

**STANDARD FORM AGREEMENT BETWEEN
NEW HAVEN UNIFIED SCHOOL DISTRICT
AND
[ARCHITECT]**

This Agreement is made on this _____ day of _____ 2015, by and between **New Haven Unified School District**, a public entity, (hereinafter called "District") and _____ (hereinafter called "Architect"), an architect duly licensed under the laws of the State of California to practice architecture in the state of California.

Whereas, District desires to construct various public works of improvement;

Whereas the District is primarily engaged in fulfilling the public mandate of education and lacks the staff and employees possessing the special training, skill and expertise necessary to design, supervise and manage the construction of a public work of improvement such as that contemplated in this Agreement;

Whereas the District desires to engage a professional with the special training, skill and expertise to design, supervise and manage the construction of the public work of improvement contemplated by this Agreement;

Whereas the District desires to engage a professional who will act at all times with the District's best interest in mind and who will respect the trust and confidence placed in that professional by the District;

Whereas Architect has represented to District that it has the special training, skill and expertise necessary to design the construction of the public work of improvement contemplated herein, and will at all times act with the District's best interest in mind;

Now, therefore, District and Architect agree as follows:

ARTICLE 1: THE PROJECT

1.1 DESCRIPTION

1.1.1 District does hereby enter into this Agreement with Architect to perform for the District under the terms and conditions in this Agreement all services incidental to the design and engineering of construction of various additions or improvements and each of which is hereinafter referred to as a future "Project".

1.2 BUDGET

1.2.1 Each future Project Budget determined by the District shall be determined and approved prior to beginning any project. The future Project Budget is the sum

that District currently estimates is available to District, or may become available, for payment to a building contractor (or contractors) to construct the future Project. This sum may be increased or decreased by the District from time to time, without the consent of Architect. The design fees will be adjusted accordingly. For each specific future Project District requests Architect's services, Architect shall submit a letter proposal referencing the future Project title, construction budget and fee proposal. Such letter proposal shall reference this agreement and be incorporated herein.

1.3 SCHEDULE OF SERVICES

1.3.1 Promptly after execution of this Agreement, Architect shall prepare and submit for review by District a schedule showing the order in which Architect proposes to carry on his work. The schedule shall apply to the completion of all services agreed to be furnished by Architect hereunder within the times established by this Agreement. The schedule shall be in the form of a progress chart so as to indicate by percentage the work completed at any time. Architect shall, as may be requested from time to time, update the progress schedule and deliver a copy to the District.

ARTICLE 2: DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply:

- 2.1 ESTIMATED PROJECT CONSTRUCTION COST: Shall mean the Architect's dated, itemized, written estimate of the total cost to District to design and construct Project.
- 2.2 MAJOR CATEGORIES OF WORK: Are those applicable categories of construction work necessary for completion of construction of the entire Project and may include but are not limited to the following construction categories: site preparation, grading and earth work, design and engineering, preparation of plans and specifications, general construction, concrete, framing, roofing, painting, heating, ventilating, air conditioning, plumbing, electrical, interior finishes, landscape, irrigation, and site improvements.
- 2.3 CONSTRUCTION DOCUMENTS: Shall include but are not limited to, working drawings, specifications, general conditions and supplementary general conditions, information for bidders, bid proposal, addenda and District-Construction Contractor Agreement developed to set forth in detail all aspects of design, function and construction and will be used for estimating the cost of the Project, securing of bids for the construction of the Project, and directing a contractor in its construction of the Project.
- 2.4 CONTRACT DOCUMENTS: Shall include the District-Construction Contractor Agreement and all documents designated in the District-Construction Contractor Agreement as part of the construction contract, including but not limited to, working drawings, specifications, addenda, general conditions and supplementary general conditions of the contract.

ARTICLE 3: BASIC SERVICES OF ARCHITECT

3.1 GENERAL SERVICES

Architect shall:

- 3.1.1 Consult to the extent required by District with the District's design representatives relative to the design and construction of the Project.
- 3.1.2 Cooperate with other professionals employed by the District for the design of other work related to the Project (if any).
- 3.1.3 Advise District as to the necessity and manner of providing or obtaining services related to the site, such as property boundary, right-of-way, topographic, hydrographic, and utility surveys, soil mechanics and subsoil data.
 - 3.1.3.1 Except as expressly provided for in this Agreement, it is the District's understanding that Architect will, as part of its fee, retain and employ all such consultants Architect deems necessary for the Architect to complete its responsibilities set forth in this Agreement.
 - 3.1.3.2 Develop the scope of services to be furnished by each specialized consultant referred to in Article 3.1.3.2, above, and any additional specialized consultants that Architect may recommend that District directly retain and employ, provided that District accepts such recommendations.
 - 3.1.3.3 Develop request for proposals for the scope of services described in Article 3.1.3.3 and seek proposals from qualified experts in the areas of expertise required of each specialized consultant.
 - 3.1.3.4 Promptly review the proposals received from the specialized consultants responding to the request for proposals described in Article 3.1.3.4, and make written recommendations to District advising District as to suitability and completeness of the specialized consultants' proposals and agreements.
 - 3.1.3.5 Be responsible for coordinating its work with the work of all specialized consultants furnishing services related to the Project. District will provide similar coordination for its consultants.
- 3.1.4 Promptly review all data furnished to Architect by District or others, including but not limited to, specialized consultants, including but not limited to, site surveys, subsoil data, chemical, mechanical and other data, logs of borings, etc.

and immediately advise District in writing whether such data is sufficient for purposes of design and construction, or whether additional data is necessary.

- 3.1.5 Contract with or employ at Architect's expense, consultants to the extent Architect deems necessary for Architect to fulfill its obligations set forth in this Agreement, including but not limited to, mechanical, electrical and structural engineers licensed as such by the State of California and other consultants necessary for development of the Project. If Architect has not already made representations to District as to Architect's intended consultants and sub-consultants, Architect shall submit for acceptance by District, consultants for each professional element of service of the Project. Nothing in this Agreement shall create any contractual relation between District and any consultant(s) employed by Architect under the terms of this Agreement.
- 3.1.6 Architect has represented that a principal of the firm shall be the architect in responsible charge for the Project, who shall, so long as his/her performance continues to be acceptable to the District, remain in responsible charge of the architectural services for the Project from the beginning of Schematic Design Phase until all of Architect's obligations required by this Agreement are fully and completely satisfied.
- 3.1.7 Exercise due professional care to abide by and comply with laws, rules, regulations and authorities that may have jurisdiction over the Project.
- 3.1.8 Advise the District of discovered or reported deficiencies in construction of the Project, which have developed following the acceptance of work and prior to expiration of the guarantee period of the Project, and suggest satisfactory methods for correction of such deficiencies.
- 3.1.9 Conduct himself in all regards as it pertains to this project and Agreement to standards of professional duty towards District interests.
- 3.1.10 Shall remove from the Project and no longer employ on the Project, any of Architect's employees, consultants, sub-consultants or employees of consultants or sub-consultants determined by District to be unacceptable.

3.2 DESIGN DEVELOPMENT SERVICES

The Design Development Services shall consist of the following phases:

PRELIMINARY DESIGN PHASE

- 3.2.1 Upon authorization by District to proceed with Preliminary Design Phase, Architect shall:
 - 3.2.1.1 In consultation with the District's design representatives, develop the initial program, budget and other requirements of the Project.

- 3.2.1.2 Prepare for District acceptance: studies incorporating the program requirements and including structure and site utilization plans, floor plans, elevation sections, perspectives and other drawings necessary to describe the Project. Architect shall revise preliminary studies until the District has approved an acceptable design concept.
- 3.2.1.3 Prepare and submit for District acceptance: (1) Outline specifications indicating architectural, structural, mechanical and electrical systems and material proposed; (2) graphic material necessary to convey the architectural design; and (3) a tabulation of both gross and assignable floor areas and a comparison to the initial program requirements.
- 3.2.1.4 Prepare and submit for District review a written itemized Estimated Project Construction Cost.
- 3.2.1.5 Prepare a design that takes into consideration the environmental comfort and work efficiency of the occupants; requires a practical minimum of maintenance; meets federal, state, and local statutory requirements for structure, fire, and public safety; be designed and engineered with flexibility to accommodate future needs; be designed to resist earthquake forces generated by major earthquakes without catastrophic collapse; conform with applicable provisions of any statute, code, regulation or law applying to the Project, including but not limited to, Titles 19 and 24 of the California Code of Regulations.

3.2.2 DESIGN DEVELOPMENT PHASE

Upon authorization by District to proceed with Design Development Phase, Architect shall:

- 3.2.2.1 Prepare from the accepted Preliminary Design Phase documents Design Development Phase Documents consisting of (1) site plans, architectural, structural, mechanical and electrical floor plans, elevations, cross sections and other required drawings; and (2) outline specifications describing size, character and quality of the entire Project and its essentials as to kinds and locations of materials, type of structural, mechanical and electrical systems; and (3) a tabulation of both gross and assignable floor areas and a comparison to the initial program area requirements.
- 3.2.2.2 Prepare and submit for District review a written itemized Estimated Project Construction Cost.

- 3.2.2.3 Prepare and submit for District acceptance written design criteria for mechanical and electrical systems.

3.3 CONSTRUCTION DEVELOPMENT SERVICES

The Construction Development Services shall consist of the following three phases:

3.3.1 CONSTRUCTION DOCUMENTS PHASE

- 3.3.1.1 Upon authorization from the District to proceed with the preparation of the Construction Documents Phase, and where required, upon written approval by all governing agencies of the preliminary plans, including but not limited to, review and approval by California Department of Education, and where applicable, State of California Department of General Services, Architect shall:
 - 3.3.1.2 Prepare from approved preliminary design development phase documents, construction documents consisting of full, complete and accurate working drawings, design computations and specifications that set forth in detail the requirements for construction of the entire Project.
 - 3.3.1.3 Carefully review and revise the technical specifications prepared or furnished by Architect to insure that the technical specifications prepared or furnished by Architect are consistent with District furnished bidding documents, general conditions and supplementary conditions, if any.
 - 3.3.1.4 Submit for District's review and acceptance, six (6) check sets of construction documents including specifications (project manual) when 100% complete for District's review and acceptance prior to Architect's submission of construction documents to any governmental authority having jurisdiction over the Project.
 - 3.3.1.5 Prepare construction documents in compliance with applicable building codes, laws, regulations, and ordinances and to the satisfaction of regulatory authorities having jurisdiction over the work.
 - 3.3.1.6 Prepare proposal forms and other documents and such details as may be required to obtain competitive bidding for the entire Project incorporating District's standard documents and/or documents of appropriate authorities and funding sources having jurisdiction over the Project.

- 3.3.1.7 Prepare and submit for District's review written itemized Estimated Project Construction Costs after 100% completion of Construction Documents. The Project Cost Estimate shall include building costs on a per square foot basis and detailed site improvement costs listing quantities and unit costs.
- 3.3.1.8 Prior to solicitation for bids, submit 100% complete, District accepted plans and specifications (project manual) to Department of General Services, Office of State Architect, Chief Structural Engineer, for review and approval, and any other governmental authority having jurisdiction over the Project.
- 3.3.1.9 Make all revisions and corrections to the plans and specifications that may be required by District, Department of General Services and any other governmental authority having jurisdiction over the Project.
- 3.3.1.10 Shall manually sign all plans submitted for approval to indicate his/her assumption of responsibility.
- 3.3.1.11 Shall retain and employ under his/her direct supervision, professional engineers registered in the applicable branches of engineering to design mechanical and electrical portions of the work, observe construction and make verified reports.
- 3.3.1.12 Shall make written recommendations to District as to the minimum experience and qualifications, which should be demonstrated by prospective contractor bidders to successfully, construct the Project.
- 3.3.1.13 Submit six (6) copies of the completed construction documents to the District in addition to the copies deemed sufficient for all bidders.

3.3.2 BIDDING PHASE

Upon solicitations of bids by District, Architect shall:

- 3.3.2.1 Prepare addenda and clarification documents, interpret construction documents and assist District as required.
- 3.3.2.2 Attend, participate in, prepare and distribute minutes of, any pre-bid meeting for prospective bidders, which may be requested by District.
- 3.3.2.3 Assist District with review, evaluation and make recommendations for awarding construction contract(s).

- 3.3.2.4 If the lowest responsible bidder's responsive bid received exceeds the Project Budget by more than 10%, the District may, at its sole discretion: (1) give written approval of an increase in the Project Budget, or (2) authorize re-bidding of the Project within a reasonable time, or (3) require the Architect to revise the scope of the Project or its quality, or both, so as to reduce the Project construction costs, in which case the Architect shall, at its sole expense, modify the construction drawings and/or technical specifications, in order to reduce the Project construction costs within the Project Budget, or (4) abandon the Project.
- 3.3.2.5 If District exercises its option to require the Architect to revise the scope of the Project or its quality, or both, so as to reduce the Project construction costs, Architect shall at its expense, prepare and present to District for District acceptance, a detailed cost breakdown identifying potential areas of cost savings, including estimated cost savings for each area, and furnish such written recommendations as the District may request to assist District in evaluating the proposed scope and/or quality revisions.

3.3.3 CONSTRUCTION PHASE SERVICES

Upon award of the construction contract by District, Architect shall:

- 3.3.3.1 Give written notice to Department of General Services, Division of the State Architect, before construction commences. Said notice shall be in duplicate on Form DSA-102 or such other format as may be proscribed. Said notice shall contain all of the information required or requested, including but not limited to, the name and address of contractor, the contract price, the date the contract was let, the starting date of construction.
- 3.3.3.2 Review the qualifications and experience of the project inspector selected by District, and promptly notify District whether said project inspector is satisfactory. If Architect determines said project inspector is not satisfactory, Architect shall provide District with facts and evidence in writing supporting its determination.
- 3.3.3.3 Submit to the Department of General Services, Division of the State Architect, for review and approval, the name of the proposed project inspector, together with an outline of his/her experience and pertinent qualifications on Form DSA-5, or such other form as may be proscribed, at least ten (10) days prior to the start of construction.

- 3.3.3.4 Provide general direction of the work of the inspector and shall immediately withdraw approval of the inspector by letter to District if Architect finds the inspector is unable or unwilling to perform his/her duties properly.
- 3.3.3.5 Provide all the administrative services set forth in the Contract Documents required to be provided by Architect.
- 3.3.3.6 Provide a color schedule, samples of textures and finishes of all materials in the Project for review and approval by the District.
- 3.3.3.7 Interpret the Contract Documents and furnish copies in a reproducible form of all clarification drawings and all other documentation required. Prepare as directed by the District, change orders to the construction contract, which are necessary as a result of such interpretations and/or clarifications or changes in the work. Analyze price quotations received from the construction contractor for proposed change orders and advise District as to the acceptability of the same. These activities will be accomplished in a prompt manner so as not to delay progress of construction.
- 3.3.3.8 With prior consent of District, make all revisions and changes to the Contract Documents to correct errors, conflicts or omissions.
- 3.3.3.9 Visit the project site at intervals appropriate to the stage of construction to ascertain the progress of the work, to observe the work, the character, scope and detail of construction, the quality and quantity of materials and equipment, and that the standard of workmanship is in conformance with the Contract Documents and Architect's recommendations; attend Project meetings; and prepare minutes of such Project meetings for distribution as directed by District.
- 3.3.3.10 Provide technical direction and interpret the Contract Documents for inspectors employed by District, conduct a review of the daily inspection reports submitted by inspectors; and issue such written recommendations to the District as the evaluation of the report data dictates necessary to insure that all work strictly complies with the requirements of the Contract Documents compliance issues.
- 3.3.3.11 Render prompt advice to the District on claims, disputes and other matters in questions between the construction contractor and the District relating to the execution or progress of the work or the interpretation of the Contract Documents.

- 3.3.3.12 Analyze and advise District as to acceptability of test reports, methods, materials, equipment and systems.
- 3.3.3.13 Review and advise District as to the acceptability of substitutions proposed by the construction contractor.
- 3.3.3.14 Review and advise District on materials, workmanship, finishes and equipment proposed for the architectural structural, mechanical, and/or electrical services submitted for the project.
- 3.3.3.15 Promptly respond to all questions, inquiries and communications from the contractor(s), or District, and respond to all Requests for Information (RFI's) within 5 working days of receipt.
- 3.3.3.16 Promptly review all submittals and reject all that do not strictly comply with the requirements of the Contract Documents.
- 3.3.3.17 Review and advise District of amounts of progress payments and final payment due to the construction contractor.
- 3.3.3.18 Assemble and deliver to District written guarantees, operating and maintenance instruction books, diagrams and charts required of the construction contract.
- 3.3.3.19 Participate in final inspection of the Project and advise District as to the acceptability of the work performed by construction contractor. Prepare written punchlists describing in detail all work that does not strictly comply with the Contract Documents. Report in writing to District upon construction contractor's satisfactory completion of all punchlist and other work required by the Contract Documents.
- 3.3.3.20 Assist District in fulfilling the requirements of the authorities and funding agencies relative to disbursements made under the construction contract for the Project.
- 3.3.3.21 Promptly after recording the notice of completion by District furnish District, at no expense to District, final working drawings and specifications including such revisions that may have been made in the course of construction. Such documents shall be labeled "as-built" or "record", based upon the Contractor's representation of actual construction.

- 3.3.3.22 In cooperation with the District, coordinate with all regulatory authorities as necessary to procure approvals and assure compliance with applicable law.
- 3.3.3.23 Prepare and submit such periodic reports as may be required, including but not limited to, Form DSA-6A/E, to Department of General Services, Division of the State Architect.
- 3.3.3.24 Prepare and/or furnish to Department of General Services, Division of the State Architect, all documents necessary for final approval and/or acceptance of the Project by Office of the State Architect, as much, as it is within the Architects reasonable ability to do so.
- 3.3.3.25 Assist the District in obtaining final Division of the State Architect's certification of compliance with regulations and/or such other approval or certification as may be normal for a Project such as that contemplated by this Agreement, including any requirements of State of California, Department of Education, State Allocation Board, or any other governmental authority having jurisdiction over the Project.

ARTICLE 4: ADDITIONAL SERVICES

- 4.1 The following services, when authorized by written District design change authorization, shall be paid for by District as provided in Article 6.3.
 - 4.1.1 Selection of movable furniture, equipment and other articles which are not included in the construction contract.
 - 4.1.2 Additional services required of the Architect by the District caused by the failure of the contractor to complete work by the Project completion date as adjusted by approved contract time extensions.
 - 4.1.3 Revisions to Construction Documents and previously approved Design Development Phase documents to accommodate changes (excluding corrections of design errors, conflicts and/or omissions by Architect or changes initiated by Architect) when so directed by District provided, however, that no compensation for extra services shall be paid for revisions which may be requested by District pursuant to Article 3.3.2.4.
 - 4.1.4 Preparation of change order documents for revisions and changes requested by District (excluding corrections of errors and omissions by Architect) after a construction contract has been awarded.

ARTICLE 5: COMPENSATION

The District shall compensate the Architect as follows:

- 5.1 For Architect's services described in Article 3 of this Agreement the basis of compensation shall be as provided in each future project letter proposal.
 - 5.1.1 Reasonable expenses without markup, of reproduction, postage and handling of drawings and specifications excluding the following: copies for Architect's office use, six (6) sets Design Development Phase copied, six (6) sets of the Construction Documents as specified under Article 3.3.1.4 and the as-built set specified in Article 3.3.3.21.

ARTICLE 6: TIMES OF PAYMENT

Payments under this Agreement shall be as follows:

- 6.1 Following the District's written authorization to proceed with each phase of Design Development Services, monthly payments based on estimate of percent of work completed by the Architect and acceptable to the District. The amount of payment shall not exceed the following schedule:
 - Preliminary Design Phase – 10%
 - Design Development – 20%
- 6.2 Following the District's authorization to proceed with Construction Document phase services, monthly payments based on estimate of the percent of work completed by Architect and acceptable to the District. Payment for construction phase shall be in accordance with the following schedule. Payments shall be based on the fees due Architect after deduction of the fees paid for design phase.
 - Construction Development Services
 - Construction Document Phase 50% Complete – 20%
 - 100% Complete (DSA Approved) – 25%
 - Award of Construction Contract – 5%
 - Construction Phase
 - Project 50% Complete – 10%
 - Construction Complete and Receipt of As-Built Drawings – 8%
 - Project close-out – 2%
- 6.3 Payments for Architect's extra services as described in Article 5, and for reimbursable expenses shall be made monthly based on Architect's statements of services rendered.

ARTICLE 7: RECORDS

- 7.1 Records of the Architect and its consultants' direct personnel expenses for extra services and reimbursable expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be presented to the District or its authorized representative with the invoice for the additional expenses or services.
- 7.2 District may, at its sole option exercisable at any time, notify Architect in writing that all future services of Architect and/or Architect's consultants, shall be performed on a time and materials basis. In such event, for all invoices or statements from Architect or Architect's consultants and sub-consultants for fees or services rendered based upon an hourly rate of compensation (rather than an agreed upon lump sum), Architect shall present a detailed itemized accounting for all hours incurred. As used herein, a detailed itemized accounting means, for each person furnishing such services rendered on an hourly rate of compensation, contemporaneously maintained records containing a specific description of the service performed such that the necessity and purpose of the service can be readily ascertained, the date that the service was performed, the hours (including fractions thereof) that each service required to be performed, and the hourly rate for services for each person. (By way of illustration only: 3/17/97, John Smith, Prepare Change Order 004 as requested by District representative Jane Doe, .4 hours at \$60.00 hour, TOTAL DUE \$24.00.)

ARTICLE 8: INDEMNITY AND INSURANCE

- 8.1 Throughout the performance of all services rendered under this Agreement, Architect, and Sub-consultants for Structural, Mechanical and Electrical, shall maintain in full force and effect, errors and omissions insurance covering the services furnished by Architect and each of the aforementioned sub-consultants pursuant to this Agreement, providing for coverage on a single incident basis for a minimum of One Million Dollars (\$1,000,000.00) for each occurrence and Two Million Dollars (\$2,000,000.00) for General Aggregate. All other sub-consultants shall maintain for a minimum of Five Hundred Thousand Dollars (\$500,000) with the same provisions as described above, unless mutually agreed upon in writing. The insurance policy shall not contain a provision providing for any deductible greater than a total of Fifty-thousand Dollars (\$50,000). A copy of the policies and all riders with respect thereto shall be furnished to the District upon request.
- 8.2 Unless otherwise set forth herein, Architect, and Sub-consultants for Structural, Mechanical and Electrical, shall carry and maintain during the life of this Agreement, and Architect and Sub-consultants for Structural, Mechanical and Electrical, obligations required by this Agreement, public liability, property damage and contractual liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00), and such Workers' Compensation insurance as required by law. Proof of all required insurance coverage shall be attached hereto prior to commencement of work under the Agreement. Upon request by District, Architect and Sub-consultants for Structural, Mechanical and Electrical, will immediately furnish copies of the required insurance policies.

- 8.3 As a part of the signing of the Contract, the Architect and Sub-consultants for Structural, Mechanical and Electrical, shall furnish a Certificate of Insurance substantiating the fact that it has taken out the insurance set forth above for the period covered by the Agreement with an insurance carrier acceptable to the District and under terms satisfactory to the District. Insurance industry's standard Accord Certificate of Insurance or binder forms shall bear an endorsement precluding the cancellation or reduction of coverage of any policy covered by such Certificate or binder before the expiration of thirty (30) days after the District shall have received notification of such cancellation.
- 8.4 All insurance policies shall by endorsement include New Haven Unified School District, its trustees, officers, employees, agents, inspectors, project managers, consultants, sub-consultants, their employees, and each of them, as additional insured to protect, as well as to provide the defense of, from all suits, actions, damages, liability, or claims of every type and description to which they may be subjected or put by reason of, or resulting from, the Architect's performance of the Agreement. Architect and each of its sub-consultant's insurance shall apply as primary insurance, and any other insurance carried by the additional insured identified above shall apply as excess and will not contribute with this insurance.
- 8.5 Each insurance policy shall include the following provisions: (1) The standard severability of interest clause in the policy and when applicable the cross liability insurance coverage provision which specifies that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured; (2) It acts as primary insurance, and that no insurance held or owned by the District shall be called upon to cover, either in full or in part, any loss covered under the policy acquired by Architect; and (3) The stated limits of liability coverage for Commercial General Liability, and Business Automobile Liability, assumes that the standard "supplementary payments" clause will pay in addition to the applicable limits of liability and that these supplementary payments "are not included as part of the insurance policies limits of liability." If any of the policies indicate that defense costs are included in the general aggregate limit, then the required general aggregate limits shall be a minimum of \$2,000,000.00 or more at the District's discretion.
- 8.6 If the Architect or any of its sub-consultants fails to maintain such insurance, the District may take out insurance to cover damages of the herein mentioned classes for which the District might be held liable on account of the Architect or any of its sub-consultants failing to pay such damages and deduct and retain the amount of the premium for such insurance from any sums due the Architect under the Agreement. Failure of the District to obtain such insurance shall in no way relieve the Architect from any of its responsibilities under the Agreement. If the funds due the Architect are not sufficient to reimburse District for the amount of the premium for such insurance, Architect agrees to pay District the difference.
- 8.7 Architect will require each of its consultants, sub-consultants and subcontractors, by an appropriate written contractual provision, to provide like insurance as provided for in this Article 8.

- 8.8 Architect shall defend, indemnify, and save harmless District (including its inspectors, project managers, trustees, officers, agents, members, employees, consultants, and sub-consultants), and each of them, of and from any and all claims, demands, suits, causes of action, damages, costs, expenses, attorneys' fees, losses, or liability, in law or in equity, of every kind and nature whatsoever arising out of, or in connection with, Architect's work to be performed under this Contract, including, but not limited to:
- a. Personal injury (including, but not limited to, bodily injury emotional injury or distress, sickness, or disease) or death to persons, including, but not limited to, any employees or agents of Contractor, District, Architect, or any subcontractor, or damage to property of anyone including the work itself (including loss of use thereof), caused or alleged to be caused in whole or in part by any negligent act or omission of Architect, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable;
 - b. Penalties threatened, sought, or imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance, or statute, caused by the negligent action or inaction of Architect;
 - c. Architect's failure to fulfill any of the covenants set forth in this Agreement;
 - d. Failure of Architect to comply with the provisions of this Agreement relating to insurance; and,
 - e. Any negligent violation or infraction by Architect of any law, order, citation, rule, regulation, standard, ordinance, or statute in any way relating to the occupational, health, or safety of employees.
- 8.9 The indemnities set forth in this section shall not be limited by the insurance requirements set forth in this Agreement.
- 8.10 Architect's indemnification of District will not include indemnification for claims which arise as the result of the active negligence of District, or the sole negligence or willful misconduct of District, its agents, servants or independent contractors who are directly responsible to District, or for defects in design furnished by such persons, other than Architect and its agents, consultants and sub-consultants.
- 8.11 All sureties shall be California admitted with an "A" or better rating.

ARTICLE 9: DISTRICT RESPONSIBILITY

The District will:

- 9.1 Enter into such agreements with specialized consultants as Architect may recommend and advise, and that are acceptable to District.

- 9.2 Provide resident construction inspectors as the District may deem advisable or may be required.
- 9.3 Furnish such legal advice and services as may be required in the opinion of District to protect the District's interest in the Project.
- 9.4 Notify the Architect of deficiencies in material or workmanship that become known to District.
- 9.5 Nothing in this Agreement nor any act or failure to act on the part of the District shall be construed as a waiver of a claim by District for any defects or deficiencies in the drawings and specifications, or of the construction supervision required of Architect.
- 9.6 District shall pay normal and necessary permit fees.

ARTICLE 10: DOCUMENTS

10.1 REPRODUCTION OF DOCUMENTS

- 10.1.1 Architect shall provide copies of all documents required by the District for review and approval by the District and appropriate authorities and lending agencies.
- 10.1.2 Architect, if so requested, shall provide copies of construction documents for bidding and construction purposes in the number required by the District. The expense of reproduction will be borne by the District. District reserves the right to select the type of reproduction and the business establishment where the reproduction of documents will be done.

10.2 OWNERSHIP AND RE-USE OF DOCUMENTS

- 10.2.1 The District acknowledges that the Architect's reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates, and other similar documents are instruments of professional service, not products. Although the Architect normally retains ownership of such documents, they nonetheless shall in this instance become the property of the District. The District recognizes that no such documents should be subject to unauthorized re-use, that is re-use without written authorization of the Architect to evaluate the documents' applicability to new circumstances, not the least of which is passage of time. The Architect will not unreasonably withhold consent to allow the District to re-use the Architect's reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates, and other similar documents. In the event the District reuses the documents described in this paragraph, the Architect is released from liability as a result of the use or reuse of the documents, unless Architect is retained as the Architect of Record on the new project.

ARTICLE 11: TERMINATION OF AGREEMENT

- 11.1 District reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any work in conjunction with this Agreement at any time upon written notice to the Architect.
- 11.1.1 In the event of termination, all finished and unfinished design development and Construction Documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by Architect shall, at the option of District, become the District's property, and if requested by District, immediately be provided to District.
- 11.1.2 In the event of termination, District shall pay to Architect as full payment for all services performed and all expenses incurred under the Agreement the sums due under Article 5.1 as shall have become payable under that Article because of the progress in work, plus a prorated portion of the next and uncompleted step, if any, as the services actually rendered hereunder by Architect bear to the total services necessary for the full performance of the next succeeding step, plus any sums due Architect for reimbursable expenses described in Article 5.1.2 and additional services as provided for in Article 4 herein. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents whether delivered to District or in the possession of Architect, and to authorized reimbursable expenses.
- 11.1.3 If, upon payment of the amount required to be paid under this Article following termination of this Agreement, District thereafter should determine to complete the original Project or substantially the same Project, District, for such purposes, shall have the right of utilization of any original tracings, drawings, calculations, specifications, estimates, and other Construction Documents prepared under this Agreement by Architect. Architect shall make them available to District upon request without additional compensation. District agrees to credit Architect with authorship as may be due to him, but is not required to renew the Agreement.

ARTICLE 12: SUCCESSORS AND ASSIGNS

- 12.1 This Agreement shall be binding upon the District and Architect and their respective successors and assigns.
- 12.2 Neither the performance of this Agreement, nor any part thereof, nor any monies due or to become due hereunder may be assigned by Architect without the prior written consent and approval of the District. Any assignment by Architect without prior written consent of District will be void.

ARTICLE 13: NOTICES

- 13.1 Any notice may be served effectively upon the District by delivering it in writing, or by depositing it in the United States Mail with postage thereon fully prepaid and addressed to District at the address set forth for the District on the signature page of this Agreement to the attention of the Associate Superintendent of Business Services and in the case of the Architect, may be served effectively upon Architect by delivering it in writing, or by depositing it in the United States Mail with postage thereon fully prepaid and addressed to the Architect at the address set forth on the signature page of this Agreement, or any notice may be served effectively by delivering or mailing it, as in this paragraph provided, addressed to any other place or places District or Architect, by written notice served upon the other, from time to time may designate.

ARTICLE 14: NONDISCRIMINATION

- 14.1 In connection with the performance of Architect pursuant to this Agreement, Architect will not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, sexual preference, marital status, physical handicap, or national origin. Architect will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, ancestry, sex, sexual preference, marital status, physical handicap, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

ARTICLE 15: WAIVER

- 15.1 Architect shall not be relieved of liability to the District for damages sustained by the District by virtue of any breach of the Agreement by Architect, and District may withhold any payments to Architect for the purpose of set-off until such time as the exact amount of damages due District from Architect is determined. The waiver by District of any breach of this Agreement shall not constitute a waiver as to any succeeding breach.

ARTICLE 16: MISCELLANEOUS PROVISIONS

- 16.1 If any claim or dispute arising from this contract proceeds to litigation, the prevailing party in such litigation shall be entitled, in addition to all other damages, its attorneys' fees and costs reasonably incurred in the prosecution or defense of such action, including but not limited to fees and costs associated with the employment and services of expert witnesses.
- 16.2 This Agreement shall be governed by the laws of the State of California.
- 16.3 If any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining

provisions contained herein shall not in any way be affected or impaired thereby, and shall remain in full force and affect.

- 16.4 This Agreement together with each letter proposal for each future project, constitutes the full and complete understanding of the parties, and supersedes any previous agreements or understandings, oral or written, with respect to the subject matter hereof, excepting that, to the extent Architect or its representatives have made representations to District prior to the execution of this Agreement, and District has relied upon those representations, Architect's representations are incorporated herein as though set forth in full.
- 16.5 This Agreement may only be modified by a written instrument signed by both parties.
- 16.6 Venue for any dispute arising under this Agreement shall be Union City, California.
- 16.7 This Agreement is not intended for the benefit of any person other than those expressly provided for herein.
- 16.8 Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust, or other legal entity whenever the context so requires. The captions and headings of the various Articles of the Agreement are intended only for convenience and in no way define, limit, or prescribe the scope or intend of the Agreement or any Article thereof.

*****[Signature Page, Next Page]*****

SIGNATURE PAGE

IN WITNESS HEREOF District and Architect have executed this Agreement the day and year first above written.

"DISTRICT"

New Haven Unified School District By: _____
AKUR VARADARAJAN
Title: Co-Superintendent/Chief Business Officer
Address: 34200 Alvarado Niles Road
Union City, CA 94587

"ARCHITECT"

_____ By: _____
Title: _____
Registration No. _____

Title: _____
Registration No. _____
Address: _____

If Architect is a corporation or limited liability company, each of its shareholders owning at least ten percent (10%) of the outstanding shares must sign this Agreement below, and by signing this Agreement agrees to be personally bound and to personally guarantee the obligations required by or agreed to herein by Architect.