AGREEMENT FOR ARCHITECTURAL SERVICES

Estancia High School Aquatic Center

This Agreement for Architectural Services ("Agreement") is made by and between the Newport-Mesa Unified School District ("District") and Westberg + White, Inc. a California corporation, Architects and Planners, (Architect"), as of December 11, 2018 for the project commonly known as the Estancia High School Aquatic Center ("Project").

RECITALS

WHEREAS, District is a local public agency school district organized under the laws of the State of California, with power to contract for the Services provided for herein pursuant to California Government Code Sections 4525 - 4529, 53060; and other applicable law.

WHEREAS, District intends to construct the Project, including future amendments and revisions, which may be made from time to time which are subject to the approval of the District Board of Education; and

WHEREAS, District requires the services of a duly qualified and licensed architect to perform the Services required by this Agreement, and Architect represents that it is aware of District's current plans with respect to the Project; and

WHEREAS, Architect warrants it is fully licensed, qualified, and willing to perform the Services required by this Agreement; provided, however, that if Architect is a corporation or other organization, the Project Architect designated pursuant to Article I.C., and not Architect itself, shall be fully licensed to practice as an architect in the State of California; and

WHEREAS, District desires to engage Architect to render the Services, pursuant to the terms and conditions, as provided herein for the Project.

NOW, THEREFORE, in consideration of the above recitals and the terms and conditions set forth hereinafter, the parties hereto agree as follows:

ARTICLE I. GENERAL TERMS.

A. General. Architect agrees to further the interests of the District by furnishing the skills and judgment in cooperation with the District, services of the District's consultants, including, but not limited to, other Architect(s), engineers, and consultants. Architect agrees to provide sufficient organization, personnel and management to carry out the requirements of this Agreement. Architect agrees to perform in an expeditious and economical manner consistent with the interests of the District, as further set forth herein.

B. Engagement of Architect. Architect promises and agrees to furnish to District all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional architectural and related architectural services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement ("Services"). All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto, all of which are incorporated herein by reference as if set forth at length hereat, and all applicable local, state and federal laws, rules and regulations. All Services performed by Architect shall be subject to the sole and discretionary approval of District.

NMUSD Initials: _____

Westberg + White Initials: _____

C. Project Architect; Key Personnel. Subject to the approval of District, Architect shall name a specific person to act as Project Architect. Architect hereby designates Frisco White (License No. C9090) to act as the Project Architect for the Project. The Project Architect shall: (1) be available to District on or off the site as required for the proper performance of all matters relating to the Project; (2) provide overall direction of the planning and design of the Project; (3) maintain oversight of the Services provided by the Architect for the Project at all times; (4) have full authority to represent and act on behalf of Architect for all purposes under this Agreement; (5) supervise and direct the Services using his or her professional skill and attention; (6) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (7) adequately coordinate all portions of the Services; and (8) act as principal contact with District and all contractors, consultants, engineers and inspectors on the Project. Any changes or assignments of the Project Architect shall be subject to District's prior written approval, which approval shall not be unreasonably withheld. The new project Architect shall be of at least equal competence as the prior Project Architect. In the event that District and Architect cannot agree as to the substitution of a new Project Architect, District shall be entitled to terminate this Agreement.

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

Architect shall provide to District a list of its key personnel who are to be assigned to the Project and time commitment for each of the same, which list shall include such information on the background of the personnel as may be required by District. The key architect personnel for performance of this Agreement are attached hereto as Exhibit A. District specifically reserves the right to approve such personnel, and Architect shall not assign or permit the assignment of any such personnel to the Project to which District has a reasonable objection.

D. Hiring of Consultants and Personnel.

1. Right to Hire or Employ. Architect shall have the option, unless District objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render Services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Architect may delegate without relieving Architect from administrative or other responsibility under this Agreement. Architect shall be responsible for the coordination and cooperation of Architect's architects, engineers, experts or other consultants. Architect shall notify District of the identity of all consultants in sufficient time before their commencement of work to allow District to review their qualifications and object to their participation on the Project if necessary.

Architect shall submit to District a list of all consultants Architect proposes to use on the Project. This list shall include such supporting information respecting the consultants' qualifications as may be required by District. District specifically reserves the right to approve such engineers and consultants, and Architect shall not assign or permit the assignment of any such engineers or consultants to the Project to which District has a reasonable objection. The engineers and consultants for performance of this Agreement are attached hereto as Exhibit B.

NMUSD Initials: _____

Westberg + White Initials: _____

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

3. Compliance with Standards. All architects, engineers, experts and other consultants hired by Architect shall be required to meet the same standards and requirements set forth in this Agreement. Architect's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

4. Assignments or Staff Changes. Architect shall promptly obtain written District approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in this Agreement, any changes in Architect's consultants and staff shall be subject to approval by District which shall not be unreasonably withheld. District shall have right to direct staff changes for non-performance.

5. Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Architect at Architect's sole expense. Such draftsman and clerical personnel shall be qualified to perform the Services assigned to them.

6. Additional Consultants. District reserves the right to retain other architects, engineers and consultants in connection with the Project. Architect shall coordinate with these parties as part of its Basic Services.

E. Standard of Care. In addition to the requirements set forth in Article I. F. regarding errors and/or omissions, Architect shall perform all services and work under this Agreement pursuant to the requirements stated in this Agreement and applicable laws, codes and regulations. The requirements stated in this Agreement establish the standard of care the parties agree that the Architect will perform to in providing services under this Agreement. If the Agreement is silent as to a particular standard or performance requirement, then the Architect will perform all services and work in a skillful and competent manner that is consistent with the standards generally recognized as being employed by professionals qualified to perform the services and work in the same discipline in the State of California. The Architect shall provide the Construction Documents and shall review the construction and installation of the Work to meet the requirements of the Construction Documents. Neither review nor approval of Architect, its consultants', and/or sub-consultants work shall relieve Architect, its consultants, and/or its sub-consultants from first, their duty to adhere to the standards and requirements of this Agreement, or if silent herein, then, the applicable standards of professional care in the performance of their duties. Architect will be fully responsible to the District for any damages to the District and delays to a Project as specified in Article V of this Agreement. Without limiting the foregoing, Architect shall be fully responsible to the District for any increased costs incurred by the District as a result of any such negligent delays in the design or construction of a Project, provided such increased cost shall not exceed Architect's indemnity obligations under this Agreement or at law. Architect represents and maintains that it is skilled in the professional calling necessary to perform the services and work required by this Agreement. Architect warrants that all of its employees, consultants, engineers, experts and other consultants and sub-consultants shall have sufficient skill and experience to perform the services and work assigned to them. Architect represents that it, its employees, consultants, engineers, experts and other consultants and sub-consultants have all required licenses, permits, qualifications and approvals of whatever nature that are legally required for them to have to perform the services and work assigned to or rendered by them, and that such licenses and approvals shall be maintained in good standing throughout the entire term of this Agreement. Any employee or consultant who is determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee

NMUSD Initials: _____

Westberg + White Initials: _____

or consultant who fails or refuses to perform the Services in a manner acceptable to District, shall be promptly removed from the Project by Architect and shall not be re-employed to perform any of the Services or to work on the Project.

F. Responsibility for Errors and Omissions. In addition to the standards and requirements set forth elsewhere in this Agreement, this Article 1. F. establishes standards and requirements that specifically govern the Architect's and District's apportionment of the risks associated with errors and omissions in the Construction Documents and/or for other failure on the part of the Architect to perform services and/or work under this Agreement.

1. Errors: The Architect shall be solely responsible for and pay all of the District's costs, expenses, fees and damages, of all kind, either due to or arising from errors by the Architect and/or one or more of the Architect's consultants and/or sub-consultants that violate the standard of care set forth in Article 1. E.

2. Omissions: The Architect shall be responsible for and pay all of the District's costs, expenses, fees and damages, of all kind, arising from the omissions of the Architect and/or one or more of the Architect's consultants and/or sub-consultants that are greater than what the District would have paid had the work been correctly shown in documents created by the Architect. Notwithstanding the foregoing, the District will pay for the costs, expenses, fees and/or damages arising from such omissions up to a maximum aggregate amount of four percent (4%) of the original amount of the Bid/Proposal submitted by the Contractor and accepted by the District for the Project. The Architect shall be solely responsible for and pay for all of the District's costs, expenses, fees and/or damages arising from such omissions in excess of four percent (4%) of the original amount of the Bid/Proposal submitted by the Contractor and accepted by the District on the Project, provided, however that Architect's liability in all cases described in subparagraphs 1 & 2 of this Article 1. F. shall not exceed its indemnity obligations of this Agreement.

G. Laws and Regulations.

1. Knowledge and Compliance. Architect shall be responsible to see that the Project as designed can operate as a functional, efficient, high-quality facility consistent with the specific direction provided to it by Owner. Architect is responsible for ensuring that the Project design shall comply with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities bearing on its Work, and with all quasi-governmental, and other regulations bearing on such Work. Architect shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project and shall give all notices required of Architect by law. Similarly, Architect's engineers and consultants shall keep themselves fully informed of applicable laws and regulations affecting performance. Architect shall be liable, pursuant to the indemnification provision of this Agreement, for all its violations of such laws and regulations in connection with its services. If Architect performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to District, Architect shall be solely responsible for all costs arising there from. Architect shall defend, indemnify and hold District, its officials, officers, employees and agents free and harmless, subject to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure to comply with such laws, rules or regulations.

2. Drawings and Specifications. Architect shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, the California Education Code, Titles 19, 21 and 24 of the California Code of Regulations, any requirements of the Division of State Architect

NMUSD Initials: _____

Westberg + White Initials: _____

(including structural safety, fire/life safety and access compliance sections), the State Department of Education and the California Department of General Services, local agencies such as Department of Health, Department of Public Works, Department of Transportation, Fire Department, and local utility companies, in effect as of the time the drawings and specifications are prepared or revised. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services as described below in this Agreement. Architect shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in this Agreement.

3. Americans with Disabilities Act. Architect will use its professional efforts consistent with the standard of care described in Article I. E to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Architect shall inform District of its interpretations of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law. Unless Architect brings such inconsistencies and conflicting interpretations to the attention of District and requests District's direction on how to proceed, Architect's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Architect, and Architect shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. If Architect brings such inconsistencies and conflicting interpretations to the attention of District and requests District's direction on how to proceed, Architect shall be responsible to District subject to the indemnification provision of this Agreement.

4. DSA Inspection Card Process. Architect and its consultants and sub-consultants shall provide all necessary services and work, as part of Architect's Basic Services, so as to comply with all DSA inspection procedures applicable to the Project. DSA has and is implementing significant changes to the Construction Oversight Process for projects under its jurisdiction. These changes are designed to streamline the DSA construction phase process and to ensure that projects are certified at the completion of construction. Effective June 1, 2013, the DSA has been using an Inspection Card Process similar to that used by virtually every building department throughout the State. These changes are described in **DSA Procedure PR 13-01.** Effective dates for the new process are explained in Section 5 of the Procedure. Forms associated with the new process are now available on the DSA Forms page. They include:

- **DSA 102-IC**: Construction Start Notice/Inspection Card Request (Now to be used instead of DSA -102);
- **DSA 151**: Project Inspector Notifications;
- **DSA 154**: Notice of Deviations/Resolution of Deviations;
- **DSA 155**: Project Inspector Semi-Monthly Report;
- **DSA 155**-INSTR: Instructions for DSA 155; and, without limitation;
- **DSA 156**: Commencement/Completion of Work Notification.

These documents are also available, and have been since May 1 2013, on the "Construction Oversight Process Changes: Courtesy Preview of Documents" page, reachable from the DSA Home page, along with Internal form DSA 152: Project Inspection Card (PDF - 136 KB), and a Manual (PDF - 5.75 MB) for Inspector reference. Architect and its consultants and sub-consultants represent and warrant that it and they will provide their services so as to be in compliance with these new processes, as part of Architect's Basic Services and are familiar with all currently required forms and procedures applicable to the Project.

NMUSD Initials: _____

Westberg + White Initials: _____

To the extent DSA has new forms, updated versions of the above listed forms, and/or replacement forms, Architect and its consultants and sub-consultants represent and warrant that it and they will provide their services so as to be in compliance with such forms as well as part of Architect's Basic Services for the Project.

H. Schedule of Services.

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

2. Performance Schedule. Architect shall adhere, to the best of its ability, to the schedule established by the District. If District and Architect cannot mutually agree on a performance schedule, District shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Architect, without the prior written approval of District. If Architect's Services are not completed due to circumstances within the control of the Architect within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that District will suffer damage for which Architect will be responsible pursuant to the indemnification provision of this Agreement.

3. Excusable Delays. Any delays in Architect's work caused by the following shall be added to the time completion of any obligations of Architect: (a) the actions of District or its employees; (b) the actions (or failures to act) of those in direct contractual relationship with District; (c) the actions (or delays) of any governmental agency having jurisdiction over the Project; (d) the actions of any parties not within the reasonable control of Architect; and (e) any act of God or other unforeseen occurrence not due to any fault or negligence on the part of Architect. Neither District nor Architect shall be liable for additional services, damages, liquidated or otherwise, to the other on account of such delays.

4. Request for Excusable Delay Credit. Architect shall, within ten (10) calendar days of the beginning of any excusable delay (unless District grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement), notify District in writing of the causes of delay. District will ascertain the facts and the extent of the delay and grant an extension of time for completing the Services when, in its reasonable judgment, the findings of fact justify such an extension. District's findings of fact thereon shall be submitted to Architect and if Architect disputes such findings, the parties to this Agreement shall proceed to mediate the dispute. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Architect for extensions of time shall be an extension of the performance time at no cost to District. If Additional Services are required as a result of an excusable delay, the parties shall mutually agree thereto pursuant to the Additional Services provision in Article II, Section D below. Should Architect make an application for an extension of time, Architect shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

5. Architect Services. Architect shall fully and adequately complete the Services described in this Agreement.

NMUSD Initials: _____

Westberg + White Initials: _____

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

- Owners Representative. As used in this Agreement, "Owners Representative" shall refer to

a consultant(s) who may be engaged by the District to perform professional services for the Project. The term "Owners Representative" shall not encompass the function to be performed by the Contractor(s) to be selected by the District to construct the Project.

ARTICLE II. THE ARCHITECT'S SERVICES.

Basic Services shall consist of those Services performed by Architect, Architect's employees and Architect's consultants as enumerated in this Agreement, including, but not limited to the following:

A. General Responsibilities of Architect.

1. Consistent with the requirements of this Agreement, Architect shall maintain all required professional certifications and/or licenses in accordance with all applicable federal and California statutes throughout the period of this Agreement.

2. All services to be performed by Architect hereunder shall conform to all technical design and construction requirements of all local, state and federal agencies having jurisdiction over the Project including, but not limited to, all applicable zoning, building, occupancy, health, environmental and land use laws and with all the applicable requirements of servicing utilities.

3. Architect shall be responsible for the professional quality, technical accuracy and coordination of all space programs, designs, drawings, calculations, specifications and other professional services furnished pursuant to this Agreement, and warrants and represents that all Construction Documents (as defined below), including all drawings, designs, calculations and specifications, will conform to all applicable building codes, regulations and laws and that the Project, when completed, will be complete and properly functioning facilities suitable for the purposes for which they are intended. Architect shall be responsible for the correction or revision, without any cost to the District, of any errors, omissions or deficiencies in the Construction Documents, including, without limiting the generality of the foregoing, the failure to conform to all applicable building codes and all governmental regulations and requirements in the preparation of all Construction Documents, including drawings, designs, calculations and specifications, or in the discharge of any of its professional services to be furnished by or on its behalf under this Agreement.

4. All designs, drawings, calculations, specifications and Construction Documents furnished hereunder by or on behalf of Architect shall be in sufficient detail to define the design intent and enable the contractor(s) to satisfactorily complete and when required to

NMUSD Initials: _____

Westberg + White Initials: _____

prepare shop drawings and subsequent construction and/or modernization of the Project without delay.

5. Employees and Consultants. Architect shall employ at its sole cost and expense, employees, technicians, consultants, engineers and personnel properly skilled in the various aspects of the design and construction of the Project, including, but not limited to, civil, structural, mechanical (inclusive of both HVAC and plumbing), electrical and other specialized engineering or consulting services required for the Project. Architect shall confer and cooperate with professional consultants employed directly by District within the scope of work covered by this Agreement. Any final reports, recommendations, working drawings and specifications shall bear the signature of any Architect consultants or engineers in addition to the signature of Architect where required by state law and governing agency and shall become the property of District.

6. Architect shall make, sign and submit to District the following written statement in connection with all documents prepared by or for it for submission to District during the course of this Agreement and in the performance of its responsibilities hereunder:

"The designs, drawings, specifications, calculations and any other documents submitted herewith fulfill the requirements of the Project as described by District and will provide a complete and properly functioning Project suitable for the purposes for which it is intended, and meet all applicable building codes, regulations and laws. All documents, when used in conjunction with the completed Construction Documents, are in sufficient and correct detail to permit satisfactory and economic construction of the Project without excessive delay, correction, clarification or amplification."

7. Cost Estimate. Architect shall prepare cost estimates, as defined in Article IV of this Agreement, for the modernization and/or new construction costs of the Project. The estimates shall be submitted as a reimbursable to the contract.

8. Progress Reports. Architect shall make written reports as to the progress of the work on the drawings and specifications and submit to the District and Owners Representative.

9. Approval of Documents. When drawings, specifications, estimated costs and other contract documents are completed, Architect shall present them to District and Owners Representative for review and final approval. As a result of the Owners Representative and District review, the Architect shall implement any required changes to the documents submitted for review and approval. It is understood and agreed that the final working drawings and specifications prepared by Architect shall meet with the approval of District.

B. Design and Construction Phases. District shall give Architect a written notice to proceed with services. The following phases are applicable for the Project:

1. Scope of Work Review. Architect shall review the program and the District approved Plan furnished by District to ascertain the requirements and scope of the Project. Such review shall include a comprehensive program review, site investigations and meetings with District staff, Owners Representative, site personnel and community as required by CEQA. CEQA requirements have been completed and the District will provide the documentation to Architect.

2. Existing Conditions Documentation. Architect and its Consultants shall document existing conditions utilizing District-provided drawings and surveys and visual observations by Architect and its Consultants. This documentation includes confirmation that visible structures, walls and partitions are actually located where shown on existing drawings, that visible aspects of major site utilities such as meters and clean outs are where shown on existing

NMUSD Initials: _____

Westberg + White Initials: _____

drawings and that other major elements such as light standards, fences, site walls, paving surfaces and the like are where shown on the existing drawings. If major discrepancies exist between the existing drawings and the actual conditions, the architect may be entitled to additional compensation to locate, measure and revise base drawings showing the correct location of such elements. The Architect will review these conditions in advance with the District and will not begin work without written approval of the District. The Architect may rely on information supplied by the District for concealed or latent conditions described in such information. Where any destructive testing, digging, trenching or use other intrusive or exceptional means to determine the condition, design or location of existing improvements or conditions, including, but not limited to ground penetrating radar, potholing, trenching, opening of existing walls or structures, opening of mechanical equipment, opening of ceilings, and the like the Architect shall recommend and assist in defining the areas for location and mode of testing.

3. Preliminary Approval from District. Architect shall review the scope of work and the findings from the review of existing conditions with District and Owners Representative prior to beginning the Schematic Design Phase. Such review is intended to ensure a complete understanding by the Architect of the Project.

4. ~~Schematic Design~~ Project Scope of Work Phase. Architect shall prepare all necessary ~~Schematic~~ Scoping Design Documents, including but not limited to, the following:

a. Plot plan, based on site information from the District, indicating the proposed location of the ~~building~~ pool; major improvements such as ~~proposed~~ existing parking areas, walks, and location of known exterior utilities and service lines.

b. Floor plans showing all rooms and areas, entrances, exits, ~~stairways, elevators~~, circulation corridors, toilet rooms, major mechanical and electrical areas. A Tabulation of Areas, including net and gross areas of the various parts of the Project shall be included.

~~c. Building elevations showing, by block outline and breaks, the various building masses and how they coincide with the floor plans, including colors and typical fenestration pattern.~~

~~d. Building sections showing floor-to-floor dimensions sufficient to indicate interface with existing structures.~~

~~e. Preliminary drawings and descriptions of systems such as structural, electrical, mechanical, HVAC controls, plumbing, clock, paging, intercom, building protection, lighting, telecommunications and data, cable TV, closed-circuit TV, computer cabling, fire protection, fire and intrusion alarms, plumbing, special systems, gas, and others, and the general type and scope of construction and the equipment required therein.~~

~~f. Statement of Probable Construction Cost ("Statement") based on the Schematic Design Documents and available data, including appropriate design and construction contingencies. This Statement shall identify the cost impact of the potential add-on concepts specified under Subparagraph h. This Statement shall be developed independently of any District Estimate of construction costs ("Estimate") since District may compare the Statement and the Estimate as a means of compiling more information regarding the actual cost of the Project.~~

NMUSD Initials: _____

Westberg + White Initials: _____

~~Architect and its cost consultant shall sign its Statement of Probable Construction Cost to indicate agreement with the data presented in the Statement.~~

~~g. Updated Project Schedule: Architect shall keep a Design Delivery Schedule for the Project assigned updated on a monthly basis showing all changes to the Project Schedule.~~

h. Add-Ons: Architect shall propose and discuss with District a range of possible alternatives. Architect's suggestions for alternatives shall maximize program content and describe their impact on the Project sufficient to increase or decrease the Statement of Probable Construction Cost by at least five (5%) percent.

~~i. Government Approvals: Architect shall in a timely manner provide architectural drawings, narrative description, and other pertinent data prepared by Architect to District, and Architect shall review the documents with the governmental authorities having jurisdiction over the Project.~~

~~j. Presentation Drawings: Concurrent with submission of Schematic Design Documents, or thereafter, as directed by District, Architect shall prepare and submit Presentation Drawings consisting of:~~

~~(i) Plans and elevations as described in 4. a., b., c., and d., above, and~~

~~(ii) One or two sketch perspectives, appropriately colored, showing materials to be used, in an easy-to-see and clear format and mounted on rigid board. Additionally, Architect shall prepare documentation describing the Project in layman's terms.~~

~~k. Copies: Architect shall submit one master set of copies of the Schematic Design Documents, outlined in in this paragraph 4. All drawing masters will be at a reduced size of 11 x 17.~~

~~l. State of California Approval: The Schematic Design Documents constitute a portion of the preliminary plans required to be submitted to the State of California for project funding approval. The District, assisted by the Architect, will submit and review the preliminary plans with State of California representatives as required in order to gain project approval.~~

m. Construction Budget Determination. Architect shall prepare the ~~Schematic~~ Project Scoping Design Documents based on the projected Construction Budget established for the Project which is attached hereto as Exhibit "F". Architect shall provide a design which reasonably can be built within the Construction Budget. Should the projected cost of construction based on the Architect's design exceed the projected Construction Budget, the Architect shall make whatever changes to the design that are needed, at no cost to the District, so that the Project can be built within the Construction Budget. The District may determine during the performance of Architect's Design Services that the projected Construction Budget may need to be modified, Architect shall at all times adhere to the projected Construction Budget.

n. Architect shall prepare the ~~Schematic~~ Project Scoping Design Documents within the timeframe for such drawings as stated herein below.

NMUSD Initials: _____

Westberg + White Initials: _____

5. Design Development Phase. Upon written approval by District of the schematic design drawings for the Project, Architect shall complete the following services for the design development phase for such Project:

a. Design Development Drawings. The Architect will meet with the District during the Design Development Phase to review the work as it progresses, obtaining approvals allowing the work to proceed in a timely manner and according to District needs. Architect shall prepare drawings, floor plans, elevations and other drawings and specifications to fix and describe the size and character of such Project in such a way as to support and coordinate with the requirements of the major building systems, including, but not limited to, structural, mechanical, electrical systems, fire sprinkler systems and public address system, low voltage design and materials of the proposed work.

b. Drawings for Approval. Architect shall furnish three complete sets of preliminary drawings to the District at the completion of the Design Development Phase as developed from the concepts of the approved schematic drawings and site utilization plans and approved development during the Design Development Phase, or as modified by approval of the District, including three sets of outline specifications. Drawings will include, plans, sections and elevations, ~~or perspective sketches~~ submitted to the District for approval, one set of which will be returned to Architect with corrections noted by District. When final corrections are completed, Architect shall furnish District with three corrected copies of the preliminary drawings and outline specifications and digital data on disc.

c. Design Development Estimate. In cooperation with, and subject to the approval of District, Architect shall prepare for the Project a Design Development Estimate of Probable Cost upon ~~fifty percent (50%) and~~ one hundred percent (100%) completion of the Design Development Phase as defined in Article IV of this Agreement.

d. Construction Budget Determination. Architect shall prepare the Design Development Documents based on the projected Construction Budget established for the Project. Architect shall provide a design which reasonably can be built within the Construction Budget. Should the projected cost of construction based on the Architect's design exceed the projected Construction Budget, the Architect shall make whatever changes to the design that are needed, at no cost to the District, so that the Project can be built within the Construction Budget. The District may determine during the performance of Architect's Design Services that the projected Construction Budget may need to be modified, Architect shall at all times adhere to the projected Construction Budget.

e. Architect shall prepare the Design Development Documents within the timeframe for such drawings as stated herein below.

6. Construction Documents Phase. Upon written approval by District of the Design Development Drawings for the Project, Architect shall complete the following services for the Construction Documents phase for such Project:

a. Working Drawings and Specifications. Architect shall prepare Contract Documents commonly referred to as working drawings and specifications, setting forth in detail and prescribing the work to be done, and the materials, workmanship, and finishes required for the Project. This shall be an amplification of the Design Development drawings and outline specifications approved by District and shall be in such form as will enable District to: (1) secure any required approvals, obtain state funding grants, and secure permits and all other approvals for the Project; (2) obtain by open competitive bidding a responsible bid that does not exceed the Construction Document One-hundred (100) Percent Estimate, as defined in Article IV of this

NMUSD Initials: _____

Westberg + White Initials: _____

Agreement, by more than ten percent of the approved budget; and (3) permit any qualified, licensed Contractor to perform the Work. During the Construction Document Phase, the Architect shall meet with the District per Exhibit G Scope of Work to review the progress of the work and discuss decisions that need to be made to progress with the work on a timely basis. These meetings will include the District, Owners Representative, site personnel and Site-Based Project Review Committee. as necessary. Architect shall also prepare reproducible working drawings and prepare specifications by an acceptable photo reproduction process.

Architect shall submit to District four copies and digital data on disc to the District of all calculations, including, but not limited to, plumbing fixture analysis, drainage, structural, mechanical, electrical, acoustical and sanitary design calculations, prior to final District approval of working drawings. The final working drawings shall be drawn legibly and be of such quality and workmanship that clear and legible duplicate transparencies or prints, uniform in size, may be obtained. Final specifications shall be prepared using paper 8 1/2 x 11 inches in size and shall be reproduced using a clearly legible duplicating process. Four sets of specifications and digital data on disc shall be provided to the District, assembled with heavy stock covers or comparable form, and shall be checked by Architect before to submittal to DSA. The District at its sole option may self- perform and or hire a third party(s) to provide a District review, study and check of documents, before the required submittal to DSA for review by the governing agencies. Architect shall make required changes additions and or corrections in the working drawings and specifications originating from the District so long as they are not in conflict with requirements of applicable building codes, local, state and/or federal government regulations, professional standards, and requirements of public agencies having jurisdiction.

All Documents submitted for District approval including schematic, design development, DSA submittals and final working drawings and "As-Builts" shall be transmitted to the District and/or to a third party as directed by the District in the format then in use by the District for such documents and data.

The Architect shall prepare all working drawings, specifications and all other contract documents in a manner that includes and enables additive and deductive alternates for the project work, which have been identified by the District by the commencement of the Construction Document Phase. Alternates which require multiple separate designs shall be considered additional services for which the Architect may request additional services for this extra effort.

b. Phasing of Work. As part of the preparation of Contract Documents and if so directed by District, final working drawings and specifications shall be prepared so that portions of the work may be deferred and performed at a later date under a subsequent contract(s). The District shall provide such final direction to Architect before commencement of working drawings. The phasing strategies to be indicated on the Contract Documents shall be consistent with the District's ability to fund the work from District funds. For the purposes of this agreement the Architect may be required to furnish construction documents that enable the District to bid and construct all of the work at a particular project site in separate phases. The Construction Documents must be prepared in a manner that upon completion of each phase, the project site is operable and can be approved by DSA and occupied by the District. If the work is permitted and bid under separate contracts or as separate sets of construction documents, as opposed to one permit and one set of documents which can be phased over time, then the Architect may request additional services for this work to the extent that it requires extra effort.

The Architect shall review with the Owners Representative and the District and determine the requirements and approach for phasing of the Work. The Architect shall incorporate and prepare as part of the Contract Documents all design and documents necessary to enable construction phasing and logistics in order to obtain the minimum disruption of the educational program at the

NMUSD Initials: _____

Westberg + White Initials: _____

project, to facilitate efficient construction, and to enable the construction of the Project within the duration determined by the District.

c. Governing Agency approvals. When in the opinion of the Architect, and following completion of the District review and correction process described above, all required Construction Documents, calculations and any other necessary documents are sufficiently complete for required government agency review, shall be submitted to the necessary governing agencies. The Architect shall obtain reviews and corrections from the governing agencies and incorporate any required changes and/or corrections into the Contract Documents, calculations or other documents prepared by the Architect.

d. Construction Document Estimate. Upon approval of the Governing Authorities, Architect shall furnish District with a revised estimated cost of the Project in digital data on disc, including a breakdown of costs by major division of work, in a cost estimating format acceptable to the District, and in Microsoft Excel (not locked). In the event that this revised estimated cost for the Project exceeds cost and budget limitations set by District, Architect agrees that it will, at no additional fee or cost to District, make revisions to the drawings and specifications as District may direct to bring the estimated cost for the Project within District's cost limitations and projected Construction Budget. The Architect shall furnish adjustments to the construction document estimate resulting from any changes required by the District or Governing Agencies due to the review of the working drawings and specifications by the District and Governing Agency review and approval process. The resulting estimate, upon approval by District, shall be known as the Construction Document One-hundred (100) Percent Estimate as defined in Article IV of this Agreement.

e. Construction Budget Determination. Architect shall prepare the Construction Documents based on the projected Construction Budget established for the Project. Architect shall provide a design which reasonably can be built within the Construction Budget. Should the projected cost of construction based on the Architect's design exceed the projected Construction Budget, the Architect shall make whatever changes to the design that are needed, at no cost to the District, so that the Project can be built within the Construction Budget. The District may determine during the performance of Architect's Design Services that the projected Construction Budget may need to be modified, Architect shall at all times adhere to the projected Construction Budget.

f. Architect shall prepare the Construction Documents within the timeframe for such drawings as stated herein below.

7. Bidding Documents and Application.

a. Bid Forms. Owners Representative shall manage the bidding process. Architect shall assist Owners Representative with the bidding process, including, but not limited to, preparation, under District's direction, of: list in electronic format of all drawings and specification sections, phasing diagrams, alternates, bid proposals, instructions to bidders, construction agreement, general and supplementary conditions, advertisement for bids, bonds, and bid tabulation forms. Bidding may be conducted with separate bid packages for trades or consolidated bidding of work at multiple project sites. Prints shall be of the same size as the tracings from which the prints are made. During the period of bidding, Architect shall interpret the drawings and specifications, prepare answers to bidder's questions and prepare any addenda required before bids are received. Architect shall help in the interpretation of bids received, including the various alternates, if any. Architect shall aid in investigating the competency and responsibility of the bidders and make a recommendation of award of contract to District. Architect shall assist in the preparation of bid tabulations and bid analysis as required by District.

NMUSD Initials: _____

Westberg + White Initials: _____

b. Alternate Bids. As described in paragraph 6a above, Architect shall provide working drawings and specifications which include alternate bids as deemed advisable by District to bring the Project within allowable cost and budget limits.

c. Substitution of Materials and Products. When substitutions to specified items are submitted by the General Contractors bidding on the project during the bid period, the Architect shall review, advise and recommend for acceptance or rejection any substitution of materials and products where requested or required by the terms of the specifications during the bidding process. If the District requires acceptance of a substitution that requires redesign or modification of elements designed for the specified item, the Architect is entitled to request additional compensation to make those changes which shall be negotiated under the terms of this agreement.

8. Applications to Governmental Agencies. Architect shall furnish and process all architectural and engineering information required to prepare and process applications to applicable governmental agencies for the securing of permits, priorities, approvals, materials, funds or as an aid in the planning of the Project.

9. Revision of Drawings. If required by District, after competitive bids based on the working drawings and specifications have been received and in the event the total of the lowest responsible bid or bids exceeds the District-approved Construction Document One-hundred (100) Percent Estimate by more than ten(10) percent, Architect shall, at its own expense, revise the working drawings and specifications as directed by the District in a manner that will permit the securing of new bids which do not exceed the cost limitations of the District-approved Construction Document One-hundred (100) Percent Estimate.

10. Construction Phase. During the construction phase for the Project, Architect shall perform the following services:

a. Pre-Construction. Architect, along with Owners Representative, shall conduct pre-construction conferences and job walks with successful contractors.

b. Administration. Architect shall provide general administration of the construction contract for all work based on the drawings and specifications prepared by Architect, and in doing so shall comply with all requirements of Title 21 and Title 24 of the California Code of Regulations, with respect to that administration. Architect shall visit the site to observe the work at all times necessary to determine the quality of the contractor's performance as the work progresses in order to advise District as to the progress and shall visit the work at least once each week and promptly whenever requested to do so by the District, Owners Representative or Inspector of Record. The administration by Architect shall be in addition to the continuous inspection of Inspector of Record. Architect shall provide technical direction to Inspector of Record when requested to do so by District representative or by Inspector of Record.

Architect shall take reasonable precautions to secure compliance by the contractor and the subcontractors with the Construction Documents. Architect shall have the authority to reject work which does not conform to the Construction Documents. Whenever Architect considers it necessary or advisable to insure the proper implementation of the intent of the Construction Documents, Architect shall request that District require that the contractor arrange for additional inspection or testing of any work, whether or not such work be partially or completely fabricated or partially or completely installed. When Architect is to observe tests or inspections or to issue approvals as required by the Construction Documents, Architect shall cooperate with the personnel responsible for such testing at the normal place where such testing is conducted or performed.

NMUSD Initials: _____

Westberg + White Initials: _____

c. Inspector of Record and Reports. Architect shall aid in the selection of, and approval of, fulltime inspectors as required by law, and provide technical direction to the inspectors during the construction process. Architect shall receive and check inspector of record's reports and prepare and submit reports to applicable agencies as required by law.

d. Schedule Observation and Records. The contractor will be contractually required to submit to Owners Representative and to Architect before construction commences, a schedule of the planned construction activities including the sequence, timing and relationship of construction activities. On a periodic basis thereafter, the contractor will be contractually required to submit to District Project Manager and to Architect schedules of the actual and planned progress of the work which accurately reflect the status of the work performed and the anticipated schedule of the work to be performed. Architect shall review and approve the contractor's schedules. Architect shall immediately notify Owners Representative and the contractor in writing of any and all instances in which the schedules submitted by the contractor do not accurately reflect the actual progress of the work, correspond to the contractor's application for payments or reflect other necessary changes in the scheduled progress of work activities.

e. Construction Delays. Architect will attempt to expedite the progress of the construction work by means of verbal and written communication and reference to agreed and accepted schedules.

f. Progress Reports. Architect shall submit verified progress reports, as required, to District and to the Division of the State Architect in compliance with Title 21 and Title 24 of the California Code of Regulations.

g. Problem Reports. During the construction, Architect shall make written reports to District stating any problems arising during construction, the changes contemplated in the work as a result of the problem, and the progress of the work.

h. Tests. Architect shall check and process all required material and test reports (except those reports provided by firms and persons whose work is excluded from the Services required to be provided to District by Architect) and report to District and any applicable agencies any deficiencies in material as reflected by those reports, and recommendations for correction of those deficiencies.

i. Color, Finish, Material Selection. With the aid of and in cooperation with District, Architect shall prepare and submit during the Design Development Phase to District for review and approval or disapproval. ~~drawings, sketches, and sample boards as are needed to represent the selections of colors, textures, finishes, and other materials involving an aesthetic decision, for all required items included in the work for the Project. Architect shall provide three complete color and material sample boards prior to bid documenting the color, finish and material selections at no additional cost to District. Architect shall monitor contractor submittals for adherence to the color, finish, and material selections and advise the District of any deviation.~~

j. Shop Drawings and Equipment Lists. Architect shall promptly review and approve all Shop Drawings, Equipment Lists, product data, specifications, addenda, change orders and other modifications, schedule of submittals and samples required by the Construction Documents to he submitted to it for approval. Architect shall submit all such drawings, addenda, change orders and other modifications to District upon completion of the Project. Such review by Architect shall not relieve the contractor of any of its responsibilities under the construction contract. For shop drawings, Equipment Lists and any other submittals that are indicated by Contractor and/or the Owners Representative to be on the critical path for the construction of the project, the Architect shall complete its review within ten working days after

NMUSD Initials: _____

Westberg + White Initials: _____

receipt of the documents, so as not to unnecessarily disrupt the orderly progress of the work or delay completion of construction. For all other shop drawings and submittals Architect shall complete its review so as not to unnecessarily disrupt the orderly progress of the work or delay completion of construction, but within no greater than twenty (20) working days. Architect shall advise District and the contractor of its approval or disapproval in writing and, in the case of any disapproval, the reasons therefore which shall identify any defect, discrepancy or deficiency which Architect discovers in the documents. In addition, Architect shall assist District in the determination of alternate acceptable materials and/or equipment. No major changes in or deviations from the requirements of the Contract Documents will be permitted at any time without prior written approval from District. Architect shall submit one set of all reviewed shop drawings for District's file and advise District of the results of such review.

k. Changes. Architect shall carefully and promptly review and approve in writing the contractor's requests for all change orders, time extensions, substitutions to specified products, materials, equipment or systems and other departures from the Construction Documents, provided such change orders are proper under the prime/construction contract. Architect shall complete its review so as not to unnecessarily disrupt the orderly progress of the work or delay completion of construction, but within no greater than ten (10) working days. Architect shall provide District, Owners Representative and the contractor a copy of its written analysis of each such request, indicating whether the same is approved or disapproved and in all cases of disapproval, the reasons therefore. Architect shall discuss with the contractor, Owners Representative and District any proposed changes required during construction when the changes alter the function, quality, appearance, or cost of the finished item of work, and Architect shall check all items of cost occasioned by the changes. Architect shall not permit the contractor to commence work on any changes without first obtaining the written approval of District. Changes shall not be commenced until Architect has received a written change order approved by District and signed by the contractor.

l. Information for As-Built Drawings. Architect shall consult with Inspector of Record and/or the contractor in the compilation of information necessary for the preparation of the as-built drawings required by subsection (u) of this Section.

m. Plans and Reports to Governmental Entities. Architect shall furnish all prints, specifications, and other necessary papers, and make reports to the governmental entities having jurisdiction as required.

n. Certificate of Payment. Before authorizing any payments to the contractor, Architect shall carefully and promptly review and approve the most recent schedule of values submitted by the contractor and reviewed by the Inspector of Record and shall require sufficient data to substantiate the contractor's right to payment as District or Architect may require. Architect shall carefully determine the proper amount owing to the contractor and shall within five (5) working days after receipt of the contractor's application for payment, issue a certificate for payment for such amounts as maybe due to the contractor. If Architect does not approve the schedule of values as submitted by the contractor within said five (5) day period Architect shall advise District, Owners Representative and the contractor within said five (5) day period in writing of Architect's reasons for withholding the certification in whole or in part. The issuance of a Certificate for Payment shall constitute a representation by Architect to District that the work has satisfactorily progressed to the point indicated, complies with and is in accordance with all building codes, all government rules and regulations and the Construction Documents (subject to an evaluation of the work as a functioning whole upon completion, and to the results of any subsequent tests required by the Construction Documents, and to minor deviations from the Construction Documents which are correctable prior to completion); and that the contractor is entitled to the payment in the amount certified.

NMUSD Initials: _____

Westberg + White Initials: _____

o. Description Drawings and Interpretations. When the Contractor requires additional clarification of a design detail, Architect shall furnish all details or incidental services necessary for the proper execution of the work, to include ~~all large-scale or full-size~~ supplemental drawings required to describe the work for the Project, but not to the extent required by the Contractor for preparation of Shop Drawings. Architect shall complete these details and deliver them to the Owners Representative and contractor to prevent delay to the contractor's operations. Tracings of all supplemental drawings shall be furnished to District and shall bear the approvals required of public agencies having jurisdiction. If, during the construction, any dispute shall arise regarding the true meaning of the drawings and/or specifications, Architect shall render a prompt interpretation.

p. Prefinal Site Observation. In cooperation with District and Owners Representative, Architect shall make a prefinal inspection at such time as Architect or District shall determine that the Project is substantially completed. On the basis of the prefinal inspection, Architect, in cooperation with District and Owners Representative, shall prepare and forward to the contractor, Owners Representative and to District a list of all deficiencies, including a list of those of a minor nature, commonly called a "punch list," and notify, through the District, the contractor in a written notice accompanying the list that all of the deficiencies must be corrected prior to acceptance of the Project.

With the Owners Representative and the District's maintenance personnel, Architect shall observe the contractors' initial start-up and testing of utilities, operational systems and equipment for readiness.

q. Certificate of Completion. Architect shall conduct observations of the project and consult with the contractor, Owners Representative and District to determine the dates of substantial completion and final completion, shall review written warranties and guarantees and related documents, and cooperate with District in the preparation of a punch list, and shall issue a final certificate for payment. Architect shall issue a final certificate for payment only after it has made an inspection to determine whether the work or the designated portion thereof is substantially complete and conforms to the requirements of the Construction Documents. The final certificate of payment shall state that based upon the Architect's personal knowledge, as personal knowledge is defined in Section 33(b), Title 24 of the California Code of Regulations and Education Code Section 17309, and on the basis of Architect's observations, the work has been completed in accordance with the terms and conditions of the Construction Documents and that the entire balance found to be due the contractor is due and payable. Furthermore, when the work or the designated portion thereof is substantially complete, Architect shall prepare a certificate of substantial completion which shall establish the date of substantial completion, shall establish the responsibilities of District and the contractor with respect to security, maintenance, heat, and utilities, and any damage to work, and shall fix the time within which the contractor shall finish all the items needed to be completed or corrected to conform the work to the Construction Documents.

During the period of construction, Architect shall cause its consulting engineers to make or cause to be made all respective tests and observations necessary to secure the completion of various types of work falling under their division of the work, and upon completion of the Project, Architect shall cause each consulting engineer to issue or cause to be issued a certificate stating that the work falling under his or her administration has been performed in accordance with the drawings and specifications and contract requirements.

r. Completion of Lien time. At the expiration of the period in which to file and serve a Stop Notice, Architect shall approve the final certificate of payment of the contractor.

NMUSD Initials: _____

Westberg + White Initials: _____

s. Guarantees. Architect shall transmit to District, the necessary guarantees, affidavits, ~~releases, bonds, waivers,~~ instruction books, diagrams, operating manuals, and documents required of the contractor by the contract documents.

t. As-Built Drawings.

(i) Not later than sixty (60) days after completion of construction, and before receipt of final payment, Architect and it's Consultants shall review record changes provided by the General Contractor in PDF format and submit the final working drawings and specifications, indicating on them all changes as shown on the General Contractor's as built documents and as made by requests for information, change orders or otherwise during construction and all information called for on the specifications, producing the Architect & its Consultants "as-built" set of final working drawings and specifications. Said "as-builts" shall also show, among other things, all deviation from original bid set of construction documents prior to construction, the location of all concealed pipe, buried conduit runs, and other similar service elements within the Project as identified and described and forwarded to Architect by the contractor, if applicable. Architect shall review ~~and certify that~~ the Contractor's "as-builts" are a correct representation of the information supplied to it by the Inspector of Record and Contractor's construction deviation from the original construction documents. Architect shall obtain a certificate from the Inspector of Record and the Contractor that the Contractor's "as-builts" are correct. Architect shall forward Contractor's "as-builts" to the District.

(ii) Before the receipt of Architect's final payment, Architect shall forward to District one clear and legible set of reproductions of the computations in hard copy print and in digital data on disc, and the DSA final verified progress report pursuant to Title 24 of the California Code of Regulations, and Architect's Certificate of Completion.

u. Means and Methods. Architect shall not be responsible for those acts or omissions which are solely the responsibility of the contractor or any subcontractors, or any of the contractor's or subcontractor's agents or employees, or any persons performing any of the work on their behalf. The Architect does not have control over or charge of and shall not be responsible for construction means, methods, techniques, schedules, sequences, or procedures, fabrication, procurement, shipment, delivery, receipt or installation, or for safety precautions and programs in connection with the work, since these are solely the Contractor's responsibility under the contract for construction.

11. Public Agency Approvals. Architect shall assist District in applying for and obtaining the required approvals from all public agencies having jurisdiction over the Project. To the extent approvals of documents or drawings are required for the Project, Architect shall submit such copies to such agency as are required and shall make corrections or revisions as may be necessary or required by such agency in order to secure approvals or funding. District shall reimburse Architect for any plan check fees paid by Architect on District's behalf.

C. Other Architect's Duties.

1. Consultations. Architect shall participate in all consultations and conferences with authorized representatives of District and/or other public agencies having jurisdiction over the construction of the Project.

2. Guarantee Period. Architect shall, upon request of District, recommend action to be taken should defects in workmanship or materials be discovered after acceptance of the Project and prior to expiration of the guarantee period.

3. Scheduling. Architect understands that District may request that Architect proceed with services for more than one project at any given time and that Architect agrees that

NMUSD Initials: _____

Westberg + White Initials: _____

Architect can provide concurrent design services as may be required by the District at any given time. Architect further understands that District may choose to postpone or abandon any phase of a Project at District's discretion and that District may give notice to restart such phase at a later date subject to potential adjustment of fees or costs for architectural services.

4. Meeting Minutes. Architect shall prepare and distribute design meeting minutes during the design phase including site programming, internal design meetings and meetings with District and/or Owners Representative. Additional documentation requirements of the Architect are outlined in Article VIII of this Agreement.

5. District-prepared Design Standards. Architect shall adopt and use the District-prepared design standards as provided by the District within 6 weeks of execution of this Agreement.

6. Value Engineering. Architect shall assist District and Owners Representative in developing value engineering opportunities during the design and bidding phases of the Project. If the District, in its sole judgment and determination, elects to incorporate Value Engineering concepts or solutions, Architect shall incorporate such into prior to the start of Construction Documents without additional charge.

D. Additional Architect Services. At District's request, Architect may be asked to perform services not included in Article II of this Agreement, not included elsewhere in this Agreement, not included in any Exhibit to this Agreement, and/or not customarily furnished in accordance with generally accepted architectural practice. As used herein, "Additional Services" mean any work which is determined by District to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary for Architect to perform at the execution of this Agreement. Architect shall not perform, nor be compensated for, Additional Services without prior written authorization from District and without a written confirmation between District and Architect as to the compensation to be paid for such services. District shall pay Architect for any approved Additional Services, pursuant to the compensation provisions herein, so along as such services are not made necessary through the fault of Architect pursuant to the indemnification provision of this Agreement. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Architect was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

1. Furniture and Interior Design. Assistance to District, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

2. Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services made necessary by the failure of Architect to detect and report such matters when it reasonably should have done so shall not be compensated.

3. Legal Proceedings. Serving as an expert witness on District's behalf or attending legal proceedings to which Architect is not a party.

4. Damage Repair. Supervision of repair of damages to any structure.

5. Services related to District-furnished furniture, furnishings and equipment

NMUSD Initials: _____

Westberg + White Initials: _____

which are not a part of the Project.

6. Consultation on replacement of work damaged by fire or other cause during construction, and furnishing services in conjunction with the replacement of such Work.

7. Services made necessary by the default of a contractor or other service providers employed by the District.

8. Preparing to serve or serving as a witness in connection with any public or legal proceeding.

9. Recruiting or training maintenance personnel.

10. Providing services required because of significant changes in the Project including, but not limited to, changes in size or complexity.

11. Providing services in evaluating an extensive number of claims submitted by a contractor or others in connection with the work which are not related to Architect drawing and specifications interpretations, conflicts, errors and omissions.

12. Providing design services, drawings and specifications strictly related to obtaining governing agency permits for existing relocatable structures that have no existing permits.

- Existing or other facilities. Providing services to survey or measure existing conditions or to make measured drawings thereof, where no as-builts exist for facility.

14. Life Cycle Cost Analysis. Providing detailed life cycle cost benefit analysis beyond those normally provided and or required to meet the requirements of the implementation plan, District Standards and to meet the approved or required to meet the approved construction budget.

15. Substitutions. Providing services in connection with evaluating excessive substitutions proposed by contractors and making subsequent revisions to drawings, specifications and other documentation resulting there from. The Architect shall ensure that the general conditions prepared for the contract documents include language requiring the contractor to pay the District as a result of contractor requested substitutions including costs from the Architect and other impacted contractors.

- Feasibility Studies. Providing financial feasibility studies

17. Project Changes. Providing services required resulting from changes in project scope, including building size, unique quality requirements, and complexity beyond the program requirements of the District approved implementation plan.

18. Extended construction. Providing construction administration services 90 days after the planned final completion and acceptance date of the construction phase of the project, when such completion delay is not due to the fault or actions of the Architect. The Architect shall demonstrate to the District that additional expenses have been incurred as a result of any such project construction delays.

NMUSD Initials: _____

Westberg + White Initials: _____

19. Any other additional service item not listed above shall be discussed and mutually agreed upon by both parties.

20. Hazardous Material Specifications. As part of the Contract Documents and construction documents, Architect shall incorporate the requirements, specific scopes of work and processes developed by the District's Hazardous Material consultants. Incorporation of such requirements shall be made in a manner that allows seamless bidding and construction.

21. Site-Based Project Review Committees. Architect shall interact with the Site-Based Project Review Committee for the Project, including soliciting input, providing regular verbal and written reports. Services to the site oversight committees shall be delivered based on a consistent and equal standard.

22. As an additional service, the Architect may be directed to provide services to District to correct existing deficiencies related to non-permitted structures that may exist on the project site. These services shall comprise the following:

- Provide a detailed site investigation, review of available records, and with District's cooperation determine if any existing structures are not properly permitted as required by applicable public agencies.

- For existing structures that require paperwork processing of available documents to obtain correction of permit deficiencies, the Architect shall furnish such applications and processing to applicable governmental agencies. This application and approval process shall occur concurrently with the project design.

- Architect shall assist the District in identifying existing structures that require preparation of designs, modifications, inspections and certifications to obtain appropriate permits. The Architect shall make recommendations on procedures for the District to follow to proceed with correction of non-permitted structures.
- To make recommendations on the development of work scope and budgets and to prepare drawings and documents in order to correct existing relocatable structures and site conditions that are permit deficient.

23. Additional Services shall be calculated using the guaranteed hourly rates set forth in Exhibit C hereto. Said guaranteed hourly rates are fully burdened.

ARTICLE III. DUTIES OF DISTRICT.

A. Owners Representative. The Owners Representative acts on behalf of District in all matters pertaining to the Services to be rendered under this Agreement. All requirements of District pertaining to Services to be rendered shall be given through Owners Representative. Owners Representative shall cooperate with Architect in all matters relative to this Agreement in order to permit the performance of the work without undue delay.

B. Statement of Scope, Budget and Scheduling for Project. District shall provide full information as to the requirements and educational program regarding the Project, including objectives, standards, constraints and criteria. District shall establish an Implementation Plan, including construction budget and schedule for completion for Project.

C. Surveys and Tests.

NMUSD Initials: _____

Westberg + White Initials: _____

1. Site Survey. District shall timely furnish Architect with a complete and accurate survey of the building site, prepared by a licensed surveyor indicating where relevant, among other matters, the location of existing buildings, grades around existing buildings, grades and lines of street, pavements, boundaries of adjoining properties and contour of site, information as to existing sewer, water, gas and electrical services of record. As an alternate, and subject to additional compensation to Architect, District may request the Architect to furnish such survey.

2. Soil Tests. District shall furnish results of soil tests by a qualified testing laboratory or soil engineer.

3. Geological Hazards Investigation Survey. District shall perform any geological hazards investigation survey required by State authorities having jurisdiction and make copies available to Architect for distribution as necessary.

D. Fees. District shall pay or cause to be paid all fees required in connection with any particular Project to public agencies having jurisdiction.

E. Bidding and Contract Documents. Owners Representative and District shall conduct the bidding process. Architect shall assist District and Owners Representative in the distribution of plans to bidders and as outlined in Section 7 above.

F. Inspector of Record. The District shall provide competent, adequate and continuous inspection during construction by an inspector(s) satisfactory to the Architect(s) and the State of California Department of General Services whose services, duties and responsibilities are described in the agreement between the District and the inspector(s). The terms and conditions of the District-inspector(s) agreement will be furnished to the Owners Representative. The inspector(s) shall act under the direction of the Architect(s) as the District may direct and shall be responsible to the District. The cost of employment of Inspector of Record will be borne by District and paid directly to Inspector of Record. The administration by Architect and its engineers and consultants shall be in addition to the continuous personal supervision of the Inspector of Record.

G. Communications and Inspections.

1. Relationship with Contractors. If during the course of construction any questions, recommendations, requests for changes, or substitutions are initiated by District, they shall be directed to the Architect only through District's chosen authorized Representative. Orders to the contractor shall be issued by the Architect through the District's chosen Representative.

2. Prefinal inspection. District, Inspector, and Owners Representative shall assist Architect and its Consultants in making the prefinal observation and the preparation of the list of deficiencies with regard to the Project.

3. Final Observation. When District has been notified by Architect that the "punch list" items have been corrected, District shall accompany Architect and the contractor on the final observation with regard to the Project.

4. If the District observes or otherwise becomes aware of any fault or defect in the Project, or nonconformance with the contract documents, prompt written notice thereof shall be given by the District to the Architect(s), the Owners Representative, and the inspector(s).

NMUSD Initials: _____

Westberg + White Initials: _____

5. Appropriate information or services under the District's control shall be furnished by the District with reasonable promptness to avoid delay in the orderly progress of the Architect's Services and the progress of the work.

H. Notice of Completion. When all items are completed with regard to the Project to the satisfaction of District and Architect, and upon recommendation of Architect, District shall accept such Project and record a Notice of Completion. During the contractor's guarantee period, District shall notify Architect in writing of any apparent deficiencies in materials or workmanship.

I. Existing or Base Building Information. Where the work includes remodeling of an existing building or work, the District shall provide to the Architect available drawings, specifications and other information describing the existing building or work.

ARTICLE IV. PROJECT COST ESTIMATES.

A. Budget Estimate. The District has prepared a Plan for the Project inclusive of a scope of work and a construction budget. Such scope and construction budget represent the baseline Project estimate of cost to be used by the Architect in guiding design services required under this Agreement. Architect's design must adhere to District's projected Construction Budget for the Project. Should the scope of Architect's Project design exceed the District's projected Construction Budget, and the overage is not due to District directed scope changes, all cost associated with any necessary re-design to ensure Architect's design adheres to District's projected Construction Budget will be borne by Architect.

~~B. Program Estimate. The Architect, upon review of the Plan, site investigations and meetings with District and Owners Representative on the work scope shall furnish a Program estimate to District and Owners Representative indicating a probable Construction cost for the project. The Program Estimate is subject to review and approval by the District.~~

C. Design Development Estimate. The Architect shall furnish estimating services during the course of design development to ensure that the scope of the Project design remains within the budget limitations established by the Plan. The Design Development Estimate shall be subject to District approval.

D. Construction Document Estimate. The Architect shall furnish estimating services during the course of the preparation of construction documents as follows:

- Fifty (50) Percent Stage. Architect shall furnish an estimate of cost when construction documents are fifty (50) percent complete. The Construction Document fifty (50) Percent Estimate shall be subject to District approval.

~~• Seventy Five (75) Percent Stage. Architect shall furnish an estimate of cost when construction documents are seventy five (75) percent complete. The Construction Document seventy five (75) Percent Estimate shall be subject to District approval.~~

3. One-Hundred (100) Percent Stage. For all Projects, Architect shall furnish an estimate of cost when construction documents are completed. The Construction Document One-hundred (100) Percent Estimate shall be subject to District approval.

E. Requirements of Estimates. All construction document estimates shall be based on prevailing construction and market conditions, using detailed quantity takeoffs and unit prices for labor, materials, equipment, supplies and the inclusion insurance, bonds, overhead and fees. The format of estimates shall be in accordance with requirements of the District and Owners

NMUSD Initials: _____

Westberg + White Initials: _____

Representative and shall be organized in a Construction Specifications Institute (CSI) format with categorization by Implementation Plan priorities.

Architect shall prepare an estimate for review by public agencies having approval or jurisdiction over the Project. Estimates for public agencies having approval or funding jurisdiction over the Project shall be prepared in accordance with the format and standards established by the specific public agency and shall be modified based on comments and input furnished by the public agency.

Estimates of construction costs and detailed Construction Cost Estimates prepared by the Architect, represent the Architect's judgment as an Architect familiar with the construction industry. It is recognized, however, that neither the Architect nor the District have control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the District's Project Budget of from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect.

ARTICLE V. PROJECT SCHEDULE.

- Time is of the essence. The Architect shall perform its services in accordance with the design schedule set forth below.

B. Term. The term of this Agreement shall be consistent with those restrictions provided in California Education Code Section 17596.

C. Time for Completion. It is understood that the deadlines set forth below are binding, unless extended in writing by District. The District will issue a notice to proceed for each phase of the project. The deadlines provided below are typical for a project of this scope.

1. Initial Site Drawings; Schematic Design Drawings; Design Development Drawings, and all obligations related thereto, shall all be completed by October 31st, 2018;

2. Construction Document Drawings, and all obligations related thereto, including without limitation, submitting same to DSA and all other agencies with jurisdiction over the Project. Increment 1 shall all be completed by February 5th, 2018; Increment 2 shall all be completed by April 5th, 2018;

~~3. DSA and other Agency Approvals, and all obligations related thereto, including without limitation, meetings with such Agencies and District and others to obtain required approvals the Project. Increment 1 shall all be completed by [Month and Day], 20__; Increment 2 shall all be completed by [Month and Day], 20__.~~

~~4. Start of Construction through overall Project completion, including without limitation, Contract Administration services for the Project, shall all be completed by [Month and Day], 20__.~~

D. Architect shall be responsible for any damage the District incurs, through no fault of the District, as a result of Architect's delay in its performance of the services per the schedule outlined above.

ARTICLE VI. QUALITY ASSURANCES AND STANDARDS

A. Quality is of the essence.

NMUSD Initials: _____

Westberg + White Initials: _____

B. Architect shall provide Architect's internal working quality assurance program to District and shall demonstrate the Architect's continuous compliance with said quality assurance program.

C. Architect shall be responsible for the professional quality, technical accuracy and coordination of all space programs, designs, drawings, calculations, specifications and other professional services furnished pursuant to this Agreement, and warrants and represents that all Construction Documents including all drawings, designs, calculations and specifications, will conform to all applicable building codes, regulations and laws and that the Project, when completed, will be complete and properly functioning facilities suitable for the purposes for which they are intended.

D. Architect shall be responsible for the correction or revision of any errors, omissions or deficiencies in the Construction Documents, including, without limiting the generality of the foregoing, the failure to conform to all applicable building codes and all governmental regulations and requirements in the preparation of all Construction Documents, including drawings, designs, calculations and specifications, or in the discharge of any of its professional services to be furnished by or on its behalf under this Agreement.

E. Architect Supplemental Instructions (ASI), sometimes called a Clarification, will be considered part of quality control, and all redesign and specification costs associated with ASI's will be borne by the Architect. An ASI and a Clarification are synonymous.

ARTICLE VII. OTHER SERVICE PROVIDERS.

A. Architect shall collaborate with all services for the Project which are separately retained by District.

B. Architect acknowledges that District may retain an Owner's Representative.

C. District reserves the right to let other contracts in connection with the Project.

D. Notwithstanding any provision to the contrary included in this Agreement, nothing in this Agreement shall supersede any legal duty or obligation of the Architect or inspector required to be performed pursuant to California Education Code sections 17302 and 17311 and Part 1, Title 24, California Code of Regulations, sections 4-341 and 4-342.

ARTICLE VIII. DOCUMENT CONTROL

A. Architect shall utilize the project management and document control system established by the Owner's Representative to ensure that Project documents are properly recorded and maintained, requests for information are transmitted and responded to, and approvals or denial of approvals are recorded and communicated in a timely and orderly fashion to the appropriate parties. The Document Control system shall include a website base system that the Architect and its Consultants shall be required to use. The Architect shall furnish resources and time for its employees and Consultant's to be trained by the Owners Representative in the use of the project management and document control system. A total of two - six (6) hour training sessions will be provided for training of the Architect's personnel. Additional training requested by the Architect shall be reimbursed to the District by the Architect by a decrease in the Basic fee.

NMUSD Initials: _____

Westberg + White Initials: _____

B. Architect shall document or require documentation of all aspects of the Project including, but not limited to, meeting minutes, requests, contracts, changes, approvals, permits and as-builts.

C. Architect shall utilize the document storage, and the document and drawing reproduction services established by District, unless other arrangements have been agreed to in writing between Architect and District.

D. Architect shall provide documents and information and fully support the required financial and performance audits of the Project. Architect shall ensure that its work products pursuant to this Agreement shall be provided in written form and include both a hard copy and an electronic copy.

ARTICLE IX. ARCHITECT'S ACCOUNTING RECORDS

A. Records of costs pertaining to Architect's Services performed pursuant to this Agreement shall be kept on the basis of generally accepted accounting principles and shall be available (upon reasonable prior notice to Architect) to the District or the District's authorized representative at District's request.

B. Pursuant to and in accordance with the provisions of California Government Code Section 8546.7, or any amendments thereto, all books, records and files of the District and the Architect connected with the performance of this Agreement shall be subject to the examination and audit of the State Auditor at the request of the District or as part of any audit of the District for a period of three (3) years after final payment is made under this Agreement. The Architect shall preserve and cause to be preserved such books, records and files for the audit period.

ARTICLE X. STANDARDIZED DESIGN AND MANUFACTURED ITEMS.

A. District desires that the Project be consistent with other projects within the District's Measure A School Facility Improvement Program.

B. Architect shall consult, cooperate and adhere to District provided design standards in the use and selection of manufactured items to be used in the Project. Manufactured items, including, but not limited to, paint, finish hardware, plumbing fixtures and fittings, mechanical equipment, electrical fixtures and equipment, roofing materials, and floor covering shall be standardized to District's criteria and design standards. Architect acknowledges technical spec, processes, procedures, and methods.

C. Architect acknowledges receipt of District's design standards which include technical specifications, processes, procedures and methods. Architect shall incorporate such design standards into Construction Documents and assume responsibility for their use. Architect acknowledges that the design standards include requirements, procedures and methods for preparation of the working drawings and specifications.

D. Architect agrees that the specifications for a Project shall provide that no asbestos or asbestos containing materials or other hazardous materials including lead, PCB'S and other materials deemed hazardous by the State of California shall be used or substituted in conjunction with the Project. Architect agrees that upon completion of all work for a Project, Architect will provide a written statement to District to the best of Architect's knowledge, no asbestos or asbestos containing materials and other hazardous materials deemed hazardous by the State of California were used in the construction of the work on the Project under the Agreement.

NMUSD Initials: _____

Westberg + White Initials: _____

ARTICLE XI. OWNERSHIP OF DOCUMENTS PREPARED FOR PROJECT.

A. Pursuant to California Education Code Section 17316 and the requirements of District, all plans, specifications, original, or reproducible transparencies of working drawings and master plans, preliminary sketches, architectural presentation drawings, structural computations, all estimates and all other documents prepared by Architect pursuant to this Agreement, including but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes ("Project Documents") are and shall remain the property of District for purposes of repair, renovation modernization, replacement, reconstruction or expansion of the Project. Although the official copyright in all Project Documents shall remain with the Architect or other applicable subcontractors or consultant, the Project Documents shall be the property of District for this site and Project whether or not the work for which they were made is executed or completed.

B. District, as the sole Owner of all Project Documents prepared for a Project, reserves the right to reuse all or part of Project Documents at its sole discretion, and with no additional compensation to Architect, for the construction of all or part of another school construction project constructed for District. District is not bound by this Agreement to employ the services of Architect who prepared Project Documents in the event they are reused on another project.

C. In the event District elects to reuse Project Documents prepared for Project on another project without employing the services of Architect who prepared Project Documents, District agrees to require the new architect to assume any and all obligations for the reuse of the Project Documents and process the same through the Division of the State Architect as the project architect designated on this Project by Architect. The District agrees to indemnify, defend and hold the Architect harmless from and against any all claims, liabilities, suits, demands, losses and expenses, including, but not limited to, reasonable attorney's fees accruing or resulting from the District reusing the drawings and specifications for another project or modifying the Architects drawings and specifications for use in another project.

D. This Agreement creates a non-exclusive and perpetual license for District to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Architect shall require any and all subcontractors and consultants to agree in writing that District is granted a non-exclusive and perpetual license for the work of such sub-contractors or consultants performed pursuant to this Agreement. Architect shall provide AutoCAD, Autodesk Revit and PDF digital data requested by construction contractors at no additional cost to District.

E. Architect represents and warrants that Architect has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Architect prepares or causes to be prepared pursuant to this Agreement. Architect shall indemnify and hold District harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section.

F. Architect warrants that no additional Fee is payable to Architect under this Agreement for the perpetual license granted to the District by this Article XII.

ARTICLE XII. TERMINATION, ABANDONMENT OR SUSPENSION OF AGREEMENT

A. **Termination for Cause**. District may suspend or terminate Architect's services under this Agreement following seven (7) days written notice to Architect because of the failure of Architect to satisfactorily perform or provide prompt, efficient or thorough service or if Architect fails

NMUSD Initials: _____

Westberg + White Initials: _____

to complete its services or otherwise comply with the terms of this Agreement. Upon receipt of a notice of termination which shall describe in reasonable detail the reasons therefor, Architect shall forthwith discontinue the rendering of all services under this Agreement other than services necessary for an orderly windup of Architect's services. If the termination is for cause, the compensation due Architect pursuant to Paragraph E below upon termination shall be reduced by the amount of damages sustained by the District due to such breach.

B. **Termination for Convenience**. District shall also have the right in its absolute discretion to terminate this Agreement without cause following fifteen (15) days prior written notice from District to Architect. Upon receipt of such a notice of termination for convenience, Architect shall forthwith discontinue the rendering of all services under this Agreement other than services necessary for the reasonable and orderly windup of Architect's, its Consultant's and Sub-Consultants' services. Any termination by the District pursuant to Paragraph A above which is found not to meet the requirements of Paragraph A above, shall be deemed a termination pursuant to this Paragraph B.

C. **Suspension or Abandonment**. District has the absolute discretion to suspend or abandon all or any portion of the work on a Project and may do so upon seven (7) days written notice to Architect. Upon notice of suspension or abandonment, Architect shall discontinue any further action on a Project. If the entire work to be performed on a Project is abandoned, the parties shall each be relieved of the remaining executory obligations of the Agreement, as it relates to that Project, but shall not be relieved of any obligations arising prior to said abandonment or of obligations related to any other Project. Compensation to Architect under this Paragraph C shall be identical to compensation to Architect under E below. Nothing set forth herein shall preclude the District from its rights and/or remedies of offset, set off, back charge, and/or indemnity, against the Architect and/or its insurance carriers.

D. **Insolvency.** In the event that Architect shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of District this Agreement shall terminate and be of no further force and effect and any property or rights tangible or intangible, shall forthwith be returned to District.

E. **Terms of Payment.** In the event District terminates, abandons or suspends the work on a Project, there shall be due and payable to Architect within thirty (30) days following the date the notice from the District is delivered to Architect the portion of the Basic Fee equal to an amount of the Basic Fee due Architect for the services performed or provided by Architect (and its consultants and sub-consultants) prior to the time of such termination, suspension or abandonment of this Agreement bears to payment due to Architect for all Services Architect is required to perform or provide for the Project. For purposes of determining the ratio of the services actually rendered to the total services necessary for the full performance of this Agreement, the division of work set forth in the payment schedule in Article VI shall be conclusively deemed to have the values corresponding to the amounts required to be paid by said progress payment schedule. In the event of termination due to a breach of this Agreement by Architect, the compensation due Architect upon termination shall be reduced by the amount of damages sustained by District due to such breach, negligence, recklessness or willful misconduct of the Architect. Architect agrees to accept the compensation allowed herein as its sole and exclusive compensation in the event of a termination by District for convenience and waives any claim for loss related to Architect's termination for convenience, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect, or incidental damages, of any kind.

NMUSD Initials: _____

Westberg + White Initials: _____

F. **Documents/Models.** Upon termination, abandonment or suspension, Architect shall deliver to District all productions of all finished and unfinished documents, cost estimates, studies, surveys, maps, models, photographs, sketches, working drawing, specifications, computations and all other documents and matters completed by Architect to which District would have been entitled at the completion of Architect's Services.

G. **Subconsultants.** Architect shall include provisions in all of its contracts, subcontracts, purchase orders, and other contracts with its Consultants and Sub-Consultants permitting termination for convenience by Architect on terms that are consistent with, and that afford no greater rights of recovery against Architect for termination than are afforded to Architect under this provision.

H. **No Release.** The termination, abandonment, or suspension of this Agreement shall not relieve or release Architect from any liability to District for damages sustained by District by virtue of any
breach of this Agreement by Architect.

ARTICLE XIII. SUCCESSORS AND ASSIGNS

A. The District and the Architect, respectively, bind themselves, their partners, successors, assigns and representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.

B. Before Architect makes any change in the name or legal nature of Architect's entity, Architect shall first notify District and cooperate with District in making such changes as District may request in this Agreement.

C. Architect shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement or of its rights, title or interest in or to the same or any part thereof, without the previous consent in writing of District; and Architect shall not assign, by power of attorney or otherwise, any of the monies to become due and payable under the Agreement unless by and with the consent of the District which shall not be unreasonably withheld or delayed.

D. If Architect desires to subcontract any part of this Agreement, the District must first consent in writing and Architect shall be fully responsible to the District for acts and omissions of any subcontractor and of persons either directly or indirectly employed by any subcontractor, as it is for acts and omissions of persons directly employed by Architect.

E. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and the District, nor shall this Agreement be construed to be for the benefit of any subcontractor.

ARTICLE XIV. MISCELLANEOUS PROVISIONS

A. This Agreement shall be governed by the laws of the State of California.

B. The failure of 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.

NMUSD Initials: _____

Westberg + White Initials: _____

C. If any terms, 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.

D. If Architect desires to subcontract any part of this Agreement, District must first consent in writing and Architect shall be fully responsible to District for acts and omissions of any subcontractor and of persons either directly or indirectly employed by any subcontractor, as it is for acts and omissions of persons directly employed by Architect. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and District, nor shall this Agreement be construed to be for the benefit of any subcontractor.

E. District's consent to any subcontractor under this Agreement shall not in any way relieve Architect of any obligations under this Agreement and no such consent shall be deemed to waiver any provision of this Agreement.

F. The District and the Architect waive all rights against each other, and against the contractors, Owners Representative, consultants, agents and employees of the other, for damages but only to the extent covered by any property insurance during construction except such rights as they may have to the proceeds of such insurance. The District and the Architect shall each require appropriate similar waivers from their contractors, Owners Representative, consultants, agents and persons and entities awarded separate contracts.

G. Architect shall at all times enforce appropriate discipline and good order among its 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 Architect to ensure compliance with this section. Any person in the employ of the Architect whom the 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 the District.

H. The Architect shall not permit its employees to come in contact with school pupils until the Department of Justice has ascertained that the employee has not been convicted of a violent or serious felony. The Architect shall certify 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. The Architect shall provide a list of the names of its employees who may come in contact with pupils to the governing board of the District.

I. The Architect shall at all times enforce appropriate control over its employees and other individuals accompanying the Architect's employees when visiting on school campuses (Visitors) to ensure that they comply with the following provisions.

1. Unless Visitors are confined to a separately fenced area on the school site, or unless other specific instructions are provided by the District, Visitors must check in and out at the school office prior to going on campus, register in the site's visitor's log and prominently wear a visitor's identification badge provided by the District.

2. Architect shall take such necessary preventative measures to ensure that all employees and other individuals accompanying the employees visiting school sites refrain from any personal contact or conversations with students.

3. Visitors shall take care to prevent disturbing or interfering with the normal operations of a site.

NMUSD Initials: _____

Westberg + White Initials: _____

4. Visitors shall at all times follow the instructions and directions of District's staff during a school campus emergency or during a school campus emergency practice drill, as to evacuation, assembly, emergency care, protection of persons and property, and ingress and egress to the campus.

J. In the interest of public health, the District is proud to provide a healthy, tobacco-free environment for employees, students, guests and contractors. Smoking and the use of any tobacco products are prohibited in buildings and vehicles, and on any property owned, leased or contracted for by the District.

K. Architect agrees to comply with all federal, state and local laws, rules, regulations and ordinances (collectively, "Regulations") applicable to Architect's Services.

L. Architect will pay all applicable Federal, State and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under this Agreement. If under Federal excise tax law any transaction hereunder constitutes a sale on which a Federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, District, upon request, will execute documents necessary to show (1) that District is a political subdivision of the State for the purposes of such exemption and (2) that the sale is for the exclusive use of District. No excise tax for such materials shall be included in any bid price.

M. In the performance of this Agreement, Architect agrees that it will not engage in, nor permit such contractors, consultants and agents as it may employ to engage in the unlawful discrimination against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Architect and its subcontractors, consultants and agents shall comply with the provisions of the Fair Employment and Housing Act as set forth at California Government Code Section 12900 et seq. and all applicable regulations promulgated thereunder, including all amendments thereto.

N. Architect shall not use District's name or insignia, photographs of the Project, or any publicity pertaining to the Services of the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of District.

O. Architect shall require all contractors, consultants and agents retained by the Architect to abide by the terms and conditions of this Article.

P. All Exhibits and Attachments, referred to are incorporated by reference herein and are a part of this Agreement, except for Appendix A, the Reference Documents list, which is provided for information only.

R. Unless otherwise specifically provided, the covenants of this Agreement shall survive completion and acceptance of the Project by District and shall continue until fulfilled.

S. The captions and the index of this Agreement shall have no effect on its interpretation.

T. Where required by the context of this Agreement, the singular shall include the plural and vice-versa.

U. None of the terms and conditions of this Agreement may be changed, waived or canceled orally or otherwise except in writing signed by the parties hereto, specifying such change,

NMUSD Initials: _____

Westberg + White Initials: _____

waiver or cancellation and approved by the District. A waiver of any breach of this Agreement shall not be deemed a waiver of any preceding or subsequent breach, whether similar or dissimilar. 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.

V. This Agreement contains all the agreements of the parties and supersedes all other written or oral agreements and cannot be amended or modified except by a subsequent written agreement executed by the party against whom it is sought to be enforced.

W. The parties agree to bear their own costs and attorney's fees regarding any dispute pertaining to this Agreement.

X. District shall have the right to back charge, deduct from, and/or setoff/offset any payment(s) then due or to that becomes due and payable to the Architect for any costs, expenses, fees, damages of the like that District has had to pay or become obligated to pay, or incurred, as a result of the failure or refusal of the Architect and/or its Consultants and/or Sub-Consultants to perform as required under this Agreement. District shall also have the right to deduct (offset/setoff) the amount of any such back charge against any other monies it may owe Architect under any other contract or agreement that Architect has with the District.

Also, if the District owes money to the Architect under this Agreement, but the Architect owes money to the District under a different agreement or contract, the District may offset/setoff such monies and either receive and/or pay the net amount of such monies after any such offset/setoff.

ARTICLE XV. INSURANCE

A. Coverages. Prior to commencing performance under the Agreement and continuing until all Services to be performed under this Agreement have been completed, Architect shall, at its sole cost and expense, carry and maintain the insurance coverages as set forth below. The insurance required hereunder shall provide for the following coverages and limits with companies properly licensed to sell such insurance in the State of California, and satisfactory to District:

1.	Worker's Compensation:	Statutory Limit
2.	Employer's Liability:	Annual Limits
	Bodily Injury by Accident, each Accident	$1,000,000
	Bodily Injury by Disease, each employee	$1,000,000
	Bodily Injury by Disease, policy limit	$1,000,000
3.	Commercial General Liability/Umbrella Liability	Limits of Liability
	General Aggregate Per Project	$2,000,000
	Products/Completed Operations Aggregate	$2,000,000
	Personal/Advertising Injury Aggregate	$1,000,000
	Each Occurrence Limit	$1,000,000
4.	Automobile Liability	Limit of Liability
	Each Accident	$1,000,000
		Combined Single Limit

NMUSD Initials: _____

Westberg + White Initials: _____

5. Errors and Omissions/Professional Liability Limits of Liability

Aggregate	$2,000,000
Single Limit Per Claim	$1,000,000

B. Additional Requirements. The following additional specifications and stipulations shall apply to the policies providing the insurance coverages required of Architect hereunder.

1. Architect shall submit proof of the required insurance coverages at the time of the execution of this Agreement. Evidence of such insurance shall be provided to District by delivering copies of the policies or certificates of insurance setting forth the required coverage.

2. Architect shall ensure that all such coverages are in full force and effect during the time intervals hereafter stipulated. The Professional Liability and all other coverages (except for the Automobile Liability coverage) shall remain in effect for at least three (3) full years after the date of final Completion of the Project and acceptance thereof by District. The Automobile policy shall remain in effect until at least the date on which Architect is paid in full under this Agreement. Architect shall not take action or omit to take any action that would suspend or invalidate any of the required coverages during the time period they are required to be in effect.

3. With respect to all Worker's Compensation and Employee Liability coverages required under this Article, Architect shall cause such coverages to be provided on a "primary" basis, regardless of the requirement that District be named, for some purposes, as an additional insured on the policies of Architect and regardless of any other insurance District may elect to purchase and maintain. Accordingly, no Workers' Compensation or Liability Coverage required of Architect shall be subject to an "excess" or "pro rata" type of other insurance clause, nor shall any such coverage be subject to any clause which would be contrary to the aforesaid intent of the parties.

4. No act or omission of any insurance agent or broker shall relieve Architect of any of its obligations under this Agreement. In the event that Architect fails to acquire and maintain the insurance coverages as provided herein, District may procure the same and pay the premium therefore, in which case the cost shall be charged to Architect or deducted from payments due Architect hereunder.

C. Each policy required of Architect hereunder shall be endorsed to require the insurer to give District at least thirty (30) days' (or 10 days for non-payment of premium) advance written notice of the insurers intention to: cancel, refuse to renew or otherwise terminate the policy; suspend or terminate any coverage under the policy; or otherwise alter any terms or conditions of the policy or of any renewal policy issued by the same Insurer, except for Workers' Compensation and Errors and Omissions.

D. Each policy required of Architect hereunder shall be endorsed to name the District, its officials, employees and volunteers and Owners Representative as additional insured as respects: liability arising out of activities performed by or on behalf of Architect, premises owned, leased or used by Architect. The coverage shall contain no special limitations on the scope of the protection afforded to District, its officials, employees or volunteers.

E. In addition, District may, at its option, require Architect to provide additional Project insurance, provided the premiums for such insurance are reimbursed by District and District approves, in advance, such additional insurance, the company issuing the same, the scope of the coverage thereof and the premiums therefore.

NMUSD Initials: _____

Westberg + White Initials: _____

F. Architect waives all its rights to subrogation against District to the extent of any insurance recoveries that may be obtained by Architect for damages caused by fire or other perils covered by insurance, except such rights as Architect may have to proceeds of insurance held by District or any other person as trustee on behalf of Architect.

G. Architect shall furnish and name the Owners Representative, as an additional insured, showing insurer's waivers of subrogation against the foregoing, insurer's prior written notice of non-renewal or modification to the foregoing and evidence of all such obligations being evidenced on the Architect's insurer's insurance certificates provide to Owner and the Project Manager throughout the term of the project until final completion.

H. Coverage shall state that Architect's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

ARTICLE XVI. INDEMNIFICATION.

- Indemnity. Architect shall indemnify, hold harmless, and defend District and each of its officers, trustees, employees, agents, and volunteers, from any and all liability, loss, fines, penalties, forfeitures, costs, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death, and property damage) incurred by District, Architect, or any other person, and from any and all demands, and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of any negligent act or omission, recklessness, or willful misconduct on the part of Architect, its officers, agents, employees, subcontractors, sub-consultants, or any other person or entity for whom Architect is responsible, in connection with the performance of the Agreement. Architect's obligations under the preceding sentence shall apply regardless of whether District or any of its officers, officials, employees, or agents are passively negligent, but shall not apply to any loss, liability, fines, forfeitures, costs or damages caused by the active negligence or by the willful misconduct of District.

- Indemnity and Professional Liability. Specifically regarding professional liability, Architect shall indemnify, hold harmless, and defend District, its officers, trustees, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by District, Architect, or any other person, and from any and all claims, demands, and actions in law or equity (including attorney's fees and litigation expenses) arising or alleged to have arisen out of or in connection with the professional negligence, errors and omissions of the Architect in the performance of the Agreement.

- Limitation. Notwithstanding paragraphs XVI. A. and XVI. B, Architect's indemnification of District shall not include indemnification for claims which arise as the result of the active negligence of District and/or third parties over who the Architect has no control, or the sole negligence or willful misconduct of District, its agents, servants or independent contractors who are directly responsible to District, or for defects in design furnished by such persons, other than Architect and its agents, consultants and sub-consultants, or unless such claims arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the Architect. It is the intent of this Article XVI to provide the broadest enforceable indemnity obligation of Architect under California law. If any provision of this Article exceeds the restrictions of California law, that portion

NMUSD Initials: _____

Westberg + White Initials: _____

of this Article that exceeds the limits of the law shall be null and void and the remaining indemnity obligations shall remain fully enforceable.

ARTICLE XVII. BASIS OF COMPENSATION

A. Basic Fee. The Architect shall be compensated for the Basic Services furnished for the Project the aggregate amount of Five Hundred and Four Thousand Dollars and No Cents ($504,000.00), which is inclusive of all costs associated with the Project, including engineers and consultants, overhead and profit, but excluding reimbursable expenses not identified as included. The Basic Fee will be paid to Architect as set forth in ARTICLE XVIII below.

B. Reimbursable Expenses. The Architect shall be reimbursed for reimbursable expenses at cost. Allowed reimbursable expenses are described as:

1. District requested reproduction of documents for the review by governmental agencies having jurisdiction over the Project. Typical DSA, State and Local City Agencies, Health Department, and Fire Authority submissions. Correspondence between Architect and its Consultants are included in the Basic Fee. The General Contractor will be required by the District's General Conditions to utilize an electronic submittal system, therefore reproducible expenses related to shop drawings will not be required on this project. All printing required for bidding and construction are to be considered reimbursable expenses.

2. Overnight delivery and special handling of project documents, specifically, drawings requested by the District. Architect's working product between itself and its consultants, design and coordination drawings and overnight deliveries related to such design and coordination with its Consultants and other Architect business delivery needs is not reimbursable under this agreement but is included in the Basic Fee. Delivery of documents, materials, samples and the like to the General Contractor, the Project Manager, the District or other entities as directed by the District shall be reimbursable. Delivery of documents to DSA and other governing authorities, unless caused by the Architect's negligence, error or omission is a reimbursable expense.

3. Travel outside of the Los Angeles/Orange County region, excepting travel for DSA reviews, meetings and plan check, that has been approved by the District in writing including the cost thereof, in advance of the actual travel.

4. Expense of models, mock-ups, excluding preliminary study sketches, renderings, photographs, and rough study models.

5. Fees paid for securing approvals of authorities having jurisdiction over the project shall be paid directly by the District to the subject agency.

C. Additional Services. The District shall compensate the Architect for any Additional Services requested of Architect, in writing and approved by District in writing, based upon a mutually agreed upon equitable adjustment to the Basic Fee. If Architect and District are unable to reach a mutually agreed upon equitable adjustment, Additional Services shall be compensated in accordance with the rate schedule attached hereto as Exhibit C. This includes geographical studies and topographical surveys.

D. Material Change. The District and the Architect agree in accordance with the terms and conditions of this Agreement that if the scope of the Project or the Architect's Basic Services are changed materially, the Architect's compensation shall be adjusted based upon a mutually agreed upon equitable adjustment to the Basic Fee. If Architect and District are unable

NMUSD Initials: _____

Westberg + White Initials: _____

to reach a mutually agreed upon equitable adjustment, the Architect shall be compensated in accordance with the rate schedule attached hereto as Exhibit C.

ARTICLE XVIII. PAYMENTS SCHEDULE.

A. Progress Payments. The fee set forth in Article XVII shall be paid as follows, provided the required services have been properly performed and timely delivered in accordance with the requirements of this Agreement:

~~1. Upon completion of the Initial Site Drawings; Schematic Design Drawings; Design Development Drawings, and all obligations related thereto, the District shall pay to the Architect the lump sum amount of One Hundred Fifteen Thousand Dollars and No Cents $115,000.00;~~

~~2. Upon completion of the Construction Document Drawings, and all obligations related thereto, including without limitation, submitting same to DSA and all other agencies with jurisdiction over the Project, the District shall pay to the Architect the lump sum amount of $ [Insert amount];~~

~~3. Upon receipt of DSA, and all other Agency Approvals to permit construction to start, and all obligations related thereto, including without limitation, meetings with such Agencies and District and others to obtain required approvals the Project, the District shall pay to the Architect the lump sum amount of $ [Insert amount]; and~~

~~4. Over the stated duration of the Construction of the Project through completion, the District shall pay to the Architect equal monthly amounts of $ [Insert amount] per month.~~

~~B. Fee Retention. Five (5) percent of each lump sum amount stated in Article XVIII, A. 1. through 4. above shall be held in Retention until Project Completion has been satisfied by Architect in accord with the terms and conditions set forth in this Agreement, the Department of State Architecture, and as determined by the District.~~

1.	Project Scope of Work and Design Development Phase	$115,000.00
2.	Construction Document Phase	$263,600.00
3.	DSA Approval Phase	$25,200.00
4.	Construction Administration Phase	$75,000.00
5.	DSA Close Out Phase	$25,200.00

ARTICLE XIX. NOTICES

A. Any notice required to be served hereunder shall be in writing and shall be deemed given and served upon delivery personally, or three (3) calendar days after depositing in the United States mail, postage pre-paid, addressed to:

District Newport-Mesa Unified School District
2985 Bear Street, Bldg. A
Costa Mesa, California 92626
Attn: Deputy Superintendent and Chief Business Official

Architect: Westberg + White, Inc., a California corporation
Architects and Planners
1775 Hancock St., Ste. 120

NMUSD Initials: _____

Westberg + White Initials: _____

San Diego, CA 92110
Attn: Frisco White, President

B. Any party may change the address or persons to which notices are to be sent to it by giving the written notice of such change of address or persons to the other party in the manner herein provided for giving notice.

ARTICLE XX. DISPUTE RESOLUTION PROCESS

- The parties agree that this Article, in its entirety, must be followed as a condition precedent to starting any arbitration as provided for below, and that this Article establishes the exclusive procedures for resolving disagreements between the Architect and the District regarding this Agreement, except as may be expressly exempted elsewhere in this Agreement. Claims shall be resolved by the Parties in accordance with the provisions of this Article XX, in lieu of any and all rights under the law that either Party may have to have its rights adjudged by a trial court or jury. It is also the intent of this mandatory and exclusive resolution procedure to resolve a "Claim" as close as possible to the conclusion of the event(s) and /or circumstance(s) giving rise to the "Claim". In this way, individual's memories, and the information and documentation available to both Parties, will be as fresh as possible and permit the best informed resolution to occur. By placing substantially identical text, or by incorporating this Article XX into the contracts and subcontracts with Architect's Consultants and Sub-Consultants, Architect shall bind each and all of its Consultants and Sub-Consultants to Architect as Architect and District are bound to one another under this Article XX. Failure of Architect to do so shall be deemed a breach of this Agreement by Architect and Architect shall be liable to District for all losses caused thereby. Both Parties acknowledge that their failure and/or refusal to follow this mandatory and exclusive process will irreparably prejudice the other Party and as such, should a Party to this Agreement fail or refuse to comply with this process, any "Claim" they may have shall be waived and forfeited. This process applies equally to the District as it does to the Consultant.

Definition of Claim. A "Claim" means a written demand or assertion by one or both of the parties: (1) seeking, as a matter of right, an interpretation of this Agreement; (2) a breach of this Agreement; (3) any request for more time; and/or (4) the payment of money and/or the recovery of damages. A Claim can contain more than one item (e.g., such as seeking two interpretations of the Agreement; or an interpretation and damage, or two or more claims for compensation each having a different basis/cause thereof, etc.) The fact that a Claim may contain two or more items does not give a Party the right to delay submitting a Claim beyond the ten (10) day time limit set forth below.

A. The procedures set forth in this Article XX shall not usurp District's authority, and do not apply to:

1. the rights the District has as a public entity and the obligations the District has as public entity to third persons;

2. personal injury, wrongful death, or property damage, claims;

3. District's rights and remedies as set forth elsewhere in this Agreement and/or under applicable law;

4. matters covered by insurance; and

5. the right of the District to specific performance or injunctive relief to compel performance.

NMUSD Initials: _____

Westberg + White Initials: _____

B. **Required Information and Documentation**. A Claim submitted shall contain a detailed narrative of the Claim together with detailed estimates and/or calculations regarding costs and/or time, and all supporting information and documentation to prove the basis and entitlement to the relief sought by the Party submitting the Claim. Any information and/or documentation not submitted by the time of the Initial Mandatory Meeting is held shall not be permitted to be used in any subsequent step of this mandatory and exclusive dispute resolution process, including at Arbitration, as both parties acknowledge that one Party withholding such information and/or documentation will cause the other Party irreparable prejudice.

C. **Time Limit for Submitting a Claim**. The time period for each Party to submit a Claim is ten (10) days from when a Party realizes, or when a reasonable person should have realized, that it has a Claim, or when a Party fails or refuses to perform an obligation required by this Agreement, or when the District denies a request for the payment of compensation, or when one Party breaches this Agreement. If a Party fails to submit a Claim within the required ten (10) day period, the Party waives and forfeits all rights and remedies to such Claim.

D. **Initial Mandatory Meeting**. Within thirty (30) days of the submission of a Claim, the District's Assistant Superintendent and Chief Operating Officer and the President of the Architect shall meet face to face to try and resolve the Claim. If this meeting results in a full or partial resolution of the Claim, the District's Assistant Superintendent and Chief Operating Officer shall place the matter on the next available Board of Education agenda with a recommendation for approval. If the Board of Education approves the proposed resolution, a change order, amendment, or compromise will be issued to the Agreement. If this meeting does not fully resolve the Claim and/or if the Board of Education does not approve the resolution of the agreement as presented to them, the parties shall proceed as follows.

- **Mediation.** If the proponent of the Claim wishes to pursue the matter further, then the proponent must send a written demand for mediation to the other party within ten (10) days of either reaching no resolution, partial resolution or the Board of Education's rejection of the partial or full resolution presented to them. Should the proponent of the Claim fail to file a demand for mediation as provided herein, the Party waives and forfeits all aspects of the Claim. Such mediation shall take place within thirty (30) days of the proponent requesting it in writing. Only those documents and information previously exchanged by the parties at the time of the Initial Mandatory Meeting may be presented at Mediation, in addition to whatever legal arguments and legal authority are applicable thereto. The costs thereof shall be shared equally by the parties. A mediator must have substantial experience mediating, arbitrating and/or litigating public works K-12 professional service disputes. The party demanding mediation must include therein the names of six (6) such mediators. The opponent shall within five (days) of receipt of the written demand for mediation either select one or provide the names of six (6) other such mediators. If the opponent fails to do so, then the proponent shall immediately identify the mediator to be used. If the party demanding mediation fails to identify in its demand six (6) such mediators, then the other party shall select such a mediator. If mediation results in a full or partial resolution of the Claim, the District's Deputy Superintendent shall place the matter on the next available Board of Education agenda with a recommendation for approval. If the Board of Education approves the proposed resolution, a change order, amendment, or compromise will be issued to the Agreement. If the mediation does not fully resolve the Claim and/or if the Board of Education does not approve the resolution of the Claim, the parties shall proceed as follows.

- **Arbitration.** If mediation fails to resolve the Claim and if the proponent of the Claim wishes not to forfeit the Claim, that party must file a demand for arbitration within five (5) days from the conclusion of the mediation. This demand for arbitration shall be filed by sending a written notice and demand for binding arbitration to either: the American Arbitration Association, JAMS

NMUSD Initials: _____

Westberg + White Initials: _____

Dispute Resolution, Judicate West, or ADR, with a copy to the District and the Owners Representative. All supporting documents and data in support of the Claim shall accompany the written notice and demand for arbitration with copies of all supporting documents and data thereof simultaneously sent to: the arbitration company selected; the District; and the Owners Representative. The hearing locale for any arbitration shall be in Orange County, California, unless otherwise agreed by the parties in writing. If both parties agree in writing, they may elect to use an independent arbitrator or an arbitrator from another alternative dispute resolution provider. The arbitration shall be held before a single arbitrator who has arbitrated more than 15 California public works professional service disputes and must be mutually agreed to by both parties. The Arbitration must be held and concluded within sixty (60) days of the written demand for Arbitration, unless the parties agree otherwise in writing. The Arbitrator has no power to fashion a remedy that is solely "related to the Contract." Rather, each of the Arbitrator's decisions and award(s), interim and/or final, shall be in writing, shall set forth statements of fact and conclusions of law explaining how and why each item of the decision/award was reached, shall be supported by substantial evidence, shall be supported by applicable law, and shall otherwise comply with the requirements of Code of Civil Procedure Section 1296. A Court shall, subject to Code of Civil Procedure section 1286.4, and/or other applicable laws, vacate any award, in whole or in part, which the Court determines, after review, is not supported by substantial evidence, or the Award is based on an error of law. The fees of the Arbitrator and the administrative costs of the arbitration shall be shared equally between the parties, and the arbitrator has no power whatsoever to alter that sharing arrangement.

Provided the Arbitrator has issued an award in compliance with the requirements of this Article, the Final Award is binding and all appellate rights are waived. Any judicial review of such an award is limited to the circumstances described herein for the Arbitrator's non-compliance with these requirements. The Arbitrator's Final Award shall be reflected in a change order, amendment and/or settlement agreement or, in the District's discretion, payment will be made as a compromise of a claim on the Agreement pursuant to the District's authority under Public Contract Code Section 9201. The Architect's consultants and sub-consultants shall participate in any binding arbitration subject to the requirement of these Articles as a party thereto, and shall be bound by the Arbitrator's Final Award, just as the District and Architect shall be bound thereto and the Architect shall add a provision in each of its consultants and sub-consultants contracts so binding each and every one of them.

Pending final resolution of a Claim the Architect and its consultants shall proceed diligently with the performance of the Contract regardless of the size or nature of the dispute. Likewise, District shall continue to make payments for undisputed amounts during such continued performance.

ARTICLE XXI. EXTENT OF AGREEMENT

A. This Agreement and any exhibits attached hereto represents the entire and integrated Agreement between the District and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the District and the Architect.

B. 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.

NMUSD Initials: _____

Westberg + White Initials: _____

The parties, through their authorized representatives, have executed this Agreement on the dates opposite their signatures.

District:	**Architect:**
Newport-Mesa Unified School District	Westberg + White, Inc., a California corporation
Signature:	Signature:
Printed Name: Timothy J. Holcomb	Printed Name: Frisco White
Title: Asst. Sup. / C.O.O.	Title:
Date: 11 DEC 18	Date: 12-11-18

NMUSD Initials: _____

Westberg + White Initials: _____

EXHIBIT "A"
Architect's Key Personnel for Performance of this Agreement

PERSONNEL	TITLE	LICENSE #
Frisco White	Principal	C9090
Tue Nguyen	Project Architect	C26015
Martin Silva	Design	N/A
Mario Balderas	CAD	N/A

NMUSD Initials: _____

Westberg + White Initials: _____

EXHIBIT "B"
Engineers and Consultants Key Personnel for Performance of this Agreement

NAME	COMPANY – DISCIPLINE	LICENSE #
Mike Gartland	Counsilman-Hunsaker Pool Consultant	N/A
Virgil C. Aoanan	VCA Civil Engineer	C36037
Peter A. Carlson	Miyamoto International Structural Engineer	S4937
Raymond W. Swartz	tk1sc Electrical	E15610
Roger Carter	tk1sc Mechanical	M30980

NMUSD Initials: _____

Westberg + White Initials: _____

EXHIBIT "C"
Basic Hourly Rate Schedule

NAME	COMPANY – TITLE	RATE
Frisco White	Principal	$250.00
Tue Nguyen	Principal Project Architect	$190.00
Martin Silva	Senior Designer	$135.00
David Tarpley	Senior Project Manager	$180.00
Mario Balderas	Professional Staff	$100.00
Daniel Rivera	Intermediate Staff	$100.00
Lisa Tuffin	Clerical Staff	$60.00

NMUSD Initials: _____

Westberg + White Initials: _____

EXHIBIT "D"
Notice to Contractors Regarding Criminal Record Checks
(Education Code Section 45125.1)

Education Code section 45125.1 provides that if the employees of any entity that has a contract with a school district may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice together with a fee determined by the Department of Justice to be sufficient to reimburse the Department for its costs incurred in processing the application.

The Department of Justice shall ascertain whether the individual whose fingerprints were submitted to it has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the Department. When the Department of Justice ascertains that an individual whose fingerprints were submitted to it has a pending criminal proceeding for a violent felony listed in Penal Code section 667.5(c), or a serious felony listed in Penal Code section 1192.7(c), or has been convicted of such a felony, the Department shall notify the employer designated by the individual of the criminal information pertaining to the individual. The notification shall be delivered by telephone and shall be confirmed in writing and delivered to the employer by first-class mail.

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 certify in writing to the governing board of the school district that none of its employees who may come in contact with pupils have been convicted of a violent or serious felony. The contract shall provide a list of the names of its employees who may come in contact with pupils to the governing board of the school district.

Penal Code section 66.5(c), lists the following "violent" felonies: murder; voluntary manslaughter; mayhem; rape; sodomy by force; oral copulation by force; lewd acts on a child under the age of 14 years; any felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant inflicts great bodily injury on another; any robbery perpetrated in an inhabited dwelling; arson; penetration of a person's genital or anal openings by foreign or unknown objects against the victim's will; attempted murder; explosion or attempt to explode or ignite a destructive device or explosive with the intent to commit murder; kidnapping; continuous sexual abuse of a child; and carjacking.

Penal Code section 11982.7 lists the following "serious" felonies: murder; voluntary manslaughter; mayhem; rape; sodomy by force; oral copulation by force; a lewd or lascivious act on a child under the age of 14 years; any felony punishable by death of imprisonment in the state prison for life; any felony in which the defendant personally inflicts great bodily injury on another, or in which the defendant personally uses a firearm; attempted murder; assault with intent to commit rape or robbery; assault with a deadly weapon on a peace officer; assault by a life prisoner on a non inmate; assault with a deadly weapon by an inmate; arson; exploding a destructive device with intent to injure or to murder, or explosion causing great bodily injury or mayhem; burglary of an inhabited dwelling; robbery or bank robbery; kidnapping; holding of a hostage by a person confined in a state prison; attempt to commit a felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant personally uses a dangerous or deadly weapon; selling or furnishing specific controlled substances to a minor; penetration of genital or anal openings by foreign objects against the victim's will; grand theft involving a firearm; carjacking; and a conspiracy to commit specified controlled substances offenses.

NMUSD Initials: _____

Westberg + White Initials: _____

CERTIFICATION BY VENDOR
CRIMINAL RECORDS CHECK
AB 1610 and AB 1612

To the Governing Board of Newport-Mesa Unified School District:

I, Frisco White, certify that:

1. I have carefully read and understand the Notice to Contractors Regarding Criminal Record Checks (Education Code section 45125.1) required by the passage of AB 1610 and AB 1612.

1. Due to the nature of the work I will be performing for the District, my employees may have contact with students of the District.

1. The list of employees who will be working on the District's project are as follows:

Tue Nguyen	Mario Balderas

1. None of the listed employees have been convicted of a violent or serious felony as defined in the Notice and in Penal Code section 1192.7 and this determination was made by a fingerprint check through the Department of Justice.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at NEWPORT BEACH California, on 12-11-18

(Signature)

Frisco White
(Typed or printed name)

President
(Title)

1775 Hancock St., Ste. 120
San Diego, CA 92110
(Address)

619-542-1188
(Telephone)

NMUSD Initials: _____

Westberg + White Initials: _____

EXHIBIT "E"
Drug-Free Workplace Certification

This Drug-Free Workplace Certification form is required from all successful bidders pursuant to the requirements mandated by Government Code Sections 8350 et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

Pursuant to Government Code Section 8355, every person or organization awarded a contract or grant from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:

a) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;

b) establishing a drug-free awareness program to inform employees about all of the following:
   1) the dangers of drug abuse in the workplace;
   2) the person's or organization's policy of maintaining a drug-free workplace;
   3) the availability of drug counseling, rehabilitation and employee-assistance programs;
   4) the penalties that may be imposed upon employees for drug abuse violations;

c) requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code Section 8355 listed above and will publish a statement notifying employees concerning (a) the prohibition of controlled substance at the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the contract be given a copy of the statement required by Section 8355(a) and requiring that the employee agree to abide by the terms of that statement.

I also understand that if the DISTRICT determines that I have either (a) made a false certification hereon, or (b) violated this certification by failing to carry out the requirements of Section 8355, that the contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of Section 8350 et seq.

I acknowledge that I am aware of the provisions of Government Code Section 8350 et seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

CONTRACTOR: **Westberg + White, Inc.**

BY: _____
Authorized Signature

PRINT NAME: **Frisco White**

NMUSD Initials: _____

Westberg + White Initials: _____

TITLE: **President**

DATE: 12-11-18

TAXPAYER OR FEDERAL ID#: **33-0232630**

NMUSD Initials: _____

Westberg + White Initials: _____

Exhibit "F"
Projected Construction Budget

NOTE to District and Westberg White:

Insert projected Construction Budget numbers here broken down by pool and deck, etc. vs. other aspects of the project and total them all up.

The number to be inserted here does not include design costs. These are to be inserted into the Agreement on or about page 31 thereof

Provided by Cumming 10/2/18
Pool and Deck - $2.4M – Confirmed
Revised interiors per WW - $1.7M – Estimated
Sitework - $1.9M – per original budget, note this includes the deck, also note no revised design at this stage
Quad and existing pool - $0.4M – Per original budget
Shade structure - $0.25M – per original budget

Total - $6.6M

NMUSD Initials: _____

Westberg + White Initials: _____

Exhibit "G"
Scope of Work

INSERT Westberg White Scope of Work Document here once Cumming and District have reviewed and approved it..

NMUSD Initials: _____

Westberg + White Initials: _____