

## **Board of Trustees Agenda Item**

**Board Meeting Date:**    March 1, 2010

**Title of Item:**

Measure E Consent

**Background and Analysis:**

Aggregate amount for these items is \$82,000

***De Anza College –***

- A) Engineering Economics Inc. – Revision #2 to Agreement – Visual & Performing Arts Center - \$0
- B) Quali-Con Enterprises – Revision #2 – Visual Performing Arts Center - \$0
- C) AEDIS Architecture & Planning, Inc. – Standard Agreement – Acoustical Renovations - \$82,000
- D) Salas O’Brien Engineers, Inc. – Revision #3 – Science Center LEED Certification - \$0
- E) Salas O’Brien Engineers, Inc. – Revision #7 – Science Center HVAC - \$0

Charles Allen, Executive Director of Facilities, Operations, and Construction Management, Tom Armstrong, Director, Bond Program Management, De Anza College, recommend that Measure E consent items be ratified/approved by the Board of Trustees.

|                           |  |
|---------------------------|--|
| Submitted by:             | Charles Allen, Executive Director, Facilities, Operations, & Construction Management |
| Additional contact names: | Tom Armstrong, Dir. Bond Program/DAC, Art Heinrich, Dir. Bond Program/FHC            |
| Is backup provided?       | Yes  |

8/1/03

**Engineering Economics Inc. – Revision #02**

Revision #02 to the Agreement (Purchase Order #H773488) dated November 06, 2006 between Foothill-De Anza Community College District and Engineering Economics Inc.

REVISION DATE:

March 1, 2010

SCOPE OF WORK:

This Revision extends the Agreement through June 30, 2010. No changes to the contract value are being made. Services will be provided by Engineering Economics Inc. and paid for by use of Measure E funding for **Project #209 Visual & Performing Arts Center** on the De Anza College Campus.

COMPENSATION:

|   |    |           |
|---|----|-----------|
| Original contract value:                              | \$ | 25,897.00 |
| Net change in contract value from previous revisions: | \$ | 7,800.00  |
| Contract value prior to this revision:                | \$ | 33,697.00 |
| Net change in contract value due to this revision:    | \$ | <u>0</u>  |
| New contract value including this revision:           | \$ | 33,697.00 |

All other contract terms to remain in place per the agreement referenced above.

Amendment agreed to by:

OWNER

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Charles Allen**

Executive Director of Facilities, Operations, and Construction Management  
Foothill-De Anza Community College District

CONSULTANT

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Blake Hickok**

CFO

Engineering Economics Inc.

**Standard Form of Agreement Between  
The Foothill-De Anza Community College District  
& AEDIS Architecture & Planning, Inc.**

AGREEMENT made as of the **2nd of March in the year Two Thousand & Ten** between the District:

Foothill-De Anza Community College District  
12345 El Monte Road  
Los Altos Hill, Ca 94022

and the Design Professional:

AEDIS Architecture & Planning, Inc.  
1494 Hamilton Ave.  
San Jose, CA 95125

***For the following Project: 765-281 Acoustical Renovations, De Anza College***

WHEREAS, it is the intent of the District and the Design Professional to establish, in this Agreement, terms and conditions applicable to the Project.

WHEREAS, in connection with the design, bidding, and construction of the Projects, the District has retained Gilbane/Maas ("the Program Manager") to provide services as the District's representative.

WHEREAS, the District has identified the following Projects (the "Project") to be designed, bid, and constructed at the District's De Anza College Campus.

Project locations will include:

- S-Quad Heath Sciences: classrooms, offices, and conference rooms
- ATC Central Plant: located adjacent to the Visual & Performing Arts Center

WHEREAS, the Design Professional, and its Design Consultants, are each duly qualified and properly licensed/registered to provide and perform all Services under this Agreement.

NOW THEREFORE, the District and the Design Professional agree as follows:

**ARTICLE 1 DESIGN PROFESSIONAL'S RESPONSIBILITIES**

**1.1 DESIGN PROFESSIONAL'S SERVICES**

1.1.1 Performance of Services. The Design Professional's Services consist of all services performed by the Design Professional, Design Professional's employees and Design Consultants as enumerated in Articles 2 and 3 of this Agreement, including Basic Services, Additional Services, and Contingent Additional Services.

1.1.2 Design Professional Schedules. The Services shall be performed in an expeditious manner, consistent with professional skill and care and the orderly progress of Project design, bidding and construction. The District and Design Professional will mutually agree upon start/finish dates for the Services or if required by the

District, the Design Professional shall prepare a schedule ("the Design Professional's Schedule") which identifies the principal activities of the Services to be performed or provided by the Design Professional for the Project and which graphically illustrates the planned progression of the Services. The Design Professional's Schedule shall be submitted to the District for review and comment; the Design Professional shall revise the Design Professional's Schedule as necessary to obtain the District's acceptance of the Design Professional's Schedule for the Project. Time limits established by the Design Professional's Schedule accepted by the District shall not, except for reasonable cause, be exceeded by the Design Professional or District.

- 1.2 STANDARD OF CARE The Design Professional, its Design Consultants and their respective officers, agents, employees, subcontractors, consultants or any persons or entities providing or performing any of the Basic Services or authorized Additional Services or Contingent Additional Services for the Project shall provide or perform such services consistent with their respective applicable standards of care for school construction under all applicable laws, codes, and standards for those providing such services for projects of the type, scope and complexity of the Project.
- 1.3 PARTNERING District and Design Professional shall cooperate and participate fully in Partnering at all levels and among all the parties involved in this Project, and at their own expense without additional compensation. Partnering shall mean both formal and informal interaction between and among all the parties involved in the Project, including, but not limited to, District representatives, the Design Professional and its Design Consultants, the General Contractor and key Subcontractors, the Program Manager, and any outside entities as designated by the District to promote the desired goal of a successful, non-adversarial completion of the Project on time and within budget.

## **ARTICLE 2 SCOPE OF DESIGN PROFESSIONAL'S SERVICES**

- 2.1 SERVICES; DEFINED The Basic Services consist of those described in this Article 2. Subsequent information may be incorporated into the Appendices that further describe the Services required for a specific component of a Project. To the extent deemed necessary by the Design Professional, the Design Professional shall employ other Design Professionals, architects, mechanical, electrical, structural, and civil engineers licensed as such by the State of California, and such other consultants necessary for the provision of services under this Agreement. All consultants provided by the Design Professional shall be paid by the Design Professional. The Design Professional shall submit, for approval by the District, names of consultants for each professional element of service of the Project. District-approved consultants provided under Basic Services shall be as named below.

Consultant Name  
[LIST NAMES OF DISTRICT  
APPROVED CONSULTANTS]

Discipline  
[LIST DISCIPLINE  
FOR EACH CONSULTANT]

Nothing in the foregoing shall create any contractual relationship between District and any consultants employed by Design Professional under the terms of this Agreement. The Design Professional is as responsible for the performance of its consultants as it would be if it had rendered these services itself.

- 2.1.1 Design Professional shall designate a principal or a staff member as the Project Design Professional or Project Engineer. So long as the Project Design Professional or Project Engineer performs in a manner acceptable to District, and remains in Design Professional's employ, the Project Design Professional or Project Engineer shall remain in charge of all design and other services required under this Agreement, including attending design-related meetings for the Project. Unless a substitution mutually acceptable to Design Professional and District is made. District-approved Project Design Professional or Project Engineer shall be the person named below.

[IF APPLICABLE, ADD]

In addition, the individual(s) named below shall attend design-related meetings as requested by the District:

[NAMES OF INDIVIDUALS]

- 2.1.2 Design Professional shall assist District in fulfilling the requirements of the authorities and funding agencies whose interests bear on the design, cost, and construction of the Project.
- 2.1.3 Design Professional shall use due professional care to abide by all regulations imposed by authorities having jurisdiction over the Project.
- 2.1.4 Design Professional shall cooperate with other professionals District may employ for related work.
- 2.1.5 To the extent required by the District, Design Professional shall consult with authorized employees, agents, and representatives of the District and the individual Colleges relative to the design and construction of the Project. The Design Professional shall prepare an electronic written record of all such meetings and consultations and shall provide the Program Manager with the resulting notes for distribution within five (5) days.
- 2.1.6 Design Professional shall review the surveys; existing record documents; mechanical, and any other documentation furnished by District. From an examination of the site and a review of available information, Design Professional shall determine whether such data are sufficient for purposes of design or whether additional data are needed and, if so, recommend in writing the manner in which it be provided and the needed services obtained. Design Professional may rely on the information provided by

District but only to the extent such reliance is consistent with Design Professional's obligations under this Agreement.

2.1.7 Review, approval or acceptance of Design Professional's work whether by District or others and whether during Schematic Design Phase, Design Development Phase, Construction Documents Phase, Bidding Phase, Construction Phase, Guarantee to Repair Period, or otherwise, shall not relieve Design Professional from responsibility for errors and omissions in Design Professional's work.

2.1.8 Design Professional shall prepare Construction Documents in compliance with applicable laws, codes, rules, regulations, ordinances, and standards including, without limitation, those listed in Attachments A through H.

2.1.9 The services of Design Professional shall be performed in accordance with the Supplemental Requirements referenced in **Attachment "E": Project Scope & Program Criteria.**

2.1.10 DELIVERABLES

In addition to the foregoing, the Basic Services to be completed by the Design Professional for the Project, are further defined under Attachments "A thru C" – Design Criteria, and detailed in Attachment "E" Project Scope & Program Criteria. The Design Professional's Basic Services shall also include the coordination of documents provided by District consultants.

2.2 PROGRAM PHASE

2.2.1 Program Review. The Design Professional shall review the District's Pre-design / Programming for the Project to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the District.

2.2.2 Evaluation of Program. The Design Professional shall provide a written preliminary evaluation of the District's program and schedule. The Design Professional shall revise the Investigation Phase/Schematic Phase Documents as necessary to obtain the approval of the District.

2.2.3 Investigation of Existing Conditions. The Design Professional shall investigate the existing conditions for the planned improvement area as necessary to mitigate reasonably foreseeable conditions that would affect the project cost or schedule. This includes investigations of readily accessible mechanical rooms, associated equipment rooms, and observable conditions, and existing or abandoned utility infrastructure and equipment. References to same shall be made or designated in the Design Documents to achieve a total project scope responsive to the approved program. Such investigation shall be conducted as early as practical.

- 2.2.4 Design Documents. The Design Professional shall prepare a report of findings for each of the Projects, which shall consist of Drawings and other documents that illustrate the principal components of the Projects and the relationship of the principal components of the Project with the new systems being proposed. The Design Documents shall also include an outline of the Specifications for the new systems.

## 2.3 SCHEMATIC / DESIGN DEVELOPMENT PHASE

- 2.3.1 Schematic Design and Design Development Documents. For the purpose of this agreement, the Schematic Design and Design Development Phases shall be combined and all requirements for both Schematic Design and Design Development shall be combined into one design phase. The Design Professional shall prepare, for approval by the District, Documents consisting of Drawings and other documentation which fix and describe the size and character of the Projects as to Design Professional, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. See Attachments "A" Schematic Design Criteria plus "B" - Design Development Criteria. See Attachment "D" – Design Professional's Project Design Schedule for expected completion of 100% Design Development Drawings.
- 2.3.2 District Review of Design Development Documents. Upon achieving completion of the Design Development Documents, the Design Professional shall provide the District with four (4) printed copies and two (2) electronic copies in an approved format of the same for the District's review of Constructability, Maintenance and/or Operations issues. The Design Professional shall prepare a document itemizing District review comments and recommended value engineering measures and shall respond to each item, indicating the proposed disposition of each. The Design Professional shall identify those items that may have unintended effects on the Project design.

## 2.4 CONSTRUCTION DESIGN DOCUMENTS PHASE

- 2.4.1 Construction Design Documents. Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Construction Budget authorized by the District, the Design Professional shall prepare, for approval by the District, Construction Design Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. The one hundred percent (100%) completed Construction Design Documents shall be completed as shown in Attachment "D" – Design Professional's Project Design Schedule. The Design Professional shall provide fully engineered Drawings and shall not, without the District's written consent, use "Deferred Approval" or "Design-Build" items that require the Contractor to furnish design engineering services

beyond those normally required for construction means, methods, techniques, and sequences. The District may, in its sole and exclusive discretion, withhold, limit or restrict any request for consent to utilize "Deferred Approval" or "Design-Build" items in the Construction Design Documents. The Design Professional shall review the District's General and Special Conditions and shall prepare the Construction Design Documents to coordinate with those documents.

2.4.2 Finishes Selection. The District shall approve all finishes proposed by the Design Professional. The Design Professional shall endeavor to conform all suggested finishes to District standards for existing structures.

2.4.3 District Review of 100% Construction Design Documents. Upon achieving one hundred percent (100%) completion of the Construction Design Documents, the Design Professional shall provide the District with four (4) printed copies and two (2) copies in an approved electronic format of the same for the District's review. Design Professional will conduct a meeting to review the 100% Construction Design Documents with the District, College, and pertinent groups to review and approve them.

2.4.6 Bid Documents. The Design Professional shall produce a final set of documents suitable for reproduction for bidding. The Bid Documents shall include the design review comments approved by the District for inclusion into the Bid Documents, shall incorporate the requirements of governmental authorities having jurisdiction. The Design Professional shall assemble a complete bid set that includes contract conditions, bidding requirements and other documents provided to the Design Professional by the District, and shall provide the District with one (1) printed copy suitable for reproduction, two IDENTICAL copies in an approved electronic format, and three additional (3) printed copies.

2.4.7 The Design Professional shall prepare a document itemizing all District review comments, and shall document the resolution of each item and the inclusion of items approved by the District into the Bid Documents.

## 2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 Bidding Process. The Design Professional shall assist the District in obtaining bids from Contractors for construction of the Project, and assist in awarding and preparing the Construction Contract for the Project for execution. The Design Professional's assistance shall include typical bidding issues and practices such as conducting the pre-bid job walk, attending pre-bid meetings, responding to bidder inquiries, assisting the District in issuing bid addenda, recommendations for developing alternate bid items and selection of the same for inclusion in the Construction Contract to

be awarded, bid proposal reviews, and recommendations for award of the Construction Contract.

2.6 CONSTRUCTION PHASE - ADMINISTRATION OF THE  
CONSTRUCTION CONTRACT

- 2.6.1 Duration of Construction Phase. The Design Professional's responsibility to provide Basic Services for the Construction Phase of the Project under this Agreement commences with the award of the Construction Contract for the Project and terminates one year after the date of Substantial Completion of the work and the District's written acceptance of the completed Project or written notice from the District or Program Manager that services are no longer required.
- 2.6.2 Administration of Construction Contract. The Design Professional shall provide administration of the Construction Contract for the Project as set forth below. The Design Professional's services in connection with administration of the Construction Contract for the Project shall be performed in a manner complementary to others providing services related to construction of the Project and/or administration of the Construction Contract for the Project, including, without limitation, the District, the Program Manager, and providers of testing and/or inspection services required for Project construction.
- 2.6.3 Design Professional Duties. Duties, responsibilities and limitations of authority of the Design Professional in connection with administration of a Construction Contract for the Project shall not be restricted, modified or extended without written agreement of the District and Design Professional. The District shall be solely responsible for ensuring that any agreement between the District and Contractor or any other party constructing a portion of the Project is in conformance with the terms and conditions contained in this Agreement. If the Agreement between the District and Contractor or other party requires services of the Design Professional beyond the Basic Services described in this Agreement, the District agrees that the Design Professional shall be compensated for such services, if provided, as Additional Services or Contingent Additional Services.
- 2.6.4 Design Professional As Representative of the District. The Design Professional shall be a representative of and shall advise and consult with the District during construction of the Project until Final Payment to the Contractor for the Project is due, up to one year after the date of Substantial Completion of the work and the District's written acceptance of the completed Project or written notice from the District or Program Manager that services are no longer required. The Design Professional shall have authority to act on behalf of the District only to the extent provided in this Agreement unless otherwise modified by written instrument.

- 2.6.5 Site Observations. The Design Professional and any of the Design Professional's consultants appropriate to the stage of work shall visit the construction site and attend weekly on-site job meetings, or mutually agreed to alternatives, such as conference calls, to become familiar with the progress and the quality of the work and to determine if the work is being performed in accordance with the Contract Documents and approved Contract Schedule. The Design Professional shall coordinate scheduling of site visits with the Program Manager and all Design Professional contacts with Contractors shall be through the Program Manager. However, the Design Professional shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as an Design Professional, the Design Professional shall keep the District informed of the progress and quality of the Work, and shall endeavor to guard the District against defects and deficiencies in the Work. The Design Professional and Design Professional's major Consultants are required to issue written Field Reports, at a minimum every month until Occupancy, outlining work in place to date, and any notification of deficiencies given to the Program Manager. *(More extensive site representation may be agreed to as an Additional Service as described in Paragraph 3.3.9 (Additional Site Observations).* The Design Professional shall promptly advise the District of any work which the Design Professional believes is not in conformity with the Contract Documents.
- 2.6.6 Contractor Responsibilities. The Design Professional shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Construction Contract. The Design Professional shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents; provided, however, that the Design Professional shall keep the District informed of any material failure of the Contractor's Progress Schedule to comply with applicable requirements of the Construction Contract Documents or material failure of the Contractor to construct the Project in accordance with the Construction Contract Documents. The Design Professional shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.
- 2.6.7 Design Professional's Access to the Work. The Design Professional shall at all times have access to the Work of the Project wherever it is in preparation or progress.
- 2.6.8 Project Communications. Unless direct communication has been specifically authorized the Design Professional and Contractor shall communicate through the Program Manager.

Communications by and with the Design Professional's Design Consultants shall be through the Design Professional.

2.6.9 Rejection of Work. The Design Professional shall have authority to reject Work that does not conform to the Construction Contract Documents. Whenever the Design Professional considers it necessary or advisable for implementation of the intent of the Construction Documents, the Design Professional shall have authority to require additional inspection or testing of the Work in accordance with the provisions of the Construction Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design Professional nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Design Professional to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

2.6.10 Review of Submittals. The Design Professional shall review and take appropriate action upon Shop Drawings, Product Data and Samples (collectively referred to as "Submittals") required of the Contractor by the Construction Documents, but only for the limited purpose of checking for general conformance with the design concept expressed in the Construction Documents. If the Construction Documents require the Contractor to prepare a Progress Schedule which includes submission and review of Submittals as Progress Schedule activities and the Design Professional is afforded the opportunity to participate in the District's review and approval of the Contractor's Progress Schedule, the Design Professional's review of Submittals shall conform with the final approved Contractor's Progress Schedule. If the Construction Documents do not require, or if the District elects to waive the requirement that the Contractor prepare a Progress Schedule, the Design Professional's review of Submittals shall be completed within a reasonable time so as not to delay, hinder or interrupt the orderly progression of construction of the Project and completion of Project construction within the Construction Contract Time. The timeframes for the Design Professionals reviews or re-reviews shall be no longer than the following: Shop Drawing and Submittals – twenty-one (21) calendar days; and High Priority Items – three (3) business days. These timeframes can only be changed by the District. If any of these timelines cannot be met, the Program Manager and/or the District shall be informed prior to the timeframe expiration. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Construction Documents. The Design Professional's review shall not constitute review of safety precautions or, unless otherwise specifically stated by the Design Professional, of construction means, methods, techniques,

sequences or procedures. The Design Professional's review of a specific item shall not indicate review of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Construction Documents, the Design Professional shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents. **The Design Professional or its consultants shall not approve any substitutions proposed by the Contractor without the express, written consent of the District's authorized representative.** The timeframes for the Design Professionals reviews or re-reviews of Substitutions including approvals by the District's authorized representative shall be no longer twenty-one (21) calendar days.

2.6.11 Response to Contractor Questions: The timeframes for the Design Professional's responses to requested information shall be no longer than the following: Requests for Information (RFI's) – or Requests for Clarification (RFC's) – seven (5) calendar days.

2.6.12 Changes. In consultation with the District, the Design Professional shall assist in the development of procedures, forms, and processes for the issuance and evaluation of Changes or potential changes to the Work. The Design Professional shall prepare such Orders with supporting documentation and data for the District's approval and execution in accordance with the Construction Documents, and may authorize minor changes in the Work not involving an adjustment in the Construction Contract Price or an extension of the Construction Contract Time and which are not inconsistent with the intent of the Construction Documents. The Design Professional shall assist the District in evaluating Change Proposals of the Contractor and shall advise the District of the nature, extent and scope of Change Proposals along with alternatives. The Design Professional shall make recommendations to the District for issuing Change Orders (including specific adjustments of the Construction Contract Price and the Construction Contract Time) on account of Change Order Requests, Change Proposals, Construction Change Directives or other actual or potential Changes to the Work. The Design Professional shall review and sign or take other appropriate action on Change Orders and Construction Change Directives prepared by the Program Manager for the District's approval and execution in accordance with the Contract Documents.

2.6.13 Substantial Completion; Final Completion. The Design Professional, assisted by the Program Manager, shall conduct inspections to determine the date or dates of Substantial Completion and the date or dates of Final Completion. The Design Professional shall generate a punch list, as needed and requested by the Program Manager, of all incomplete or unaccepted items of work to assist and facilitate the completion of the Project by the Contractor. The Design Professional shall forward to the District all warranties and similar submittals

required by the Contract Documents which have been received from the Program Manager. The Design Professional shall complete all closeout procedures and requirements, including but not limited to, completion certificates, testing reports, and change order approvals. The Design Professional shall provide the District a detailed listing of documents delivered to authorities with jurisdiction over the project along with proof of delivery. The Design Professional shall issue a final Project Certificate for Payment upon compliance with the requirements of the Contract Documents. The Design Professional shall determine and certify the date of Final Completion.

2.6.13.1 Project Closeout. The Design Professional shall assist the Program Manager in meeting its obligation to closeout the construction phase of the project within 90 days of Substantial Completion. This includes, but is not limited to responding to approvals, for all RFI's, PCO's, CO's, requests for guidance, punch list inspections, issuance of completion certificates, or any other required documentation needed to close out the project including submitting all final documentation. If the Design Professional's failure to assist the Program Manager causes the Contractor to not be able to close out the project within 90 days, the Design Professional may be subject to any additional costs from the District or Program Manager caused by that failure.

2.6.14 Disputes; Interpretations Under the Construction Contract Documents

2.6.14.1 Arbiter of Disputes. The Design Professional shall interpret and decide matters concerning performance of the District and Contractor under the requirements of the Construction Documents on written request of either the District or Contractor. The Design Professional's response to such requests shall be made with reasonable promptness and within any time limits agreed upon. The Design Professional's decisions on claims, disputes or other matters, including those in question between the District and Contractor, except for those relating to aesthetic effect as provided in Article 2.6.14.3 Aesthetic Effects, may be subject to arbitration as provided in this Agreement and in the Construction Documents.

2.6.14.2 Design Professional's Decisions. Interpretations and decisions of the Design Professional shall be consistent with the intent of and reasonably inferable from the Construction Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Design Professional shall endeavor to secure faithful performance by both District and Contractor, shall not show partiality to either, and shall

not be liable for results of interpretations or decisions so rendered in good faith.

2.6.14.3 Aesthetic Effects. The Design Professional's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Construction Documents.

2.6.15 Punchlist. At the time of determining Substantial Completion and in conjunction with the District, the Program Manager and the Contractor, the Design Professional shall note the conditions of the Work requiring correction, replacement, removal or other action necessary to comply and conform to the requirements of the Construction Documents ("the Punchlist"). The Design Professional shall, in conjunction with the District, the Program Manager, and the Contractor, determine the time reasonably necessary to complete the Punchlist items. If mutual agreement is not reached regarding the time for the Contractor's completion of the Punchlist, the Design Professional shall make a binding good faith determination of the time for the Contractor's completion of the Punchlist.

2.6.16 Modification of Construction Phase Responsibilities. Notwithstanding the items of Construction Phase Basic Services described hereinabove, the scope of the Design Professional's Construction Phase Basic Services may be modified by mutual agreement of the District and the Design Professional for the Project. Modifications to the scope of Construction Phase Basic Services, if any, for the Project shall be set forth in a revision to this agreement.

### **ARTICLE 3    ADDITIONAL SERVICES**

3.1 GENERAL The services described in this Article 3 are not included in Basic Services. If authorized by the District, Additional Services shall be paid for by the District as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Articles 3.2 Project Representation Beyond Basic Services and 3.4 Optional Additional Services, may be provided if authorized or confirmed in writing by the District and Design Professional. If services described under Contingent Additional Services in Article 3.3 are required due to circumstances beyond the Design Professional's control, the Design Professional shall notify the District in writing prior to commencing such services, stating the reason for the change and estimated changes, if any, in the Design Professional's Project Contract Price or Design Professional's Schedule. If the District deems that such services described under Article 3.3 are not required, the District shall give prompt written notice to the Design Professional. If the District indicates in writing that all or part of such Contingent Additional Services is not required, the Design Professional shall have no obligation to provide those services.

- 3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES If more extensive representation at the Site than is described in Article 2.6.5 Site Observations is required, the Design Professional shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities. Project Representatives shall be selected, employed, and directed by the Design Professional, and the Design Professional shall be compensated therefore as agreed by the District and Design Professional. The furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Design Professional as described elsewhere in this Agreement.
- 3.3 CONTINGENT ADDITIONAL SERVICES - Contingent Additional Services consist of:
- 3.3.1 Project Quality Program. To the extent that the District or the Program Manager has instituted a Project Quality Program to more vigorously inspect the quality of construction as performed by the Contractor, the Design Professional shall conduct additional and more exhaustive inspections as specified by the Program Manager.
- 3.3.2 Revisions to Design Documents. Making revisions to the approved Design Development Documents or Construction Design Documents when such revisions are: (a) required by the enactment, interpretation or revision of codes, laws or regulations subsequent to the preparation of such documents; or (b) due to changes required as a result of the District's failure to render decisions in a timely manner.
- 3.3.3 Assigned Project Changes. Providing services required because of significant changes in the Project including, but not limited to, size, quality, or complexity requested by the District.
- 3.3.4 Fire; Casualty. Providing consultation concerning replacement of the Project damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such damage, except to the extent that the Design Professional or its Design Consultants have caused or contributed to such fire or other casualty.
- 3.3.5 Contractor Default. Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the District or Contractor under the Construction Contract.
- 3.3.6 Excessive Claims. Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work, except to the extent that such claims arise out of the services, Design Documents or other work product provided or performed by or through the Design Professional.

- 3.3.7 Dispute Resolution Proceedings. Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Design Professional is party thereto or where the claims are substantially design related.
- 3.3.8 Extended Construction Duration. Providing additional Construction Administration services when the construction duration is extended through no fault of the Design Professional. Under no circumstances shall such compensation exceed \$ 200 per week to the Design Professional.
- 3.3.9 Additional Site Observations. Providing additional site inspections when construction duration is extended through no fault of the Design Professional.
- 3.4 Optional Additional Services: Additional Services consist of:
- 3.4.1 Feasibility/Special Studies. Providing financial feasibility or other special studies, beyond what is detailed within the Basic Services.
- 3.4.2 Site Analysis. Providing planning surveys, site evaluation or comparative studies of prospective sites, beyond what is detailed within the Basic Services.
- 3.4.3 Special Surveys / Studies. Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project except to the extent expressly included in the Basic Services under this Agreement.
- 3.4.4 Quantity Surveys/Inventories. Providing detailed quantity surveys or inventories of material, equipment and labor, except as provided under 2.2.7 Schematic Design Construction Cost Estimate, 2.3.3 Design Development Construction Cost Estimate, and 2.4.2 and 2.4.5 Construction Design Construction Cost Estimates.
- 3.4.5 Ownership/Operating Cost Evaluations. Providing analyses of owning, operating and life cycle costs.
- 3.4.6 Interior Design. Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment, except to the extent that such items are included in the scope of the Construction Contract for the Project or included in the scope of the Design Professional's Basic Services for the Project. Basic Services shall include sufficient furniture and equipment layout to confirm the functionality of the design.
- 3.4.7 Upgrade Electrical Service. Should the need arise to augment existing utilities with new or upgraded services, provide engineering services and Design Professional support for an

electrical substation, upgrading high voltage transformers and 480V switchgear, or the incorporation of new power sources.

- 3.4.8 Inventory of Existing Facilities. Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.
- 3.4.9 District's Agents Requirements. Services, exceeding those included in the scope of Basic Services, in connection with the requirements of District's agents, representatives, vendors; i.e. bankers, insurance company, etc.
- 3.4.10 Post Final Payment. Providing services after issuance to the District of the Certificate for Final Payment for the Project except as provided under 2.1.10 LEED Certification and 2.6 Construction Administration which may extend the required service time period.
- 3.4.11 Record Documents. Providing services to prepare Record Design Documents or "As-Built" Drawings for the Project; provided, however, the Design Professional shall generally review the As-Built Drawings prepared by the Contractor for the Project.
- 3.4.12 Professional Renderings. Providing preparation and presentation services of artistic representations / renderings, either drawn and / or colored, depicting the buildings future appearance.

#### **ARTICLE 4 DISTRICT'S RESPONSIBILITIES**

- 4.1 PROJECT INFORMATION. The District shall provide information regarding requirements for the Project, including a program, which shall set forth the District's objectives, schedule, constraints and criteria for the Project.
- 4.2 CONSTRUCTION BUDGET. The District shall establish and or provide a Construction Budget for the Project.
- 4.3 DISTRICT REPRESENTATIVE. The District shall designate a representative authorized to act on the District's behalf with respect to the Project. The District's Representative shall render decisions in a timely manner pertaining to documents submitted by the Design Professional in order to avoid unreasonable delay in the orderly and sequential progress of the Design Professional's services.
  - 4.3.1 Program Management and Coordination. The District has retained a Program Manager who will act as the District's agent to direct the Design Professional in the performance of its responsibilities. The Design Professional agrees to coordinate its work and activities with the Program Manager, and to act on the Program Manager's instructions. The Design Professional further agrees to coordinate its work with other consultants and contractors retained by the District to work on this project or on related projects. [District Program Manager: GilbaneMAAS]

- 4.4 SOILS; GEOTECHNICAL SERVICES. The District shall furnish the services of geotechnical and soils engineers for the Project. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.
- 4.5 DISTRICT DESIGN CONSULTANTS. The District shall furnish the services of Design Consultants other than those enumerated in Article 2, Basic Services, when such services are reasonably required by the scope of the Project and are requested by the Design Professional and approved by the District. If the District approves of other Design Consultants, in lieu of the District retaining the services of such other Design Consultants, if provided in the Project Contract, the Design Professional shall retain such other Design Consultants.
- 4.6 TEST/INSPECTION SERVICES. The District shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Construction Contract Documents.
- 4.7 PROJECT CONSULTANTS. Except for the Design Consultants included in the Design Professional's Basic Services, the District shall furnish all accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the District may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the District.
- 4.8 DESIGN PROFESSIONAL'S RELIANCE ON INFORMATION. The services, information, surveys and reports required by Articles 4.5 through 4.7 shall be furnished at the District's expense unless otherwise specified, and the Design Professional shall be entitled to rely upon the accuracy and completeness thereof, subject to the Design Professional's initial review and acceptance of such information, surveys and reports, and notification to the District of apparent errors or discrepancies therein.
- 4.9 DISTRICT PROVIDED SERVICES/INFORMATION. Unless otherwise set forth in this contract, the District will provide the following information/services: (a) hazardous materials assessment/abatement consultant and information; (b) Site surveys and topography; (c) specification for furniture and/or other furnishings and equipment not included in the scope of the Construction Contract awarded by the District for construction of the Project.
- 4.10 DISTRICT NOTICE. Prompt written notice shall be given by the District to the Design Professional if the District becomes aware of any fault, failure, defect, or neglect of Design Professional or in the services provided by Design Professional hereunder; provided that the failure or delay by the District in giving such notice shall not constitute a waiver of any right or

remedy of the District arising out of such fault, failure or neglect of the Design Professional, except to the extent that such failure or delay of the District is prejudicial to the Design Professional's ability to remedy any such Design Professional fault, neglect or failure.

- 4.11 AS-BUILT DRAWINGS. The District shall require the Contractor to provide the District with as-built record drawings indicating the location and size of all underground, concealed, or imbedded construction not covered in the original drawings, change orders, supplemental drawings, or Shop Drawings. The Contractor shall be required to record such construction on reproducible drawings furnished to the Contractor by the District. The Contractor shall be required to submit completed record drawings to the Design Professional for review. Such a review by the Design Professional shall not relieve the Contractor of his or her responsibilities for the accuracy and completeness of the information recorded.

## **ARTICLE 5 CONSTRUCTION COST**

- 5.1 CONSTRUCTION COST DEFINED Construction Cost includes those costs typically included in the Construction Contract Price and shall include the total cost or estimated cost to the District for construction of all elements of a Project as designed or specified by the Design Professional. The Construction Cost shall include the cost at then current market rates of labor and materials furnished to the District and equipment designed, specified, selected or specially provided for by the Design Professional, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Project during construction. Construction Cost does not include the compensation to the Design Professional under this Agreement, the costs of the land, rights-of-way, financing or other costs, which are the responsibility of the District as, provided in Article 4 District's Responsibilities.
- 5.2 PROJECT CONSTRUCTION BUDGET The Project Construction Budget for the Project is the total costs allocated by the District for construction of the Project, exclusive of the compensation to the Design Professional due under this Agreement, any Site acquisition costs, and the costs of furnishing and installing furniture, fixtures and equipment not included in the scope of the Construction Contract awarded for the Project. The Project Construction Budget may be modified from time to time by the District in consultation with the Design Professional, provided, that if the District and Design Professional are unable to mutually agree upon modifications to the Project Construction Budget for the Project, the District shall have the authority in its sole reasonable judgment to effectuate modifications to the Project Construction Budget.
- 5.2.1 Design Professional's Estimates. The Design Professional's evaluations of the District's Project Construction Budget and their detailed Construction Cost Estimates represent the Design Professional's best judgment as a design professional familiar with the construction industry of the then current Construction Cost to

construct the Project as reflected in the then current Design Documents. It is recognized, however, that neither the Design Professional nor the District has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Design Professional cannot and does not warrant or represent that bids or negotiated prices will not vary from the District's Project Construction Budget or from the Construction Cost Estimate or evaluation of Construction Cost prepared or agreed to by the Design Professional.

- 5.2.2 Bid Costs Exceeding Project Construction Budget. If within one hundred and twenty (120) days of the date upon which Design Professional obtains final approval for the Construction Documents for the Project, the District shall have solicited Bid Proposals from bidders for award of the Construction Contract and such Bid Proposals are opened by the District within said one hundred and twenty (120) days and the lowest bona fide Bid Proposal exceeds the Project Construction Budget, the District may: (1) approve an increase in the Project Construction Budget; (2) reject all bid proposals and authorize re-bidding of the Project; (3) abandon or terminate the Project; or (4) revise the Project scope, or reduce or eliminate portions of the Project so as to limit and reduce construction costs. Unless the District has theretofore directed changes, modifications or inclusions in the scope of the Project or component parts thereof which cause the Bid Proposals to exceed the Project Construction Budget, if the District elects to revise the Project pursuant to (4) above, the Design Professional shall make all necessary revisions to the Construction Documents without adjustment of the Contract Price; if the District elects to reject all Bid Proposals and re-bid the Project, for such subsequent re-bid(s), Design Professional shall perform the obligations set forth in Article 2. above in connection with such re-bid(s) without adjustment of the Contract Price for the Project.

If the lowest bona fide Bid Proposal for this project exceeds the Project Construction Budget, and if the District elects to approve an increase in the Project Construction Budget, there shall be no adjustment to the Design Professional's Contract Price.

## **ARTICLE 6 USE OF DESIGN DOCUMENTS**

- 6.1 DISTRICT OWNERSHIP. Ownership of the originals and reproducible drawings, specifications and other Design Documents prepared by or on behalf of the Design Professional under this Agreement, including without limitation working drawings, master plans, preliminary sketches, Design Professional presentation drawings, structural and other engineering calculations or computations, estimates, Schematic Design Drawings, Design Development Drawings, and Construction Drawings are and shall remain the property of the District. By this reference, the provisions of California Education Code §17316 are incorporated by reference herein in their entirety and references in said §17316 to "school district" shall be deemed to refer to the District. Upon the termination of this Agreement,

termination of any Revision for the Project, or the abandonment or all or any portion of the Project, the District may use any portion of the completed drawings, specifications, estimates and other Design Documents completed at the time of termination or abandonment for any purpose relating to the Project for which the Design Documents were prepared, including without limitation, completion of Design Documents for the Project, construction of the Project, future additions, alterations, repairs, maintenance, reference, use or occupancy. The foregoing notwithstanding, the Design Professional shall be permitted to retain copies, including reproducible and electronic file copies of the Design Documents for information and reference, including the re-use of details contained in the Design Documents for other projects, provided that the rights of the Design Professional hereunder shall not be deemed to permit the Design Professional to use the Design Documents prepared under this Agreement in whole or in substantial part for other projects.

In the event that the District permits any unauthorized use, reuse or modification to the Design Documents by any person, firm or legal entity, the District agrees to indemnify, defend and hold the Design Professional, its employees and consultants harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including reasonable attorneys' fees and all legal expenses and fees incurred on appeal, and all interest thereon, accruing or resulting to any and all persons, firms, or any other legal entity, on account of any damage or loss to property or persons, including death, arising out of such unauthorized use, reuse or modification of the Design Documents and other documents, except where the Design Professional is found to be liable for such damages or losses by a court or forum of competent jurisdiction.

- 6.2 ELECTRONIC FILES. The Design Professional shall make available if requested to the District at each stage of its submission of Schematic Design Documents, Design Development Design Documents and Construction Design Documents, the corresponding electronic files for deliverables including Drawings and Specifications. Electronic files should be formatted in the latest versions of MS Word (for Specifications and other written materials) and AutoCAD & Adobe .pdf format (for Drawings). All progress and final document submittals shall be both in paper and electronic formats. Wherever electronic documentation is required, the format shall be Compact Disk prepared on the most currently available version of AutoCAD. Electronic format information shall be submitted in full compliance with the CAD Layer Guidelines developed by The Task Force on CAD Layer Guidelines and published by the American Institute of Design Professionals Press.
- 6.3 ARCHIVE OF ELECTRONIC FILES. Due to risk of damage, anomalies in transcription and modification during use, whether intended or otherwise, it is agreed that the Design Professional shall archive a copy of the electronic media transferred to the District, the contents of which it is expressly agreed shall be conclusive proof in all disputes over the content of electronic media furnished to the District. Hard paper copies of the information contained on the electronic media are available. Use of the

electronic media at the District's election shall be at the sole risk of the District.

## **ARTICLE 7    DISPUTES**

- 7.1    CONTINUATION OF DESIGN PROFESSIONAL'S SERVICES. Except in the event of the District's failure to make undisputed payment of the Contract Price for the Project due Design Professional, notwithstanding any disputes between District and Design Professional hereunder, Design Professional shall continue to provide and perform services hereunder pending a subsequent resolution of such disputes. Unless otherwise agreed in writing, the Design Professional shall continue to carry out its services as provided in this Agreement and maintain its progress during any proceedings undertaken pursuant to this Article, and the District shall continue to make payments to the Design Professional in accordance with this Agreement, except for matters specifically relating to the dispute.
- 7.2    MANDATORY MEDIATION. All claims, disputes and other matters in controversy between the District and the Design Professional arising out of or pertaining to this Agreement or any Project Revision, shall be submitted for resolution by non-binding mediation conducted under the auspices of the American Arbitration Association ("AAA") and the AAA Construction Industry Mediation Rules in effect at the time of filing a Demand for Mediation. The commencement and completion of mediation proceeding pursuant to the foregoing is a condition precedent for either the District or the Design Professional initiation arbitration proceedings under Article 7.3 Arbitration of this Agreement. The Design Professional and District shall each bear their own fees, costs and expenses incurred in connection with, or otherwise arising out of, mediation proceedings commenced hereunder.
- 7.3    ARBITRATION If Mandatory Mediation under Article 7.2 is unsuccessful, all unresolved claims, disputes and other matters in controversy shall be resolved by binding arbitration conducted under the auspices of the American Arbitration Association ("AAA") Construction Industry Arbitration Rules in effect at the time of the filing of a Demand for Arbitration. If any claim or dispute is asserted by the Design Professional, the Project Manager if any, the Contractor or the District relating to the Project and arising in whole or in part out of this Agreement, Design Professional and District agree that any arbitration proceedings initiated between Design Professional and District hereunder shall be consolidated with any arbitration proceedings initiated in connection with such other claim or dispute with the Design Professional or the Contractor. Any arbitration hereunder shall be conducted in the AAA Regional Office closest to the Site. In the event of any dispute between the parties which results in arbitration proceedings pursuant to this Article 7.3, the prevailing party is entitled to recover from the other party all reasonable costs (including without limitation the costs of arbitration and fees of the arbitrator(s)) and attorney's fees incurred in good faith.

## **ARTICLE 8    TERMINATION, SUSPENSION OR ABANDONMENT**

- 8.1    TERMINATION FOR DEFAULT. This Agreement or a Project Revision may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement, or a Project Revision, through no fault of the party initiating the termination.
- 8.2    DISTRICT RIGHT TO SUSPEND. If the Project is suspended by the District for more than 60 consecutive days, the Design Professional shall be compensated for services performed prior to notice of such suspension. When the Assigned Project is resumed, the Design Professional's compensation shall be equitably adjusted to provide for expenses incurred as a direct result of the suspension and the resumption of the Design Professional's services.
- 8.3    DISTRICT RIGHT TO ABANDON. A Project Revision may be terminated by the District upon not less than seven (7) calendar days' written notice to the Design Professional in the event that the Assigned Project is permanently abandoned. If the Project is abandoned by the District for more than 90 consecutive days, the Design Professional may terminate the Project Contract for the Project by giving written notice.
- 8.4    DESIGN PROFESSIONAL SUSPENSION. Failure of the District to make payments to the Design Professional in accordance with this contract may be treated by the Design Professional as substantial nonperformance and cause for termination. If the District fails to make payment when due under this contract, the Design Professional may, upon (7) seven calendar days' written notice to the District, suspend performance of services under this Agreement. Unless the payment in full is received by the Design Professional within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Design Professional shall have no liability to the District for delay or damage caused the District because of such suspension of services. The Design Professional shall further have the right to retain possession of all Drawings, Specifications and other Design Documents prepared for the Project until full payment of all amounts due for services performed has been received. The Design Professional shall not be held liable for any claims, liabilities, costs and expenses, damages or losses that may result from any such withholding of Drawings, Specifications and other Design Documents. No failure on the part of either party of this Agreement to exercise its rights hereunder shall be or operate as a waiver, release or relinquishment of any rights or powers conferred under this Agreement.
- 8.5    COMPENSATION TO DESIGN PROFESSIONAL. In the event of termination of this Agreement which is not the fault of the Design Professional, the Design Professional shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Article 8.6 District Termination for Convenience.

- 8.6 DISTRICT TERMINATION FOR CONVENIENCE. The District may, at any time, upon seven (7) calendar days advance written notice to Design Professional terminate the entirety of this Agreement for the District's convenience and without fault, neglect or default on the part of Design Professional. In such event, this Agreement shall be deemed terminated seven (7) calendar days after the date of the District's written notice to Design Professional or such other time as the District and Design Professional may mutually agree upon. If the District terminates this Agreement, the District shall make payment to the Design Professional for services provided for the Project through the date of termination plus actual costs incurred by Design Professional directly attributable to such termination.

## **ARTICLE 9 MISCELLANEOUS PROVISIONS**

- 9.1 GOVERNING LAW; INTERPRETATION. This Agreement and each Revision issued hereunder shall be governed by the laws of the State of California. This Agreement and any Revision issued hereunder shall be interpreted in accordance with their fair meaning and not strictly for or against the District or the Design Professional.
- 9.2 STATUTE OF LIMITATIONS. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for the Project for acts or failures to act occurring prior to Substantial Completion of the Project, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion of the Project, except for duties performed for up to one year after substantial completion.
- 9.3 WAIVER OF PROPERTY DAMAGE. District and Design Professional waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in the General Conditions of the Contract for Construction. The District and Design Professional each shall require similar waivers from their contractors, consultants and agents.
- 9.4 SUCCESSOR AND ASSIGNS. The District and Design Professional, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither District nor Design Professional shall assign this Agreement without the written consent of the other.
- 9.5 ENTIRE AGREEMENT. This Agreement represents the entire and integrated agreement between the District and Design Professional and supersedes all prior negotiations, representations or agreements, either

written or oral. This Agreement may be amended only by written instrument signed by both the District and Design Professional.

- 9.6 THIRD PARTIES. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the District or Design Professional.
- 9.7 ASBESTOS; PCBs; TOXIC SUBSTANCES. Unless otherwise provided in this Agreement, the Design Professional and Design Professional's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. Accordingly, the District hereby agrees that no claim or suit for negligence, breach of contract, indemnity or any other cause of action will be brought by the District against the Design Professional, it's employees and consultants arising out of the presence of asbestos, asbestos-related materials, or any other hazardous substance, in any form whatsoever, as defined by the Environmental Protection Agency or any other public authority, in any building or structure that is the subject of services performed by the Design Professional on this Project. The District further agrees to indemnify, defend and hold the Design Professional, it's employees and consultants harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including reasonable attorneys' fees and all legal expenses and fees incurred on appeal, and all interest thereon, accruing or resulting to any and all persons, firms or any other legal entity, on account of any damage or loss to property or persons, including death, arising out of the presence of hazardous substances, including, but not limited to, asbestos or asbestos-related materials, except where the Design Professional is found to be solely liable for such damages or losses by a court or forum of competent jurisdiction.
- 9.8 DESIGN PROFESSIONAL USE OF PROJECT MATERIALS. The Design Professional shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Design Professional's promotional and professional materials. The Design Professional's materials shall not include the District's confidential or proprietary information if the District has previously advised the Design Professional in writing of the specific information considered by the District to be confidential or proprietary. The District shall provide professional credit for the Design Professional on the construction sign and in the promotional materials for the Project.
- 9.9 DESIGN PROFESSIONAL AND DESIGN CONSULTANTS INSURANCE. Unless otherwise stated in a Revision, at all times during performance of services under this Agreement, the Design Professional and each of its Design Consultants under this Agreement or for an Assigned Project shall obtain and maintain the following insurance coverage: Each of the Design Professionals Design Consultants shall maintain insurance coverage equal to 50% of the amount listed below.

|   |                                   |
|---|-----------------------------------|
| Workers Compensation  | In accordance with applicable law |
| Employers Liability   | \$1,000,000                       |
| Commercial General Liability (including Bodily Injury or Death and Property Damage) |                                   |
| Per Claim   | \$1,000,000                       |
| Aggregate   | \$1,000,000                       |
| Automobile Liability - Bodily Injury or Death                                       |                                   |
| Per Claim   | \$1,000,000                       |
| Aggregate   | \$2,000,000                       |
| Professional Liability  |                                   |
| Per Claim   | \$1,000,000                       |
| Aggregate   | \$2,000,000                       |

Prior to commencement of services for the Project, the Design Professional shall deliver to the District Certificates of Insurance evidencing the insurance coverage required hereunder for the Design Professional and each Design Consultant for the Project. Said Insurance Certificates shall also show the deductible or any self-insured amounts of each policy. All policies of insurance required hereunder shall be acceptable only if issued by insurer(s) authorized to issue insurance by the State of California and the insurer(s) are reasonably acceptable to the District. Coverage under each of the required insurance policies shall, whether by endorsement or otherwise, provide that the coverage there under shall not be modified, cancelled or allowed to expire without at least thirty (30) days advance written notice to the District. The District and its consultants shall be named as Additional Insured to the Commercial Liability Insurance policy of the Design Professional and each of its Design Consultants for the Project. The District shall have the right to withhold any and all payments due Design Professional until the appropriate and complete Certificates of Insurance are provided.

9.10 DEFINITIONS. Unless otherwise set forth in this Agreement, the following terms shall be as defined herein.

9.10.1 Construction Contract. The Contract for Construction awarded by the District to a Contractor for the construction the Project. The District may, in its sole and exclusive discretion award one or more Construction Contracts for construction of the Project; if the District elects to award one or more Construction Contracts for construction of the Project, references herein to "Construction Contract" shall refer to all Construction Contracts awarded by the District for the Project.

9.10.2 Contractor. The individual or entity awarded the Construction Contract by the District for the Project. If the District awards more than one Construction Contract for construction of the Project, references in this Agreement to the Contractor shall be deemed references to all Contractors awarded a Construction Contract for the Project.

9.10.3 Design Documents. The Drawings, Specifications, calculations and other work product prepared by the Design Professional or its

Design Consultants for the Project or any portion thereof. Design Documents include Drawings, Specifications and other documents prepared by the Design Professional or a Design Consultant for the Project. As applicable by the context in which the term "Design Documents" is utilized, the term Design Documents includes the Design Documents prepared by or on behalf of the Design Professional during the Schematic Design, Design Development and Construction Documents Phases of this Agreement.

9.10.4 Design Consultant(s). Design Consultant(s) are individuals or entities retained by Design Professional to provide or perform a portion of the Design Professional's services or work product hereunder, including any portion of the Design Documents. Design Consultants shall be duly licensed as required by law, rule or regulation and shall be qualified to perform or provide the portion of Design Professional's services or work product assigned by having previously provided design consulting services for California public school project design and construction. Within seven (7) days of the signing of this contract by the Design Professional, the Design Professional shall submit a complete list of all Design Consultants it intends to utilize on this Project. The District shall have the right to reasonably disapprove a Design Consultant. Design Professional shall be responsible for the adequacy, timeliness and quality of services or work product provided or performed by Design Consultants; Design Professional shall be liable to District for, and shall defend, indemnify and hold harmless District and its Board of Trustees, employees, officers, agents and representatives from and against, all losses, costs, damages, liabilities, actions or demands arising out of the services or work product provided or performed by Design Consultants.

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

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

9.10.7 Construction Cost Estimate. Construction Cost Estimates are detailed estimates prepared by or on behalf of the Design Professional of the then current costs of labor, materials, equipment and services plus a reasonable allowance for the Contractor's profit, overhead and administrative costs as necessary to complete construction of the Project in accordance with the Design Documents. Construction Cost Estimates shall include a reasonable allowance for contingencies relating to market conditions at the time of solicitation of Contractor bids for the Work of the Project and shall accurately estimate the full value of the Project scope included in the Project Construction Budget.

9.10.8 Construction Contract Time. The Construction Contract Time is

the duration allowed under a Construction Contract awarded by the District for the Project for the Contractor to achieve Substantial Completion of construction of the Project.

9.10.9 Construction Contract Price. The Construction Contract Price is the Contract Price due from the District to a Contractor awarded a Construction Contract for the Project.

9.10.10 Project Contract Price. The Project Contract Price is the estimate of the total amount payable by the District to the Design Professional for the Basic Services of the Project.

## **ARTICLE 10 PAYMENTS TO THE DESIGN PROFESSIONAL**

10.1 DIRECT PERSONNEL EXPENSE. The Project Contract Price includes the Design Professional's Direct Personnel Expenses and related overhead costs. These are defined as the direct salaries of the Design Professional's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits, travel to and within San Francisco, San Mateo, Santa Clara, Contra Costa, and Alameda Counties, insurance and other overhead costs associated with or arising out of performance of Basic Services for an Assigned Party, except for Reimbursable Expenses.

### **10.2 PAYMENTS ON ACCOUNT OF BASIC SERVICES**

10.2.1 Design Professional Billings to District. During the course of providing Basic Services, the Design Professional shall submit monthly billing invoices to the District for payment of the Contract Price for Basic Services. Additional Services performed or incurred in the prior month shall not be billed for until receiving written authorization from the District or its representative. Design Professional's billings shall be in such form and format as may be reasonably requested by District, including without limitation, allocation of billings to pending Projects.

10.2.2 District Payments to Design Professional. Within thirty (30) days of receipt of Design Professional's billing invoices, District will make payment to Design Professional of undisputed amounts of the Contract Price due for Basic Services, and authorized Additional Services. No deductions shall be made or withheld from payments due Design Professional hereunder on account of any penalty, assessment, liquidated damages or other amounts withheld by the District from payment to the Contractor engaged by the District for Project construction. The District may, however, withhold or deduct from amounts otherwise due Design Professional hereunder if Design Professional shall fail to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after Design Professional has fully cured such failure of

performance, less costs, damages or losses sustained by the District resulting there from. Notwithstanding any provision of this Agreement to the contrary, if the District shall, in good faith, dispute the amount due Design Professional under any billing invoice rendered by Design Professional under this Agreement, pursuant to Civil Code §3320(a), the District may withhold from payment to the Design Professional an amount not to exceed one hundred and fifty percent (150%) of the disputed amount.

## **ARTICLE 11 PROJECT CONTRACT PRICE & BASIS OF COMPENSATION**

- 11.1 COMPENSATION FOR SERVICES. Compensation for Basic Services shall be a fixed lump sum amount, including reimbursable expenses in the amount of (\$ 82,000) Eighty-two Thousand dollars.

Reference: Attachment "F" Design Professional's Fee & Schedule of Values for the fee breakdown & project allocation.

|  |           |
|--|-----------|
| Design Fee Total:                        | \$ 76,000 |
| Reimbursable Expenses (Lump-sum capped): | \$ 6,000  |

- 11.2 COMPENSATION FOR ADDITIONAL SERVICES  
Compensation for the personnel of the Design Professional and Design Consultants performing authorized Additional Services shall be in accordance with the applicable provisions set forth in an Agreement Revision.

- 11.3 COMPENSATION FOR REIMBURSABLE EXPENSES  
Compensation for Reimbursable Expenses is included in the Lump Sum compensation for Basic Services per section 11.1 and includes elements such as but not limited to mileage incurred, reprographics, computer plotting, reproductions, courier, telephone and FAX charges. Reprographics include four (4) sets of the completed schematic design drawings, design development package and construction documents package.

The following reimbursable costs are not included in the lump sum compensation for Basic Services and shall be reimbursed at cost plus a 10% charge for administration and overhead with a not-to-exceed amount of the total contract as noted in Section 11.1.

- Travel Costs: The reasonable expense of travel costs incurred by the Design Professional or their consultants when requested by the District to travel to a location more than 75 miles from either the project site, Campus' office(s), or the District's office, incurred in performing the work.
- Reproduction Costs: Reproduction costs of required plans, specifications, bid and contract documents beyond what are described above, including all bid sets, addenda, construction sets and supplemental instructions.
- Plan Check/Permit Fees: Fees paid to Jurisdiction Authorities or other Regulatory Agency.

## ARTICLE 12 INDEMNIFICATION

- 12.1 DESIGN PROFESSIONAL INDEMNITY OF DISTRICT. To the fullest extent permitted by law, except to the extent caused in whole or in part by indemnitee, the Design Professional shall indemnify, defend and hold harmless the District and its employees, officers, Trustees, agents and representatives from any and all claims, demands, losses, responsibilities or liabilities for: (a) injury or death of Design Professional's or the Design Professional's Design Consultants' employees arising out of this Agreement; (b) injury or death of persons or damage to property, including the removal or replacement of any in-place work during or after Project Completion; or (c) other costs or charges, to the extent the liabilities, damages and losses are caused by willful misconduct, recklessness, or negligence, including concurrent negligence, of the Design Professional or Consultant of the Design Professional. The foregoing shall include without limitation, attorneys fees and costs incurred by the District, and shall survive the termination of this Agreement until any such claim, demand, loss, responsibility or liability covered by the provisions hereof is barred by the applicable Statute of Limitations.

This indemnity agreement shall not be construed to limit the enforceability of other contractual provisions between the District and the Design Professional requiring cooperation with the public agency regarding any claim by a construction Contractor.

It is the intent of the District that this indemnity agreement shall be in accordance with California Civil Code Section 2782.8 and shall be a Type II (comparative/proportionate) agreement and not a Type I agreement, which would otherwise shift all indemnity obligations to the Design Professional.

- 12.2 DESIGN PROFESSIONAL REIMBURSEMENT OF DISTRICT ATTORNEY'S FEES AND INDEMNITY PAYMENT. The Design Professional shall immediately tender demand(s) for indemnity made by the District to its insurance carrier for a determination within 30 days from the date of tender. The insurance company shall be required to agree to a rough approximation of potential liability of the Design Professional, and agree to reimburse the District for its defense fees incurred in proportion to that approximation. At the conclusion of the underlying matter or claim for which indemnity is sought (through voluntary settlement, arbitration award, or court judgment), the Design Professional shall within 30 days reimburse the District for all settlement monies paid. Should the Design Professional and/or its insurance company fail or refuse to proportionally reimburse the District for: (a) its attorney's fees; or (b) indemnity paid, then either matter shall be submitted to binding arbitration for determination within 60 days, after failure or refusal to make payment to the District.
- 12.3 DESIGN PROFESSIONAL BOUND TO ARBITRATION BY OTHER CLAIMS. In the event of any claim, arbitration demand filed on behalf of the prime contractor or any subcontractor in which design deficiencies or errors, or Design Professional contract administration deficiencies are

alleged as a basis for said claim, Design Professional agrees to participate as a party in any such arbitration or state court litigation, and shall further be bound as a party to any arbitration set forth or required under California Public Contract Code § 20104, et seq.

- 12.4 DISTRICT INDEMNITY OF DESIGN PROFESSIONAL. The District shall indemnify and hold harmless the Design Professional, its employees and consultants from all claims arising of bodily injury (including death) and physical damage (other than to the Project itself and property covered by insurance), but only to the extent that they arise out of the willful acts, omissions or other conduct of the District, and/or the sole negligence of the District.

This Agreement entered into as of the day and year first written above.

“DISTRICT”  
Foothill-De Anza Community College District

\_\_\_\_\_  
Date

\_\_\_\_\_  
Charles Allen  
*Executive Director of Facilities, Operations, and  
Construction Management*

“DESIGN PROFESSIONAL”  
AEDIS Architecture & Planning, Inc.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dan A. Hunsaker, AIA, LEED A.P.  
*Principal*

**Attachments to this Agreement consist of the following:**

Attachment "A": Schematic Design Criteria

Attachment "B": Design Development Criteria

Attachment "C": Construction Documents Criteria

Attachment "D": Project Schedule

Attachment "E": Project Scope & Program Criteria

Attachment "F": Design Professional's Fee & Schedule of Values

Attachment "G": Estimating Standards

Attachment "H": Not Used

## Attachment "A": Schematic Design Criteria

### Schematic Design (SD) Criteria

In the Schematic Design Phase, the District and the Design Professional respectively, shall provide those services necessary to prepare Schematic Design Documents consisting of drawings and other documents illustrating the general scope, scale and relationship of Project components for approval by the District. Designs will be conceptual in character and based on the requirements developed under previous phases [Pre-design, Site Analysis] and approved by the District, or on program requirements provided by the District and reviewed and agreed upon by the Design Professional. The following descriptions shall apply to those services assigned in the Schedule of Services as the responsibility of the party indicated therein.

1. **Design Professional Design/Documentation** services during the Schematic Design Phase responding to program requirements and consisting of preparation of:
  01. **Conceptual site and building plans**
    - A) Site plan should illustrate relationship between new and existing structures, traffic flow, existing and proposed topography, landscape features, roads, walks and major utility connections (typically @1 inch = 20 feet scale.)
    - B) Typical floor plans should be @1 inch = 16 feet scale.
    - C) Plans of special floors or areas @1 inch = 8 feet scale.
    - D) Roof plan @1 inch = 16 feet scale.
  02. Preliminary sections and elevations (sketch form @ 1/6" or 1/8" scale.)
  03. Preliminary selection of building systems and materials
    - A) Description of the Building envelope including wall systems, window types, glazing types.
  04. Development of approximate dimensions, areas and volumes
  05. Perspective sketch(es).
  06. Study model(s)
  07. Outline Specifications
  08. Handicap requirements
  09. Code Analysis - provide a written statement describing the methods proposed to comply with governing codes and regulations, including zoning, occupancy, life safety, fire resistance, fire protection and structural adequacy.
2. **Structural Design / Documentation** services during the Schematic Design Phase consisting of recommendations regarding basic structural materials and systems, analyses, and development of design solutions for:
  01. A predetermined structural system w/design loads and criteria
  02. Alternate structural systems
3. **Mechanical Design / Documentation** services during the Schematic Design Phase consisting of consideration of alternate materials, systems and equipment, and development of conceptual design solutions for:
  01. Energy source(S)
  02. Energy conservation
  03. Heating and ventilating
  04. Air conditioning
  05. Plumbing
  06. Fire protection
  07. Special mechanical systems
  08. Process systems
  09. General space requirements

010. Outline Specifications

4. **Electrical Design / Documentation** services during the Schematic Design Phase consisting of consideration of alternate systems, recommendations regarding electrical materials, systems and equipment, analyses, and development of conceptual design solutions for:
  01. Power service and distribution
  02. Lighting
  03. Telephones
  04. Fire detection and alarms
  05. Security systems
  06. Electronic communications
  07. Special electrical systems
  08. General space requirements
  09. Outline Specifications
5. **Civil Design / Documentation** services during the Schematic Design Phase consisting of consideration of alternate materials and systems and development of conceptual design solutions for:
  01. On-site utility systems
  02. Off-site utilities work
  03. Fire protection systems
  04. Drainage systems
  05. Paving
  06. Outline Specifications
6. **Landscape Design / Documentation** services during the Schematic Design Phase consisting of consideration of alternate materials, systems and equipment and development of conceptual design solutions for land forms, lawns and plantings based on program requirements, physical site characteristics, design objectives and environmental determinants.
7. **Interior Design / Documentation** services during the Schematic Design Phase consisting of space allocation and utilization plans based on functional relationships, consideration of alternate materials, systems and equipment and development of conceptual design solutions for Design Professionalural, mechanical, electrical and equipment requirements in order to establish:
  01. Partition locations
  02. Furniture and equipment layouts
  03. Description of finishes for typical areas, areas subject to heavy use or traffic, toilet areas, food service areas and any special finishes.

## Attachment “B”: Design Development Criteria

### Design Development (DD) Criteria

Design Development Documents should consist of drawings and other documents to fix and describe the size and character of the entire Project, including Design Professional, structural, mechanical and electrical systems, materials, equipment and labor, safety and maintenance requirements, and energy conservation.

1. **Design Professional Design / Documentation** consisting of continued development and expansion of Design Professional Schematic Design Documents to establish the final scope, relationships, forms, size and appearance of the entire Project through:

01. **Plans, sections and elevations**

- A. 1/8” scale CADD (preferably) plans, including roof plan, with overall dimensions and column lines identified.

1. Major elements such as entrances, elevators, toilet rooms, mechanical spaces and shafts located.

2. Extent of basements (If any)

3. Roof plan with mechanical penthouses or roof mounted equipment.

- B. Key ACAD sections through the entire building indicating floor to floor height, ceiling height, relationship of windows and cladding, parapets, and relationship to finished grade.

1. Illustrate floor relationships, construction thicknesses and profiles, vertical circulation and special features.

- C. Minimum 1/8” scale, dimensioned ACAD elevations of all building facades indicating materials, systems and glazing types.

02. **Typical construction details**

- A. Large scale, typical wall section(s) of each major type of wall treatment indicating basic flashing, wall composition and materials.

- B. Typical window types and details.

- C. Partition types and typical doors and frames including typical borrowed light conditions.

- D. Typical stair construction and details.

- E. Identification of any special conditions such as raised flooring, shielding requirements, automatic doors etc.

03. **Three dimensional sketch(es) as furnished to the District**

04. **Study model(s) as prepared as a part of the project**

05. **Final materials selections**

- A. Identify all exterior materials

- B. Interior finish schedule including ceiling heights for all major and typical spaces.

06. **Equipment layouts**

- A. Special equipment types and locations

07. **Other Information**

- A. Specifications -

1. Draft front end and general conditions

2. Draft technical sections or samples from similar jobs

- B. Geotechnical Report

- C. Code analysis review

- D. Acoustical report (if applicable)

- E. Updated program statement
- F. Area/Volume statistics
- G. Updated schedule

2. **Structural Design / Documentation** services during the Design Development Phase consisting of continued development of the specific structural system(s) and Schematic Design Documents In sufficient detail to establish:

01. Basic structural system and dimensions

A. Foundation system design

1. Sheeting & shoring requirements

- a) Scaled plan locating sheeting with typical details & elevations.
- b) Quantifiable tie-back criteria, if required.

2. Spread Footing / Mat Slab Design

- a) Scaled plan (1/8" preferred) indicating isolated footings, continuous footings, slabs on grade and foundation walls. Slab elevations and bottom of footing elevations noted.
- b) Schedule of isolated footings, by type, Indicating size and reinforcing requirements.
- c) Typical continuous footing details indicating sizes and reinforcing requirements.
- d) Typical foundation wall & pier conditions indicating sizes & reinforcing requirements.
- e) Slab on grade details indicating thickness and reinforcing requirements.
- f) Waterproofing and foundation drainage requirements.

3. Pile / Caisson Design

- a) Scaled plan (1/8" preferred) indicating pile / caisson sizes & quantities, caps, grade beams, slabs on grade and foundations walls. Slab elevations and bottom of cap / grade beam elevations noted.
- b) Length of piles / caissons including amount of rock socketing.
- c) Type of piles with loading criteria.
- d) Pre-augering requirements noted.
- e) Casing requirements noted.
- f) Types and number of tests noted.
- g) Schedule of typical cap and grade beam designs indicating sizes and reinforcing requirements.
- h) Typical foundation wall & pier conditions indicating sizes & reinforcing requirements.
- i) Slab on grade details indicating thickness and reinforcing requirements.
- j) Waterproofing and foundation drainage requirements.

4. Slurry Wall Design

- a) Scaled plan (1/8" preferred) indicating slurry wall layout, slabs on grade and any additional foundation walls. Slab elevations and top of slurry wall elevations noted.
- b) Length of slurry wall including amount of rock socketing.
- c) Thickness of slurry wall with reinforcing requirements.
- d) Section showing guide wall requirements.
- e) Quantifiable tie-back criteria, if required.
- f) Types and number of tests noted.
- g) Typical foundation wall & pier conditions Indicating sizes & reinforcing requirements.

- h) Slab on grade details indicating thickness and reinforcing requirements.
- i) Waterproofing and foundation drainage requirements.
- 5. Special Foundation Systems
  - a) Information similar to above allowing for adequate quantification & pricing.
- B. Main Structural System Design
  - 1. Steel Structural Systems
    - a) Scaled plans (1/8" preferred) indicating layout of floor slabs, column lines piece type & sizes, moment connections and bracing locations. Slab elevations noted.
    - b) Column criteria, preferably, a schedule with base & leveling plates.
    - c) Bracing elevations with members sized.
    - d) Girder & truss elevations with members sized.
    - e) Criteria for curtain wall wind bracing loads and criteria for skylight Supports,
    - f) Tie-rod & cable requirements.
    - g) Typical connection details.
    - h) Typical special connection detail (i.e., pipe conditions)
    - i) Typical exterior wall sections / details.
    - j) Typical framing @ floor & roof openings with quantity allowance.
    - k) Typical beam opening details with quantity allowances.
    - l) Allowances for slab depressions, equipment support, roof screen support, window washing anchorage, satellite dish support, etc.
    - m) Slab locations, thickness and deck type / size.
    - n) Type of deck closure relative to light gauge or bent plate material.
    - o) Number of deck shear connectors noted.
    - p) Spray fireproofing or concrete encasement criteria.
    - q) Priming / painting criteria.
  - 2. Cast-in Place Concrete Systems
    - a) Scaled plans (1/8" preferred) indicating layout of floor slabs, openings, column lines, slab type & sizes and structural wall locations. Slab elevations noted.
    - b) Column criteria, preferably, a schedule with sizes and reinforcing requirements.
    - c) Structural wall, beams & column drop sections & details with reinforcing requirements.
    - d) Structural girder sections & details with reinforcing requirements.
    - e) Criteria for curtain wall wind bracing loads and criteria for skylight supports.
    - f) Typical exterior wall sections / details.
    - g) Typical reinforcing @ floor & roof openings with quantity allowance.
    - h) Typical beam opening reinforcing with quantity allowances.
    - i) Embed allowance requirements (ie. Loading dock angles, sleeves, steel support plates, etc.)
    - j) Slab placement criteria.
    - k) Finishing & curing criteria.
  - 3. Structural Precast Systems
    - a) Scaled plans (1/8" preferred) indicating layout of floor slabs, openings, column lines, slab type & sizes and structural wall locations. Slab elevations noted.
    - b) Column criteria, preferably, a schedule w/ sizes and reinforcing

requirements.

c) Structural floor, wall, beam sections & details with reinforcing requirements.

d) Structural girder sections & details with reinforcing requirements.

e) Stair element system - if precast.

f) Criteria for curtain wall wind bracing loads and criteria for skylight supports,

g) Typical exterior wall sections / details.

h) Typical reinforcing @ floor & roof openings with quantity allowance.

i) Typical beam opening reinforcing with quantity allowances.

j) Embed allowance requirements (ie. Piece connections, loading dock angles, sleeves, steel support plates, etc.)

k) Topping slab placement criteria.

l) Finishing & curing criteria.

m) Caulking criteria

4. Wood / Light Gauge Framing Systems

a) Scaled plans (1/8" preferred) indicating layout of floor framing, openings, column lines and structural wall locations. Slab elevations noted.

b) Wood species, sizes and rating requirements required for all framing elements.

c) Metal stud and joist sizes and gauge.

d) Typical connection details.

e) Truss elevations.

f) Typical exterior wall sections / details.

02. Final structural design criteria

A. Live load criteria should be finalized.

B. Dead loads criteria should be substantially established.

C. Wind load criteria should be finalized.

D. Special provisions for concentrated loads, openings & equipment loads should be substantially established.

E Deflection & vibration control criteria should be established.

F. Thermal movement control should be established.

G. Subsurface waterproofing methods indicated.

03. Foundation design criteria

A. Soil bearing capacity.

B. Boring & test pit data.

1. Water table data.

2. Contaminated soil removal criteria.

3. Potential subsurface obstruction allowance established.

4. Potential rock / ledge removal.

04. Preliminary sizing of major structural components

A. Refer to .01 for requirements by systems type.

05. Critical coordination clearances

A. Sections at critical clearance areas with detailed dimensions.

06. Outline specifications or materials lists

A. Specifications are expected to indicate material and installation requirements by major structural components.

B. Typical (generic) specifications sections to be issued are as follows:

1. Earthwork

2. Cast-In-place Concrete

3. Structural Precast Concrete

4. Reinforcing
  5. Structural Steel
  6. Steel Joists
  7. Metal Decking
  8. Light Gauge Metal Framing
  9. Metal Stairs & Railings
  10. Rough Framing — Carpentry
  11. Wood Trusses
3. **Mechanical Design / Documentation** consisting of continued development and expansion of mechanical Schematic Design Documents and development of outline specifications to establish:
01. HVAC System
    - A. Heating and cooling design load calculations
      1. Approximate equipment sizes and capacities
    - B. Preliminary equipment layouts
      1. Size, Location and routing of major ductwork
      2. Single line diagram of branch ductwork, with sizes and capacities, piping diagrams, identify heating zones, VAV boxes etc.
    - C. Equipment schedule with sizes and capacities
    - D. Required space for equipment
    - E. Required chases and clearances
    - F. Acoustical and vibration control
    - G. Visual impacts
    - H. Energy conservation measures
      1. Temperature control system description
  02. Plumbing
    - A. Locate all plumbing fixtures including roof drains
    - B. Specify pipe, fixture and equipment materials
    - C. Locate floor drains
    - D. Provide sanitary and storm system riser diagrams
  03. Fire Protection System
    - A. Identify fire pump requirements and size
    - B. Specify sprinkler system types (dry and wet)
    - C. Specify sprinkler head type (concealed, semi-recessed, exposed)
4. **Electrical Design / Documentation** consisting of continued development and expansion of electrical Schematic Design Documents and development of outline specifications or materials lists to establish:
01. Criteria for lighting, electrical and Communications systems
    - A. Preliminary, typical light fixture layout
    - B. Identify telephone, data and duplex requirements
  02. Approximate sizes and capacities of major components
    - A. Specify emergency generator requirements and quantity and size of auto transfer switches
  03. Preliminary equipment layouts
    - A. Provide panel and equipment schedule
    - B. Specify data technology system
  04. Required space for equipment
  05. Required chases and clearances
    - A. Provide one-line, riser diagram

5. **Civil Design / Documentation** consisting of continued development and expansion of civil Schematic Design Documents and development of outline specifications or materials lists to establish the final scope and preliminary details for on-site and off-site civil engineering work.
  01. Site Plan showing buildings, paving walls, curbs, retaining walls and property lines.
    - A. Site lighting layout
  02. Boring information
  03. Typical sections through paving, walkways and curbs
  04. Site drainage pattern and location of utilities and points from which services will be run to the building.
    - A. Indicate all underground utilities and services (sized and posited), existing and proposed.
6. **Landscape Design / Documentation** consisting of continued development and expansion of landscape Schematic Design Documents and development of outline specifications or materials lists to establish the final scope and preliminary details for landscape work.
  01. Landscape plan showing types and quantities of planting
  02. Plans showing existing grades in relation to finish grades
  03. Parking layouts
7. **Interior Design / Documentation** services during the Design Development Phase consisting of continued development and expansion of interior Schematic Design Documents and development of outline specifications or materials lists to establish the final scope and preliminary details relative to:
  01. Interior construction of the Project
    - A. Floor plans and reflective ceiling plans drawn to 1/8" scale.
    - B. Partition types indicated and noted on plans.
    - C. Door & frame types designed and noted on schedule.
    - D. Any additional secondary framing requirements noted. (ie. mezzanines, stages, stairs, ramps, etc.)
    - E. Interior railings indicated in plan and elevation with typical detail.
    - F. Typical interior details noted.
  02. Special Interior design features
    - A. Large scaled plans, elevations & sections drawn for feature design elements.
    - B. Decorative flooring & ceiling patterns/ elements indicated.
  03. Furniture, furnishings and equipment selections
    - A. Casework, millwork indicated in plan and elevation with typical details.
    - B. Equipment requirements indicated on plans.
    - C. Equipment schedules (ie. Food service, laboratory equipment, etc.)
    - D. Note new versus existing to be re-used and any modifications necessary to adapt to new locations.
  04. Materials and finishes and colors
    - A. Interior finishes schedule for floors, walls, ceilings & base requirements.
    - B. Door & frame schedule.
    - C. Hardware schedule or hardware sets.

## **Attachment “C”: Construction Documents Criteria**

### **Construction Documents (CD) Criteria**

The Construction Document Phase shall consist of Drawings, Specifications and other documents setting forth in detail the construction requirements, bidding and contracting for the construction of the project based on approved Design Development Documents:

1. **Design Professional Design / Documentation** services during the Construction Document Phase shall consist of the preparation of the drawings, based on the approved Design Development Documents, setting forth in detail the Design Professional construction requirements for the project. Included with the detail but not limited to:
  - a. Floor Plans for each floor indicating:
    - (1) Spaces fully articulated, detailed, labeled, dimensioned and numbered.
    - (2) Material finishes identified.
    - (3) Doors numbered and hardware sets shown / scheduled.
    - (4) Built-in furniture.
  - b. Design Professional drawings shall be coordinated with the structural, mechanical and electrical drawings as well as the project specifications.
2. **Structural Design / Documentation** services during the Construction Document Phase shall consist of the preparation of the drawings, based on the approved Design Development Documents, setting forth in detail the Structural construction requirements for the project.
3. **Mechanical Design / Documentation** services during the Construction Document Phase shall consist of the preparation of the drawings, based on the approved Design Development Documents, setting forth in detail the Mechanical construction requirements for the project.
4. **Electrical Design / Documentation** services during the Construction Document Phase shall consist of the preparation of the drawings, based on the approved Design Development Documents, setting forth in detail the Electrical construction requirements for the project.
5. **Civil Design / Documentation** services during the Construction Document Phase shall consist of the preparation of the drawings, based on the approved Design Development Documents, setting forth in detail the Civil construction requirements for the project.
6. **Landscape Design / Documentation** services during the Construction Document Phase shall consist of the preparation of the drawings, based on the approved Design Development Documents, setting forth in detail the Landscape construction requirements for the project.
7. **Interior Design / Documentation** services during the Construction Document Phase shall consist of the preparation of the drawings, based on the approved Design Development Documents, setting forth in detail the Interior Design requirements for the project.
8. **Development and Preparation of the Project Specifications** describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.
9. Calculations determining design elements included in the Drawings and Specifications, including structural, mechanical, electrical and other calculations confirming compliance with code-mandated or programmed requirements.

## Attachment "D": Project Schedule

### Project Schedule

|   | C. Days | START    | FINISH   |
|---|---------|----------|----------|
| <b>Design Agreement:</b>                      |         |          |          |
| <b>Notice to Proceed</b>                      |         | 03/02/10 |          |
| <b>Design Phase</b>                           |         |          |          |
| 8 Weeks                                       | 87      | 03/05/10 | 05/31/10 |
| <b>Bid Phase</b>                              |         |          |          |
| 12 Weeks (approximate)                        | 84      | 05/31/10 | 08/23/10 |
| <b>Construction Administration</b>            |         |          |          |
| General Construction: 6-8 Weeks (approximate) | 45      | 8/23/10  | 10/07/10 |
| Project Closeout                              | 55      | 10/08/10 | 11/30/10 |

#### Notes:

1. Bid Phase and Construction Phase durations are subject to change at District's discretion.
2. Construction duration is an approximate guideline, and actual determination will be a function of design development & final scope.
3. Construction Phasing for each project may be accelerated and shall be a function of the College & Department's program schedules (to be determined).

## **4. Attachment “E”: Project Scope & Program Criteria**

### **1.0 SERVICES**

Provide complete architectural design & engineering services from Design Development through Construction Administration and Project Closeout for Foothill Community College District and the De Anza Community College.

### **2.0 SCOPE OF WORK**

Sound attenuation & noise mitigation for the following project locations:

- S-Quad Heath Sciences: classrooms, offices, and conference rooms
- ATC Central Plant: located adjacent to the Visual & Performing Arts Center.

### **3.0 SCOPE OF SERVICES**

#### **Scope Development:**

Review & utilize the existing Acoustical Reports & Reference Documents; perform site visits & meetings to understand situation; develop, identify, & provide recommended architectural design solutions that will mitigate noise and substantially reduce sound transmissions to acceptable levels.

During design process develop measurable noise reduction metrics for the projects that are achievable with-in the guidelines of the budget.

#### **Design Development & Construction Documents:**

Provide complete design services & biddable construction documents. Documents shall incorporate District standards and include all necessary architectural, structural, electrical, and controls design details.

Provide complete design services from design development through construction documents. Design phase submittals: 100% DD, 60% CD (interim review set), 100% CD, and a Final Conformed Bid Documents. Project client-team design reviews & meetings will be conducted for each submittal, and during scope development, recommendations, and planning. Review comments will be addressed and a final set of conformed biddable documents provided. Services shall include all necessary architectural, structural, and electrical design details & technical specifications. Provide all field verifications & measurements. Plans to be issued on full-size drawings and each submittal will include 4 print sets and an electronic file set.

Design shall incorporate District standards & guidelines and meet sustainable guidelines. During design development, submit for review and approval form & finishes with the College.

Design Development Deliverables: recommendations and solutions, design documents (drawings & specifications) for review, architect's responses to review comments to design documents, final construction conformed bid documents, and construction cost estimate.

Construction & Bid Documents Deliverables: Prepare, for approval, Construction Documents consisting of drawings, details, technical Specifications, warranty criteria, and any testing requirements.

- Construction Documents Phase deliverables shall include the following:
- Drawings & Details
- Technical Specifications
- Quality Control/Quality Assurance specifications & guidelines.
- A list of required submittals
- Estimate: Statement of Probable Costs (reference Attachment G)
- Schedule of probable material fabrication & installation durations.
- Architect responses to review comments.

Make any final adjustments as requested by the Client and prepare 100% Bid Documents.

Design reviews will be conducted at each design submittal and review comments will be issued to the Consultant. The Consultant (s) shall review & respond to all design review comments in a timely basis. The Consultant's responses shall be included in each subsequent design submittal package. Once design review comments have been addressed, provide final conformed set of bid documents.

Work shall include coordination with FHDA Facilities & Plant Services and other District consultants.

**Estimates:**

Provide estimate of probable construction costs in approved format for each associated project: ATC Central Plant & S-Quad Heath Sciences.

**DSA:**

Currently DSA submission is not included.

**Bid Phase:**

Following District's approval of the Construction Documents, assist District in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction. Services during this phase will include:

- a) Preparation of Addenda.
- b) Evaluation & response to Contractors' request for clarifications.
- c) Attend a pre-bid walk-through meeting with prospective bidders, and answer questions that arise during the pre-bid meeting & bid phase. May include assisting in review of bids and/or proposals in determination of lowest responsive bidder.

**Construction Administration & Project Close-out Phase:**

Design Professional shall be a representative of and shall advise and consult with District & Program Manager during construction until issuance to the Owner of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work.

Design Professional shall provide the following construction support services but not limited to:

- a) Attend a pre-construction meeting to review the construction details and specifications with the contractor prior to commencement of construction activities.

- b) Review all construction submittals for compliance with the contract documents including any shop drawing reviews, and issue appropriate responses.
- c) Reply to Contractor's Requests for Information (RFI's) & Substitution Requests with appropriate technical answers. The District to assist is this process.
- d) Provide punch-list inspections for correction of non-compliant construction items, close out administration, punchlist letter, and one follow-up punchlist walk with memorandum letter. Punchlist inspections & issued letter will serve as the baseline to help ensure contractor has met their contractual obligations including quality of installation.
- e) Review and approval of all submittals specified in Contract Documents (i.e. samples, shop drawings, installer certifications, hardware, and materials). All finishes & colors shall be reviewed for approval in conjunction with College & District.
- f) Assist with review and processing change orders, certification of construction payment requests if requested.
- g) Periodic site visits, OAC project meetings, and construction monitoring.
- h) Coordinate quality assurance installation efforts, testing, & inspections with District.
- i) Final project inspections, punchlists, review for substantial completion, and certification of Final Acceptance.
- j) Review close out material for conformance with construction documents and transmit to Program Manager/District. Items to include but not limited to warranties, contractor as-built record drawings, and operation & maintenance manuals.
- k) The Design Professional shall assist with project closeout documents and requirements. Including review of testing & certification, compliance, Final Acceptance, and review of any as-built plans.

**Project Meetings & Coordination:**

Design phase shall include, but not limited to: (4) project team meetings & design reviews. Agenda & Meeting Minutes to be provided by the Architect.

Bid Phase will include (1) pre-bid meeting. District to facilitate.

Construction administration phase will include all necessary site visits, inspections, construction meetings, including a pre-construction meeting. Meetings & minutes will be facilitated by the Construction Manager, and typically held on a weekly basis.

All work shall entail coordination with the District, College, Plant Services, Program Manager, and other District consultants.

**Reference Documents:**

Acoustical Reports & Sound Readings

S-Quad:

Charles Salter Associates - Acoustical Report

#### **4.0 EXCLUSIONS**

DSA Submission & associated work

Schematic Design Phase

Regarding Attachments A – C, provide the design services relevant to the successful implementation of this project.

Fee is based on scanning existing “as-built” building plans, and utilizing as base documents for DD/CD development. Electronic submittal does not include AutoCAD format.

Design and structural calculations for an acoustical roof screen.

#### **5.0 INVOICING REQUIREMENTS**

Remit all invoices to the following address:

Gilbane/MAAS: Accounting (**Measure E**)

Foothill Community College

12345 El Monte Road

Los Altos Hills, CA 94022

All invoices should include the following information:

- Measure E
- Project Number and Name
- Purchase Order Number
- Schedule of Values with percent complete.
- Backup billing data

## Attachment "F": Design Professional's Fee & Schedule of Values

### Design Professional's Compensation

#### Fee Distribution & Schedule of Values

##### S-Quad Heath Sciences: classrooms, offices, and conference rooms

| Phase                       | Percent     | Fee             |
|-----------------------------|-------------|-----------------|
| Design Development          | 25%         | \$10,175        |
| Construction Documents      | 50%         | \$20,350        |
| Bid Phase                   | 5%          | \$2,035         |
| Construction Administration | 20%         | \$8,140         |
| <b>Fee Total</b>            | <b>100%</b> | <b>\$40,700</b> |

##### ATC Central Plant: adjacent to the Visual & Performing Arts Center

| Phase                       | Percent     | Fee             |
|-----------------------------|-------------|-----------------|
| Design Development          | 25%         | \$8,825         |
| Construction Documents      | 50%         | \$17,650        |
| Bid Phase                   | 5%          | \$1,765         |
| Construction Administration | 20%         | \$7,060         |
| <b>Fee Total</b>            | <b>100%</b> | <b>\$35,300</b> |

Reimbursable Expenses  
(Lump-sum Capped) **\$ 6,000**

**Total Contract Value** **\$82,000**

## **Attachment “G”: Estimating Standards**

The Foothill De Anza Community College District Construction Program uses a standard estimating format for which all estimates shall comply. The purpose is to:

- Provide consistency between estimates prepared by different entities (e.g. Design Professional, Program Manager, School Construction).
- Ensure that quantities of material developed or assumed by different estimators are consistent.
- Ensure that assumptions, exclusions, and inclusions considered by estimators are consistent with the intent of the Design Professional.
- Ensure that contingencies for design, construction and escalation assumed by different estimators are consistent.

### **ESTIMATE FORMAT**

1. There must be a cover sheet matching the format of the District’s budget.
2. All estimates must be in “present day” dollars.
3. All plan sheets must contain the following information:
  - Project Name
  - Design Professional’s Name
  - The document date
  - Sheet number
  - Name of the Estimator, the Checker and Company
  - Type of estimate (i.e. Conceptual, Schematic, Design Development or Construction Document)
4. Costs should be broken down as follows:
  - Trade costs for complete project
  - Allowances for LEED Certification (if applicable and if the scope of work is not well defined)
  - Allowances for special features (if not well defined)
  - Taxes Included and Excluded
  - General Conditions
  - Fees as a % (if applicable and if not well defined)
  - Escalation per year as a %
  - Design Contingency as a % (check w/ Program Manager)
  - Programmed equipment and work outside construction contract (if any)
  - Construction Contingency (5% - Check w/ Program Manager)
  - Sub Total
  - Estimate Total
5. Sheet 2 of the Estimate Summary must be in 2004 CSI (Construction Specifications Standards) Format.

Show major items of work & associated cost within each division.

2004 CSI Major Divisions (not limited to):

DIVISION 01 - GENERAL REQUIREMENTS  
DIVISION 02 - EXISTING CONDITIONS  
DIVISION 03 - CONCRETE  
DIVISION 04 - MASONRY  
DIVISION 05 - METALS  
DIVISION 06 - WOOD, PLASTICS, AND COMPOSITES  
DIVISION 07 - THERMAL AND MOISTURE PROTECTION  
DIVISION 08 - OPENINGS  
DIVISION 09 - FINISHES  
DIVISION 10 - SPECIALTIES  
DIVISION 11 - EQUIPMENT  
DIVISION 12 - FURNISHINGS  
DIVISION 13 - SPECIAL CONSTRUCTION  
DIVISION 14 - CONVEYING SYSTEM  
DIVISIONS 15 THROUGH 20 - Not Assigned  
DIVISION 21 - FIRE SUPPRESSION  
DIVISION 22 - PLUMBING  
DIVISION 23 - HEATING, VENTILATING, AND AIR CONDITIONING (HVAC)  
DIVISION 24 - NOT ASSIGNED  
DIVISION 25 - INTEGRATED AUTOMATION  
DIVISION 26 - ELECTRICAL  
DIVISION 27 - COMMUNICATIONS  
DIVISION 28 - ELECTRONIC SAFETY AND SECURITY  
DIVISIONS 29 THROUGH 30 - Not Assigned  
DIVISION 31 - EARTHWORK  
DIVISION 32 - EXTERIOR IMPROVEMENTS  
DIVISION 33 - UTILITIES  
DIVISION 34 - TRANSPORTATION  
DIVISION 35 - WATERWAY AND MARINE CONSTRUCTION  
DIVISIONS 36 THROUGH 39 - Not Assigned  
DIVISIONS 40 THROUGH 49

6. If Project includes renovation and addition, provide estimates for each separately. Both estimates must be prepared using the same format with quantities, unit, unit price, and the total.
7. All the back up sheets for each division of work should include the basic information of: Description, Quantities, Unit, Unit Price, Total.
8. Total costs for the divisions.
9. The project gross and net areas as defined in plans and Spec's and broken down by renovation versus new construction.
10. Written assumptions and clarifications.
11. Allowances with descriptions, units and values.
12. Written exclusions.

**Salas O'Brien Engineers Inc. – Revision #3**

Revision #3 to PAA #D09 (Purchase Order #M876705) to the Master Agreement dated March 15, 2004 between Foothill-De Anza Community College District and Salas O'Brien Engineers Inc.

**REVISION DATE:**

March 1, 2010

**SCOPE OF WORK:**

This Revision extends the Agreement through December 31, 2009. No changes to the contract value are being made. Services will be provided by Salas O'Brien Engineers Inc and paid for by use of Measure E funding for Project #202 Science Center LEED Certification at De Anza College Campus.

**COMPENSATION:**

|   |           |           |
|---|-----------|-----------|
| Original contract value:                              | \$        | 19,500.00 |
| Net change in contract value from previous revisions: | \$        | 35,250.00 |
| Contract value prior to this revision:                | \$        | 54,750.00 |
| Net change in contract value due to this revision:    | <u>\$</u> | <u>0</u>  |
| New contract value including this revision:           | \$        | 54,750.00 |

All other contract terms to remain in place per the agreement referenced above.

Amendment agreed to by:

OWNER

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Signature

Date

**Charles Allen**

Executive Director of Facilities, Operations, and Construction Management  
Foothill-De Anza Community College District

CONSULTANT

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Signature

Date

**Carl Salas**

President - Salas O'Brien Engineers Inc.

**Salas O'Brien Engineers Inc. – Revision #7**

Revision #7 to PAA #D07 (Purchase Order #M671173) to the Master Agreement dated March 15, 2004 between Foothill-De Anza Community College District and Salas O'Brien Engineers Inc.

## REVISION DATE:

March 1, 2010

## SCOPE OF WORK:

This Revision extends the Agreement through June 30, 2010. No changes to the contract value are being made. Services will be provided by Salas O'Brien Engineers Inc. and paid for by use of Measure E funding for Project #276 Science Center HVAC on the De Anza College Campus.

## COMPENSATION:

|   |               |
|---|---------------|
| Original contract value:                              | \$ 49,469.00  |
| Net change in contract value from previous revisions: | \$ 306,728.00 |
| Contract value prior to this revision:                | \$ 356,197.00 |
| Net change in contract value due to this revision:    | <u>\$ 0</u>   |
| New contract value including this revision:           | \$ 356,197.00 |

All other contract terms to remain in place per the agreement referenced above.

Amendment agreed to by:

OWNER

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Signature

Date

**Charles Allen**

Executive Director of Facilities, Operations, and Construction Management  
Foothill-De Anza Community College District

CONSULTANT

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Signature

Date

**Carl Salas**

President - Salas O'Brien Engineers Inc