

SERVICE CONTRACTOR AGREEMENT

This AGREEMENT is hereby entered into between Newport-Mesa Unified School District, hereinafter referred to as "DISTRICT", and Studio + Architecture

Name of Independent Contractor

<u>2070 Business Center Dr., Suite 295</u>	<u>Irvine,</u>	<u>CA</u>	<u>92612</u>	<u>949-315-1993</u>
Mailing Address	City	State	Zip	Telephone Number

hereinafter referred to as "CONTRACTOR", which includes the names Service Provider, Consultant, or Independent Contractor.

WHEREAS, DISTRICT is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if such persons are specially trained and experienced and competent to perform the special services required; WHEREAS, DISTRICT is in need of such special services and advice; and WHEREAS, CONTRACTOR is specially trained and experienced and competent to perform the special services required by the DISTRICT, and such services are needed on a limited basis.

NOW, THEREFORE, the parties agree as follows:

1. Services to be provided by CONTRACTOR: shall consist of a Feasibility Study for the Education Center Roof Replacement Project.
2. Term. CONTRACTOR shall commence providing services under this AGREEMENT on June 27, 2018 and will diligently perform as required and complete performance through the end of said project which will be completed approximately by December 30, 2018.
3. Compensation. DISTRICT agrees to pay the CONTRACTOR for services satisfactorily rendered pursuant to this AGREEMENT a total fee according to the Price/Fee Schedule and/or Price Quotation exhibits within this AGREEMENT on a time and materials basis for an estimated fee of \$9,840 plus reimbursables allowed per the contract.
4. General Terms and Conditions. The agreement includes general terms and conditions as

printed and set forth on the following pages; and the CONTRACTOR, by executing this Agreement, agrees to comply with all such attached general terms and conditions.

5. DISTRICT AND CONTRACTOR have subscribed to this Agreement, including all exhibits as listed below; attached hereto and incorporated herein by reference:

X Statement of Work and /or Proposal

X Price/Fee Schedule and/or Price Quotation

Newport-Mesa Unified School District
Name of District

By: _____

Timothy D. Holcomb
Typed Name

Assistant Superintendent, Chief Operating Officer
Title

Studio + Architecture
Contractor Name

By: _____

Typed Name

Title

Taxpayer Identification Number

General Terms and Conditions

1. Expenses. DISTRICT shall not be liable to CONTRACTOR for any costs or expenses paid or incurred by CONTRACTOR in performing services for DISTRICT, except as identified in this AGREEMENT and approved by the DISTRICT through its purchase order.

2. Independent Contractor. CONTRACTOR, in the performance of this AGREEMENT, shall be and act as an independent contractor. CONTRACTOR understands and agrees that he/she and all of his/her employees shall not be considered officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of the DISTRICT and/or to which DISTRICT's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. CONTRACTOR assumes the full responsibility for the negligent acts and/or omissions or willful misconduct of his/her employees or agents as they relate to the services to be provided under this AGREEMENT. CONTRACTOR shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to CONTRACTOR's employees, in place as of the date of this agreement. CONTRACTOR's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession.

3. Materials. CONTRACTOR shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this AGREEMENT.

4. Termination. DISTRICT and CONTRACTOR may, at any time, with or without cause or reason, terminate this AGREEMENT. Upon such termination, DISTRICT shall compensate CONTRACTOR for services satisfactorily rendered to the date of termination. Written notice by either DISTRICT or CONTRACTOR shall be sufficient to stop further performance of services by the CONTRACTOR. Notice shall be deemed given when received by the DISTRICT or CONTRACTOR or no later than thirty (30) calendar days after the day of mailing, whichever is sooner.

5. Hold Harmless. CONTRACTOR agrees to and does hereby indemnify, hold harmless and defend the DISTRICT and its governing board, officers and employees from claims, demands made and liability, loss, damage or expense, which may be incurred by reason of:

(a) Liability for damages for: (1) death or bodily injury to person; (2) injury to, loss or theft of property; or (3) any other loss, damage or expense arising out of (1) or (2) above, sustained by the CONTRACTOR or any person, firm or corporation employed by the CONTRACTOR, either directly or by independent contract, upon or in connection with the services called for in this AGREEMENT, in proportion to the extent caused by the negligence or willful misconduct of CONTRACTOR, except for liability for damages referred to above which result from the negligence or willful misconduct of the DISTRICT or its officers, employees or agents.

(b) Any injury to or death of any person(s), including the DISTRICT's officers and employees, or damage to or loss of any property in proportion to the extent caused by any negligent act, default, omission, or willful misconduct of the CONTRACTOR, or any person, firm or corporation employed by the CONTRACTOR, either directly or by independent contract, arising out of, or in any way connected with, the services covered by this AGREEMENT, whether said injury or damage occurs either on or off DISTRICT's property, except for liability for damages which result from the negligence or willful misconduct of the DISTRICT or its officers, employees or agents.

(c) Any liability for damages which may arise from the furnishing or use of any copyrighted or uncopyrighted matter or patented or unpatented invention under this AGREEMENT.

6. Insurance. CONTRACTOR agrees to carry a comprehensive general and automobile liability insurance with limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage in a form mutually acceptable to both parties to protect CONTRACTOR and DISTRICT against liability or claims of liability which may arise out of this AGREEMENT. In addition, CONTRACTOR agrees to provide an endorsement to this policy stating, "Such insurance as is afforded by this policy shall be primary, and any insurance carried by DISTRICT shall be excess and noncontributory." No later than Five (5) days from execution of this AGREEMENT by the DISTRICT and CONTRACTOR, CONTRACTOR shall provide DISTRICT with certificates of insurance evidencing all coverages and endorsements required hereunder including a thirty (30) day written notice of cancellation or reduction in coverage. CONTRACTOR agrees to name DISTRICT and its governing board, officers, agents and employees as additional insureds under said policy. CONTRACTOR agrees to maintain current insurance certificates and endorsements on file with the DISTRICT for the term of the AGREEMENT.

7. Assignment. The obligations of the CONTRACTOR pursuant to this AGREEMENT shall not be assigned by the CONTRACTOR. HDR will be using a subcontractor on this project per the proposal.

8. Compliance with Applicable Laws. The services completed herein must meet the approval of the DISTRICT and shall be subject to the DISTRICT's general right of inspection to secure the satisfactory completion thereof. CONTRACTOR agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are applicable to CONTRACTOR, CONTRACTOR's business, equipment and personnel engaged in services covered by this AGREEMENT or accruing out of the performance of such services.

9. Permits/Licenses. CONTRACTOR and all CONTRACTOR's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this AGREEMENT.

10. Employment with Public Agency. CONTRACTOR, if an employee of another public agency, agrees that CONTRACTOR will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this AGREEMENT.

11. Entire Agreement/Amendment. This AGREEMENT and any exhibits attached hereto constitute the entire agreement among the parties to it and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated, and may be amended only by a written amendment executed by both parties to the AGREEMENT.

12. Nondiscrimination. CONTRACTOR agrees that it will not engage in unlawful discrimination in employment of persons because of race, color, religious creed, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age of such persons.

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

14. Notice. All notices or demands to be given under this AGREEMENT by either party to the other shall be in writing and given either by: (a) personal service or (b) by U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or if mailed on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section.

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

16. Attorney Fees/Costs. Should litigation be necessary to enforce any terms or provisions of this AGREEMENT, then each party shall bear its own litigation and collection expenses, witness fees, court costs, and attorneys' fees.

17. Governing Law. The terms and conditions of this AGREEMENT shall be governed by the laws of the State of California with venue in Orange County, California. This AGREEMENT is made in and shall be performed in Orange County, California.

18. Exhibits. This AGREEMENT incorporates by this reference, any exhibits, which are attached hereto and incorporated herein.

19. Force Majeure Clause. The parties to the Contract shall be excused from performance thereunder during the time and to the extent that they are prevented from obtaining, delivering, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by the government, when satisfactory evidence thereof is presented to the other party (ies), provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the party not performing.

20. Time is of the Essence. Time is of the essence in the performance of and compliance with each of the provisions and conditions of this contract.

21. Safety and Security. It shall be the responsibility of the Provider to ascertain from the District the rules and regulations pertaining to safety, security and driving on school grounds, particularly when children are present.

22. Invoicing Required Documentation:

1. Name of firm and address or person and address submitting invoice.
2. Name of school district as addressee (not school).
3. Date of invoice. Note: Payment Terms: net 30 days, unless cash discount provided
4. Number of school district purchase order (if applicable).
5. Special terms, such as discounts.
6. Description of each item, not just a stock number.
7. Quantity.
8. Unit quantity (dozen, gross, pound, etc.)
9. Unit price for each item.
10. Extended price for each item.
11. Hours and rates for labor charges, if applicable
12. Subtotals of amounts subject to sales tax.
13. Amount of sales tax (if applicable).
14. or total fixed fee, if applicable.
15. Phased billing may apply if fixed fee.

23. Originality of Services. CONTRACTOR agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, and submitted to the DISTRICT and/or used in connection with his AGREEMENT, shall be wholly original to CONTRACTOR and shall not be copied in whole or in part from any other source, except that submitted to CONTRACTOR by DISTRICT as a basis for such services.

24. Copyright/Trademark/Patent. CONTRACTOR understands and agrees that all materials produced under this AGREEMENT shall become the property of DISTRICT and cannot be used without DISTRICT'S express written permission. DISTRICT shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the DISTRICT.

25. Duty to Provide Fit Workers. CONTRACTOR and subcontractors, if any, shall at all times enforce appropriate discipline and good order among their employees and shall not employ or work any unfit person or anyone not skilled in providing the services required under this AGREEMENT. It shall be the responsibility of the CONTRACTOR to require compliance with this section. Any person in the employ of the CONTRACTOR or subcontractor whom DISTRICT may deem incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from providing services under this AGREEMENT and shall not again provide services except with written consent of DISTRICT.

The CONTRACTOR shall not permit an employee to come in contact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a violent or serious felony. The CONTRACTOR shall state in writing to the governing board of the DISTRICT that none of its employees who may come in contact with pupils have been convicted of a violent or serious felony, to the best of our knowledge, information and belief based upon background checks. The CONTRACTOR shall provide a list of the names of its employees who may come in contact with pupils to the governing board of the DISTRICT. Reference California Education Code Section 45125.1

26. Employment With Public Agency. CONTRACTOR, if an employee of another public agency, agrees that CONTRACTOR will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this AGREEMENT.

27. Conflict of Interest. CONTRACTOR affirms that to the best of his/her knowledge, there exists no actual or potential conflict between CONTRACTOR'S family, business, or financial interest and the services provided under this AGREEMENT, and in the event of change in either private interests or services under this AGREEMENT, any question regarding possible conflict of interest which may arise as a result of such change will be raised with the DISTRICT. CONTRACTOR shall not be in a reporting relationship to a DISTRICT employee who is a near relative, nor shall a near relative be in a decision-making position with respect to the CONTRACTOR.

28. Tobacco Use Policy. In the interest of public health, the DISTRICT is proud to provide a healthy, tobacco-free environment. Smoking or the use of any tobacco products are prohibited in buildings and vehicles, and on any property owned, leased or contracted for by the DISTRICT pursuant to DISTRICT'S Policy 3620. Failure to CONTRACTOR to abide with the conditions of Policy 3620 may result in the termination of this AGREEMENT.

29. Non-Waiver. The failure of the DISTRICT in any one or more instances to insist upon strict performance of any of the terms of this AGREEMENT or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

30. Provision of Law Clause. Each and every provision of law clause required by law to be inserted in the AGREEMENT shall be deemed to be inserted herein and the AGREEMENT shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the AGREEMENT shall forthwith be physically amended to make such insertion or correction.