly reject, as discussed with DISTRICT, work or materials which do not conform to the Construction Documents. Designer shall immediately notify the DISTRICT and contractor(s) of such rejections. Designer shall also have the authority to recommend to the DISTRICT that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

8.14 **Substitutions.** Designer shall consult with DISTRICT, in a timely manner (within five (5) days or less), with regard to substitution of materials, equipment and laboratory reports thereof, prior to the DISTRICT's final written approval of such substitutions. Designer's consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work. Substitution requests which involve more work or time than is normally required for routine substitutions, as mutually determined by the Parties, may be the subject of additional compensation as Additional Services.

8.15 **Revised Documents and Drawings.** Designer shall prepare, at no additional expense to DISTRICT, all documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

8.16 **Change Requests and Material Changes.** Designer shall evaluate and advise DISTRICT, in a timely manner and in writing, of any change requests and material change(s) which may be requested or necessary in the Project plans and specifications. Designer shall provide the DISTRICT with its opinion as to whether such change requests should be approved,

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MDA Johnson Favaro  
National City New Two Story Facility

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DESIGNER  
DISTRICT
denied or revised. If the DISTRICT has not hired a construction manager or other person to do so, the Designer shall prepare and execute all change orders and submit them to the DISTRICT for authorization. If the DISTRICT has designated a construction manager or other person to prepare all change orders, the Designer shall review all change orders prepared by such person, execute them and deliver them to the DISTRICT for authorization if they meet with the Designer's approval, or submit them to the DISTRICT with recommendations for revision or denial if necessary. Likewise, the Designer shall thoroughly review and provide comment on all documents sent to its office that may be considered precursors to official change orders. These may include Field Instructions and/or Change Order Proposals. Designer shall include adequate written information (take-offs, references to drawing sheets / specification sections, etc.) supporting its review comments. Designer shall not order contractors to make any changes affecting the contract price or duration without approval by DISTRICT of such a written change order, pursuant to the terms of the Construction Documents. Designer may order, on its own responsibility and pending the DISTRICT's Board of Trustees approval, changes necessary to meet construction emergencies, if written approval of DISTRICT's Representative is first secured. Designer may also authorize minor changes in the work, pending DISTRICT's approval, so long as such changes are not inconsistent with the intent of the Construction Documents and do not involve an adjustment in the contract sum or an extension of the contract time.

8.17 Applications for Payment. Designer shall examine, verify and approve contractor's applications for payment, and shall issue certificates for payment in amounts approved by the Project Inspector of Record or the DISTRICT's Representative, based on the Designer's observations at the site. The issuance of a certificate for payment shall not be a representation that the Designer has: (1) made exhaustive or continuous on site inspections of the work for which payment is sought; (2) reviewed construction means, methods, techniques, sequences or procedures for the work for which payment is sought; (3) ascertained how and for what purpose the contractor has used money previously paid; or (4) certified that the work for which payment is sought is without defects.

8.18 Final Color and Product Selection. Designer shall coordinate final color and product selection with DISTRICT's original design concept. Designer shall clearly indicate to the District which, if any, color / product selections made are not standard to the given manufacturer, which selections cost more money than the given manufacturer’s standard, and which selections come with a heightened risk of not actually attaining the selection for the project (due to potential availability issues).

8.19 Substantial Completion. Designer shall determine the date of substantial completion, in consultation with the DISTRICT.

8.20 Punch List. After determining that the Project is substantially complete, Designer shall participate in the inspection by the IOR of the Project and shall review all

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DISTRICT
remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the contractor ("Punch List Items"). Designer shall notify contractor in writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Designer shall also notify DISTRICT of all Punch List Items.

8.21 **Warranties.** Designer shall review materials assembled by the contractor and subcontractors with regard to all written warranties, guarantees, owners' manuals, instruction books, diagrams, record "as built" drawings, and any other materials required from the contractors and subcontractors pursuant to the Construction Documents. Designer shall coordinate and provide these materials to the DISTRICT.

8.22 **Certificate of Completion.** Designer shall participate in any further inspections of the Project necessary to issue Designer's Certificate of Completion and final certificate for payment.

8.23 **Documents for Project Close-Out.** Designer shall cause all other Designers, engineers and other consultants, as may be hired by Designer, to file any and all required documentation with the DISTRICT or other governmental authorities necessary to close out the Project. Designer shall assist the DISTRICT in obtaining such documentation from all other Designers, engineers, or other consultants. Designer acknowledges that obtaining final certification and closure on the project from the Division of State Architect (DSA) can take an extended period of time – even after all relevant documents have been submitted by the designer to DSA. The District reserves the right to withhold final payment to the designer until the official project certification and closure documentation has been received by the District. Designer acknowledges that the District may choose to use a multi-prime delivery method and the designer agrees to absorb any additional cost due to additional DSA documentation required (i.e. DSA 102 forms, DSA 6 forms).

8.24 **District's Document Control.** Designer shall use the District's web-based document control system (ProLog/Converge) when requested by the District as no additional cost to the District. This may apply to RFI’s, submittals, meeting minutes, or any other construction-phase document.

8.25 **Coordination with Department of State Architect (DSA) During Construction** – Designer shall keep a log of all design change documentation that requires submission to DSA. This may include addenda to the contract documents during the bid phase and changes made during construction. The designer will provide and review this log at all construction meetings and will provide an update on the approval of each noted change with DSA.
8.26 **Contractor Delays** – In the event that that contractor is delayed due to their own negligence, weather, or acts of god, etc. shall entitle the architect to additional fees or compensation.

9. **RECORD DRAWINGS**

During the record drawings phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

9.1 **Record Drawings and Specifications.** Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Designer shall review and forward the Final Working Drawings and Specifications, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing a "record" set of Final Working Drawings and Specifications ("Record Drawings and Specifications"). The Record Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Designer shall personally review and certify that the Record Drawings and Specifications are a correct representation of the information supplied to Designer by the Inspector of Record and the contractor, and shall obtain certifications from the Inspector of Record and the contractor that the drawings are correct.

The record drawings shall be accompanied with a record BIM model (in Revit software format) incorporating all relevant data listed above. The designer shall provide 40 hours of training to the District regarding how to view, operate, and manipulate the BIM model. Pdf files of the BIM model printouts shall also be included with the record documents.

Designer shall provide 3 “record” color boards to the District. Color, finish, and manufacturers for each major finish item shall be included.

9.2 **Approval.** Once DISTRICT provides Designer with specific written approval of the Record Drawings and Specifications, Designer shall forward to DISTRICT the complete set of original Record Drawings and Specifications or a complete set of reproducible duplicate Record Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

9.3 **Documents for Final Payment.** Prior to the receipt of Designer's final payment, Designer shall forward to DISTRICT all of the following: (1) one clear and legible set of reproductions of the computations; (2) the original copy of the specifications; (3) the Record Drawings and Specifications and other required record documentation as required herein; (4) the final verified progress report required pursuant to Title 24 of the California Code of Regulations; and (5) Designer's Certificate of Completion.

10. **WARRANTY PERIOD.**
During the warranty period phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

10.1 **Advice.** Designer shall provide advice to DISTRICT on apparent deficiencies in the Project during any applicable warranty periods for the Project.
EXHIBIT "B"

FEE AND PHASING SCHEDULES/TASK ORDER(S)

1. **Fee and Phasing Schedule.**

   The Designer shall be compensated based upon the following Fee Schedule:

   A. **Programming Compensation**

      Payments on account of the agreed compensation shall be made within thirty (30) days of the DISTRICT's acceptance of programming phase service in accordance with the hourly rates shown in Exhibit "C". Billings be lump sum in arrears based upon hours of work performed.

      1. Programming Phase Completed – Hours of work performed

   B. **Design, Construction Administration, and Closeout Services Compensation**

      Payments on account of the agreed compensation shall be made within thirty (30) days of the DISTRICT's acceptance of design, construction administration, and closeout service in accordance with the percentages set forth below. Billings be lump sum in arrears based upon work completed.

      1. Schematic Plan Phase – 10% of total task order sum.
      2. Design Development Phase - 25% of total task order sum
      3. Final Working Drawings and Specifications – 25% of total task order sum
      4. Final Working Drawings and Specifications Approved by DSA – 5% of total task order sum
      5. Bid Phase – 5% of total task order sum
      6. Construction Phase – 20% of total task order sum
      7. DSA Project Certification – 10% of task order sum

MDA Johnson Favaro
National City New Two Story Facility

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DESIGNER
DISTRICT
2. **Task Order(s).**

**SCOPE OF SERVICES**

**General:** Pursuant to Education Code Section 17316, all materials, plans, specifications and estimates prepared pursuant to this Agreement shall be and remain the property of the DISTRICT. Such drawings and specifications supplied as herein required shall be the property of the DISTRICT whether or not the work for which they were made is executed. The Designer shall furnish to the DISTRICT one computer file (in .PPT or .PDF format, or other format as requested by the DISTRICT), one presentation copy and seven handout copies of all work products required. Any other copies of the drawings, specifications, work products, etc. other than those listed in this Agreement shall be supplied to the DISTRICT by the Designer at the cost of reproduction.

A. **Task Order No. 1 – National City New Two Story Facility - Provide Complete Programming Services (Programming Phase) for the Project in Order to Confirm Scope of Work:**

Designer will be required to meet with a designated user group to develop a space and functional program for a two story 10,500 ASF Science Lab / Classroom Building on the existing National City Campus. The program for the new facility shall not exceed 10,500 ASF. Funding for the project is Proposition R sources.

The space and functional program shall identify all site, utility and parking requirements for the facility, identify all key Furniture, Fixtures and Equipment (FF&E) requirements as well as provide recommendations for transitions connecting to other existing buildings on campus. Designer shall also coordinate with all site entitlement requirements and the National City Partnership Agreement associated with the campus and project. The required program will allow the Designer to proceed into the design phase of the project. The program will be utilized as a benchmark for assuring that the design square footage is staying within scope. The Designer shall also have preliminary discussions with the local agencies regarding the project to assure that there is general agreement on the direction of the design solution and coordinate with the State and Local Fire Marshall. The scope of work defined during the program phase shall be complete and all inclusive.

The scope of the proposed new building may include (but is not limited to) the following items:

1. A new 10,500 ASF science lab/classroom building
2. Commercial lease space for community use on first floor
3. Classrooms and Laboratories on second floor
4. All site, utility, and parking requirements for the facility
5. Assist in coordination of environmental requirements for the facility
6. Accommodation of all existing site, utilities, parking, and operational requirements
7. Transitions connecting to other Existing National City HEC Building on campus (first and second floor)
8. ADA compliance upgrades of adjacent areas

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National City New Two Story Facility
9. New furniture and equipment  
10. Wireless internet  
11. Communications and security  
12. Coordination with all site entitlement & partnering agreements required  
13. Coordination with possible right of entries  
14. Replacement of coiling fire door in Existing National City HEC Building  
15. Remodeling part of first floor of Existing National City HEC Building  
16. Support in amending development agreement with city of National City  
17. Building architecture should complement Existing National City HEC Building and surrounding area  
18. Lighting improvements at adjacent areas, parking structure, and parking areas.

Program Schedule

Designer shall propose a schedule for the programming process inclusive of all required meetings, approvals and research required.

The program schedule shall not exceed 60 consecutive calendar days (from notice to proceed identified in section 3.13.2 of this agreement to completion of programming phase)

Programming Fee Budget

Fees for the Programming Phase of the project shall not exceed $50,000.

Programming Deliverables

Designer is responsible for all deliverable requirements listed in this agreement, whether or not it is included in the list below:

1. Programming phase

Reimbursable Expenses (at cost and not included in Agreement)  
1. Printing – Other than listed in deliverables  
2. Delivery – Other than listed in deliverables  
3. Other – fees, unforeseen items, etc.  
4. Consultants’ fees are not reimbursable as they are included in the not to exceed fee

Task Order No. 1 Not To Exceed Fee: $50,000.00

B. Task Order No. 2 – National City New Two Story Facility - Provide design (schematic plan phase, design development phase, final working drawings and specifications, construction contracts documents & bid phase), construction administration (construction phase), and closeout services (construction phase, record drawings & warranty period):

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MDA Johnson Favaro  
National City New Two Story Facility

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DESIGNER

DISTRICT
Provide design, construction administration, and closeout services for the National City New Two Story Facility on the existing National City Campus (including all utilities, site requirements entitlement and partnering agreement requirements with National City).

Design Schedule

Designer shall propose a performance schedule for the design process inclusive of all required meetings, reviews, and approvals and required.

The design schedule shall not exceed 150 consecutive calendar days (from completion of programming phase to submission to DSA).

Design, Construction Administration, and Closeout Services Fee Budget

Fees for the design, construction administration, and closeout services for the project shall be a lump sum fee of $650,000.00. The lump sum fee includes but is not limited to the following as called out in the MDA Johnson Favaro Proposal dated October 27, 2011:

1. Architectural Design
2. Landscape Design
3. Structural Engineering
4. Civil Engineering
5. MEP Engineering
6. Cost Estimating
7. Code Consulting
8. Specifications
9. Science Laboratory Design Consultant
10. Land Surveying
11. Geotechnical Engineering Survey
12. Sustainability (LEED)/Energy Model
13. Audio Visual and Information Technology
14. Interior (Furniture, Fixtures and Equipment) Coordination

The lump sum fee for the design, construction administration, and closeout services for the project represent 10 percentage of construction costs. The construction budget anticipated for this project is $6,500,000.

The design, construction administration, and closeout services for the project shall also include a design allowance of $97,500. This allowance is subject to the requirement of the Agreement and specifically noted in Section 3.12.3.
This Agreement takes precedence over RFQ #109 and its addenda as it pertains to services, deliverables, etc. The Agreement places additional services, deliverables, etc. as part of the design, construction administration, and closeout services fee which were not specified as part of RFQ #109 and its addenda.
This Agreement takes precedence over any and all proposal to date. This includes the MDA Johnson Favaro Proposal dated October 27, 2011.

Design, Construction Administration, and Closeout Services Deliverables

Designer is responsible for all deliverable requirements listed in this agreement, whether or not it is included in the list below:

a. Schematic Plan Phase
b. Design Development Phase
c. Final Working Drawings and Specifications
d. Construction Contracts Documents
e. Bid Phase
f. Construction Phase
g. Record Drawings
h. Warranty Period

Reimbursable Expenses (at cost and not included in “General” above)
1. Printing – Other than listed in deliverables
2. Delivery – Other than listed in deliverables
3. Other – fees, unforeseen items, etc.
4. Consultants’ fees are not reimbursable as they are included in the lump sum fee

In the event that monies are not used from the reimbursable not to exceed amount this will be credited back to the District via a deductive change order to the Agreement.

Task Order No. 2 Lump Sum Fee: $650,000.00 plus $97,500.00 not to exceed amount design allowance plus $52,000.00 not to exceed amount for miscellaneous reimbursables.

MDA Johnson Favaro
National City New Two Story Facility

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DESIGNER

DISTRICT
**EXHIBIT "C"**

**COMPENSATION RATES**

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EXHIBIT "D"

CONTRACTOR FINGERPRINTING REQUIREMENTS

Designer Certification

With respect to the Agreement dated ____________ 20 __ by and between the DISTRICT ("DISTRICT") and DESIGNER ("Designer") for the provision of Design services, Designer hereby certifies to the DISTRICT's Board of Trustees that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with DISTRICT pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

__________________________  ____________________________
Contractor's Representative  Date

Designer Exemption

Pursuant to Education Code section 45122.1, the DISTRICT ("DISTRICT") has determined that DESIGNER ("Designer") is exempt from the criminal background check certification requirements for the service Agreement dated ____________ by and between the DISTRICT and Designer ("Agreement") because:

☐  The Designer's employees will have limited contact with DISTRICT students during the course of the Agreement; or

☐  Emergency or exceptional circumstances exist.

__________________________  ____________________________
DISTRICT Official  Date

MDA Johnson Favaro  DESIGNER
National City New Two Story Facility  DISTRICT
Designer's Consultant Certification

The DISTRICT ("DISTRICT") entered into an agreement for Design services with DESIGNER ("Designer") on or about ____ ____ ("Agreement"). This certification is submitted by ________________, a consultant to the Designer for purposes of that Agreement ("Consultant"). Consultant hereby certifies to the DISTRICT's Board of Trustees that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with DISTRICT pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

_________________________________________  ____________
Consultant's Representative                     Date


Designer's Consultant Exemption

The DISTRICT ("DISTRICT") entered into an agreement for Design services with DESIGNER ("Designer") on or about ____ ____ ("Agreement"). Pursuant to Education Code section 45122.1, the DISTRICT has determined that ________________, a consultant to the Designer for purposes of that Agreement ("Consultant"), is exempt from the criminal background check certification requirements for the Agreement because:

☐ The Consultant's employees will have limited contact with DISTRICT students during the course of the Agreement; or

☐ Emergency or exceptional circumstances exist.

_________________________________________  ____________
DISTRICT Official                              Date


MDA Johnson Favaro
National City New Two Story Facility

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DESIGNER

DISTRICT
From: Harris, Fred [FHARRIS@CCC.CO.EDU]
Sent: Sunday, January 15, 2012 12:25 PM
To: SOCCEO@LISTSERV.CCCNEXT.NET
Subject: Redevelopment Successor Agency Oversight Boards

Memorandum

January 13, 2012

TO:
CEOs/CBOs

FROM:
Dan Troy, Vice Chancellor, College Finance and Facilities Planning

SUBJECT:
Redevelopment Successor Agency Oversight Boards

As you are probably aware, Redevelopment Agencies in the state are undergoing a fundamental transformation as a result of legislation passed with last year’s budget bill, ABX1 26, and a recent Supreme Court decision. It was the Governor’s intent to capture more of the property tax revenue that was previously set aside for redevelopment activities in order to help balance the state budget. Since the Supreme Court decided that Redevelopment Agencies (RDAs) may be abolished, the process of disbanding them, outlined in ABX1 26, will begin. Successor agencies will be established to pay the ongoing obligations of the former RDAs. The successor agencies will each have an oversight board consisting of seven members. Members are to be appointed by the county board of supervisors, the county superintendent of education, and others. The legislation also stipulates that a community college representative will be appointed by the Chancellor of the California Community Colleges.

Given that all the other members of the oversight boards are selected and appointed at the local level, the Chancellor believes that the selection of the community college member should also be done at the local level. Therefore, we request that districts having a Redevelopment Agency within their boundaries nominate someone to be the community college member on the oversight board, and submit this nomination to the Chancellor’s Office. The Chancellor may then appoint the nominated individual to the board. If there are multiple community college nominees for an oversight board, the Chancellor will appoint the nominee submitted by the district having the greatest financial stake in the RDA, unless there is agreement among the affected districts to do otherwise. It should be noted that there is no compensation or reimbursement for expenses provided to members of the oversight boards.
Please submit the name and contact information for your nominee to Diane Brady (dbrady@ccc.co.edu<mailto:dbrady@ccc.co.edu>) as soon as possible, but no later than January 25, 2012.

*****************************************************
Frederick E. Harris, Assistant Vice Chancellor College Finance & Facilities Planning