RFQ Questions:

1. **Question**: Please clarify the SOQ submission date. On page 2 of the RFQ, the due date for the SOQ submission is Tuesday April 19 at 2:00 pm.

   **SFUSD Response**: The earlier version of the RFQ had a typo. The due date is Friday April 19 at 2:00pm. The corrected version of the RFQ is posted to the SFUSD web site.
2. **Question:** Is there a minimum requirement for DVBE participation that needs to meet with consultants?

**SFUSD Response:** 3% participation -- if you can’t meet that, please provide notice of good faith effort.

3. **Question:** Page 12 of the RFQ, section IX.5; the final sentence reads: “Include an organization chart depicting your approach to staffing and consultant management on two or more projects.”
   - Does the District not wish to see a proposed organization chart for the specified project of the RFQ at the New Mission Bay School?
   - Does the currently requested type of organization chart mean you wish to see examples of how our team has worked together on two different projects, or two concurrent projects at the same time?

**SFUSD Response:**
   - An organizational chart is required showing the reporting relationships and responsibilities of the Bridging Architect and supportive team.
   - Examples of how a particular team has worked together on previous projects can be included in your firm’s narrative describing experience and professional qualifications.

4. **Question:** Page 13 of the RFQ, section IX.9.a: “A statement of the Firm’s financial resources. Include a certification of correctness of the Firm’s statement of financial resources. This shall include a full set of financial statements from your most recent complete fiscal year accompanied by either an audit or review report prepared by an independent Certified Public Accountant. Compiled or internally prepared financial statements will not be accepted.”
   - Can this requested statement(s) be prepared internally?

**SFUSD Response:** No. Per the RFQ, “internally prepared financial statements will not be accepted.”
5. **Question:** Are there additional uses like housing or additional office use / space being considered for this project?

**SFUSD Response:** No additional uses are planned, only those uses stated in the RFQ: PreK-5 Elementary School, High School Linked Learning Hub, District Professional Development and Office Space.

6. **Question:** How many students or capacity should the linked learning hub be designed for?

**SFUSD Response:** Not sure. This will be confirmed during the programming phase.

7. **Question:** How was the anticipated construction cost of $70M arrived at?

**SFUSD Response:** $70M +/- is the anticipated construction costs based on SFUSD internal analysis.

8. **Question:** Is high rise design experience a necessary qualification?

**SFUSD Response:** High rise design experience is a desirable qualification per the RFQ, section IX Contents of Proposals and Evaluation Criteria, section 2.G, reference list of projects “with mid-rise to high-rise experience.” This is one of several aspects in the overall proposal scoring criteria.

9. **Question:** Is there an overall project schedule that can be shared with the prospective bidders to this RFQ?

**SFUSD Response:** The overall project schedule contains many variables making it difficult to forecast an exact completion date.

10. **Question:** Can consultants be located beyond the 25 mile radius requirement as mentioned on page 3 of the RFQ?

**SFUSD Response:** Primary lead architectural firms must be within the 25 mile radius requirement. Consultants can be located beyond the 25 mile radius.
11. **Question:** Is this RFQ open to all architects?

**SFUSD Response:** Yes. *There are no pre-qualified requirements other than what is discussed in the RFQ.*

12. **Question:** Please further discuss the District’s sustainability goals for this project.

**SFUSD Response:** See the RFQ, section V.5E.1 and section IX.2.E.

13. **Question:** Is the awarded bridging architect and consultants precluded from pursuing the subsequent design-build contract?

**SFUSD Response:** Yes.

14. **Question:** Will joint ventures or collaborations between two architectural firms be considered for the Bridging Architect SOQ.

**SFUSD Response:** No. *The District is not looking for a joint venture or collaboration for the Bridging Architect. The District is looking for a strong individual architectural firm.*

**RFQ Attachments**

- Attachment 1 - Sample Terms & Conditions attached. The final contract will be negotiated with an exact scope of work, fees and schedule will be attachments to the Terms and Conditions.

END OF ADDENDUM No. 1
AGREEMENT FOR ARCHITECTURAL SERVICES
BY AND BETWEEN
SAN FRANCISCO UNIFIED SCHOOL DISTRICT
AND

______________________________

FOR

__________ PROJECT

ATTACHMENT 1 Certificates: NOT INCLUDED

- Roofing Certification (Not Included)
- Iran Contracting Certification (Not Included)
- Suspension and Debarment Certification (Not Included)
- Architect’s Disclosure Form Regarding SFUSD Officials (Not Included)
- Insurance Certificates (Not Included)

PART 1 Exhibits: NOT INCLUDED

A / Responsibilities and Services of Architect (Not Included)
B / Schedule of Services (Not Included)
C / Fee Proposal and Form of Invoice (Not Included)
D / Architect Roles and Directory of Consultants (Not Included)
E / Criteria and Billing for Extra Services (Not Included)
F / Responsibilities Matrix (Not Included)
G / Deliverables Matrix (Not Included)

PART 2 Exhibits: NOT INCLUDED

A / Responsibilities and Services of Architect
B / Schedule of Services (Not Included)
C / Fee Proposal and Form of Invoice (Not Included)
D / Architect Roles and Directory of Consultants (Not Included)
E / Criteria and Billing for Extra Services (Not Included)
F / Responsibilities Matrix (Not Included)
G / Deliverables Matrix (Not Included)
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This Agreement for Architectural Services is made as of the day of __________________ 20___, between the San Francisco Unified School District, a California public school district ("District" or "SFUSD"), and __________________ ("Architect") (individually a "Party" and collectively the "Parties"), for the following project ("Project").

Architectural Services for the Modernization and/or New Construction of __________ School, located at ___________, __________, CA, as further described in Article 2. Project Scope.

Please refer to Exhibit “A” for a complete description of the Responsibilities and Services of Architect under:

- PART 1 Project Assessment
- PART 2 Schematic Design through Construction Closeout

Design services will be managed by a single SFUSD Project Manager (District PM) and supported by two consultants at various phases of the Project. The consultant’s primary responsibility is to assist the District PM and the Architect.

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

Article 1. Definitions

1.1. In addition to the definitions above, the following definitions for words and phrases shall apply when used in this Agreement, including all Exhibits:

1.1.1. Agreement: The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.

1.1.2. Architect: The architect listed in the first paragraph of this Agreement, including all Consultants to the Architect, although there is no contractual relationship between the District and any Consultants employed by the Architect under terms of this Agreement.

1.1.3. As-Built Drawings ("As-Builts"): Any document prepared and submitted by District’s contractor(s) that details on a Conforming Set the actual construction performed during the Project, including changes necessitated by change orders.

1.1.4. Bid Set: The plans, drawings, and specifications at the end of the Construction Documents Phase that DSA has approved, if required, and that the District can use to go out to bid for construction of the Project.

1.1.5. Conforming Set: The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase. The Architect shall ensure that DSA has approved all revisions to the Bid Set that are incorporated onto the Conforming Set and for which DSA approval is required.

1.1.6. Fixed Budget Limit: Fixed Budget Limit (FBL). The total cost to the District of all elements of the Project designed or specified by the Architect, as set at the end of PART 1 and as adjusted at the end of each PART 2 design phase in accordance with this Agreement. The FBL does not include the compensation of the Architect and Consultants, the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District, including construction management.
1.1.7. **Consultant(s):** Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Architect.

1.1.8. **Construction Manager (CM):** The District consultant(s) employed for the purpose of assisting the District in managing a portion of PART 2 of the Project, including Construction Documents, DSA submittal, and the procurement, construction and final close out of the Project. The Architect shall cooperate and coordinate its work with the CM.

1.1.9. **Day(s):** Unless otherwise designated, “day(s)” means calendar day(s).

1.1.10. **District:** The San Francisco Unified School District.

1.1.11. **District Design Standards + Guidelines:** The District Design Standards + Guidelines (DDSG), which are a part of 1.1.13 Procedures and Standards Binder, represent the products, materials, procedures, and special requirements that architects, engineers, and contractors must follow when designing and building projects for the District, and are updated periodically. Architects directing the planning and design of District facilities must be sufficiently familiar with the most current version of the DDSG and adhere to the DDSG in all phases of planning and design.

1.1.12. **DSA:** The Division of the State Architect.

1.1.13. **Procedures and Standards Binder:** The SFUSD Procedures and Standards Binder (which includes 1.1.11 DDSG), represents the procedures, processes, protocol, and standards to be followed by all District Consultants performing work in relation to the Bond Program, and are updated periodically. The most current revisions of all documents contained in the Procedures and Standards Binder must be adhered to.

1.1.14. **Project Manager (PM):** District personnel designated to represent the District in all matters pertaining to the Project.

1.1.15. **Program Planning and Design Management (PPDM):** The program management consultant retained directly by the District for the purpose of assisting the District in the areas of program and design management and oversight. The PPDM is responsible to assist the District PM with the oversight, administration, coordination and day to day management of the Architect, from PART 1 Project Assessment up to and through the completion of PART 2 Design Development. The District PM and PPDM shall be the Architect's primary point of contact for the Project(s) during these phases. The Architect shall cooperate and coordinate its work with both but take final directions from the District PM.

1.1.16. **Project Budget:** The total amount indicated by the District for the entire Project plus all other costs, including design, construction, administration, financing, and all other costs.

1.1.17. **Record Drawings:** A final set of drawings prepared by the Architect based upon marked-up prints, drawings, and other data furnished to the Architect by the Contractor that incorporates all changes from all As-Builts, sketches, details, and clarifications.

1.1.18. **Service(s):** All labor, materials, supervision, services, tasks, and work that the Architect is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Project.

1.1.19. **Visually Verify:** To verify to the fullest extent possible by physical inspection and reasonable investigation and without any destructive action.
Article 2. Scope, Responsibilities, and Services of Architect

2.1. Architect shall render the Services as described in Exhibit “A”, commencing with receipt of a written Notice to Proceed signed by the District representative. Architect’s Services will be completed in accordance with the schedule attached as Exhibit “B.”

2.2. Any task, including, but not limited to, reviews or approvals that the District PM may perform pursuant to this Agreement may be performed by the PPDM and/ unless that task indicates it shall be performed by the governing board of the District.

2.3. Architect shall provide Services that comply with professional architectural standards and applicable requirements of federal, state, and local law including, without limitation:

2.3.1. California Code of Regulations, Title 24, including amendments.

2.3.2. California Code of Regulations, Title 19, Public Safety, State Fire Marshall Regulations, Pertinent Local Fire Safety Codes, including all amendments.

2.3.3. Americans with Disabilities Act.

2.3.4. Education Code of the State of California.

2.3.5. Government Code of the State of California.


2.3.8. U.S. Copyright Act.

2.4. Storm Water. Architect, through its Consultant(s), shall be the District’s Qualified Storm Water Developer (QSD) and shall prepare all documents necessary for the District to be in compliance with the current Construction General Permit (CGP) of the State Water Resources Control Board.

2.5. Architect shall contract for or employ at Architect’s expense, Consultant(s) to the extent deemed necessary for completion of its Services on the Project including, but not limited to, architects, mechanical, electrical, structural, fire protection, civil engineers, landscape architects, low voltage, data, and telephone consultants, interior designers, cost estimation providers, food service, acoustical, audio visual, traffic and security consultants licensed as required by applicable law of the State of California. The names of Consultant(s) shall be submitted to the District for approval prior to commencement of Services, as indicated below. The District reserves the right to reject the Architect’s use of any particular Consultant. Nothing in the foregoing procedure shall create any contractual relationship between the District and any Consultant(s) employed by the Architect under terms of the Agreement.

2.6. Architect shall coordinate with District personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project. If the Architect employs Consultant(s), the Architect shall ensure that its contract(s) with its Consultant(s) include language notifying the Consultant(s) of the responsibilities.

2.7. Architect shall identify the regulatory agencies that have jurisdiction over essential building and design elements and coordinate with and implement the requirements of the regulatory agencies, including, without limitation, California Department of Education (CDE), the Office of Public School Construction (OPSC), the Department of General Services (DGS), DSA
Fire/Life Safety, DSA Access Compliance Section, DSA Structural Safety, State, County and City Fire Marshal, County and City Health Departments and Inspectors, and any regulatory office or agency that has authority for review and supervision of school district construction projects.

2.8. Architect shall provide Services required to obtain local agencies' approval for off-site work related to the Project including review by regulatory agencies having jurisdiction over the Project.

2.9. Architect shall coordinate with the District's DSA Project Inspector(s).

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

2.11. Architect shall coordinate and integrate its work with any of the following information and/or services as provided by District:

2.11.1. Ground contamination or hazardous material analysis.

2.11.2. Any asbestos and/or lead testing, design or abatement.

2.11.2.1. Architect shall submit to the District the following statement prior to Project closeout: "No Asbestos Containing Building Material ("ACBM") was specified as a building material in any construction document prepared by my firm; to the best of my knowledge, no ACBM was used as a building material in the building."

2.11.3. Compliance with the California Environmental Quality Act ("CEQA"). Architect agrees to coordinate its work with that of any CEQA consultants retained by the District, to provide current elevations and schematic drawings for use in CEQA compliance documents, and to incorporate any mitigation measures adopted by the District into the Project design at no additional cost to the District. If the District and/or its CEQA consultant does not provide mitigation measures to the Architect when reasonably required for incorporation into the Project design, the Architect may submit scope and fees for approval to the District for the work required to incorporate those mitigation measures as Extra Services.

2.11.4. Historical significance report.

2.11.5. Soils investigation.

2.11.6. Geotechnical hazard report, except as indicated in Exhibit “A.”

2.11.7. Topographic surveys of existing conditions.

2.11.8. State and local agency permit fees.

2.11.9. Commissioning Agent and Reports.

2.11.10. Testing and Inspection.

Article 3. Architect Staff

3.1. The Architect has been selected to perform the Services due to the skills and expertise of key individuals.
3.2. The Architect agrees that the following key individuals in Architect’s firm shall be associated with the Project in the following capacities, as set-forth below and in Exhibit “D”.

Principal in Charge: __________________________
Project Director: __________________________
Project Architect(s): __________________________
Other(s): __________________________

Major Consultants:
- Electrical: __________________________
- Mechanical: __________________________
- Structural: __________________________
- Civil: __________________________
- Other: __________________________

3.3. The Architect shall not change any of the key individuals listed above without prior notice to and written approval by the District, unless said personnel cease to be employed by the Architect. In either case, the District shall, in its sole discretion, participate in the Architect’s selection of replacement personnel. The District shall approve any proposed replacement personnel in advance of replacement personnel performing any Services.

3.4. If any key individual fails to perform to the satisfaction of the District, then upon written notice, the Architect shall have five (5) days to remove that person from the Project and replace that person with someone acceptable to the District. Likewise, all key personnel for any Consultant must also be designated by the Consultant and shall be subject to all conditions previously stated in this paragraph.

3.5. The Architect represents that the Architect has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of the Services and that no person having any such interest shall be employed by the Architect.

3.6. The Architect shall comply with Education Code section 17302(a) and agrees that all plans, specifications, and estimates shall be prepared by a licensed architect holding a valid certificate under Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code or by a structural engineer holding a valid certificate to use the title structural engineer under Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, and that licensed personnel shall be in “responsible charge” of Consultants or personnel who observe construction.

Article 4. Schedule of Services

The Architect shall commence Services under this Agreement upon receipt of a Notice to Proceed and shall prosecute the Services diligently as described in Exhibit “A,” so as to proceed with and complete the Services in compliance with the District’s schedule as set-forth in Exhibit “B”. Time is of the essence and failure of Architect to perform Services on time as specified in this Agreement is a material breach of this Agreement. It shall not be a material breach if a delay is beyond the Architect’s and/or its Consultant(s’) reasonable control.

Article 5. Fixed Budget Limit

5.1. After completion of the PART 1 Project Assessment, and in accordance with Exhibit “A”, the Architect shall have ongoing responsibility to further develop, review, and reconcile the Fixed
Budget Limit (FBL) for the District at the beginning of the Project and at the completion of each PART 2 design phase. The District, PPDM and CM shall also have responsibility to develop, review, and reconcile the FBL with the Architect.

5.2. Architect shall complete all PART 1 Services and PART 2 Services as described in Exhibit “A”, including plans, designs, drawings, specifications and other construction documents, so that the cost to construct the work designed by the Architect will not exceed the FBL, as adjusted subsequently with the District’s written approval. The Architect shall diligently maintain cost controls throughout the Project to deliver the Project within the FBL.

5.3. If any of the following events occur:

- The lowest responsive base bid or proposal received is in excess of ten percent (10%) of the FBL; or
- If the combined total of base bid and all additive alternates come in ten percent (10%) or more under the FBL as calculated by the Architect, assuming the District, the District’s program manager and the District’s construction estimator (if any) did not agree with the most current FBL as calculated by the Architect at the time of the opening of bids or proposals; or
- The FBL increases during design due to reasonably foreseeable changes in the condition of the construction market in the county in which the District is located, in so far as these have not been caused by Acts of God, earthquakes, strikes, war, or energy shortages due to uncontrollable events in the world economy;

Then the District, in its sole discretion, has one or a combination of the following alternatives:

5.3.1. Give the Architect written approval on an agreed adjustment to the FBL.

5.3.2. Direct the Architect to prepare the Project for re-bid within one (1) months’ time of receipt of bids, if practicable (and exclusive of District and other agencies’ review time) at no additional cost to the District.

5.3.3. Terminate this Agreement if the Project is abandoned, without further obligation by either Party.

5.3.4. Within one (1) months’ time of receipt of bids, instruct Architect to revise the drawings and specifications (in scope and quality as approved by the District) to bring the Project within the FBL for re-bidding at no additional cost to the District. The modification of Construction Documents shall be the limit of the Architect’s responsibility arising out of the establishment of a FBL. All other obligations of the Architect, including construction administration services, remain as stated in the Agreement.

Article 6. Fee and Method of Payment

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

- Lump Sum / Fixed Fee
- Cost-Plus Fee
- Percentage Based
6.2. **PART 1** - District shall pay Architect the Fee pursuant to the provisions of Exhibit “C”.

6.3. **PART 2** - District shall pay Architect the Fee pursuant to the provisions of Exhibit “C”.

6.4. Architect shall bill its work under all Parts of this Agreement in accordance with the District’s Invoice Template as set forth in Exhibit “C”.

6.5. No increase in Fee for services including additional construction administration will be allowed from change orders generated during the construction period.

6.6. The Architect’s Fee set forth in this Agreement shall be full compensation for all of the Architect’s Services incurred in the performance hereof, including all printing and delivery costs required per Exhibit “A” and as indicated in Exhibit “C”.

6.7. Regardless of the structure of the Architect’s Fee, the Architect’s Fee may be adjusted downward if the Scope of Services of this Agreement is reduced by the District in accordance with this Agreement. District shall pay for Services authorized and performed prior to the notice to the Architect of a reduction as indicated here.

6.8. No payment shall in any way lessen the liability of the Architect to remedy or replace unsatisfactory work, service, products, equipment, or materials, if the unsatisfactory character of such work, service, products, equipment or materials was not detected at the time of payment. Service, products, materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by the District and in such case, must be remedied or replaced by Architect without delay at no additional cost to the District. Nothing in this Section shall preclude, limit, or waive any other remedy or remedies available to the District.

**Article 7. Payment for Extra Services or Changes**

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

**Article 8. Ownership of Data**

8.1. Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for District to use, at its discretion, all plans, including, but not limited to, record drawings, models, specifications, and estimates that the Architect or its Consultants, prepares or causes to be prepared pursuant to this Agreement.

8.2. The Architect retains all rights to all copyrights, designs and other intellectual property embodied in the plans, record drawings, models, specifications, estimates, and other documents that the Architect or its Consultants prepares or causes to be prepared pursuant to this Agreement.

8.3. The Architect shall perform the Services and prepare all documents under this Agreement with the assistance of Computer Aided Design Drafting (CADD) Technology (e.g., AutoCAD).
The Architect shall deliver to the District, a “thumb” drive, and/or compact disc with these documents in a set of “bound” per sheet files that is compatible with the most current version of the CADD Technologies used by the Architect. As to any drawings that Architect provides in a CADD file format, the District acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that the District should rely on hard copies of all documents.

8.4. In order to evidence what CADD information was provided to the District, Architect and District shall each sign a “hard” copy of reproducible documents that depict the information at the time Architect produces the CADD information. If applicable, the Architect shall have a copy of each Building Information Model Archive held in escrow for the duration of the Project. Those copies held in escrow will evidence what information was provided to the District. District agrees to release Architect from all liability, damages, and/or claims that arise due to any changes made to this information by any person other than the Architect or Consultant(s) subsequent to it being provided to the District.

8.5. Following the termination of this Agreement, for any reason whatsoever, the Architect shall promptly deliver to the District upon written request and at no cost to the District the following items (hereinafter “Instruments of Service”) in an electronic format requested by District and which the District shall have the right to utilize in any way permitted by statute:

8.5.1. One (1) set of the Contract Documents, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.

8.5.2. One (1) set of CADD drawing files in AutoCAD 2010™, or later version format of all drawings that are part of the Contract Documents.

8.5.3. One (1) set of “bound” per sheet files with reference tabs CADD drawing files in AutoCAD 2010™, or later version format of the site plan, floor plans (architectural, plumbing, structural mechanical and electrical), roof plan, sections and exterior elevations of the Project.

8.5.4. One (1) copy, in electronic format, of each Building Information Model Archive for the Project, inclusive of all related files, if required.

8.5.5. All finished or unfinished documents, studies, meeting minutes, program documents, reports, calculations, drawings, maps, models, photographs, technology data and reports prepared by the Architect under this Agreement.

8.6. In the event the District changes or uses any fully or partially completed documents without the Architect’s knowledge and participation, the District agrees to release Architect of responsibility for such changes, and shall indemnify and hold the Architect, harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorneys’ fees, on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of any changes or use except to the extent the Architect is found to be liable in a forum of competent jurisdiction. In the event District uses any fully or partially completed documents without the Architect’s full involvement, the District shall remove all title blocks and other information that might identify the Architect and the Architect’s Consultants.

Article 9. Termination of Agreement

9.1. If Architect fails to perform the Services to the reasonable satisfaction of the District and as required by this Agreement, or if Architect fails to fulfill in a timely and professional manner Architect’s material obligations under this Agreement, or if Architect shall violate any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement, in whole or in part, effective immediately upon the District giving written
notice thereof to the Architect. In the event of a termination pursuant to this subdivision, Architect may invoice District for all Services performed until the date of the notice of termination. District shall have the right to withhold payment and deduct from Architect’s invoice, any amounts equal to District’s costs caused by Architect’s negligent errors or omissions, recklessness, or willful misconduct. The District may, at its discretion, provide the Architect time to cure its default or breach.

9.2. District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Architect may invoice District according to the percentage completed based on Exhibit “C” and District shall pay all undisputed invoice(s) for Services performed until the date of District’s written notice of termination, not to exceed the Fee.

9.3. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.

9.4. The Architect has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement. Such termination shall be effective on the date District receives written notice of the termination from Architect. Architect may invoice District according to the percentage completed based on Exhibit “C” and District shall pay all undisputed invoice(s) for Services performed until the Architect’s notice of termination, not to exceed the Fee.

9.5. If, at any time in the progress of the Design of the Project, the governing board of the District determines that the Project should be terminated, the Architect, upon written notice from the District of such termination, shall immediately cease performing Services. The District shall pay the Architect only the fee associated with the Services performed, from Architect’s last paid invoice up to the date of the notice of termination, not to exceed the Fee.

9.6. If the District suspends the Project for more than one hundred twenty (120) consecutive days, the Architect shall be compensated for Services performed prior to the notice of suspension. When the Project is resumed, the schedule shall be adjusted and the Architect’s compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Architect’s Services. If the District suspends the Project for more than eighteen (18) months, the Architect may terminate this Agreement by giving written notice.

Article 10. Architect Indemnity

10.1. To the fullest extent permitted by California law and in accordance with California Civil Code section 2782.8, Architect shall indemnify, protect, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees and members (“Indemnified Parties”) from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney’s and consultants’ fees and causes of action to property or persons, including personal injury and/or death (“Claim(s)”), to the extent that the Claim(s) arises out of, pertains to, or relates to the negligent errors or omissions (active or passive, ordinary or gross), recklessness (ordinary or gross), or willful misconduct of the Architect, its directors, officials, officers, employees, contractors, subcontractors, consultants, sub-consultants or agents arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. This indemnity excludes the Architect’s liability as to the active or sole negligence or willful misconduct of the District.

10.2. The following shall be Claims, to the extent they satisfy the definition of Claims herein:

10.2.1. The cost of Project delays. Without limiting the Architect’s liability for indirect cost impacts due to Project delays, the direct costs for which the Architect shall be
liable for shall be proportionate to the amount the District is liable to the Project contractor(s), subcontractor(s), suppliers, inspector(s), construction manager(s) for the Project delays, including the proportionate cost of interim housing necessitated by Project delays, to the extent that the Project delays arise out of, pertain to, relate to or result from the negligent errors or omissions, recklessness, or willful misconduct of the Architect in the performance of any Services which falls below the applicable standard of care of Architects engaged in similar public education projects.

10.2.2. The cost of construction change orders for errors and omissions. Without limiting the Architect’s liability for indirect cost impacts, the direct costs for which the Architect shall be liable shall equal the difference between the cost of the change order(s) and the reasonable cost of the work had that work been a part of the originally prepared construction documents, the change order(s) result from any error or omission of Architect in the performance of Services which falls below the applicable standard of care of Architects engaged in similar public education projects.

10.2.3. These amounts may be paid by the Architect to the District or the District may in reasonable good faith withhold those costs from amounts owing to Architect, pending resolution of the dispute.

10.3. Architect’s duty to indemnify under this Agreement shall apply during the term of this Agreement and shall survive any expiration or termination of this Agreement until any such Claim(s) are barred by the applicable statute of limitations and is in addition to any other rights or remedies that the District may have under the law or under this Agreement.

Article 11. Mandatory Mediation for Indemnity Claims

11.1. The Parties hereto agree prior to commencing any legal action relating to any Claim, as defined herein, to submit the Claim to a mandatory good-faith mediation process ("Mediation"). The Parties’ expectations are that if the Claim is made by a third party (e.g., a contractor), that the third party will be a participant in that Mediation. The Parties agree that any statute of limitations applicable to any Claim shall be tolled for the period from the date a Party requests Mediation through the tenth (10th) day after termination of the Mediation, unless otherwise agreed to by the Parties.

11.2. Except as set forth below, the Parties agree to refrain from filing, maintaining or prosecuting any action related to the Claim during the pendency of the Mediation provided that the Mediation must commence within thirty (30) days after a Party makes written demand to the other for Mediation.

11.3. The Parties shall participate in a minimum of one full-day mediation session before the Mediation may be declared unsuccessful and terminated by either Party. The Mediation shall be conducted in accordance with such rules as the Parties agree upon, or in the absence of agreement, in accordance with the Commercial Mediation Rules of JAMS/Endispute. Evidence of anything said, any admissions made, and any documents prepared in the course of the Mediation shall not be admissible in evidence or subject to discovery in any court action pursuant to Evidence Code Section 1152.5.

11.4. The Parties shall mutually agree to the selection of a mediator who is an attorney that is experienced in public works construction claims. If the Parties are unable to agree upon a mediator, then the mediator shall be appointed by JAMS/Endispute.

11.5. The Mediation shall take place at a location within twenty (20) miles of the District’s administrative office. The mediator’s fees and administrative fees, if any, shall be split
equally between the Parties, but, unless otherwise agreed to in writing, each Party shall bear its own attorney's fees.

11.6. If any Party commences a legal action without first attempting to resolve the Claim as required by this Article 11, that Party shall be in breach of this Agreement and shall not be entitled to recover attorney's fees that might have otherwise been recoverable.

11.7. This mandatory mediation process shall only apply to Claims pursuant to the Architect Indemnity provision herein and shall not apply to any disputes to be resolved pursuant to the Alternative Dispute Resolution provision herein.

Article 12. Fingerprinting and Tuberculosis

Pursuant to Education Code section 45125.2, District has determined on the basis of scope of Services, that Architect, Contractors, and their employees will have only limited contact with pupils at most. Architect shall promptly notify District in writing of any facts or circumstances which might reasonably lead District to determine that contact will be more than limited as defined by Education Code section 45125.1(d).

Article 13. Responsibilities of the District

13.1. The District shall examine the documents submitted by the Architect and shall render any decision(s) required of the District, in a timely manner to avoid unreasonable delay in the performance of the Architect's Services.

13.2. The District shall verbally or in writing advise the Architect if the District becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's documents. Failure to provide such notice shall not relieve Architect of its responsibility therefore, if any.

13.3. The District shall furnish the services of a hazardous material consultant or other consultants when such services are deemed necessary by the District. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to these matters which are to be incorporated into bid documents prepared by the Architect. If the hazardous materials consultant is furnished by the District and is not a Consultant of the Architect, the specifications shall indicate that the specifications prepared by the District's consultant relating to these matters are included in the Architect's bid documents for the District's convenience and have not been prepared or reviewed by the Architect. The bid documents shall also direct questions about the specifications to the consultant that prepared the specifications.

13.3.1 70 CFR 763.99 (a)(7) - ACM Exclusions. Prior to Project Closeout, or when reasonably requested by the District, Architect shall, on its firm letterhead, sign and submit to the District the following statement: "No ACBM was specified as a building material in any construction document prepared by my firm; to the best of my knowledge, no ACBM was used as a building material in the building.

13.4. District personnel and/or its designated representatives shall coordinate with Architect as may be requested and beneficial for the coordination or management of work related to the Project.

13.5. The District shall timely provide to the Architect all relevant information in its possession regarding the Project that is necessary for performance of the Architect's Services.

13.6. The District shall pay all fees required by agencies having jurisdiction over the Project.

Article 14. Liability of District
14.1. Other than as provided in this Agreement, the District’s financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed.

14.2. District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by the Architect, or by its employees and Consultants, even though such equipment may be furnished or loaned to the Architect by District.

Article 15. Anti-discrimination; Compliance with the Americans with Disabilities Act (ADA)

15.1 It is the policy of the District that in connection with all work performed under Agreements there be no discrimination against any employee engaged in the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status and therefore the Architect agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Architect agrees to require like compliance by all its subcontractor(s).

15.2 Architect acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through an Architect, must be accessible to the disabled public. Architect shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Architect agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agree that any violation of this prohibition on the part of the Architect, its employees, agents or assigns will constitute a material breach of this Agreement.

Article 16. Insurance Requirements

Architect shall procure prior to commencement of the Services of this Agreement and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services hereunder by the Architect, his agents, representatives, employees and Architect(s). Architect’s liabilities, including but not limited to Architect’s indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Architect’s failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated as a material breach of contract by the District.

16.1. Minimum Scope and limits of Insurance:

16.1.1. Coverage shall be at least as broad as the following scopes and limits:

16.1.1.1. Commercial General Liability. Two million dollars ($2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location or the general aggregate limit shall be twice the required occurrence limit.
16.1.1.2. **Commercial Automobile Liability, Any Auto.** Two million dollars ($2,000,000) per accident for bodily injury and property damage.

16.1.1.3. **Workers’ Compensation Liability.** For all of the Architect’s employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Architect shall keep in full force and effect, a Workers’ Compensation policy. That policy shall provide employers’ liability coverage with minimum liability coverage at Statutory Limits per accident for bodily injury or disease. The Architect shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, Architects, trustees, and volunteers.

16.1.1.4. **Employment Practices Liability.** For all of the Architect’s employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Architect shall keep in full force and effect, an Employment Practices Liability policy. That policy shall provide employers’ liability coverage with minimum liability coverage of one million dollars ($1,000,000) per occurrence. The Architect shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, Architects, trustees, and volunteers.

16.1.1.5. **Professional Liability.** This insurance shall cover the prime design professional and his/her liability arising from the services of Architect(s) with a minimum of two million dollars ($2,000,000) per claim limit, and subject to no more than twenty-five thousand dollars ($25,000) per claim deductible, coverage to continue through completion of construction plus “tail” coverage for two (2) years thereafter.

16.1.1.6. **Pollution Legal Liability.** Legal Liability coverage for bodily injury, property damage, environmental damage, emergency response expense, claim expense and business interruption costs caused by pollution incidents arising from Architect’s performance of any portion of the services with a minimum of one million dollars ($1,000,000) per claim limit and subject to no more than twenty-five thousand dollars ($25,000) per claim deductible, coverage to continue through completion of construction plus “tail” coverage for two (2) years thereafter.

16.1.2. The District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.

16.2. **Deductibles and Self-Insured Retention:**

16.2.1. The Architect shall inform the District in writing if any deductibles or self-insured retention exceeds $ 25,000. At the option of the District, either:

16.2.1.1. The District can accept the higher deductible;

16.2.1.2. The Architect’s insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers.

16.3. **Other Insurance Provisions:**

16.3.1. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
16.3.1.1. The District, the PPDM, CM, their representatives, District consultants, trustees, officers, officials, employees, agents, and volunteers (“Additional Insureds”) are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Architect; instruments of Service and completed operations of the Architect; premises owned, occupied or used by the Architect; or automobiles owned, leased, hired or borrowed by the Architect. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

16.3.1.2. For any claims related to the projects, the Architect’s insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Architect’s insurance and shall not contribute with it.

16.3.1.3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

16.3.1.4. The 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.

16.3.1.5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District. At the option of the District, the Architect shall be the party required to provide the District this notice in lieu of the Architect’s insurance provider.

16.4. Acceptability of Insurers:

16.4.1. Insurance is to be placed with insurers admitted in California with a current A.M. Best’s rating of no less than A:VII. The Architect shall inform the District in writing if any of its insurer(s) have an A.M. Best’s rating less than A:VII. At the option of the District, either:

16.4.1.1. The District, at its discretion, can accept the lower rating;

16.4.1.2. Require the Architect to procure insurance from another insurer.

16.5. Verification of Coverage:

16.5.1. Per Attachment 1., Architect shall furnish the District with:

16.5.1.1. Certificates of insurance showing maintenance of the required insurance coverage;

16.5.1.2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before Services commence.

Article 17. Covenant Against Contingent Fees

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

Article 18. Entire Agreement/Modification

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

Article 19. Non-Assignment of Agreement

This Agreement is intended to secure the Professional Services of the Architect, therefore, Architect may not assign, transfer, delegate or sublet any interest therein without the prior written consent of the District and any such assignment, transfer, delegation or sublease without the District’s prior written consent shall be considered null and void. Likewise, the District may not assign, transfer, delegate or sublet any interest therein without the prior written consent of Architect and any such assignment, transfer, delegation or sublease without the Architect’s prior written consent shall be considered null and void.

Article 20. Law, Venue

20.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.

20.2. The county in which the District administration office is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

Article 21. Alternative Dispute Resolution


21.1.1. If the District disapproves of any portion or amount(s) of the Architect’s invoices, the District shall within thirty (30) days of receipt by the District of any of the Architect’s invoices, communicate to the Architect in writing, with reasonable detail, the portion or amount of the Architect’s invoices that are disapproved for payment, the portion or amount of the Architect’s invoices that are approved for payment, and the basis for the District’s disapproval of the disputed portion(s) or amount(s) of the Architect’s invoices (“Disputed Architect Invoice Detail”).

21.1.2. If the Architect disagrees with the Disputed Architect Invoice Detail, the Architect shall communicate to the District in writing, and request to meet and confer in good faith with respect to the Disputed Architect Invoice Detail, to determine if the disagreement can be resolved. The meet and confer shall be scheduled to occur within thirty (30) days of Architect’s request. The meet and confer shall include, but are not limited to, face-to-face meeting(s) with the appropriate District and Architect personnel as appropriate and necessary.

21.1.3. If the Parties cannot resolve the matter during this meet and confer process, the Parties shall handle the matter as a “dispute” as provided herein.
21.2. Disputes between the parties arising out of this Agreement shall be resolved by the following processes:

21.2.1. Negotiation. Within fifteen (15) days following the receipt of a request to meet, the parties shall meet and attempt in good faith to resolve any dispute arising out of or relating to this Agreement by negotiation. The Parties’ meet and confer process for Disputed Architect Invoice Detail as detailed above, shall satisfy this negotiation requirement.

21.2.2. Mediation. Within thirty (30) days, but no earlier than fifteen (15) days, following the earlier of receipt of notice by one Party from the other Party of a demand for mediation, the Parties shall: submit the dispute to non-binding mediation administered by the AAA (or other agreed upon rules) under its construction industry mediation rules, unless waived by mutual stipulation of both Parties.

21.2.2.1. Administer the dispute pursuant to the Mandatory Mediation provisions indicated herein, or

21.2.2.2. If there is no other parties involved, administer the dispute pursuant to non-binding mediation administered in accordance with the Commercial Mediation Rules of JAMS/Endispute, unless waived by mutual stipulation of both Parties.

21.2.3. Litigation. Disputes arising from this Agreement that cannot be settled through negotiation or mediation (after those processes have been exhausted) shall be litigated in the California Superior Court in the county in which the Project that is the subject of this Agreement is located.

21.3. Architect shall neither rescind nor stop the performance of its Services pending the outcome of any dispute that occurs during the Construction Administration Phase.

Article 22. Severability

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

Article 23. Employment Status

23.1. Architect shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow the District to exercise discretion or control over the professional manner in which the Architect performs the Services; provided always, however, that the Services to be provided by the Architect shall be provided in a manner consistent with all applicable standards and regulations governing such Services.

23.2. Architect understands and agrees that the Architect’s personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee.

23.3. Should the District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that the Architect is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts
already paid by the Architect which can be applied against this liability). The District shall then forward those amounts to the relevant taxing authority.

23.4. Should a relevant taxing authority determine a liability for Services performed by the Architect for the District, upon notification of such fact by the District, the Architect shall promptly remit such amount due or arrange with the District to have the amount due withheld from future payments to the Architect under this Agreement (again, offsetting any amounts already paid by Architect which can be applied as a credit against such liability).

23.5. A determination of employment status pursuant to the preceding two (2) paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, the Architect shall not be considered an employee of the District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that the Architect is an employee for any other purpose, then the Architect agrees to a reduction in the District’s liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of the District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that the Architect was not an employee.

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

Article 24. Warranty and Certification of Architect

24.1. Architect warrants and certifies that the Architect is properly certified and licensed under the laws and regulations of the State of California to provide the Services that it has agreed to perform.

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

24.3. Architect warrants and certifies that it is aware of the provisions of California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects (“Prevailing Wage Laws”). Since the Architect is performing Services as part of an applicable “public works” or “maintenance” project, and since the total compensation is One Thousand Dollars ($1,000) or more, the Architect agrees to fully comply with and to require its Consultant(s) to fully comply with all applicable Prevailing Wage Laws.

24.3.1. Architect shall ensure that it Consultants comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner, and are registered pursuant to Labor Code section 1725.5.

Article 25. Cost Disclosure - Documents and Written Reports

Architect shall be responsible for compliance with California Government Code section 7550, if the total cost of the Agreement exceeds Five Thousand Dollars ($5,000).

Article 26. Notices and Communications

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

District: San Francisco Unified School District

Architect: ____________________________
Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the day after delivery. Any notice given by mail shall be effective three (3) days after deposit in the United States mail. Any notice by email shall be effective upon acknowledgment of receipt, if so requested.

**Article 27. Disabled Veteran Business Enterprise Participation**

Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises (DVBEs) of at least three (3) percent, per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the "Act"). This Project may use funds allocated under the Act. Therefore, to the extent feasible and pertaining to future hirings, the Architect, before it executes the Agreement, shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBEs in conjunction with the Agreement, and documentation demonstrating the Architect’s good faith efforts to meet these DVBE goals.

**Article 28. District’s Right to Audit**

28.1. District retains the right to review and audit, and the reasonable right of access to the Architect’s and any Consultant's premises to review and audit the Architect’s compliance with the provisions of this Agreement ("District’s Audit Right"). The District’s Audit Right includes the right to inspect, photocopy, scan, and to retain copies, outside of the Architect's premises, of any and all Project-related records, documents and other information with appropriate safeguards, if such retention is deemed necessary by the District in its sole discretion. The District shall keep this information confidential, as allowed by applicable law.

28.2. The District’s Audit Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the District determines are necessary to discover and verify that the Architect is in compliance with the requirements of this Agreement.

28.3. If there is a claim for additional compensation or for Extra Services, the District’s Audit Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the District determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

28.4. The Architect shall maintain complete and accurate records for a minimum of seven (7) years and in accordance with generally accepted accounting practices in the industry. The Architect shall make available to the District for review and audit, all Project related accounting records and documents, and any other financial data. Upon District’s request, the Architect shall submit exact duplicates of originals of all requested records to the District.

28.5. The Architect shall include audit provisions in any and all of its subcontracts, and shall ensure that this Article is binding upon all Consultants.

28.6. Architect shall comply with these provisions within fifteen (15) days of the District’s written request to review and audit any or all of the Architect’s Project-related documents, records and information.

28.7. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of more than Ten Thousand Dollars ($10,000), the 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 under the Agreement.

**Article 29. Suspension and Debarment Certification**

A corporation for any contract of one hundred thousand dollars ($100,000) or more for goods/services must complete and submit to District a Suspension and Debarment Certification. This Certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, section 3017.510, Participants responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Architect shall submit with the Agreement a completed Suspension and Debarment Certification attached hereto as **Attachment 1**.

**Article 30. Submitting False Claims; Monetary Penalties**

Pursuant to Government Code §12650 et. seq., any person, including a contractor, subcontractor, consultant or an architect who submits a false claim, shall be liable to the District for three times the amount of damages which the District sustains because of the false claim. A person who commits a false claim act shall also be liable to the District for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to the District for a civil penalty.

**Article 31. Conflict of Interest**

31.1. Architect shall not make, participate in making, or in any way attempt to use his or her position, to influence a contract on behalf of the District when he or she knows, or has reason to know, that he or she has a personal financial interest in that contract.

31.2. Architect shall comply with the District’s Board Policy 3850, as may be amended during the Term of this Contract. BP 3850 provides: “That no Board Member or employee of the San Francisco Unified School District, except persons engaged in the performance of contracts as early retirees or Architects under the approved federally assisted programs, may participate in proposal process or have any interest, direct or indirect, in any contract made by or on behalf of the School District within two (2) years after the termination of a Board Member’s term in office or the termination of employment with the School District. Except as herein provided, any contract or other transaction entered into for or on behalf of the School District, in violation of the terms herein provided, shall be void and unenforceable against the School District: (SFUSD Board Policy 3850)

31.3. Architect and its agents, subcontractors and Architects (“Architect Entities”) may be required to disclose economic interests that they hold that could foreseeably be affected by the exercise of their public duties. If applicable, Architect and Architect Entities must submit a Statement of Economic Interests (“Form 700”) as required by Cal. Govt. Code§§ 81000-91015; and SFUSD Board Rules and Procedures 9270, "Conflict of Interest Code")

31.3.1. Architect and Architect Entities shall determine whether its participation in a contract may constitute a conflict of interest. Architect shall notify the District immediately if it determines or obtains information that a potential conflict of interest exists.

31.4. **Additional Disclosure Requirement.** Architect shall provide the District the name of any employee of the Architect that is also a current or former member of the District’s Governing Board or a District employee. Architect shall submit the attached "Architect's Disclosure Form Regarding SFUSD Officials" attached hereto as **Attachment 1**. Architect shall update this form, as necessary, during the Term of this Contract.

31.5. **Compliance with Gift Limits.** Architect shall abide by applicable legal restrictions relating to offering gifts, meals or entertainment or other business courtesies to District officials. Architect and Architect Entities shall not:
31.5.1. Offer, give, or promise to offer or give, directly or in directly, any money, gift or gratuity to any District contracting or procurement official at any time.

31.5.2. Offer or give, directly or indirectly, any gifts in a calendar year to a District official which exceed the allowable gift limit. (See e.g. Cal. Govt. Code 89503; 2 CCR 18940.2. See also www.doc.ca.gov)

31.6. Employment Negotiations. Prior to engaging in employment negotiations with a District employee (e.g. a job interview or discussion of a job offer), the Architect shall notify that District employee’s supervisor of the Architect’s interest in hiring said employee, so that, if applicable, and if practicable, a full separation may be established between the public employee and any governmental decisions regarding that Architect.

31.7. Architect Certification. In signing this Agreement, Architect certifies that it will comply with conflict of interest laws and regulations, and SFUSD Board Policies. Architect acknowledges that it is familiar with these provisions; certifies that it does not know of any facts that constitute a violation of such provisions; and agrees to promptly notify the District if it becomes aware of any such facts during the term of this Agreement.

Article 32. Other Provisions

32.1 Neither the District’s review, approval of, nor payment for, any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and the Architect shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Architect’s failure to perform any of the Services to the standard of care of the Architect for its Services, which shall be, at a minimum, the standard of care of architects performing similar work for California school districts in or around the same geographic area of the District.

32.2 Each Party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each Party acknowledges that the drafting of this Agreement was the product of negotiation, that no Party is the author of this Agreement, and that this Agreement shall not be construed against any Party as the drafter of the Agreement.

32.3 The Architect shall issue a credit to the District as an offset to the Architect’s Fee equal to one hundred percent (100%) of the tax deduction and/or credit the Architect receives based on the Project per Internal Revenue Code Section 179(D).

32.4 The Architect acknowledges that the District is a public agency that is subject to heightened curiosity by the news media and the public and that the Architect may not be apprised of all facts surrounding the Project that that Architect is working on. Accordingly, the Architect shall promptly refer all inquiries from the news media or public concerning this Agreement or its performance under the Agreement to the District, and the Architect shall not make any statements or disclose any documents to the media or the public relating to the performance under this Agreement or the effects caused thereby. If the Architect receives a complaint from a citizen or member of the public concerning the performance or effects of this Agreement, it shall promptly inform the District of that complaint. In its sole discretion, the District shall determine the appropriate response to the complaint.

32.5 Confidentiality. In connection with this Agreement, the Architect may have access to private or confidential information which may be owned or controlled by the District and that such information may contain proprietary details, the disclosure of which to third parties will be damaging to the District, its employees or students. Architect also understands and agrees that the disclosure of such information may violate state and/or federal law and may subject the Architect to civil liability. Consequently, Architect agrees that all information disclosed by the District to the Architect shall be held in strict confidence and used only in performance of
the Agreement, unless disclosure is required by law or court order. Architect shall exercise the same standard of care to protect such information as is used to protect its own proprietary data. Architect shall comply at all times, as applicable, with the requirements of the Family Educational Records Privacy Act ("FERPA") and relevant state law regarding the confidentiality and handling of confidential student information, including but not limited to California Education Code sections 49073 et seq. The Architect and all Architect’s agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement. Failure to comply with this Section may constitute a material breach if so deemed by the District.

32.6 **Attachment 1** are hereby incorporated by this reference and made a part of this Agreement. All **PART 1 Exhibits (A, B, C, D, E, F and G)** are hereby incorporated by this reference and made a part this Agreement. All **PART 2 Exhibits (A, B, C, D, E, F and G)** are hereby incorporated by this reference and made a part this Agreement.

IN WITNESS, WHEREOF the parties hereto have executed this Agreement the year and date first above written.

Board of Education Resolution #:______________________

ARCHITECT

______________________________

Signature

SAN FRANCISCO UNIFIED SCHOOL DISTRICT

______________________________

Reeta Madhavan, Chief Financial Officer

______________________________

David Goldin, Chief Facilities Officer

APPROVED AS TO FORM:

______________________________

SFUSD Facilities Legal Counsel