

Peralta Community College District

REQUEST FOR QUALIFICATIONS ARCHITECTURAL SERVICES RFQ #20-21/05



NOTICE IS HEREBY GIVEN that the Peralta Community College District ("District") is requesting qualified persons, firms, partnerships, corporations, associations, or professional organizations to provide full architectural planning and design services to the District for the Measure A and Measure G Bond Programs ("Program") and projects identified in the District's Bond Project List and Long-Range Facilities Master Plan ("Projects").

All SOQs ARE DUE ELECTRONICALLY BY 4:00P.M. ON THURSDAY, SEPTEMBER 7, 2020. Oral, telegraphic, facsimile, telephone, or email SOQs will not be accepted. SOQs received after this date and time will not be accepted and will be returned unopened. All SOQS must be submitted electronically using the Peralta Community College website thru the Purchasing Department thru the following link:

<https://build.peralta.edu/vendor-registry>

Or, by contacting the Peralta Community College District, Office of Purchasing, **501 5th Avenue, Oakland, California, 94606, Phone (510) 466-7225**, Office Hours: 8:30 a.m. to 4:00 p.m.

Each submittal must conform and be responsive to the requirements set forth in this RFQ.

The District reserves the right to waive any informalities or irregularities in received submittals. Further, the District reserves the right to reject any and all submittals and to negotiate contract terms with one or more respondent firms for one or more of the work items. The District retains the sole discretion to determine issues of compliance and to determine whether a respondent is responsive, responsible, and qualified.

If you have any questions regarding this RFQ, please submit via Vendor Registry at the link above before 4:00 p.m. on August 28, 2020. Answers will be posted on the District website by 4:00 p.m. on September 4, 2020.

RFQ RESPONSE SCHEDULE SUMMARY:

The District reserves the right to change the dates on the schedule without prior notice.

Date	Event
August 14, 2020	Release of RFQ
August 26, 2020 11:00 AM	Pre-Proposal Meeting
August 28, 2020 4:00 PM	Deadline for submitting written questions
September 4, 2020 4:00 PM	Deadline for District answering written questions
September 7, 2020 4:00 PM	Deadline for Submitting SOQs

I. INTRODUCTION

Founded in 1964, the Peralta Community College District (“PCCD” or “District”) is a collaborative community of colleges comprised of Berkeley City College, College of Alameda, Laney College, and Merritt College. The Peralta Colleges provide a dynamic multicultural learning environment offering accessible, high-quality educational programs and services, including two-year degrees, certificates, and university transfer programs to more than 30,000 students. The District currently has an active program at all four sites. This capital construction project is partially funded from the State of California and local bond Measures A and G. Approved by the voters in 2006, Measure A allows the District to issue and sell bonds of up to \$390,000,000. Measure G was approved by the voters in November 2018, allowing the District to issue and sell bonds up to \$800,000,000.

The District is asking experienced and proven firms to submit their qualifications to provide full architectural planning, programming, and design services for the District’s Measure A and Measure G Bond Programs. This RFQ defines the architectural services sought, and generally outlines the Projects’ requirements.

The District’s goal in issuing this RFQ is to select a pool of experienced architectural firms that can provide planning, programming, and design services. From there, the District intends to issue a request for proposals (RFP) in order to select one or more qualified firm(s) from that pool to provide said services to the District.

Information regarding the Program is available at: <https://build.peralta.edu>.

A. LIMITATIONS

The District reserves the right to contract with any entity responding to this RFQ. The District makes no representation that participation in the RFQ process will lead to an award of contract or any consideration whatsoever. The District shall in no event be responsible for the cost of preparing a response to this RFQ. The awarding of a contract, if at all, is at the sole discretion of the District.

The District reserves the right to reject any or all SOQs, to waive any irregularities or informalities not affected by law, to evaluate each SOQ submitted, and to award contracts, if any, according to the SOQ which best serves the interest of the District at a reasonable cost to the District. Any contract(s) resulting from this RFQ, however, will be made according to the form of the architectural services agreement attached to this RFQ as **Appendix “A”**.

The Respondent’s SOQ package, and any other supporting materials submitted to the District in response to this RFQ, will not be returned and will become the property of the District unless portions of the materials are designated as proprietary at the time of submittal, and are specifically requested to be returned. Vague designations and/or blanket statements regarding entire pages or documents are insufficient and will not bind the District to protect the designated matter from disclosure. Pursuant to *Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, SOQ packages shall be held confidential by the District and shall not be subject to disclosure under the California Public Records Act until after either: (1) the District and the successful Respondent have completed negotiations and entered into an Agreement, or (2) the District has rejected all Proposals. Furthermore, the District will have no liability to the Respondent or other party as a result of any public disclosure of any SOQ package.

B. FULL OPPORTUNITY

The District hereby affirmatively ensures that Disadvantaged Business Enterprises ("DBE"), Small Local Business Enterprises ("SLBE"), Small Emerging Local Business Enterprises ("SELBE"), Disabled Veterans Business Enterprises ("DVBE"), and minority business enterprises shall be afforded full opportunity to submit SOQs in response to this RFQ, and will not be discriminated against on the basis of race, color, gender, sexual orientation, political affiliation, age, ancestry, religion, marital status, national origin, medical condition or disability in any consideration leading to the award of the contract. No qualified disabled person shall, on the basis of disability, be excluded from participating in, be denied the benefits of, or otherwise be subjected to discrimination in any consideration leading to the award of contract.

C. RESTRICTIONS ON LOBBYING AND CONTACTS

From the period beginning on the date of the issuance of this RFQ and ending on the date of the award of the contract, no person, or entity responding to this RFQ, nor any officer, employee, representative, agent, or consultant representing such a person or entity shall contact through any means or engage in any discussion regarding this RFQ, the evaluation or selection process/or the award of the contract(s) with any member of the District's Governing Board ("Board"), selection committee members, or any member of the Citizens' Oversight Committee, or with any employee of the District except for clarifications and questions as described herein. Any such contact shall be grounds for the disqualification of the entity submitting a SOQ.

II. SCOPE OF SERVICES

SUMMARY OF SCOPE OF SERVICES

The Contracted Firms may provide Architecture and Engineering related services and reporting, including, but not limited to the following, and/or as described in each future RFP. The quantity and duration of projects will depend on the District's requirements and needs for these services.

The work may include, but is not limited to, the following tasks:

- 1) Condition Assessments (estimate of remaining service life and code compliance reviews) investigation, analysis and recommendation(s) for repair/replacement of existing building envelope components including, but not limited to, roofs, windows, doors, gutters, and building envelope
- 2) Architectural design and related engineering services for new building construction, building renovations (interior or exterior), and building demolition
 - a. Preparation of estimates, schedules, plans, and specifications for campus projects, and as otherwise requested
 - b. Provide support services in other disciplines, as required, to accomplish primary architectural task orders, including but not limited to:

- I. Interior Design/FF&E (Furniture, Fixtures, and Equipment)
- II. Structural
- III. Civil
- IV. Electrical
- V. Audio Visual
- VI. Telephone/Data
- VII. Security
- VIII. Mechanical (HVAC and Plumbing)
- IX. Fire Protection
- X. Landscape
- XI. Code Consulting
- XII. Cost Estimating
- XIII. Other support services tasks as needed for the work

- 3) Prepare criteria or bridging documents for Design/Build procurements
- 4) Prepare design phase documents (Programming, Schematic Design (SD), Design Development (DD), 50% Construction Documents (CD), 95/100% CD) for submittal and review. The CD design package submitted to DSA shall be a fully coordinated and complete set of contract documents
- 5) Provide cost estimates at Programming/Space Plans, Schematic Design, Design Development and 100% CD, and participate in scope to budget reconciliation process with PMT and/or CM
- 6) Participate in review of design documents with the District, site staff, PMT, CM, local Fire Marshall, DSA, and representatives of other State or Local agencies as needed, and prepare meeting minutes
- 7) Determine the available swing space at each school and develop a phasing plan in coordination with the District Project Manager, PMT, and CM
- 8) Where applicable, develop an interim housing plan and associated documents and obtain DSA approval for the plan
- 9) Coordinate District-provided drawings and reports as required. This includes, but is not limited to, seismic studies, surveys, topographical maps and energy audits

- 10) Incorporate hazmat mitigation documents provided by District's consultant into the final document set to be approved by DSA
- 11) Prepare final set of plans and specifications for bidding
- 12) Participate in bidding and bid review and analysis, which will include preparing addenda and obtaining DSA approval of addenda
- 13) Prepare preliminary color/material/fenestration boards of all applicable exterior
- 14) Interior materials for review by District Representatives at the end of the schematic design phase. Prepare final color/material/fenestration boards during the design development phase based upon Bond Management Team feedback. Prepare FF&E plans and specifications
- 15) Construction Administration Services
 - a. Assist in construction administration activities, including review of submittals, attendance at weekly on-site meetings, implementation of current DSA-required procedures
 - b. Responses to requests for information (RFI's), review of contractor payment requests and change orders, and conducting meetings
 - c. Participate in project close-out tasks, which will include the preparation of punch lists, the review of warranties and guarantees, and the review and approval of final contractor payments
 - d. Final DSA close-out
 - e. Preparation and review of Record Documents and electronic files
- 16) Peer and constructability review of design and bid document review and analysis
- 17) Field investigations and surveying
- 18) Feasibility Studies, Development Planning, Marketing Analysis, Evaluation, and Assessment
- 19) Additional miscellaneous services and tasks generally associated with Architectural Services and Building Engineering Services and Systems, and as otherwise required architectural services
- 20) The selected consultant(s) and/or consultant teams shall keep proper records of all projects designed pursuant to this "on-call" services contract, including, but not limited to, copies of all project correspondence, submittals, shop drawings, schedules, plans, specifications, addenda, change orders, construction change directives, contracts, as-builts and/or record drawings, and any pertinent data

regarding the contract. All such project records shall be submitted to the District after the completion of the project and shall become property of the District

- 21) The selected consultant(s) must have sufficient staff to handle several projects simultaneously and promptly complete assigned tasks. Work must begin on assigned tasks within ten (10) days of notification to proceed

Deliverables, as specified in each Request for Task Order, will be prepared in accordance with the applicable codes and regulations and District standards including, but not limited to, the District and/or College standards.

The District intends to evaluate and select those Applicants whose qualifications are determined to be the most beneficial to the District. The selected firms are allowed to therefore provide services for a variety of District projects at any of the District's campuses or satellite locations. Future project specific requests will be issued as a RFP.

III. REQUIREMENTS FOR SUBMITTAL OF QUALIFICATIONS

A. FORMAT REQUIREMENTS

Please limit proposals to no more than twelve (12) pages. Firms submitting SOQs in response to this RFQ must follow the format below. Material must be in 8-1/2 x 11 inch format, font size 12 point or larger. Each SOQ shall include a Front Cover stating the following: "Statement of Qualifications for [FIRM NAME] in Response to Peralta Community College District's RFQ # _____."

Each SOQ shall include a table of contents and divider tabs labeled with the boldface headers below (e.g. the first tab would be entitled "Cover Letter," the second tab would be entitled "Business Information," etc.).

Provide One (1) electronic copy of the SOQ on an USB Flash Drive (if not submitted electronically via Vendor-Registry).

The SOQ electronic file shall be formatted as follows:

- Proposals shall include divider tabs labeled with boldface headers as outlined below (e.g. the first tab with be entitled "Cover Letter", the second tab would be entitled "Business Information", etc.
- A cover sheet listing the firm's name, the total number of pages, and identifying any pages that were removed due to proprietary information

Each submission package will be reviewed to determine its completeness prior to the actual evaluation. If a respondent does not respond to all categories requested, the respondent may be disqualified from further consideration.

B. SOQ CONTENT REQUIREMENTS

1. TAB 1 - COVER LETTER (maximum of 1 page)

- Provide a letter of introduction signed by an authorized officer of the firm. If the architectural services firm is a joint venture, duplicate the signature block and have a principal or officer also sign on behalf of each party to the joint venture
- Include a brief description of why your firm is well suited for, and can meet, the District’s needs
- Clearly identify the individual(s) who are authorized to speak for the firm during the evaluation process
- **Must include the following statement:**
“[INSERT ARCHITECTURAL SERVICES COMPANY’S NAME] received a copy of the District’s form of Architectural Services Agreement (“Agreement”) attached as Appendix “A” to the RFQ. [INSERT ARCHITECTURAL SERVICES COMPANY’S NAME] has reviewed the indemnity provisions and professional liability insurance provisions contained in the Agreement. If given the opportunity to contract with the District, [INSERT ARCHITECTURAL SERVICES COMPANY’S NAME] has no objections to the use of the Agreement.”
- Respondent shall certify that no official or employee of the District, nor any business entity in which an official of the District has an interest, has been employed or retained to solicit or assist in the procuring of the resulting contract(s), nor that any such person will be employed in the performance of any/all contract(s) without immediate divulgence of this fact to the District
- Respondent shall certify that no official or employee of the firm has ever been convicted of an ethics violation

2. TAB 2 – BUSINESS INFORMATION

Please provide the following information:

- Company name
- Address
- Telephone
- Fax
- Website
- Name and email of main contact
- Federal Tax I.D. Number

- License or Registration Number
- Type of organization/business structure (ownership, legal form, i.e. corporation, partnership, etc., and senior officials of company). If a joint venture, describe the division of responsibilities between participating companies, offices (location) that would be the primary participants, and percentage interest of each firm
- A brief description and history of the firm, including number of years the firm has been in business and date firm was established under its given name
- Number of employees (licensed professionals, technical support)
- Location of office where the bulk of services solicited will be performed
- Any State of California certification for your firm indicating Small Business or Disabled Veteran Business Enterprise status
- How sub-consultants are generally used by your firm and to what extent work is performed in-house versus by a sub-consultant
- Provide similar information for proposed sub-consultants
- How sub-consultants will be utilized on the Project(s) and to what extent work will be performed in-house

3. TAB 3 – PROJECT APPROACH AND FIRM QUALIFICATIONS

- Provide a statement demonstrating your firm’s or team’s ability to accomplish the scope of services in a comprehensive and thorough manner with an aggressive schedule in order to meet the District’s goal of moving projects into construction within the earliest possible timeframe
- A brief written summary of the firm’s philosophy related to the planning and design of the Project(s)
- Describe your firm’s approach to cost estimating, including some history of cost estimates versus actual bid amount, on three (3) school projects awarded in the last five (5) years. Include at least two (2) examples of school facility modernization projects
- Describe your firm’s approach to quality control/assurance procedures, including coordination of design disciplines and DSA final certification
- Describe the approach to compliance with Program requirements and conformance with Federal/State/Local applicable code requirements
- Describe your firm’s experience with construction cost reduction measures such as, but not limited to, value engineering in design and construction

- Describe how your firm has incorporated the use of energy savings in design and your experience with sustainable design, LEED and CHPS in the context of similar facilities
- Describe your experience with pre-checked designs, giving specific project details
- Describe your experience with lease/lease-back projects
- How does your firm approach modernization projects versus new construction projects?
- Demonstrate your firm’s flexibility in adapting to the changing needs and priorities of a community college district
- Describe your experience with DSA and working within the DSA processes
- Describe your experience with the Project Commissioning process
- Identify established methods and approaches utilized by your firm to successfully meet completion deadlines, and provide examples demonstrating effective use of stated methods and approaches

4. TAB 4 – RELEVANT K-14 PROJECT EXPERIENCE AND REFERENCES

- Provide information about prior services/designs prepared by your firm in the last ten (10) years on **a minimum** of five (5) K-14 educational projects in California. Include **the last five** (5) K-14 educational projects your firm has designed that have been completed, including whether projects were closed out with DSA successfully
- Experience with projects for Public Agencies in California
- Experience working on a campus while school is in session
- Experience on projects with design guidelines that incorporated sustainability efforts and other measures related to mitigating or reducing the negative impact on the environment. This may also include work on LEED certified facilities or Low Impact Development (LID) and sustainable storm water management techniques
- For each project, please include the following information:
 - Briefly state the significance of each relevant project your firm has worked on that you would like to be considered in this RFQ. Briefly explain how you believe the particular project is relevant to the District’s needs
 - Specify role of firm or individual if work was not exclusively by the firm (i.e., joint venture, association)

- Provide at least two (2) examples of projects that have been phased during school occupancy while conducting renovation and new construction
- Identify DSA close-out status for the **last** five (5) completed K-14 educational projects
- Provide a list of the following for each project noted above:
 - Project name, type, program, and location
 - Beginning and end dates of project (including design and construction)
 - Square footage
 - Date of each project Notice of Completion and DSA final certification
 - Number of RFI's and Change Orders of each project
 - Original budget, bid amount, and final amount at close-out
 - Key individuals of the firm involved and their roles in the project
 - Any sub-consultants that worked with the firm
 - References: district name with name of contact person, title, telephone number, and email address to be contacted for a reference
 - Identify any and all K-14 educational projects that have not been closed-out by DSA and provide explanation

5. TAB 5 – ARCHITECT TEAM SUMMARY AND QUALIFICATIONS

The selected architectural services company shall employ, at its expense, professionals properly licensed and skilled in the execution of the functions required for architectural services as described herein:

- Identify and provide resumes for key members within your architectural firm that you would assign to the Architect team and their roles. Include, at a minimum: Principal-in-Charge; Architect(s); Project Engineer(s); and Construction Administrator. List license numbers, dates, and office addresses. Resumes shall include specific qualifications and recent related experience and shall include a list of references with contact names and phone numbers
- Identify roles and qualifications of sub-consultants, if any. Note: firm(s) selected for inclusion in the District's pool of architects will be required to demonstrate long term relationships with any sub-consultants and submit resumes and

recent project experience where the sub-consultant is utilized as part of any response to any subsequent Request for Qualifications for the Project(s)

- Each response must include evidence that the architectural services company is legally permitted and properly licensed for the scope of work for which the SOQ is submitted and to conduct business in the State of California
- The District expects that the team shall remain intact through the duration of the Project(s). If a team member must leave, the District reserves the right to approve that team member's replacement

6. TAB 6 – LITIGATION HISTORY

Provide a comprehensive five (5)-year summary of the firm's litigation, arbitration and negotiated/settled history with previous clients. State the issues in the litigation, the status of the litigation, names of parties, and outcome. A SOQ failing to provide the requested information on lawsuits or litigation, and responses which assert attorney-client privilege and fail to provide the information requested, will be considered non-responsive, disqualified from the selection process, and will not be evaluated.

All reimbursables will require receipts to be provided to the District.

IV. SELECTION CRITERIA

A. EVALUATION

The SOQ will be reviewed for responsiveness and evaluated pursuant to the specific criteria set forth in this RFQ, including, without limitation:

- The firm's experience and performance history with similar services for California K-14 school districts (with particular experience in community college work), including:
 - Successful experience with DSA, modernization and new construction projects, and completion of projects on time, including demonstrated ability to complete Project(s) in a tight time-frame.
 - Project Architect's experience in successful and timely approval of firm's projects through all state and local regulatory agencies.
 - Ability to assist with preparing and/or modifying Education Specifications as required by the State agencies and the District's design committee.
 - Experience in planning, design, and administering the construction of public school renovation and repair projects.
 - Experience administering construction change orders.
 - Use of energy savings and value engineering in design.
 - Knowledge of state laws and regulations, the American with Disabilities Act, and other governmental requirements for K-14 school districts, with particular focus on California community colleges.
 - Experience in data communication systems used in schools.

- Experience with construction cost reduction measures such as, but not limited to, re-use of design plans and construction design.
 - Experience with pre-checked designs.
 - Experience with the Building Commissioning Process.
- Experience, results, professional and technical expertise of proposed personnel.
 - Acceptable and verifiable references from clients contacted by the District, including:
 - Firm’s reputation;
 - Satisfaction of previous clients (client relationships);
 - Timeliness of work and ability of the firm to meet schedules; and
 - Accuracy of cost estimates.
 - Overall responsiveness of the SOQ.
 - Location of office and accessibility to the District.
 - Proposal, including proposed fee and fee schedule.

A Selection Committee will evaluate all submissions. Each SOQ must be complete. Incomplete SOQs will be considered nonresponsive and grounds for disqualification. The District retains the sole discretion to determine issues of compliance and to determine whether respondents are responsive, responsible, and qualified. Based upon the information presented in the SOQs, the District’s Selection Committee will choose the most highly qualified firms to be interviewed and then potentially selected. At the Selection Committee’s discretion, firms may be requested to arrange a tour of a representative facility which they have been responsible for.

Item	Criteria	Points
1	Firm Experience	30
2	Client References	20
3	Staff Experience	40
4	SLBE Compliance	10
	Total	100

B. DISTRICT INVESTIGATIONS

The District may investigate responding parties that extend beyond contacting the references identified in the SOQ. The District may request a firm to submit additional information pertinent to the review process. The District also reserves the right to investigate and rely upon information from other available sources in addition to any documents or information submitted.

THANK YOU FOR YOUR INTEREST IN THIS EXCITING PROGRAM!

Exhibit A

AGREEMENT FOR ARCHITECTURAL SERVICES

PERALTA COMMUNITY COLLEGE DISTRICT

AND

[REDACTED]

FOR

[NAME OF PROJECT]

[REDACTED], 2020

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AGREEMENT FOR ARCHITECTURAL SERVICES

This Agreement for Architectural Services is made as of _____, 202_, between the Peralta Community College District, a California public school district, ("District") and _____ ("Architect") (collectively "Parties"), for the following project ("Project"):

[INSERT BRIEF DESCRIPTION OF THE PROJECT THAT INCLUDES THE ADDRESS OF THE PROJECT SITE]

For and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

Article 1. Definitions

- 1.1. In addition to the definitions above, the following definitions of words or phrases shall apply when used in this Agreement, including all Exhibits:
 - 1.1.1. **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
 - 1.1.2. **Architect:** The Architect identified in the first paragraph of this Agreement, including all Consultants to the Architect. The term Architect means the Design Professional in General Responsible Charge on this Project.
 - 1.1.3. **As-Built Drawings ("As-Builts"):** Any document prepared and submitted by District Contractor(s) that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by Construction Change Documents and change orders, and detailed by the District's construction contractor(s) on a Conforming Set.
 - 1.1.4. **Bid Set:** The plans, drawings, and specifications at the end of the Construction Documents Phase that the Division of the State Architect ("DSA") has approved and that the District can use to go out to bid for construction of the Project.
 - 1.1.5. **Conforming Set:** The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase. The Architect shall ensure that DSA has approved all revisions to the Bid Set that are incorporated onto the Conforming Set and for which DSA approval is required.
 - 1.1.6. **Construction Budget:** The total amount of funds indicated by the District for the entire Project plus all other

costs, including design, construction, administration, and financing.

- 1.1.7. **Construction Change Documents ("CCD"):** The documentation of changes to the DSA-approved construction documents.
- 1.1.8. **Construction Cost Budget:** The total cost to District of all elements of the Project designed or specified by the Architect, as adjusted at the end of each design phase in accordance with this Agreement. The Construction Cost Budget does not include the compensation of the Architect and the Architect's Consultants, the cost of land, rights-of-way, financing or other costs which are the responsibility of the District, including construction management.
- 1.1.9. **Construction Manager:** The District's representative on the Project if the District retains a construction manager, project manager, or owner's representative.
- 1.1.10. **Contractor:** One or more licensed contractors under contract with the District for construction of all or a portion of the Project.
- 1.1.11. **Consultant(s):** Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Architect.
- 1.1.12. **District:** The Peralta Community College District.
- 1.1.13. **DSA:** The Division of the State Architect.
- 1.1.14. **Extra Services:** District-authorized services outside of the scope in **Exhibit "A"** or District-authorized reimbursables not included in Architect's Fee.
- 1.1.15. **Laboratory of Record:** The District-designated laboratory(ies) for testing of concrete, soils, materials, and other required testing.
- 1.1.16. **Project:** [FILL IN DESCRIPTION OF PROJECT].
- 1.1.17. **Record Drawings:** A final set of drawings prepared by the Architect that incorporates all changes from all As-Builts, sketches, details, and clarifications.
- 1.1.18. **Service(s):** All labor, materials, supervision, services, tasks, and work that the Architect is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Project.

- 1.1.19. **Visually Verify:** To verify to the fullest extent possible by physical inspection and reasonable investigation and without any destructive action.

Article 2. Scope, Responsibilities, and Services of Architect

- 2.1. Architect shall render the Services described in **Exhibit "A,"** commencing with receipt of a written Notice to Proceed signed by the District representative. Architect's Services will be completed in accordance with the schedule attached as **Exhibit "C."**
- 2.2. Architect shall provide Services that shall comply with professional architectural standards, including the standard of care applicable to architects designing public school facilities and applicable requirements of federal, state, and local law, including, but not limited to, the requirements of the California Business and Professions Code, the California Education Code, and the California Code of Regulations. All persons providing professional services hereunder shall be properly licensed as required by California law.
- 2.3. The District intends to award the Project to Contractor(s) pursuant to a competitive bid process. District reserves its right to use alternative delivery methods and the Architect's scope of work may be adjusted accordingly.
- 2.4. Architect acknowledges that all California public school districts are obligated to develop and implement the following storm water requirements, and Architect shall provide the design for the same, without limitation:
 - 2.4.1. A municipal Separate Storm Sewer System ("MS4"). An MS4 is a system of conveyances used to collect and/or convey storm water, including, without limitation, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.
 - 2.4.2. A Storm Water Pollution Prevention Plan ("SWPPP") that contains specific best management practices ("BMPs") and establishes numeric effluent limitations at:
 - 2.4.2.1. Sites where the District engages in maintenance (e.g., fueling, cleaning, repairing) of transportation activities.
 - 2.4.2.2. Construction sites where:
 - 2.4.2.2.1. one (1) or more acres of soil will be disturbed, or
 - 2.4.2.2.2. the project is part of a larger common plan of development that disturbs one (1) or more acres of soil.
 - 2.4.3. Architect shall conform its design work to the District's storm water requirements indicated above, that are approved by the

District and applicable to the Project, at no additional cost to the District. In addition, as required Architect shall develop a grading and drainage plan and a site plan from architectural information showing a final development of the site. This drawing will also include a horizontal and vertical control plan and a utility infrastructure plan. The Services described in this subparagraph shall be provided by a professional civil engineer who contracts with or is an employee of the Architect.

- 2.5. Architect shall contract for or employ at Architect's expense, Consultant(s) to the extent deemed necessary for completion of the Project including, but not limited to: architects; mechanical, electrical, structural and civil engineers; landscapers; and interior designers, licensed as such by the State of California as part of the Basic Services under this Agreement. The names of Consultant(s) shall be submitted to the District for approval prior to commencement of Services, as indicated below. The District reserves the right to reject Architect's use of any particular Consultant. Nothing in the foregoing procedure shall create any contractual relationship between the District and any Consultant employed by the Architect under terms of the Agreement. Architect shall require each of the Consultants retained by it to execute agreements with standard of care and indemnity provisions commensurate with this Agreement, but Architect shall remain solely responsible and liable to District for all matters covered by this Agreement.
- 2.6. Architect shall coordinate with District personnel or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project. This shall include, without limitation, coordination with State labor compliance, if any. If the Architect employs Consultant(s), the Architect shall ensure that its contract(s) with its Consultant(s) include language notifying the Consultant(s) of State labor compliance, if any.
- 2.7. Architect shall identify the regulatory agencies that have jurisdiction over essential building and design elements and coordinate with and implement the requirements of the regulatory agencies, including, without limitation, the California Department of Education, the Office of Public School Construction, the Department of General Services, DSA, including DSA Fire/Life Safety, DSA Access Compliance Section, DSA Structural Safety Section, the State Fire Marshal and any regulatory office or agency that has authority for review and supervision of school district construction projects.
 - 2.7.1. If the Project is subject to DSA jurisdiction, then Architect, and its Consultants, if any, shall comply with all the DSA requirements, including without limitation, all the requirements included and/or referenced in the following forms:
 - 2.7.2.1. Form DSA IR A-6, Construction Change Document Submittal and Approval Process.

- 2.7.2.2. Form DSA IR A-18: Use of Construction Documents Prepared by Other Professionals. [**If applicable to modular/relocatable structures; delete if not applicable**]
- 2.7.2.3. Form DSA IR A-24, Construction Phase Duties of the School District, Contractor and Design Professional.
- 2.7.2.4. Form DSA PR 07-01: Pre-Check Approval Process. [**If applicable to modular/relocatables; delete if not applicable**]
- 2.7.2.5. Form DSA PR 07-02: Over-The-Counter Review of Projects Using Pre-Check Approved Design. [**If applicable to modular/relocatables; delete if not applicable**]
- 2.7.2.6. Form DSA PR 13-01, Construction Oversight Process Procedure.
 - 2.7.1.6.1. Each of Architect's duties as provided in the Construction Oversight Process Procedure shall be performed timely so as not to result in any delay to the Project.
- 2.7.2.7. Form DSA PR 13-02, Project Certification Process.
- 2.8. Architect shall provide Services as required to obtain any local, state and/or federal agencies' approval for on-site and off-site work related to the Project including review by regulatory agencies having jurisdiction over the Project.
- 2.9. Architect shall direct and monitor the work of the District's DSA project inspector(s) ("Project Inspector(s)") and the Laboratory of Record. Architect shall provide code required supervision of special inspectors not provided by the Laboratory of Record.
- 2.10. Architect shall give efficient supervision to Services, using its best skill and attention. Architect shall carefully study and compare all contract documents, drawings, specifications, and other instructions ("Contract Documents") and shall at once report to District, Construction Manager, and Contractor, any error, inconsistency, or omission that Architect or its employees may discover, in writing, with a copy to District's Project Inspector(s). Architect shall have responsibility for discovery of errors, inconsistencies, or omissions.
- 2.11. Architect recognizes that the District may obtain the services of a Construction Manager and that Architect may have to assume certain coordination and management responsibilities, including tracking Requests for Information ("RFI"), providing RFI responses, and leading all coordination meetings between the District, Project Inspectors, and Contractors on the Project. The District reserves the right to retain the services of a Construction Manager at any time. The Construction

Manager, if any, shall be authorized to give Architect Services authorizations and issue written approvals and notices to proceed on behalf of District. The District reserves the right to designate a different Construction Manager at any time. Any task, including, but not limited to, reviews or approvals that the District may perform pursuant to this Agreement may be performed by the Construction Manager, unless that task indicates it shall be performed by the Governing Board of the District. In addition, the District may have a constructability review of Architect's design documents. Architect shall conform any design documents to the constructability review as part of the Services under this Agreement and shall not be entitled to any compensation as Extra Services for this activity.

2.12. Architect shall provide computer-generated pictures downloaded to computer files, updated as requested by the District, that the District may use on its website.

2.13. As part of the basic Services pursuant to this Agreement, Architect is not responsible for:

2.13.1. Ground contamination or hazardous material analysis.

2.13.2. Any asbestos and/or lead testing, design or abatement; however, it shall coordinate and integrate its work with any such information provided by District.

2.13.3. Compliance with the California Environmental Quality Act ("CEQA"), except that Architect agrees to coordinate its work with that of any CEQA consultants retained by the District, to provide current elevations and schematic drawings for use in CEQA compliance documents, and to incorporate any mitigation measures adopted by the District into the Project design at no additional cost to the District.

2.13.4. Historical significance report.

2.13.5. Soils investigation.

2.13.6. Geotechnical hazard report, except as indicated in **Exhibit "A."**

Article 3. Architect Staff

3.1. The Architect has been selected to perform the Services herein because of the skills and expertise of key individuals.

3.2. The Architect agrees that the following key people in Architect's firm shall be associated with the Project in the following capacities:
[Architect must fill in blanks below. District must approve.]

Principal In Charge: _____

Project Director: _____

Project Architect(s): _____

Project Architect(s): _____

Other: _____

Major Consultants:

Electrical: _____

Mechanical: _____

Structural: _____

Civil: _____

Other: _____

- 3.3. Architect shall not change any of the key personnel listed above without prior written approval by the District, unless said personnel cease to be employed by Architect. In either case, the District shall be allowed to interview and approve replacement personnel.
- 3.4. If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice Architect shall have five (5) calendar days to remove that person from the Project and replace that person with one acceptable to the District. All lead or key personnel for any Consultant must also be designated by the Consultant and are subject to all conditions stated in this paragraph.
- 3.5. Architect represents that Architect has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of Services required under this Agreement and that no person having any such interest shall be employed by Architect.
- 3.6. Architect shall comply with Education Code section 17302(a) and agrees that any plans and/or specifications included in the Services shall be prepared under the supervision of licensed personnel, and that licensed personnel shall be in "responsible charge" of persons who observe the construction.

Article 4. Schedule of Services

Architect shall commence Services under this Agreement upon receipt of a written Notice to Proceed and shall prosecute the Services diligently as described in **Exhibit "A,"** so as to proceed with and complete the Services in compliance with the schedule in **Exhibit "C."** Time is of the essence and failure of Architect to perform Services on time as specified in this Agreement is a material breach of this Agreement. It shall not be a material breach if a delay is beyond the Architect's or Architect's Consultant(s)' reasonable control.

Article 5. Construction Cost Budget

- 5.1. Architect hereby accepts the District's established Construction Cost Budget and Project scope. In accordance with **Exhibit "A,"** the Architect shall have responsibility to further develop, review, and reconcile the Construction Cost Budget for the District at the beginning of the Project and at the completion of each design phase. The District and Construction Manager shall also have responsibility to develop, review, and reconcile the Construction Cost Budget with the Architect.
- 5.2. Architect shall complete all Services as described in **Exhibit "A,"** including all plans, designs, drawings, specifications and other Contract Documents, so that the cost to construct the work designed by the Architect will not exceed the Construction Cost Budget, as adjusted subsequently with the District's written approval. Architect shall maintain cost controls throughout the Project to deliver the Project within the Construction Cost Budget.
- 5.3. The District may, in its sole discretion, do one, or a combination, of the following if any of the events in Article 5.4 occur:
 - 5.3.1. Give Architect written approval on an agreed adjustment to the Construction Cost Budget.
 - 5.3.2. Authorize Architect to re-negotiate, when appropriate, and/or re-bid the Project within three (3) months time of receipt of bids (exclusive of District and other agencies' review time) at no additional cost to the District.
 - 5.3.3. Terminate this Agreement if the Project is abandoned by the District, without further obligation by either party.
 - 5.3.4. Within three (3) months time of receipt of bids, instruct Architect to revise the drawings and specifications (in scope and quality as approved by the District) to bring the Project within the Construction Cost Budget for re-bidding at no additional cost to the District.
- 5.4. If any of the following events occur, the District may exercise any one, or any combination, of the actions set forth in Article 5.3 above:
 - 5.4.1. The lowest responsive base bid received is in excess of five percent (5%) of the Construction Cost Budget; or
 - 5.4.2. If the combined total of base bid and all additive alternates come in ten percent (10%) or more under the Construction Cost Budget; or
 - 5.4.3. If the Construction Cost Budget increases in phases subsequent to the Schematic Design Phase due to reasonably foreseeable changes in the condition of the construction market in the county in which the District is located, in so far as these have not been caused by Acts of God, earthquakes, strikes, war, or

energy shortages due to uncontrollable events in the world economy.

Article 6. Fee and Method of Payment

6.1. The District shall pay Architect for all Services contracted for under this Agreement an amount equal to the following ("Fee"):

An amount equal to [REDACTED] Dollars
(\$ [REDACTED]) based on the rates set forth in **Exhibit "D"**

6.2. The District shall pay Architect the Fee pursuant to the provisions of **Exhibit "D."**

6.3. Architect shall bill its work under this Agreement in accordance with **Exhibit "D."**

6.4. No increase in Fee will be due from CCDs and/or change orders generated during the construction period to the extent caused by Architect's error or omission.

6.5. The Architect's Fee set forth in this Agreement shall be full compensation for all of Architect's Services incurred in the performance hereof as indicated in **Exhibit "D."**

6.6. Regardless of the structure of Architect's Fee, the Architect's Fee may be adjusted downward if the Scope of Services of this Agreement is reduced by the District in accordance with this Agreement.

Article 7. Payment for Extra Services or Changes

Any charges for Extra Services shall be paid by the District as described in **Exhibit "B"** only upon certification that the claimed Extra Service was authorized as indicated herein and that the Extra Services have been satisfactorily completed. If any service is done by Architect without prior written authorization by the Construction Manager or the District's authorized representative, the District will not be obligated to pay for such service. The foregoing provision notwithstanding, Architect will be paid by the District as described in **Exhibit "B"** for Extra Services that the Construction Manager or the District's authorized representative verbally requests, provided that Architect confirms such request in writing pursuant to the notice requirements of this Agreement, and proceeds with such Extra Services not earlier than two (2) business days after the District receives confirmation of the request from the Architect.

Article 8. Ownership of Data

8.1. This Agreement creates a non-exclusive and perpetual license for the District to use, at its discretion, all plans including, but not limited to, record drawings, specifications, estimates and other documents that Architect or its Consultants prepare or cause to be prepared pursuant to this Agreement.

- 8.2. Architect retains all rights to all copyrights over designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that Architect or its Consultants prepare or cause to be prepared pursuant to this Agreement.
- 8.3. Architect shall perform the Services and prepare all documents under this Agreement with the assistance of Computer Aided Design Drafting Technology ("CADD") (e.g., AutoCAD). Architect shall deliver to District, on request, the tape and/or compact disc format and the name of the supplier of the software/hardware necessary to use the design file. As to any drawings that Architect provides in a CADD file format, the District acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that the District should rely on hard copies of all documents.
- 8.4. In order to document exactly what CADD information was given to the District, Architect and District shall each date and sign a "hard" copy of reproducible documents that depict the information at the time Architect produces the CADD information. The District agrees to release Architect from all liability, damages, and/or claims that arise due to any changes made to this information by anyone other than Architect or its Consultant(s) subsequent to it being given to the District.
- 8.5. Following the termination of this Agreement, for any reason whatsoever, Architect shall promptly deliver to the District upon written request and at no cost to the District the following items (hereinafter "Instruments of Service"), which the District shall have the right to utilize in any way permitted by statute:
 - 8.5.1. One (1) set of the Contract Documents, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.
 - 8.5.2. One (1) set of fixed image CADD files in DXF format of the drawings that are part of the Contract Documents.
 - 8.5.3. One (1) set of non-fixed image CADD drawing files in DXF or DWG or both formats of the site plan, floor plans (architectural, plumbing, structural, mechanical and electrical), roof plan, sections and exterior elevations of the Project.
 - 8.5.4. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data and reports prepared by the Architect under this Agreement.
 - 8.5.5. The obligation of Section 8.5 of this Agreement shall survive the termination of this Agreement for any reason whatsoever.

- 8.6. In the event the District changes or uses any fully or partially completed documents without Architect's knowledge or participation or both, the District agrees to release Architect of responsibility for such changes, and shall hold Architect harmless from and against any and all claims on account of any damages or losses to property or persons, or economic losses, arising out of that change or use, unless Architect is found to be liable in a forum of competent jurisdiction. In the event that the District uses any fully or partially completed documents without the Architect's full involvement, the District shall remove all title blocks and other information that might identify Architect and its Consultants.

Article 9. Termination of Contract

- 9.1. If Architect fails to perform Architect's duties to the satisfaction of the District, or if Architect fails to fulfill in a timely and professional manner Architect's material obligations under this Agreement, or if Architect shall violate any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement, in whole or in part, effective immediately upon the District giving written notice thereof to the Architect. In the event of a termination pursuant to this subdivision, Architect may invoice the District for all Services performed until the notice of termination, but the District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Architect's actions, errors, or omissions that caused the District to terminate the Agreement.
- 9.2. District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Architect may invoice District and District shall pay all undisputed invoice(s) for Services performed until the District's notice of termination.
- 9.3. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 9.4. Architect has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement. Such termination shall be effective thirty (30) days after receipt of written notice from Architect to the District. Architect may invoice the District and the District shall pay all undisputed invoice(s) for Services performed until Architect's notice of termination.
- 9.5. If, at any time in the progress of the Design of the Project, the Governing Board of the District determines that the Project should be terminated, Architect, upon written notice from the District of such termination, shall immediately cease Services on the Project. The District shall pay Architect only the fee associated with the Services provided since the last invoice that has been paid and up to the notice of termination.

- 9.6. If the District suspends the Project for more than one hundred twenty (120) consecutive days, Architect shall be compensated for Services performed prior to notice of that suspension. When the Project is resumed, the schedule shall be adjusted and Architect's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Architect's Services. If the District suspends the Project for more than two (2) years, Architect may terminate this Agreement by giving written notice.

Article 10. Indemnity/Architect Liability

- 10.1. To the full extent permitted by California law, Architect shall indemnify and hold free and harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("the Indemnified Parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim") that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Architect, its officers, employees, subcontractors, consultants, or agents, including without limitation the payment of all consequential damages. Architect shall also, to the furthest extent permitted by California law, defend the Indemnified Parties at Architect's own expense, including attorneys' fees and costs, from any and all Claim(s) and allegations relating thereto.
- 10.2. Architect shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnified Parties in any Claim. Architect's obligation pursuant to Article 10.1 includes reimbursing the District for the cost of any settlement paid by the Indemnified Parties and for any and all fees and costs, including but not limited to legal fees and costs, expert witness fees, and consultant fees, incurred by the Indemnified Parties in the defense of any Claim(s), or to enforce the indemnity herein.
- 10.3. Architect shall, to the furthest extent permitted by California law, defend the District Parties at Architect's own expense, from any and all Claim(s) and allegations relating thereto with counsel approved by District where such approval is not to be unreasonably withheld. Whereas the cost to defend the District Parties charged to the Architect shall not exceed the proportionate percentage of Architect's fault as determined by a court of competent jurisdiction, any amounts paid in excess of such established fault will be reimbursed by the District. Notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, such defendant shall meet and confer with other parties regarding unpaid defense costs. Architect's obligation to defend or to indemnify shall not be restricted to insurance proceeds. District shall also have the right to accept or reject any legal representation that Architect proposes to defend the Indemnified Parties.

- 10.4. District may withhold any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Architect from amounts owing to Architect.

Article 11. Responsibilities of the District

- 11.1. The District shall examine the documents submitted by the Architect and shall render decisions so as to avoid unreasonable delay in the process of the Architect's Services.
- 11.2. The District shall verbally or in writing advise Architect if the District becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's documents. Failure to provide such notice shall not relieve Architect of its responsibility therefore, if any.
- 11.3. Unless the District and Architect agree that a hazardous materials consultant shall be a Consultant of the Architect, the District shall furnish the services of a hazardous material consultant or other consultants when such services are requested in writing by Architect and deemed necessary by the District or are requested by the District. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to said matters, which are to be incorporated into bid documents prepared by Architect. If the hazardous materials consultant is furnished by the District and is not a Consultant of the Architect, the specifications shall include a note to the effect that the hazardous materials consultant's specifications are included in the Architect's bid documents for the District's convenience and have not been prepared or reviewed by the Architect. The note shall also direct questions about the hazardous materials consultant's specifications related to asbestos and lead paint survey and/or abatement documentation to the preparer of the hazardous materials consultant's specifications.

Article 12. Liability of District

- 12.1. Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.
- 12.2. District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Architect, or by its employees, even though such equipment be furnished or loaned to Architect by District.

Article 13. Nondiscrimination

- 13.1. Architect agrees that no discrimination shall be made in the employment of persons under this Agreement because of the race, national origin, ancestry, religion, age, physical or mental disability, sex, or sexual orientation of such person.
- 13.2. Architect shall comply with any and all applicable regulations and laws governing nondiscrimination in employment.

Article 14. Insurance

- 14.1. Architect shall comply with the insurance requirements for this Agreement, set forth in **Exhibit "E."**
- 14.2. Architect shall provide certificates of insurance and endorsements to District prior to commencement of the work of this Agreement as required in **Exhibit "E."**

Article 15. Covenant against Contingent Fees

Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Architect, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Architect, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the contract price or consideration or to recover the full amount of such fee, commission, percentage fee, gift, or contingency.

Article 16. Entire Agreement; Modification

This Agreement, including the Exhibits attached hereto, supersedes all previous contracts and constitutes the entire understanding of the Parties hereto. Architect shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both Parties. Architect specifically acknowledges that in entering this Agreement, Architect relies solely upon the provisions contained in this Agreement and no others.

Article 17. Non-Assignment of Agreement

In as much as this Agreement is intended to secure the specialized Services of the Architect, Architect may not assign, transfer, delegate or sublet any interest therein without the prior written consent of District and any such assignment, transfer, delegation or sublease without the District's prior written consent shall be considered null and void. Likewise, District may not assign, transfer, delegate or sublet any interest therein without the prior written consent of Architect and any such assignment, transfer, delegation or sublease without Architect's prior written consent shall be considered null and void.

Article 18. Governing Law; Venue

- 18.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.
- 18.2. To the fullest extent permitted by California law, the county in which the District administration office is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

Article 19. Alternative Dispute Resolution

All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice. If this method proves unsuccessful, then all claims, disputes or controversies as stated above may be decided through litigation.

If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Consultant shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Consultant's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Consultant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

Article 20. Attorneys' Fees

[In the event either party shall bring any action or legal proceeding for damages for any alleged breach of any provision of or performance under this Agreement, to terminate this Agreement, or to enforce, protect or establish any term or covenant of this Agreement or right or remedy of either party, the prevailing party shall be entitled to recover, as a part of the action or proceeding, reasonable attorneys' fees and court costs, including consultants' fees, attorneys' fees and costs for appeal, as may be fixed by the court. The term "prevailing party" shall mean the party who received substantially the relief requested, whether by settlement, dismissal, summary judgment, judgment, or otherwise.] **[OPTIONAL]**

Article 21. Severability

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

Article 22. Employment Status

- 22.1. Architect shall, during the entire term of Agreement, be an independent contractor and nothing in this Agreement is intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the District to exercise discretion or control over the professional manner in which Architect performs the Services that are the subject matter of this Agreement; provided always, however, that the Services to be provided by Architect shall be provided in a manner consistent with all applicable standards and regulations governing such Services.
- 22.2. Architect understands and agrees that Architect's personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee.
- 22.3. Should the District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Architect, or any employee or Consultant of Architect, is an employee of the District for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Architect which can be applied against this liability). The District shall then forward those amounts to the relevant taxing authority.
- 22.4. Should a relevant taxing authority determine a liability for past services performed by Architect for the District, upon notification of such fact by the District, Architect shall promptly remit such amount due or arrange with the District to have the amount due withheld from future payments to Architect under this Agreement (again, offsetting any amounts already paid by Architect which can be applied as a credit against such liability).
- 22.5. A determination of employment status pursuant to the preceding two (2) paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Architect shall not be considered an employee of the District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Architect is an employee for any other purpose, then Architect agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the

foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Architect or its employees or Consultants was not an employee.

22.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 23. Certificate of Architect

23.1. Architect certifies that the Architect is properly certified or licensed under the laws and regulations of the State of California to provide the professional services that it has herein agreed to perform.

23.2. Architect certifies that it is aware of the provisions of the California Labor Code that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with those provisions before commencing the performance of the Services of this Agreement.

23.3. Architect certifies that it is aware of the provisions of California Labor Code and California Code of Regulations that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since the Architect is performing Services as part of a "public works" or "maintenance" project, and since the total compensation is one thousand dollars (\$1,000) or more, the Architect agrees to fully comply with and to require its Consultant(s) to fully comply with all requirements of the Prevailing Wage Laws.

Article 24. Cost Disclosure - Documents and Written Reports

Architect shall be responsible for compliance with California Government Code section 7550, if the total cost of the Contract is over five thousand dollars (\$5,000).

Article 25. Notice & Communications

Notices and communications between the Parties to this Agreement may be sent to the following addresses:

District:

Peralta Community College District
333 East 8th Street
Oakland, CA 94606
ATTN: _____
FAX: _____

Architect:

ATTN: _____
FAX: _____

Any notice personally given shall be effective upon receipt. Any notice sent by facsimile shall be effective the day after transmission. Any notice sent by overnight delivery service shall be effective the day after delivery. Any notice

given by mail shall be effective five (5) days after deposit in the United States mail.

Article 26. DVBE Participation

Pursuant to section 71028 of the Education Code and Public Contract Code section 10115, the District may have a participation goal of at least three percent (3%), per year, of the overall dollar amount expended each year by the community college district for disabled veteran business enterprises ("DVBE"). In accordance therewith, Architect must submit, upon request by the District, appropriate documentation to the District identifying the steps Architect has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.

Article 27. District's Right to Audit

- 27.1. District retains the right to review and audit, and the reasonable right of access to Architect's and any Consultant's premises to review and audit the Architect's compliance with the provisions of this Agreement ("District's Right"). The District's Right includes the right to inspect, photocopy, and to retain copies, outside of Architect's premises, of any and all Project-related records and other information with appropriate safeguards, if such retention is deemed necessary by the District in its sole discretion. The District shall keep this information confidential, as allowed by applicable law.
- 27.2. The District's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the District determines is necessary to discover and verify whether Architect is in compliance with all requirements of this Agreement.
- 27.3. If there is a claim for additional compensation or for Extra Services, the District's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the District determines is necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.
- 27.4. Architect shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. Architect shall make available to the District for review and audit all Project-related accounting records and documents and any other financial data. Upon District's request, Architect shall submit exact duplicates of originals of all requested records to the District.
- 27.5. Architect shall include audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all Consultants.
- 27.6. Architect shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of Architect's Project-related records and information.

Article 28. Other Provisions

- 28.1. Architect shall be responsible for the cost of reviewing CCDs and/or change orders caused by the Architect’s willful misconduct, recklessness, or negligent acts, errors or omissions. Without limiting Architect’s liability for indirect cost impacts, the direct costs for change orders for which Architect shall be liable shall equal the difference between the cost of the change order and the reasonable cost of the work had that work been a part of the originally prepared Contract Documents. These amounts shall be paid by Architect to District or the District may withhold those costs from amounts owing to Architect.
- 28.2. Neither the District’s review, approval of, nor payment for, any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Architect shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Architect’s failure to perform any of the Services furnished under this Agreement to the standard of care of the Architect for its Services, which shall be, at a minimum, the standard of care of architects performing similar work for California school districts in or around the same geographic area as the District.
- 28.3. Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.

Article 29. Incorporation of Exhibits Exhibits A though [redacted] attached hereto are hereby incorporated by this reference and made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

PERALTA COMMUNITY COLLEGE DISTRICT

[NAME OF ARCHITECT]

Date: _____, 2018

Date: _____, 2018

By: _____

By: _____

Title: _____

Title: _____

Exhibit B

VENDOR'S QUESTIONNAIRE AND CERTIFICATE BY COMPLIANCE

The following information is requested for information purposes only. It will not be used in determining bid award.

Date: _____

Firm Name **Telephone**

Business Fax **Email Address** **Website**

Street Address **City/State** **Zip Code+ 4®**

Mailing Address **City/State** **Zip Code + 4®**

Type of Organization (Check one) Individual Partnership Corporation

Name of Owner(s) applicable) **State of Incorporation (if applicable)**

Name of Partners **(I) Indicate (G) General (L)Limited**

Local Address

Amount of Annual Business

The District is identifying vendor ownership as follows:

	Asian-American (Chinese, Japanese, Korean, Vietnamese)	Black or African-American	Filipino	Latino (other than Mexican or Mexican-American)	Mexican or Mexican-American	Native – American	Pacific Islander, other Asian	White	Disabled	Veteran	Women	Subcontractor	Employee	Apprentice
Total #														
% of assets														

The District is identifying vendor workforce as follows:

	Asian-American (Chinese, Japanese, Korean, Vietnamese)	Black or African-American	Filipino	Latino (other than Mexican or Mexican-American)	Mexican or Mexican-American	Native – American	Pacific Islander, other Asian	White	Disabled	Veteran	Women	Subcontract or	Employee	Apprentice
Total #														

Explain whether current workforce is racially and ethnically proportionate to the area from which the workforce is drawn (national, state, or local). Use separate sheet if necessary.

Detail steps taken by vendor since inception to assure non-discriminatory recruiting, hiring, and apprenticeship, placement, promotion, demotion, layoff and termination practices. Use separate sheet if necessary.

What are you interested in providing the District? (e.g., construction, consulting, goods or services).

--

Main Headquarters Office(s) Address/Telephone (List all as applicable)	1. 2. 3.
---	---

Total # of Employees _____

Local Office(s) Address/Telephone (List all as applicable)	1. 2. 3.
---	---

Total # of Employees _____

Name and list residential zip code for each employee, subcontractor, or apprentice for awarded contract (Please use the Zip+4®) Use separate sheet as Necessary	1. 2. 3. 4. 5. 6.
--	--

Exhibit C



Peralta Community College District

SMALL LOCAL BUSINESS ENTERPRISE and SMALL EMERGING LOCAL BUSINESS ENTERPRISE PROGRAM

The District is committed to ensure equal opportunity and equitable treatment in awarding and managing its public contracts and has established an annual overall program goal of twenty-five percent participation for small local businesses. To facilitate opportunities for small local business, the District will use a maximum 5% bidding preference for SLBE and SELBE firms. The preference is only used for computation purposes to determine the winning bidder, the contract is awarded at the actual bid amount. Please review the following guidelines to see if your firm qualifies for the preference.

The 5% bidding preference for an SLBE and SELBE firms are for construction, personal and professional services, goods and services, maintenance, repairs, and operations where responsibility and quality are equal. The preference will be 5% of the bid amount of the lowest responsive responsible bidder, and may not exceed \$50,000.00 for any bid.

A Non-SLBE/SELBE Prime Contractor who utilizes 25% of total bid amount, with SLBE or SELBE subcontractors (who meet the District's Definition of an SLBE and SELBE), can also receive a maximum of 4% bidding preference, not to exceed \$50,000.00 for any bid. (See below Subcontractor section.)

Definitions:

SLBE: A Small Local Business Enterprise is a business that has not exceeded gross annual revenue of 8.5 million dollars for a construction firm, or 6 million dollars for goods and non-professional services firm, or 3 million dollars for architecture, engineering and professional services firm, for the past three consecutive years and meets the below geographic location requirements.

SELBE: A Small Local Emerging Business Enterprise is a business that has not exceeded gross annual revenue of 1.5 million dollars for the past three consecutive years and meets the below geographic location requirements.

Commercially Useful Function: Shall mean a business is directly responsible for providing the materials, equipment, supplies or services to the District as required by the contract solicitation. The business performs work that is normal for its business services and carries out its obligation by actually performing, managing, or supervising the work involved. The business is **not** Commercially Useful if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of SLBE or SELBE participation.

Geographic Location Requirements:

- The business must be located at a fixed, established commercial address located in the District's market area of Albany, Alameda, Berkeley, Emeryville, Oakland, or Piedmont, and not a temporary or movable office, a post office box, or a telephone answering service.
 - If the business has an office outside of the District's market area as well as an office within the market area, the office within the District's market area must be staffed on a full time permanent basis with someone employed by the business.
 - If requested, the business that has an office outside of the District's market area must provide proof of one or more past contracts citing the business address (such as contracts to perform work, to rent space or equipment, or for other business services) was within the District's market area at least one (1) year prior to the date of contract award. The one-year requirement does not apply to businesses whose sole establishment is located within the District's market area.
-

Subcontractors:

Non-SLBE/SELBE Prime Contractors who use subcontractors, who meet the district definitions of SLBE and SELBE, may receive a maximum of 4% bidding preference if the following conditions are met:

1. 25% of total bid amount is with Subcontractors who meet the District's definition of an SLBE and SELBE. The Prime Contractor must list each Subcontractor on the Subcontractor List form, clearly identifying the SLBE and SELBE status and the Dollar Amount of work each subcontractor will perform.
2. The Subcontractors must provide a Commercially Useful Function.
3. The Prime Contractor must maintain the Subcontractor percentages (based on the quoted dollar amounts) indicated in the Subcontractor List form at the time the Contract is awarded and throughout the term of the Contract.
4. The Prime Contractor must fill out sign the SLBE/SELBE Self Certification Affidavit and return it with the bid documents, and 48 hours after the bid opening the Prime Contractor must submit signed SLBE/SELBE Self Certification Affidavit from each of the SLBE and SELBE subcontractors listed in the Subcontractor form. The Subcontractor must agree to provide the requested documentation to verify the SLBE/SEBLE status.
5. No Substitutions can be made to the SLBE and SELBE subcontractor without the prior written approval of the District. The District will approve a subcontractor substitution on the following conditions:
 - a. A written statement from the subcontractor agreeing to the substitution.
 - b. When the subcontractor has been given a reasonable opportunity to execute the subcontract, yet fails to, or refuses to execute the subcontract, or refuses to satisfy contractual obligations.
 - c. When the subcontractor becomes insolvent.
 - d. When the District determines the work performed by the subcontractor is not in accordance with the contact agreement, or the subcontractor is substantially and unduly delaying or disrupting the progress of work.

Firms that meet the District criteria for an SLBE and SELBE can complete the below self-certification affidavit signed under penalty of perjury. Firms claiming SLBE and SELBE status in the self-certification affidavit will be required to submit proof of residency and revenue 48 hours after bid opening. Such proof shall consist of a copy of a contract to perform work, to rent space or equipment, or for other business services, executed from their local address, and the firm's tax returns for the past three consecutive years.



Peralta Community College District

SLBE/SELBE SELF CERTIFICATION AFFIDAVIT

I certify under penalty of perjury that my firm meets the District's definition of a Small Local Business Enterprise or a Small Emerging Local Business Enterprise and resides in the geographic location of the District's market area and qualifies for the below preference. The maximum preference will be five percent of the bid amount of the lowest responsible bidder, and may not exceed \$50,000.00 for any bid. The preference is only used for computation purposes to determine the winning bidder; the contract is awarded at the actual bid amount. The District's Contract Compliance Office will determine whether this requirement has been fulfilled. Bidders may only claim one of the below preferences.

Certification Status	Preference	Preference Claimed (check only one)
SLBE	5% of lowest bid	
SELBE	5% of lowest bid	
25% of Subcontractors are SLBE/SELBE	4% of lowest bid	
Not a SLBE/SELBE	None	

1. I acknowledge and am hereby advised that upon a finding of perjury with the claims made in this self certification affidavit the District is authorized to impose penalties which may include any of the following:
 - a) Refusal to certify the award of a contract
 - b) Suspension of a contract
 - c) Withholding of funds
 - d) Revision of a contract for material breach of contract
 - e) Disqualification of my firm from eligibility for providing goods and services to the Peralta Community College District for a period not to exceed five (5) years

2. I acknowledge and have been advised and hereby agree that my firm will be required to provide proof (and if applicable, my SLBE and SELBE Subcontractors will provide proof) of the status claimed on this self-certification affidavit 48 hours after bid opening. Proof of status claimed includes tax returns from the previous three years and past contracts to determine the size and geographical location of my firm.

3. I declare that the above provisions are attested to under penalty of perjury under the laws of the State of California.

Bid Number: _____ Bid Name _____

Signed Date

Printed or typed name Title

Name of Company Telephone Fax

Exhibit D

WORKERS' COMPENSATION INSURANCE CERTIFICATE

TO: THE PERALTA COMMUNITY COLLEGE DISTRICT

I am aware of the provisions of Section 3700 of the Labor Code that requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code. I will comply with such provisions before commencing the performance of the work under this contract and submit the necessary evidence of workers' compensation to Peralta Community College District.

Company: _____

Business Address: _____

Signature: _____

Name of Signing Official _____

Title of Signing Official: _____

Date: _____

Company Seal:

Exhibit E

Statement of Equal Employment Opportunity

I hereby certify that

_____ (Legal Name of Vendor/Consultant/Contractor)

Will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin and shall insure compliance with all provisions of Executive Order No. 11246 (as amended by Executive order No.11375).

The vendor's questionnaire requests information for record keeping purposes only. The information requested will not be used as a basis for contract award.

However, after a contract is awarded to your company, the District requires your company to report:

- a. Actual racial, gender and residential workforce composition of your company for the contract work.
- b. Actual racial, gender and residential workforce composition of subcontractors for the contract work.
- c. Number of apprenticeship workforce for the contract work.

This report must be submitted to the District Department of General Services on a quarterly basis.

I declare under penalty of perjury under the laws of the state of California that the information I have provided herein is true and correct and is of my own personal knowledge.

BY: _____ Date

Print Name

Exhibit F

**NON-COLLUSION DECLARATION
(Public Contract Code Section 7106)**

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.
[Title] [Name of Firm]

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____,
[Date]

at _____, _____.
[City] [State]

Date: _____

Proper Name of Bidder: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

Exhibit G

Acknowledgement and Signature Form

The undersigned having carefully examined the Request for Proposals, location of the proposed work, the local conditions of the place where the work is to be done, the Invitation, the General Conditions, the Specifications and all of the documents for this project, and accurately completed the Vendor's Questionnaire, proposes to enter into a contract with Peralta Community College District to perform the work described in this RFQ, including all of its component parts, and to furnish any and all required labor, materials, equipment, insurance, bonding, taxes, transportation and services required for this project in strict conformity with the RFQ, including any Addenda, within the time specified.

Addendum Acknowledgement

The following addendum(s) are acknowledged in this RFQ: _____

Acknowledgement and Signature:

1. No Proposal is valid unless signed in ink by the person authorized to make the proposal.
2. I have carefully read, understand and agree to the terms and conditions on all pages of this proposal. The undersigned agrees to furnish the services stipulated on this proposal.

Vendor Name: _____ Title: _____

Contact Person: _____

Address: _____

Telephone: _____ Fax: _____

Contractor License #: _____ Expiration Date: _____

Federal Tax Identification Number: _____

Authorized Signature: _____ Date: _____