



# HARTNELL COMMUNITY COLLEGE DISTRICT



Facilities Development Office  
411 Central Ave.  
Salinas, CA 93901  
Telephone (831) 770-7044  
Fax (831) 770-7040

**PUBLIC NOTICE**  
**REQUEST FOR STATEMENT OF QUALIFICATION (RFQ)**  
**ARCHITECTURAL/ENGINEERING SERVICES FOR THE TECHNICAL**  
**TRAINING BUILDING PROJECT**



## INFORMATION PACKAGE

### INTRODUCTION

The Hartnell Community College District (District) is requesting a Statement of Qualifications (SOQ's) from qualified firms, partnerships, and corporations to provide comprehensive, professional architectural services to the District for the **Technical Training Building Project** as described in Exhibit "B". The District is engaged in ongoing new construction and major modernization projects, site development and planning, growth projects and area-wide planning associated with the local Measure H Bond. The **Technical Training Building Project** is funded by the Measure H bond and must be designed in accordance with all applicable Government codes and established procedure.

If your firm is interested in being considered for this project by the District, please submit two hard copies and one electronic copy of your Statement of Qualification (SOQ) to:

**Facilities Development Office  
Attn: Damon Felice  
411 Central Ave.  
Salinas, CA 93901**

Completed Statement of Qualifications must be received no later than **5:00 p.m. on Tuesday, March 23, 2010**. The District will not review submittals received after this time and date. No oral, telegraphic, facsimile or telephone SOQ's will be considered. SOQ's received after **5:00 p.m. on Tuesday, March 23, 2010** will not be considered and will be returned unopened.

The District is not responsible for any expenses related to the preparation or presentation of the SOQ, including but limited to travel.

The SOQ may be withdrawn by the firm submitting the Statement at any time prior to the closing date and time for receipt of SOQ.

The attached documents outline the required submittal information as well as the selection criteria to be used by the District. If you have any questions, please directed them to Damon Felice at (831) 770-7044 or via e-mail at [damon@felice-consulting.com](mailto:damon@felice-consulting.com).

### TIME SCHEDULE

The district will follow the following timetable:

RFQ Available	3/8/2010
Deadline for the submittal of SOQ	3/23/2010
Selection of qualified firm(s)	3/25/2010
Issue RFP to qualified firm(s)	3/29/2010
Issue NTP to qualified firm	5/04/2010



## **SECTION 1 PURPOSE OF REQUEST**

The Statement of Qualification (SOQ) shall respond to each item noted below, within the specific format described. Please limit response information to relevant information only. Supplemental brochure information will not be accepted and may result in disqualification of submitting firm. All proposals shall be submitted in the following format:

### **1. COVER LETTER/LETTER OF INTEREST**

Please include the name of your firm, address, telephone number, fax number, email address, home page URL, type of firm (i.e. corporation), applicable California Registration Number(s) and the name of the Principal to contact. The letter must be signed by the representative of the firm with the authorization to bind the firm by contract. (maximum of two (2) pages)

### **2. FIRM ORGANIZATION AND STAFFING METHODOLOGY**

Please provide a brief history of your firm, including the following information:

#### **FIRM ORGANIZATION**

- Scope of architectural services typically provided or offered by the your Firm; please include a summary of the Firm's history.
- Prior experience as architect of record for public agency public works projects and related educational projects, including a general description of the scope of services provided for each contract.
- Services as an architect for other California Community College Districts, State Universities or University of California projects.
- Experience of the Firm's principals and employees who are licensed Architects and have previous experience with Division of State Architect ("DSA") projects.

#### **STAFFING AND METHODOLOGY**

- Address the extent to which the Owner will be permitted to request specific staff personnel to provide or perform all or portions of the Basic Services.
- Describe the your Firm's commitment of staff for specific Basic Services for the Project.
- Describe the manner in which each of the Phases of the Basic Services will be completed for the Project.
- Generally describe the approaches taken by the your Firm relative to recommendations of value engineering of the Design Documents so that: (a) the Construction Costs of the Project are within the Construction Budget established for the Project; or (b) operational/use costs are minimized.
- Generally describe approaches taken to prepare estimates of Construction Costs for the Project, including whether estimating services are typically completed by the your Firm's staff or by an outside consultant.
- Generally describe the quality control measures of the your Firm and each Design Consultant you've identified to ensure that the Design Documents for the Project conform with the design intent and other requirements established by the Owner and to minimize the extent of errors/ omissions in the Design Documents.



### 3. PROJECT TEAM

Please identify and include a resume of the following key Team Members. Please include years with the firm, their discipline, education, and registration number(s) if applicable:

- Principal in Charge
- Senior Staff Manager
- Project Architect
- Contract Administrator
- Any additional team members of interest that could be service

*Personnel at the time of the contract signing are expected to be involved throughout the life of the project.*

### 4. CONSULTING RESOURCES

Identify the proposed consulting disciplines (e.g. mechanical engineer, electrical engineer, civil engineer) associated with your firm. List the names, California registration number(s), business address(es), phone number(s), fax number(s), email address(es), and homepage URL(s), as well as date established, and time associated with your firm. Identify the number and type of each project completed in association with each consulting firm in the last five years.

### 5. FINANCIAL RESOURCES

- Provide credit references
- Identify insurance coverages maintained by the your Firm, including specific confirmation of commercial general liability, professional liability, errors and omission, workers compensation and employer's liability coverages as required by the attached form of Architect Contract (Exhibit "C").
- For each proposed Design Consultant, confirm that each Design Consultant has or will obtain each of the policies of insurance with the minimum coverage amounts set forth in the Architect Contract.

### 6. RELEVANT EXPERIENCE

- Please complete Exhibit A (attached). In this spreadsheet please provide the total number and dollar amounts of Community College projects completed by your firm in California within the last five years. Please identify whether the project was a new construction or modernization project.
- Please identify on Exhibit A the total number of projects under contract or completed by your firm that are applying for or were funded by Public Funds.
- Please provide the number of projects in progress by your office at this time. What percentage of these projects are Community College related?

### 7. CLIENT SATISFACTION

**The Hartnell Community College District may contact previous clients in regard to the following questions. If your firm requests that we not contact the Client Reference, please explain the reasoning for your objection.**

- Has your firm ever been terminated by a district or other client during the course of any project? If so, explain.
- List the last four education clients for whom your firm has performed school design services. Reference must include:



- School district name, address
- Contact name, phone number
- Identify project(s) for referral (list school superintendents name and phone number)
- DSA project numbers



## EXHIBIT "A" PROJECT SPREADSHEET

LIST THE SCHOOL PROJECTS, ANY LEVEL, IN PRODUCTION, UNDER CONSTRUCTION OR COMPLETED BY YOUR FIRM IN THE LAST FIVE (5) YEARS. – SEE CRITERIA ABOVE IN SECTION 6, RELEVANT EXPERIENCE

PROJECT NAME & DSA NUMBER(S)	COMMUNITY COLLEGE CLIENT & CONTACT NAME	COST GROUP	CURRENT DESIGN OR CONSTRUCTION STATUS	IF COMPLETE TOTAL CHANGE ORDER PERCENTAGE

- Group I        \$500,000 - \$1,000,000
- Group II       \$1,000,001 - \$5,000,000
- Group III      \$5,000,001 - \$10,000,000
- Group IV       Above \$10,000,001



## **EXHIBIT "B"**

### **SCOPE OF WORK**

Hartnell College is close to finishing its first building on the Alisal Campus, a 55,000 sq. ft. building. The new building will support that new facility and sit adjacent to the current building. The programs which are anticipated to be housed in this project are Auto and Diesel Mechanics.

Below is the schedule which will be expected to be met by the firm who is awarded this work:

<b>Issue NTP</b>	<b>May 4, 2010</b>
<b>Programming with users</b>	<b>May 5, 2010 - May 31, 2010</b>
<b>Design Development</b>	<b>June 1, 2010 - June 25, 2010</b>
<b>Schematic Design</b>	<b>June 28, 2010 - July 16, 2010</b>
<b>Design Development</b>	<b>July 17, 2010 - August 13, 2010</b>
<b>Construction Documents</b>	<b>August 16, 2010 - September 30, 2010</b>
<b>DSA Review</b>	<b>October 1, 2010 - December 31, 2010</b>
<b>Bid Period</b>	<b>January 1, 2011 - February 25, 2011</b>
<b>Construction</b>	<b>April 2011</b>

*As part of your RFQ if you feel you can exceed the above dates please include a schedule with you submittal for review by the District.*



**EXHIBIT "C"**  
**FORM OF ARCHITECTURAL AGREEMENT**

**PLEASE NOTE THAT THE DISTRICT WILL NOT NEGOTIATE THE ATTACHED ARCHITECTURAL AGREEMENT, SO BY RESPONDING TO THIS RFQ YOU ARE INDICATING THAT YOU WILL SIGN THE AGREEMENT AS PRESENTED.**

**(SEE ATTACHED)**



## **SECTION 2 SELECTION PROCESS & CRITERIA**

All Statements of Qualifications (SOQ) received by the specified deadline will be reviewed by the Hartnell Community College District for content, completeness, experience and qualifications. After those firms deemed the most qualified are selected, further evaluation may or may not occur by a committee.

The District may also contact references and client lists provided by the firm selected to be reviewed by the committee.

The Hartnell Community College District reserves the right to select the SOQ which, in its sole judgment, best meets the needs of the District.

### **SELECTION CRITERIA**

- A. Responsiveness to Request for SOQ – extent and depth of response.
- B. Professional reputation of firm
- C. Satisfaction of current/prior clients (References).
- D. School design experience including recent processing of plans through DSA.
- E. Accuracy of firm's cost estimate history and ability to design within budget and implement cost saving procedures.
- F. Proven experience related to project management responsibilities and ability to work as a team with contractors, construction managers and various district personnel.
- G. Ability to deliver effective architectural services working under successive deadlines and schedule constraints.

**AGREEMENT FOR ARCHITECTURAL SERVICES**

between

Hartnell Community College District

and

ARCHITECT

DATE

**Alisal Technical Training Building**

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## ARCHITECT AGREEMENT

This Agreement for Architectural Services (“Agreement”) is made effective as of October 5, 2004 (the “Effective Date”) by and between **HARTNELL COMMUNITY COLLEGE DISTRICT**, a California Community College District (“Owner”) and \_\_\_\_\_ (“Architect”). This Agreement is entered to with reference to the Following Recitals, all of which are incorporated herein by this reference.

### RECITALS

**WHEREAS**, the Owner desires to retain the Architect to provide architectural services in connection with the design, bidding and construction of a work of improvement situation on Hartnell Community College Alisal Campus commonly described as the Technical Training Building (collectively the “Project”).

**WHEREAS**, as of the date of this Agreement, the current estimate of the cost to construct the Project is \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

**WHEREAS**, the Project requires the preparation of Design Documents.

**WHEREAS**, applicable law, rule or regulation requires the oversight of some portions or all of the construction of the Project by a California licensed architect.

**WHEREAS**, Architect is duly licensed as an architect under the laws if the State of California and is qualified and capable of providing and performing the services and its other obligations under this Agreement in accordance with the terms hereof.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the Owner and Architect agree as follows:

## AGREEMENT

### ARTICLE 1 ARCHITECT’S SERVICES AND DEFINITIONS

#### 1.1 Services Generally.

1.1.1 Services Described. “Architect’s Services” consist of those Basic Services and Additional Services performed by Architect’s employees and any Consultants retained by Architect pursuant to this Agreement.

1.1.2 Design Schedule. Architect’s Services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of Architect’s Services. Architect has submitted and Owner has approved a schedule (the “Design Schedule”) for the performance of Architect’s Services on this Project, which Design Schedule is attached to this Agreement as Exhibit A.

Architect shall keep the Design Schedule current and update it at least monthly. The approved Design Schedule, and all approved updates thereto, shall be incorporated in the overall Project Schedule. Architect shall perform all services in accordance with the approved Design Schedule. The Design

Schedule shall include allowances for periods of time required for Owner's review and for approval of submissions by authorities having jurisdiction over the Project. The Design Schedule shall identify critical dates by which Owner must furnish information or approvals in order to achieve the deadlines required for performance of Architect's services. In addition, the Design Schedule shall describe: (a) a network of interrelationships of Architect, Owner's Consultants, and Architect's Consultants; (b) Project activities; (c) the duration for all phases of Architect's Services; (d) all milestone dates; and (e) the projected time for review and approval of Architect's Deliverables after receipt by Owner. Time limits established by the Design Schedule shall not be exceeded by Architect, except for causes that are not within Architect's reasonable control.

1.1.3 Principals. Architect has appointed [ ] as Architect's project director (the "Project Director"), whose duties shall include, without limitation, either directly or through assistants reasonably acceptable to Owner, directing and coordinating the work of Architect and Architect's Consultants, and coordinating Architect's Services with Owner's Consultants, who shall be identified in writing to Architect not later than commencement of the Schematic Design Phase. Architect has also designated [ ] as "Design Principal" to provide the Services required by this Agreement. Architect shall not remove or replace any of the above individuals without Owner's prior written consent, which consent shall not be unreasonably withheld. Any replacement Design Principal or employee presented to Owner for approval shall have substantially equivalent or better qualifications than the Project Director or employee whom he or she replaces. The Project Director shall represent Architect, and all communications given to the Project Director shall be deemed to have been delivered to Architect.

1.2 Definitions. Capitalized terms in this Agreement are defined within the text of this Agreement. A list of some of the capitalized terms and their definitions (or references to the location in the Agreement where the term is defined) is as follows:

**Additional Services:** Those services described in Article 3 which are not included in Architect's Basic Services.

**Architect:**

**Architect's Consultant:** A design or construction professional performing a portion of the Architect's Services under subcontract with Architect, as identified in Exhibit B and Paragraph 2.1.4 of this Agreement.

**Basic Services:** The services required by Articles 1 and 2 of this Agreement to be performed by Architect in exchange for the Basic Compensation identified in Section 11.1.

**Conditions:** The General and Supplementary Conditions of the Construction Contract, as modified by Owner pursuant to Paragraph 2.7.4.

**Construction Contract:** The agreement between Owner and the Contractor for the construction of the Project.

**Construction Cost Forecast:** The detailed estimates of construction costs prepared by Contractor through completion of the Construction Document Phase, as described in Sections 5.1, 5.3 and elsewhere in this Agreement.

**Construction Documents:** The documents, consisting of drawings and specifications, to be prepared by Architect pursuant to Section 2.6.

Construction Manager: The construction manager designated by Owner pursuant to Section 4.5.

General Contractor: The California licensed general contractor responsible to build the Project, as identified in Paragraph 2.1.6 and elsewhere in this Agreement.

Deliverable: Any of the documents or other instruments identified on Exhibit C prepared by Architect, and Architect's Services, to be provided to Owner as required by this Agreement.

Design Principal: The individual designated by Architect as the primary designer of the Project, pursuant to Paragraph 2.1.4.

Design Schedule: The schedule described in Paragraph 1.1.2 and attached as Exhibit A.

Draft Program: The interim Program to be prepared by Architect pursuant to Section 2.2.

Fast Track: The phasing of the Project in such a manner that the Construction Documents for one or more phases of construction are substantially complete, and construction starts on those phases, prior to final completion of all the Construction Documents, as identified in Paragraph 2.7.5.

Final Budget: Owner's final budget for the Project, as identified in Paragraph 5.3.2 and elsewhere in this Agreement.

Final Completion: The status of the Project when: (i) the entire work of construction has been performed, to the best of Architect's knowledge, opinion and belief after observing and reviewing the work as required in this Agreement, in general accordance with the full requirements of the Construction Documents; (ii) General Contractor has corrected all discovered defective work to Architect's and Owner's reasonable satisfaction; (iii) all required occupancy permits have been issued for the Project from the authorities governing the Project; and (iv) all requirements for "Final Completion of the Work" imposed by the Construction Contract (including all Conditions attached as exhibits thereto) have been met. However, notwithstanding the provisions of the preceding sentence, the duration of Architect's Basic Services in connection with construction administration shall be determined in accordance with Paragraph 2.8.1.

Final Plan: The Final Plan prepared by Architect pursuant to Section 2.2, which sets forth the objectives and conditions for all elements of the Project in detail.

Guaranteed Maximum Price ("GMP"): The price for construction of the Project set forth in the Construction Contract established pursuant to the process described in Paragraphs 5.3.1, 5.3.2 and elsewhere in this Agreement.

Legal Requirements: All federal, state, and local law, ordinances and regulations; all recorded easements, covenants, conditions and restrictions as disclosed by Owner's policy of title insurance furnished to Architect; and all requirements established by the insurance carriers of Architect as described in Article 12.

Owner: Hartnell Community College District.

Owner's Budget: Owner's Working and/or Final Budget, as applicable, as described in Section 5.3 and elsewhere in this Agreement.

**Owner's Consultants:** Consultants retained by Owner to assist it in carrying out the Project, as identified to Architect in writing pursuant to Paragraph 1.1.3.

**Program:** The statement prepared by Architect pursuant to Paragraph 2.1.1 that identifies Owner's functional and operational requirements for the Project as described in Paragraph 2.1.2.

**Project Director:** The individual designated by Architect in Paragraph 1.1.3 as the primary Owner contact and manager of Architect's internal processes for the Project.

**Project:** The programming, planning, design, construction administration and related tasks for the development of the CAB Remodel Project, as described on the first page of this Agreement.

**Project Schedule:** The overall schedule for completion of the Project, of which Exhibit A will form a part.

**Site Observations:** The observations of Architect during the Construction Phase of the Project pursuant to Paragraph 2.8.6.

**Work:** The work of building, constructing and installing all site improvements, building shell improvements, interior improvements and related facilities for the development of the CAB Remodel Project.

**Working Budget:** The interim Budgets developed by Owner for the Project pursuant to the process identified in Section 5.3 and elsewhere in this Agreement.

## **ARTICLE 2 BASIC SERVICES**

### **2.1 Basic Services Generally.**

**2.1.1 General.** Architect acknowledges that Owner, not being skilled in such matters, is relying upon Architect for the technical and professional adequacy of Architect's services and that neither Owner, Owner's Consultants, nor General Contractor shall perform any duties of Architect or assume any responsibility or liability for the professional or technical adequacy of the drawings and specifications prepared by Architect. All approvals required by Owner shall be in writing. The approval by Owner of any Deliverable required by this Agreement shall not constitute a waiver by Owner or require Owner to relinquish any of its rights under this Agreement nor shall it relieve Architect of any of its obligations or liabilities for the technical or professional adequacy of its services as described in this Agreement. Architect and Architect's Consultants shall provide all professional Architectural Services required in connection with this Agreement with the degree of care exercised by architects in metropolitan areas of the U.S.A., especially in Northern California. During all phases of the Project, Architect shall take into account and perform all services hereunder in accordance with: (1) the approved Design Schedule; (2) all requirements of the Draft and Final Plan; (3) Owner's Budget; and (4) the specialized functions of Owner to be conducted in the completed Project.

**2.1.2 Included Services.** The Basic Service Phases consist of Programming, Final Plan, Schematic Design, Design Development, Construction Documents, Construction Administration, Post Construction, and Resolution of Claims and Disputes as more particularly enumerated in this Agreement.

The Basic Services include architectural and design services for the following elements of the Project: architectural, building systems (including structural, mechanical, electrical, plumbing), interior

and exterior building graphics/signage, interior and exterior lighting, telecommunications/data systems, audio/visual equipment, systems furniture selection, acoustical, exterior landscaping, lighting, fire life-safety and building security systems. Basic Services include the following engineering/design disciplines: structural, mechanical, plumbing, fire/life safety, electrical and landscaping.

2.1.3 Excluded Services. The following services are not part of the Basic Services, but the Architect will coordinate its work and designs with the work and designs provided by the Owner's separate consultants:

**[Insert Excluded Services]**

2.1.4 Architect's Consultants. Consultants retained by Architect shall be approved by Owner to complete the services described in Exhibit B, "Architect's Consultants." Owner's acceptance of any Consultant shall not in any way relieve Architect of any duty, responsibility or liability to Owner for services provided by Architect or any of its Consultants. Owner in its sole discretion can reasonably direct Architect to replace any Consultant to whom Owner has objection. Owner shall have the right of approval, which shall not be unreasonably withheld, concerning any replacement Consultant retained by Architect. Architect shall direct and coordinate the work of all its Consultants. Architect shall contract directly with its Consultants for all required services, and all fees and other charges of Architect's Consultants are included in Architect's Compensation as provided in Article 11.

2.1.5 Licenses. Architect represents that Architect and Architect's Consultants, and each of them, are duly licensed professionals qualified to practice their professions in the State of California and, if a partnership, corporation or other form of business entity, are in good standing and qualified to do business in the State of California.

2.1.6 Construction Process. Architect's Basic Services are premised on Owner's selection of a General Contractor for the Project during the design phases, who will perform preconstruction estimating and value engineering.

2.1.7 Coordination. Architect shall be responsible for the general direction and coordination of its Consultants. Architect shall cooperate with Owner and Construction Manager during the development of the design to effect cost savings as deemed appropriate by Owner and Architect. Architect shall participate in and facilitate conferences and meetings which are necessary for its Basic Services or are reasonably requested by Owner and upon request shall promptly prepare meeting minutes.

2.1.8 Interior Design. Architect's Basic Services include providing interior design, making recommendations to Owner concerning furniture procurement options, coordinating finishes with furniture, developing furniture specifications and specifying requirements for interior graphics. Such services exclude services required for Owner's procurement or installation of furniture. Owner intends to let a separate contract for the purchase and installation of furnishings, trade fixtures, movable equipment and other personal property that is not part of the building systems.

2.1.9 Legal Requirements. Architect's Basic Services include (1) reviewing the provisions of applicable Legal Requirements that affect the Project, (2) reviewing the Project documents for compliance with such Legal Requirements, and (3) making revisions directed by parties that have approval rights under Legal Requirements and as required for Owner to obtain approval by such parties. Architect shall (at the request of Owner) consult with the appropriate authorities to determine applicable Legal Requirements for obtaining necessary approvals. Architect shall provide a reasonable number of supplemental or clarifying drawings or specifications to assist in obtaining such approvals. Architect shall assist Owner in connection with Owner's responsibility for filing documents required for the

approval by all parties that have approval rights under Legal Requirements. Architect shall provide as Basic Services all services necessary to obtain the governmental approvals for the Project. However, any services required in relation to an Environmental Impact Report shall be Additional Services.

2.1.10 Public Meetings. Architect or the appropriate Consultant(s) of Architect shall appear, and make design presentations where appropriate, to the Hartnell Community College Board of Trustees, the Measure H Bond Oversight Committee and selected User Groups.

2.1.11 Variance. If any Legal Requirement poses an obstacle or impediment to economical construction of the Project, Architect shall promptly notify Owner thereof and furnish Owner with its opinion as to whether or not a variance or waiver should be sought. If Owner elects to seek a variance or waiver, Architect shall meet and confer as necessary or appropriate with the applicable governmental authorities, prepare for and testify at any hearings or meetings regarding such variance or waiver, and otherwise shall cooperate with Owner to procure such variance or waiver. The services described in this Paragraph 2.1.11 shall be Additional Services.

2.1.12 Document Protocols. At the beginning of each Phase from Phase I through VII described below, Owner and Architect shall meet and establish a protocol for the creation and maintenance of documents to be generated by each party during that phase.

2.1.13 Deficiencies In Owner-Furnished Information. Architect shall immediately advise Owner in writing of any apparent deficiencies or discrepancies in the information Owner provides to Architect during each phase of Architect's Services. Architect shall describe and advise Owner of additional investigations or information reasonably required to prepare the Construction Documents.

2.1.14 Revisions in Project Scope. The Owner reserves the right to increase or decrease the scope of the Project, including deletion of or reduction in size of structures and inclusion or exclusion of interior design services, on written notice to Architect. If the Owner directs such revisions to the Project scope, an equitable adjustment in the Project Schedule and the Architect's compensation shall be negotiated between Owner and Architect.

## 2.2 Programming (Phase I).

2.2.1 General. Owner has compiled a Draft Building Program that includes: (i) design objectives, limitations and criteria; (ii) the space requirements for each of the intended functions the Project is expected to fulfill; (iii) the space relationship among the various functions; (iv) the need for flexibility of space devoted to the various functions; and (v) special equipment and systems. Architect shall review Draft Program and shall prepare a Final Plan of requirements for space and adjacencies based on Owner's design objectives, space and equipment requirements and functional relationships, head count, growth assumptions and adjacency information. The Final Plan shall be submitted to Owner for approval in accordance with the Design Schedule.

2.2.2 Data Collection and Interviews. Architect has already reviewed the Draft Program, staff and student counts, adjacencies and other qualitative aspects of the Program. Building on this foundation, Architect will:

- (1) Verify current and projected staff and student counts.
- (2) Confirm space requirements, functional relationships and adjacency requirements for personnel functions, individual work areas, shared areas and equipment, based upon standards to be established.

(3) Design character and visual appearance parameters.

2.2.3 Floor Plan Review. Prior to the preparation of any concept or block plans, Architect's interior design team will review the proposed internal elements of the building plan with regard to core configuration, elevator location, stair separation and access, core-to-window wall dimensions, and general planning depths, as well as the interior planning module and geometric characteristics of the floorplate.

2.2.4 Building Systems Review. Architect will review building provisions for the HVAC system, electrical distribution, fire protection, security, elevators, and structural systems, as well as the ceiling and lighting systems with regard to their general relationship to the interior planning requirements.

2.2.5 Program. Based upon the results of the data collection and interviews, a Final Plan will be prepared by Architect for Owner's approval. This Program will include a description of the space requirements and other assumptions which will form the basis of the design, including growth projections and anticipated organizational changes. The Program will be reviewed with Owner to evaluate its consistency with the Project objectives

2.3 Final Plan (Phase II).

2.3.1 Description. During the Final Planning Phase, Architect shall develop, refine and organize the material gathered during the Programming Phase for the Potential Development, into a minimum of three alternative preliminary Master Plan schemes, one of which schemes Owner shall select for further development. The scheme selected by Owner shall be developed into a Final Plan in a manner such that, when approved by Owner, it accurately expresses through preliminary site plans, studies and sketches: (1) the overall Potential Development function and purpose, and (2) the budget, schedule, space, space relationships, and use limitations which will affect the Potential Development. The Final Plan shall develop all facilities and utilities, show site traffic patterns as required or anticipated by the traffic requirements of the Potential Development, identify the number of car parking spaces required by the Final Plan space allocations, show landscaping and site circulation, and be prepared to generally meet applicable Legal Requirements known to Architect at that time.

The approved Final Plan shall serve as the basis for Architect's initiation of the Schematic Design of the Project. Architect's future work product shall not deviate from the Final Program without the written agreement of Owner and appropriate amendment of the Master Plan. Before commencing Schematic Design, Architect shall submit the Final Plan for approval by Owner after Architect has confirmed all program requirements with Owner. The Final Plan shall be accompanied by Architect's confirmation that (1) the programming tasks are complete upon Owner's approval, and (2) all data requested from Owner necessary to meet the objectives of the Programming Phase have been received. Revisions to the Draft Program shall be carried out as a Basic Service.

2.4 Schematic Design Phase (Phase III).

2.4.1 General. Based on the Final Project Proposal and the Final Plan approved by Owner, Architect shall provide Schematic Design Services as described below and provide Deliverables including those listed in Exhibit C. The approved Concept and Block Plans will be refined to produce a more developed and integrated solution as follows:

(a) Space Planning. A Space Plan will be developed showing the general layout of offices, open plan areas and other special tenant areas.

(b) Workstation Standards. Standards for individual workstations will be developed based on:

- (1) Storage and filing requirements.
- (2) Communications systems.
- (3) Information processing systems.
- (4) Staff and student requirements.

(c) Schematic Design. Upon approval of the Space Plan, the Schematic Design will be developed to show the typical floor layout, including workstations, doors and furniture for group study areas, tutorial, media center, student, assessment and disabled student learning.

2.4.2 Coordination. Architect shall be responsible for coordinating the efforts of the design team including Architect's Consultants, and Architect shall coordinate its services and its Consultants' services with the services of Owner's Consultants so that completion of the tasks outlined in Programming, Final Plan and Schematic Design Phases do not interfere with Architect's responsibilities as outlined in such Phases.

2.4.3 Alternatives. Architect shall review with Owner and General Contractor alternative approaches to design and construction of the Project to determine, for Owner's approval, the most efficient and economical design consistent with the Project requirements; provided, however, ultimate responsibility for construction means and methods shall be the General Contractor's responsibility, as described in Paragraph 2.8.7.

2.4.4 Description. Based on (1) the Final Plan or modifications to the Project necessitated by the receipt of governmental approvals, (2) any Project Schedule and Working Budget requirements, and (3) mockups constructed by Owner, Architect shall prepare, for approval by Owner, Schematic Design Documents for the Project, consisting of drawings and other documents illustrating the scale and relationship of Project components, including those described for the Schematic Design Phase in Exhibit C. The Schematic Design Documents shall determine all areas, area relationships, volume or other units which shall be used to calculate budget information for Owner's estimate of Project cost to allow Owner to instruct Architect to revise the Project as set forth in Article 5.

## 2.5 Design Development Phase (Phase IV).

2.5.1 Description. Based on the previously approved Schematic Design Documents and any adjustments authorized by Owner in the Final Plan, Project Schedule or Final Budget, Architect shall prepare, for approval by Owner, Design Development Documents consisting of drawings, specifications, and other documents to fix and describe the size and character of the entire Project as to the architectural (including facade), interior design, structural, mechanical and electrical systems, plumbing, site development, fire protection, energy management systems, security, acoustical engineering, life safety systems, utility pad, and elevators, and such other elements as may be appropriate, to assist Owner and General Contractor to prepare cost forecasts and schedules. Architect shall make such revisions in the Design Development Documents to comply with the Final Plan, Project Schedule, and Final Budget in accordance with Article 5.

Upon approval of the Architectural and interior Schematic Design, Design Development documents will be prepared to fix and describe the Project design, building systems, special features and details of the visual concept for the Project, consisting of the following:

- (a) General Architectural.
  - (1) Floor plans of each typical and unique level.
  - (2) Building elevations.
  - (3) Building sections.
  - (4) Preliminary building systems designs.
  - (5) Final architectural finish pallet for review and approval.
  - (6) Key details, where appropriate.
  - (7) Outline specifications for architectural scope.
- (b) Interior Architectural. Visual Concept Interior design and furnishings character will be established for the following:
  - (1) Interior architectural treatments and special millwork.
  - (2) Wall, floor and finish selections.
  - (3) Color palettes.
  - (4) Furniture selections. Based off Steelcase Furniture.
  - (5) Window covering and carpet selections.
  - (6) Cabinetwork, paneling or custom features.
  - (7) Lighting.
- (c) Presentation. The above items will be presented for Owner's review and approval, utilizing the following work products:
  - (1) Floor plan layouts.
  - (2) Sketches.
  - (3) Fabric, carpet and finish samples.
  - (5) Interior models and renderings. Preparation of interior models and renderings prepared by the Architect's employees shall be considered a Basic Service. Preparation of interior models and renderings by Architect's Consultants or other third parties shall be considered an Additional Service.

2.5.2 Coordination. Owner shall provide necessary legal services for the review and negotiation of a form of Construction Contract. Architect shall recommend, specify and review all necessary testing requirements for the Project, including soils, wind, seismic, dynamic, stress and structural tests, and any other evaluations necessary for the Project. Architect shall prepare explanatory information and documents concerning the Design Development Documents as may be reasonably required by Owner. The Design Development Phase shall conclude upon approval by Owner and the appropriate governmental agencies of the Design Development Documents.

2.5.3 Constructability and Design Review; Value Engineering. Owner reserves the right to conduct, or cause to be conducted, constructability reviews and/or value engineering of the Design Development Documents. If Owner elects to conduct either constructability reviews or value engineering, the Owner shall notify the Architect of the same. Upon receipt of written notification, the Architect shall submit Design Development Documents for such constructability review and/or value engineering. The Owner, Owner's Consultants, General Contractor and Architect will confer and consult with each other to arrive at mutual understandings and agreements as to which of the constructability review and/or value engineering comments are to be incorporated into the Design Development Documents. Architect shall revise Design Development Documents as necessary to obtain Owner's reasonable approval. Such revisions to Design Development Documents are included in Architect's Basic Services.

## 2.6 Construction Documents Phase (Phase V).

2.6.1 Description. Based on the previously approved Design Development Documents and any further adjustments in the Final Plan, Project Schedule, or Final Budget authorized by Owner, Architect shall prepare, for approval by Owner, coordinated Construction Documents in a state reasonably acceptable to Owner consisting of drawings and specifications setting forth the requirements for the construction of the Project, based on the contracting and construction process mutually agreed upon.

Construction Documents, consisting of drawings and specifications for the purpose of assisting Owner in obtaining bids, construction permits and constructing the Project will be prepared upon Owner's approval of Design Development documents and authorization to proceed, as follows:

- (a) General Architectural Drawings.
  - (1) Floor plans of each unique level, including raised flooring if requested by the Owner.
  - (2) Building elevations.
  - (3) Building sections.
  - (4) Enlarged plans and elevations of special areas where necessary.
  - (5) Public area layouts of the reflected ceiling plans, showing the location of the various types of ceilings and the location of standard and special light fixtures, HVAC registers, sprinkler heads, light switches, etc. will be indicated, where necessary, from information provided by the appropriate engineer.
  - (6) Finish plans, showing the location and type of paint, floor coverings, and other special finishes, in public areas.

- (7) Details indicating the design intent of the above.
- (8) Specifications covering the above construction work for the Project will be prepared to establish the requirements and standards for the construction work.
- (b) Interior Architectural Drawings.
- (1) Floor plans and schedules, indicating the location and types of partitions, doors, frames and hardware, glass partitions and millwork locations.
- (2) Reflected ceiling plans, showing the location of the various types and features of ceilings. The location of standard and special light fixtures, switches, sprinklers heads, and air conditioning diffusers and registers also will be shown, if necessary, based upon information provided by other consultants. Raised flooring design shall be incorporated if requested by the Owner.
- (3) Outlet plans, showing the location of power, telephone and data communication outlets, if necessary, based upon information and criteria provided by other consultants and detailed interiors program.
- (4) Finish plans and finish schedules, showing the locations and types of paint, wall coverings, wood finishes, carpeting, floor coverings, fabrics, and other special finishes. Such plans shall show the placement of artwork and the location and types of lighting for artwork.
- (5) Details indicating the design intent of the above.
- (6) Specifications covering the above interior construction work for the Project will be prepared to establish the requirements and standards for the interior construction work.
- (c) Backgrounds for Engineering and Other Consultants. Architect will cooperate and coordinate with engineering and other consultants in connection with the Construction Documents Phase Basic Services, as set forth below. Architect will forward reproducible or electronic discs of its drawings (backgrounds) to the consultants, to show the locations of design elements that influence the layout and design of engineering systems.
- (d) Furniture and Furnishings. Furniture location drawings and specifications will be prepared, describing the requirements for pricing, bidding, fabricating and installing furnishings for the Project by furniture and furnishings dealers and/or fabricators. Architect will provide the outline specification for finishes and a plan and elevation of each typical workstation type (open or closed plan) and a Space Plan indicating the locations of stations or offices by type. Architect does not purchase or handle furniture, furnishings or equipment on a resale basis. All procurement of furniture is to be by Owner in accordance with its established purchasing procedures.

2.6.2 Building Regulations. Architect affirms that it is knowledgeable of Legal Requirements governing the Project. Architect shall use due professional care to prepare Construction Documents that conform to these Legal Requirements, including pending laws and regulations that are not yet in effect if they are publicly announced and generally known to architects in the Northern California Area and Division of State Architect Office. If the Legal Requirements of one or more jurisdictions affecting the Project are in conflict, Architect will conform the Construction Documents to the more stringent

standards where it is feasible to do so. If it is not feasible to do so, Architect will advise Owner of the areas of conflict and will cooperate with Owner in connection with the resolution of such conflict. Also as part of Architect's Basic Services, Architect will identify tests required by such Regulations, and cooperate with Owner in connection with such tests.

2.6.3 Government Approvals of Construction Documents. Without limiting Architect's obligations under Paragraph 2.6.2, Architect shall submit Construction Documents to the appropriate governmental authorities, and assist Owner with the filing of an application for a building permit for the Project, and shall process the Construction Documents as required by such governmental authorities to secure the issuance of a building permit for the Project.

2.6.4 Constructability and Design Review; Value Engineering. Owner reserves the right to conduct, or cause to be conducted, constructability reviews and/or value engineering of the Construction Documents. If Owner elects to conduct either constructability reviews or value engineering, the Owner shall notify the Architect of the same. Upon receipt of written notification, the Architect shall submit Construction Documents for such constructability review and/or value engineering. The Owner, Owner's Consultants, General Contractor and Architect will confer and consult with each other to arrive at mutual understandings and agreements as to which of the constructability review and/or value engineering comments are to be incorporated into the Construction Documents. Architect shall revise Construction Documents as necessary to obtain Owner's reasonable approval. Such revisions to Construction Documents are included in Architect's Basic Services.

2.6.5 Owner's Approval. The Construction Documents phase shall conclude upon Owner's final sign-off and approval of all the Construction Documents.

## 2.7 Bidding or Negotiation Phase (Phase VI).

2.7.1 Description. Architect will provide assistance to Owner, as needed, to assess strategies for pricing, including whether proposals should be bid or negotiated, and to assist in the selection of contractors and vendors for bidding or negotiation. Assistance will be provided to Owner, as needed, to solicit and review bids or proposals for construction and furnishings contracts.

2.7.2 Coordination. During the preconstruction phases of the Project, Architect shall meet, confer, collaborate and coordinate, as necessary or appropriate, with Owner, Owner's Consultants and General Contractor. Owner shall ensure that its Consultants undertake a similar degree of cooperation with Architect.

2.7.3 Bid Packages. When Construction Documents are in the opinion of Owner and Architect in such a state of completion to allow Owner to request proposals from pre-qualified subcontractors for all work which may be appropriate for consideration, evaluation, and selection of the subcontractors, Owner shall notify Architect to prepare the bid packages for pricing purposes as set forth in this Paragraph 2.7.3.

Architect shall prepare the bid packages for each part of the Work utilizing Owner-modified standard American Institute of Architects forms consistent with this Agreement. Required bid packages include, but are not limited to site work, site-superstructure, exterior envelope, interiors and specialties. Architect shall ensure that each such bid package (i) includes alternatives for bidding desired by Owner, up to a maximum of one minor alternative for each bid package, (ii) is sufficiently complete to enable contractors and subcontractors to reasonably and accurately estimate the cost of the Work under each of the designated alternatives, and (iii) includes, without limitation, drawings, specifications, bidding information, bidding forms and instructions, the form of the subcontract approved by Owner, and the

Contract Conditions as described below. Architect shall provide reasonable additional information requested by any subcontractor in connection with the bidding of the Work.

2.7.4 Bid Costs Exceeding Project Construction Budget. If within ninety (90) days of the date upon which Architect obtains final DSA approval for the Construction Documents, the Owner shall have solicited Bid Proposals from bidders for award(s) of the Construction Contract(s) and such Bid Proposal are opened by the Owner, or Owner's Consultants, within said (90) days and the lowest bona fide Bid Proposal(s) exceeds the Final Budget as established in this Agreement, the Owner may: (1) approve of an increase in the Budget; (2) reject all such Bid Proposals and authorize re-bidding of the Bid Packages; (3) revise Project Scope through value engineering so as to limit and reduce Construction Costs. If the Bid proposals exceed the Final Budget, and if the Owner elects to revise the Project Scope, such revisions to Project are included in Architect's Basic Services.

2.7.4 Contract Conditions. The terms and conditions of the Construction Contract shall form the basis for Architect's duties of administration required by this Agreement. However, if as a result of negotiations with the General Contractor any amendments to this Agreement are required, Architect agrees to negotiate reasonably and in good faith with Owner to resolve such issues.

2.7.5 Fast-Track. Architect acknowledges that some of the Work may be constructed on a Fast Track basis, and may be bid prior to completion of the final Construction Documents for the entire Project. If the Project or any portion of the Project is Fast Track, then based on the then known facts, Architect and its Consultants shall complete the Construction Documents, including Architect's coordination and correction based on such coordination, prior to taking bids for the Work. With respect to Fast Track, Owner and Architect also agree as follows:

In those cases in which bids are taken for a portion of the Work prior to completion of all of the Construction Documents (i.e., Fast Track), Owner and Architect acknowledge that the Fast Track method is being utilized to obtain beneficial occupancy of the relevant portion of the Project at the earliest possible time, which will be prior to the completion of certain other portions of the Work (i.e., other than the portion being bid under the Fast Track process) and prior to many essential decisions with respect to the Work as a whole being made. Further, both Owner and Architect acknowledge that, in Fast Track, the drawings will be completed in phases, and will not in all cases incorporate all information which may have an impact on any such drawings, which information would or will not be developed until later in the design process, and that such drawings may need to be amended at a later time to incorporate such subsequently developed information. However, Architect expressly acknowledges and agrees that it is executing this Agreement with the full knowledge that Owner intends to use Fast Track on the Project, and that it is Architect's obligation, under this Agreement, to coordinate Work on the Project, to the extent possible, and to the best of Architect's ability, under the provisions of this Agreement, based on the knowledge available to Architect, and on the Construction Documents which have been completed, at any point in time with respect to that portion of the Work which is subject to Fast Track.

## 2.8 Construction Phase (Phase VII).

2.8.1 Duration. The Construction Phase will commence with the commencement of site work by the General Contractor and will terminate 90 days after the Date of Substantial Completion of the Work, as defined in 2.8.13. It is expected that the period of time from commencement of site work until Substantial Completion of the Work will be approximately 14 months, including grading and site work. Architect's compensation for Basic Services includes Construction Administration Phase services for such period of time. If the course of such construction Work extends beyond 14 months, then Architect's compensation for supervision of such additional period of time shall be compensated as an Additional Service.

2.8.2 Architect's Role. Architect shall assist Owner with the general administration of the Construction Contract awarded to the General Contractor for construction of the Project. Architect shall have authority to act on behalf of Owner only to the extent provided in this Agreement and the Conditions of the Construction Contract. Notwithstanding the foregoing, the parties disclaim any intent to make the General Contractor a third-party beneficiary of this Agreement.

2.8.3 Architect's Duties. The duties, responsibilities and limitations of authority of Architect during construction shall not be restricted, modified or extended without written agreement of Owner and Architect.

2.8.4 Advice and Consultation. Architect shall advise and consult with Owner during the Construction Administration Phase.

2.8.5 Pre-Construction Conference. Architect shall arrange for and attend a pre-construction conference with major contractors, subcontractors and manufacturers to explain the project, set the tone for quality performance, review critical areas interface, clarify intent and determine the impact of long lead products.

2.8.6 Site Observations. During the Construction Administration Phase, the Project Director (or his designee) up to an average of twice a week shall visit the site and attend progress meetings with Owner and General Contractor and upon Owner's request shall promptly prepare meeting minutes. Based on such visits and meetings, Architect shall become familiar with the progress and quality of the completed Work and shall determine in general if the Work is proceeding in accordance with the Construction Documents. Architect shall prepare observation reports and interface with government authorities having jurisdiction over the Project, as requested by the Owner. On the basis of such on-site observations ("Site Observations") as an architect, Architect shall keep Owner informed of the progress and quality of the Work, and shall endeavor to guard Owner against defects and deficiencies in the Work of which Architect becomes aware.

2.8.7 General Contractor's Responsibility. Architect shall not have control over, or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work. The foregoing shall solely be the General Contractor's responsibility under the Construction Contract. Architect shall not be responsible for the General Contractor's schedules or failure to carry out the Work in accordance with the Construction Documents. Architect shall not have control over or charge of acts or omissions of the General Contractor, subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

2.8.8 Communications. Except as may otherwise be provided in the Construction Documents or when direct communications have been specially authorized, Owner and General Contractor shall communicate with each other directly and keep Architect informed of all material communications or, at the option of Owner, Owner and General Contractor shall communicate through Architect. Communications to and with Architect's Consultants shall be through or in conjunction with Architect. Communications between Architect and General Contractor relating to scope, schedule, contract sum, or quality of the Work shall be through or in conjunction with Owner. However, Architect shall answer all General Contractor's requests for information.

2.8.9 Payments to General Contractor. Architect shall recommend payment of the amounts owing to the General Contractor based on Architect's visits and observations at the site and on evaluations of the General Contractor's Applications for Payment. Within an agreed-upon period not to exceed 5 days after receipt of such application, Architect shall issue Certificates for Payment in such

amounts. If so requested by Owner, prior to issuing a Certificate for Payment, Architect shall consult with, and review the General Contractor's Application for Payment with, Owner to determine the amounts due.

The issuance of a Certificate for Payment shall constitute a representation by Architect to the Owner, based on Architect's observations at the site and on the data comprising the General Contractor's Application for Payment that, to the best of Architect's knowledge: (1) the Work has progressed to the point indicated; and (2) the quality of the Work appears to be in accordance with the Construction Documents.

2.8.10 Nonconforming Work. Architect shall promptly notify Owner of Work observed by Architect which does not conform to the Construction Documents and upon instruction from Owner shall reject such Work on Owner's behalf. Whenever, in Architect's reasonable opinion, the special testing or inspection of any Work is necessary or advisable to ensure the proper implementation of the intent of the Construction Documents, Architect shall recommend to Owner such inspection or testing, whether or not such Work be then fabricated, installed or completed.

2.8.11 Shop Drawings And Other Submittals. Architect shall review and promptly take appropriate action upon the General Contractor's submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Construction Documents. Such action shall be performed following Architect's standard procedures for receiving, routing, distributing and otherwise handling such submittal. Architect shall make reasonable changes to its standard procedures to cooperate in achieving an orderly progression of the Work. The parties shall discuss and agree upon any such changes no later than 10 days after commencement of the Construction Administration Phase. Architect's action shall be performed in accordance with the General Contractor's Project submittal schedule when accepted by Architect and Owner, or in the absence of such an accepted schedule, within such time as is sufficient in Architect's professional judgment to permit adequate review, not to exceed ten working days for submittals requiring only Architect's review, and fifteen working days for submittals requiring both Architect's and Architect's Consultants.

2.8.12 Changes In The Work. Architect shall prepare documentation for Change Proposal Requests ("CPR's") for all changes to the Construction Documents. Upon approval, the CPR shall be issued by Owner to the General Contractor for pricing. Upon Owner's acceptance of the General Contractor's pricing and proposal for the revised Work, Owner shall prepare and send to the General Contractor a Change Order describing the adjustment to the Construction Contract time or amount. The General Contractor will sign the document and send it to Architect for signature by Architect, if appropriate. Architect shall take appropriate action regarding the Change Order and forward the signed document to Owner for its signature. After signing the document, Owner shall distribute copies of the document to Architect and General Contractor. When deemed necessary by Architect in consultation with Owner, Architect shall prepare supporting documents for changes for Owner's approval and execution in accordance with the Construction Documents. Architect may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time providing the changes are consistent with the intent of the Contract Documents. Architect shall advise Owner of all such minor changes in the Work. Architect shall review the Owner-prepared Change Orders prior to final approval by Owner, Architect and General Contractor in accordance with the Conditions.

During the construction of the Work, Architect shall update and distribute to Owner and General Contractor Construction Documents showing the effect of all Change Orders, excluding the Work of any design/build subcontractors.

2.8.13 Substantial and Final Completion. Architect and Owner shall determine the Date of Substantial Completion and the date of Final Completion, both in accordance with the Construction Documents and the Conditions. Architect shall receive and forward to Owner for Owner's review written warranties and related documents required by the Construction Documents and assembled by the General Contractor, and shall issue a final Certificate for Payment.

General Contractor will be required to notify Owner and Architect, in writing, when General Contractor believes the Work (or designated portions thereof) have been fully performed and are acceptable under the Contract Documents. Upon either (i) the General Contractor's Work having progressed to the level described in the preceding sentence, or (ii) the General Contractor's preparation of the punch list, the Architect shall prepare, or amend, as appropriate, the "punch list." Prior to issuing any certificate of Final Completion, Architect shall conduct inspections of the Work with Owner and General Contractor, first, to prepare or amend the items on the "punch list" requiring additional work or correction and, second, to determine whether all such "punch list" items have been completed by the General Contractor. Architect shall notify Owner, in writing, when Architect finds the Work (or designated portions thereof) fully performed and acceptable under the Contract Documents, stating that to the best of Architect's knowledge, information and belief, on the basis of Architect's Site Observations, the Work has been completed in substantial accordance with the terms and conditions of the Contract Documents, and that Final Payment to General Contractor for such portion of the Work is due and payable. Architect shall notify Owner in writing when it is appropriate to record a Notice of Completion for each portion of the Work.

2.8.14 Architect's Authority. Architect shall be the interpreter of the design requirements of the Contract Documents and upon request of Owner shall offer impartial opinions regarding performance by both Owner and the General Contractor thereunder, for the execution or progress of the Work, and any other matters or questions related thereto as they affect design matters. Architect shall make interpretations and render advice in writing promptly after written request therefore by either Owner or (to the extent permitted) the General Contractor, especially if the matter in question is delaying or threatens to delay the Project. Architect's interpretations and opinions are to be directed to matters relating solely to the intent of the Contract Documents.

2.8.15 Decisions and Interpretations. Interpretations and decisions of Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in detailed written or graphic form.

2.8.16 Project Representative. Architect may provide a Project Representative approved by Owner to assist Architect in carrying out Architect's responsibilities at the site. The furnishing of such Project Representation shall not modify the rights, responsibilities or obligations of Architect as described in this Agreement.

## 2.9 Post-Construction Phase (Phase VIII).

Architect shall assess any reported defects or deficiencies in the Work arising during the one-year period following Architect's certification of Final Completion for each building. Architect shall act on behalf of Owner and shall issue instruction, including drawings and specifications, as necessary, to General Contractor if work is required to correct any defects or deficiencies. Upon General Contractor's completion of any remedial work, Architect shall notify Owner in writing that such work has been satisfactorily completed. If such defects or deficiencies are determined not to be the result of any error, omission or negligent act of Architect, then Architect shall be compensated, as Additional Services for all Services rendered by Architect in connection with the assessment and correction of such defects and/or deficiencies.

## 2.10 Resolution of Claims and Disputes.

2.10.1 Upon request of both the General Contractor and the Owner, Claims (as hereinafter defined) may be referred to the Architect. The Architect will review Claims and take one or both of the following preliminary actions within ten days of receipt of a Claim (i) request additional supporting data from the claimant, or (ii) submit a schedule to the parties indicating when the Architect expects to make a recommendation to Owner.

2.10.2 If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

2.10.3 If a Claim has not been resolved, the party making the Claim shall, within ten (10) days after the Owner's initial response to such Claim, take one or more of the following actions: (i) submit additional supporting data, (ii) modify the initial Claim or (iii) notify the other party that the initial Claim stands.

2.10.4 When requested by Owner, Architect (i) shall interpret the requirements of the Contract Documents and (ii) shall render written opinions within a reasonable time on all Claims, disputes, Contractor requests for Change Orders, matters relating to the sufficiency of the execution and progress of the Work, and other matters in question between Owner and Contractor relating to the execution or progress of the Work or interpretation of the Contract Documents. Architect shall consult with its subconsultants or others as appropriate prior to rendering any such decisions and/or interpretations unless instructed otherwise by Owner. Architect's decisions on any Claim, disputes, or other matters, including those in question between Owner and Contractor, shall be advisory only.

## **ARTICLE 3 ADDITIONAL SERVICES**

3.1 Additional Services Generally. The services described in this Article 3 ("Additional Services") are not included in Basic Services unless part of the tasks described in Phase I through Phase VIII. When authorized, Owner shall compensate Architect, in addition to the compensation for Basic Services as provided under Article 11. The Additional Services shall be commenced and provided only if authorized and confirmed in writing by Owner.

3.2 Description of Additional Services. Additional Services shall consist of the following:

3.2.1 Elevator engineering design and specifications

3.2.2 Services for audio-visual, telephone, and other special wiring equipment selection.

3.2.3 Services in connection with furniture moving or move coordination.

3.2.4 Services related to environmental impact approvals.

3.2.5 Services in connection with areas or work outside the Project area and scope of Basic Services.

3.2.6 Preparation of rendered views and finish models by third parties (renderings and models prepared by Architect's employees shall be included in Basic Services).

## ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 Information. Owner shall provide full information and requirements for the Project and, pursuant to its responsibilities under Article 2, Architect shall assist Owner in identifying and determining the necessary information and requirements.

4.2 General Contractor. Owner shall retain the General Contractor to construct the Project. The General Contractor's services, duties and responsibilities shall be those described in the Construction Contract.

4.3 Budget. As set forth in Article 5, Owner shall provide a Final Budget for the Project, a copy of which shall be provided to Architect. Such Final Budget shall include contingency amounts for bidding, changes in the Work during construction, and other costs which are the responsibility of Owner, including those described in this Article 4 and Article 5.

4.4 Representative. Owner shall designate in writing a representative authorized to act in Owner's behalf with respect to the Project. Until further written notice from Owner, such representative shall be Owner's Construction Manager, as described paragraph 4.5 of this Agreement. Owner or such authorized representative shall examine the documents submitted by Architect and shall render decisions and approvals pertaining thereto in a manner to avoid unreasonable delay in the orderly and sequential progress of Architect's services.

4.5 Construction Manager. The Owner intends to retain the services of **Felice Consulting Services** or other designated individual or individuals for its own benefit to assist the Owner in understanding and managing the technical aspects of the project and the process of its construction. **Damon Felice** and any other such individual or individuals as are designated in writing by the Owner shall be herein referred to, singularly and collectively, as the "Construction Manager." The Owner retains the right to have the Construction Manager exercise any of those rights and powers which this Agreement provides to the Architect, including, without limitation, review of change orders, recommendation of approval of progress billings, and review of schedules. The Owner may designate that such rights and powers will be exercised by the Construction Manager, by the Architect, or by both (either conjunctively or disjunctively). Such designation shall be in writing signed by the Owner and may be changed from time to time by the Owner. In the absence of any such written designation, only the Architect shall have the rights and powers specified in this Agreement.

4.6 Surveys and Legal Information. Owner has furnished to Architect an ALTA survey describing existing physical characteristics, legal limitations and existing utility locations for the Project; a written legal description of the site; and a copy of all applicable documents constituting exceptions to Owner's title.

4.7 Soils and Environmental Reports. Owner has furnished to Architect a soils and foundation report by a soils engineer; and a Phase I environmental report.

4.8 Tests and Inspections. Owner shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law and codes. Unless provided otherwise in this Agreement or the Construction Documents, Owner shall arrange and pay for the special tests and inspections required by building codes. Architect shall identify mandatory tests required to meet regulations.

4.9 Owner's Expenses. The services, information, surveys and reports required of Owner in this Article shall be furnished at Owner's expense.

## **ARTICLE 5 CONSTRUCTION BUDGET**

5.1 Included Costs. The Working and Final Budgets shall include the cost of all elements of new construction to be included in the Construction Documents, including the total cost of labor, material and equipment to be furnished and installed by the General Contractor. The Working and Final Budgets shall also include cost of the labor, material, or equipment necessary to install Owner supplied equipment as provided in the Construction Documents, and will consist of a summary of building system component costs and specific line items which when totaled determine the cost of each building component. The format for the Working and Final Budgets shall be agreed upon by Owner and Architect no later than December 6, 2004. The Owner or General Contractor shall provide a detailed estimate of cost for each specific line item. Architect shall cooperate with Owner and General Contractor and will provide all information reasonably required by Owner or General Contractor in preparing the estimates.

5.2 Responsibility For Construction Cost. The parties acknowledge that the Working and Final Budgets shall be established after extensive consideration based in part on Architect's information and Deliverables, and Architect shall exercise reasonable care in accordance with the standard of care in Paragraph 2.1.1 to design the Project so that it may be constructed without exceeding such Budgets. Evaluations of Owner's Final Budget by Architect represent Architect's best judgment as a design professional familiar with the construction industry in the Northern California Area. It is recognized, however, that neither Architect nor Owner has control over the cost of labor, materials or equipment, over the General Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. The limit of Architect's responsibility in the event construction costs exceeds the Final Budget are stated in this Article 5.

5.3 Budget Development. Owner's Budget will be developed in two stages:

5.3.1 Working Budget. Through completion of the Design Development Phase, the Architect, in consultation with the Owner and General Contractor shall develop a "Working Budget" which will be based upon the Final Plan, and the first Construction Cost Forecast. The Working Budget is subject to periodic revisions resulting from (a) changes in the Final Plan and (b) periodic updates to the Construction Cost Forecasts. Pending completion of the Working Budget, Architect shall use the preliminary budget set forth in Exhibit G attached hereto.

5.3.2 Final Budget. Upon completion of the Design Development Phase, Owner shall either approve the Working Budget as it is then formulated and direct Architect to proceed with the Construction Document phases, in which case the Working Budget shall become Owner's "Final Budget" for purposes of all future phases of the Project; or Owner shall direct Architect in a written notice (delivered to Architect within fourteen days after Owner's receipt of the Schematic Design package) to make revisions to the Design Development Documents in order to meet a Final Budget designated by Owner in such written notice. Such revisions to the Design Development Documents shall be a Basic Service.

5.4 Redesign Services. Owner will require the General Contractor to submit a 100% Construction Document Estimate for the entire Project. If the General Contractor's Estimate exceeds the Working Budget, then upon written request by Owner, Architect, in consultation with the General Contractor, shall perform redesign services in accordance with Paragraph 5.4.1 as a Basic Service. After completion of the redesign process, a revised Estimate shall be requested from the General Contractor.

Upon receipt of a revised Estimate acceptable to Owner and Architect, Architect shall proceed to complete the Construction Documents. Upon completion of the Construction Documents, Owner and the General Contractor with the assistance of Architect shall solicit and obtain subcontractor bids for all portions of the Work.

5.4.1 Redesign Process. In performing redesign services as a Basic Service pursuant to this Section 5.4, unless the parties otherwise agree, Architect shall proceed in the following manner, in declining order of preference: (1) redesign any line items so that the forecasted cost of each such line item will meet the Working or Final Budget as the case may be (hereafter the “applicable Budget”) for that line item unless, in Architect’s good-faith professional opinion, redesign of individual line items would be unduly difficult, in which case Architect shall (2) redesign any components so that the forecasted cost of each such component will meet the applicable Budget for that component unless, in Architect’s good-faith professional opinion, redesign of individual components would be unduly difficult, in which case Architect shall (3) “borrow” from other line items or components which are shown as underrunning their applicable Budget cost estimates and “add” such “borrowed” budgetary funds to components or line items which are shown as overrunning their applicable Budget cost estimates so that the cost will meet the Final Budget for the Project unless, in Architect’s good-faith professional opinion, such redesign would be unduly difficult, in which case Architect shall (4) redesign the Project so that the forecasted cost of the Project will meet the applicable Budget for the Project. In the event of a dispute concerning whether a particular redesign option as specified in (1) through (4) herein is “unduly difficult,” the parties shall discuss the matter in good faith and attempt to agree.

## **ARTICLE 6 OWNERSHIP AND USE OF DOCUMENTS**

6.1 Owner’s Rights. Architect hereby grants and assigns to Owner all of Architect’s and its consultant’s right, title and interest in and to all copyrights and other proprietary rights in documents they prepare or modify in connection with this Agreement, in any tangible, electronic or other form or medium whether now known or later developed (including CAD data files, models, sketches, renderings, reports, analyses and other expressions) (collectively, the “Documents”), including the right to use, copy, reproduce, display, modify, publicly perform and make derivatives thereof, and the right to secure renewals and extensions of such rights. Such grant and assignment shall be effective as to each of the Documents when and as delivered to Owner, regardless of whether the project is commenced or the Documents in their entirety are completed. Architect shall take such additional actions as may be reasonably required by Owner to vest such right, title and interest.

6.2 Retention of Originals. The originals of all Project Documents, including electronic discs (if used for their production) shall remain in the possession and control of Architect and the respective Architect’s Consultants for the benefit of Owner. At Owner’s request, any or all Project Documents shall be immediately delivered to Owner in their original form, or in clear, reproducible form, regardless of whether or not this Agreement is completed, suspended or terminated.

6.3 Reuse of Documents - Owner. Owner shall have the right, regardless of whether or not this Agreement is completed, suspended or terminated, to use and reuse the Project Documents for any purpose in connection with this Project, including, but not limited to, original construction, future expansion, renovation, maintenance and repair. In the event Owner performs work or has work performed on its behalf for which Architect is not retained, Owner shall indemnify, defend, protect and hold Architect free and harmless from liability, if any, arising from the use of any Project Documents by Owner, including, without limitation, any liability to third parties for personal injury, death, or property damage. This indemnification provision shall survive the termination of this Agreement.

6.4 Reuse of Documents - Architect. Notwithstanding anything to the contrary in the General Conditions, Architect may reuse plans, drawings, specifications and other data prepared pursuant to this Agreement in its architectural practice, but only in their separate constituent parts and not as a whole, except that Architect shall not have the right to use any unique or specific constituent parts developed exclusively for Owner or developed by Owner for any purpose. In the event Architect uses any of the plans, drawings, specifications and other data in its architectural practice as authorized herein, Architect shall indemnify, defend, protect and hold Owner free and harmless from liability, if any, arising from the use of such plans, drawings, specifications and other data by Architect, including, without limitation, any liability to third parties for personal injury, death, or property damage. This indemnification provision shall survive the termination of this Agreement.

6.5 Use by General Contractor. The General Contractor may retain one contract record set of the Project Documents. Owner will grant the General Contractor and subcontractors a limited license to use and reproduce applicable portions of the Project Documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents (e.g., shop drawings), but not for use on other projects.

6.6 CAD Data Files. At Owner's request, Architect shall deliver to Owner CAD data files ("Data"). Architect makes no representations or warranties, expressed or implied, of merchantability, or fitness for a particular purpose or with respect to the Data's quality, adequacy, completeness or sufficiency, or any results to be or intended to be achieved as to its use.

6.6.1 Owner acknowledges that anomalies and errors can be introduced into electronic data when it is transferred or used in an incompatible computer environment. Further, Owner acknowledges and solely accepts the risks associated with and/or the responsibility for any damages to hardware, software or computer systems or networks related to any use of the Data. The Data is furnished "as is." Owner hereby releases Architect from any damages or losses of any kind, including, but not limited to, damages or losses to property or persons, including injuries or death, or economic losses, or any consequential, special, indirect or incidental damages, resulting from the transfer or use of the Data in an incompatible computer environment, except for damages or losses caused by Architect's sole negligence.

6.6.2 Owner is responsible for modifying its computer system to properly use the Data. Owner acknowledges that the Project, as built, may vary from the Data transferred to the Owner. Architect shall have no duty to modify or update the Data and Architect reserves the right to retain an archival copy of the Data delivered to Owner which shall be referred to and shall be conclusive proof and govern in all disputes over the form or content of the Data furnished to Owner.

## **ARTICLE 7 RESOLUTION OF DISPUTES**

7.1 Definition of "Disputes". For purposes of this Article 7, "Disputes" shall mean all unresolved claims, counterclaims, disputes, controversies, and other matters in question between Architect and Owner arising out of or relating to this Agreement or the breach thereof (other than claims arising out of alleged breaches of the covenants contained in Section 9.7 of this Agreement, for which injunctive relief may be sought from a court of competent jurisdiction).

7.2 Resolution of Disputes. Owner and Architect shall submit all Disputes to mediation prior to either party initiating litigation pursuant to Sections 7.3 and 7.4 below, unless delay in initiating or prosecuting a proceeding in an arbitration or judicial forum would prejudice Owner or Architect. Owner and Architect shall agree in writing as to the identity of the mediator and the roles and procedures of the mediation. If Owner and Architect cannot agree, the Dispute shall be submitted to mediation under the

then current Construction Industry Mediation Rules of the American Arbitration Association. If any Dispute has not been resolved within forty-five (45) days after submission thereof to mediation, and if the parties have not agreed to arbitration or other form of alternative dispute resolution, either party may initiate litigation for the resolution of such Dispute.

7.3 Performance of Parties to Continue. Unless otherwise agreed in writing, during the period in which any Dispute is outstanding Architect shall continue to perform its services and carry out its other responsibilities, and the Owner shall continue to make payments and carry out its other responsibilities, in accordance with this Agreement.

7.4 Attorney's Fees. Should arbitration or litigation of any Dispute occur between Owner and Architect, all hearing or court costs, witness fees, reasonable attorney's fees and related costs shall be paid by the non-prevailing party to the prevailing party, as such party is determined by the arbitrator(s) or court.

## **ARTICLE 8 TERMINATION AND SUSPENSION**

8.1 Termination for Default. This Agreement may be terminated by either party upon not less than seven days written notice should the other party fail to perform in accordance with its terms through no fault of the party initiating the termination. The parties' right to terminate for failure to perform is limited to material failures of performance. In the event of termination of Architect for default, Architect shall assign to Owner at no cost any consultant agreements relating to the Project.

8.2 Convenience. Owner may terminate this Agreement for its convenience upon not less than seven days written notice to Architect. In the event of such termination, Architect shall cease performing Services promptly after receipt of such notice, and shall be paid for all Services performed up to the notice of termination and for all costs incurred by Architect that could not have been avoided by reasonably prompt efforts by Architect to mitigate its cost upon receipt of the notice of termination. Architect's right to reimbursement under this Article is limited to costs that could not have been avoided by reasonable prompt efforts by Architect to mitigate its cost upon receipt of the notice of termination, suspension or abandonment. As an Additional Service, upon request of Owner, Architect shall facilitate any new architect's assumption of Architect's duties following a termination pursuant to this Section 8.2.

8.3 Suspension. The services of Architect under this Agreement may be suspended by Owner upon not less than seven days written notice to Architect. If the suspension is for more than 60 consecutive days, Architect shall be compensated for services performed prior to notice of such suspension and any Reimbursable Charges incurred by Architect prior to its receipt of the suspension notice.

8.4 Payment Disputes. Failure of Owner to make payment shall not justify cessation or termination of Architect's Services if (1) the failure is cured within 30 days of delivery by certified mail to Owner of notice of the failure of payment, or (2) the failure of payment is limited to no more than 100% of the amounts in dispute between Owner and Architect, Owner has delivered to Architect written notice of the amount and nature of the dispute, and Owner proceeds promptly and in good faith to resolve the dispute.

8.5 Failure To Pay - Architect's Rights. Except as otherwise provided in Section 8.4, if Owner fails to make payments when due Architect may suspend performance of its Services by first giving Owner 30 days' notice of such suspension. If Owner pays all amounts then due and not in dispute within 30 days of receipt of such notice, Architect shall have no right to suspend its performance. In the

event of a suspension of Services under this Section, Architect shall have no liability to Owner for delay or damage caused the Owner because of such suspension of Services.

8.6 Compensation Upon Termination. In the event of termination not the fault of Architect, Architect shall be compensated for Services performed prior to termination, together with any Reimbursable Charges incurred prior to receipt of the termination notice and all reasonable expenses incurred resulting from such termination. This will be Architect's sole remedy in the event of termination for convenience.

## **ARTICLE 9 GENERAL PROVISIONS**

9.1 Governing Law. This Agreement shall be governed by California Law.

9.2 Successors and Assigns. Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal 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. Architect shall not assign, sublet or transfer any interest in this Agreement without the written consent of the Owner. Owner reserves the right on notice of the Architect to assign Owner's interest in this Agreement to another party in whole or in part, including an assignment for security purposes, provided that such assignment shall not relieve Owner of its obligations under this Agreement.

9.3 No Third-Party Beneficiaries. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Owner or Architect, nor do the parties intend to confer third-party beneficiary rights to any person.

9.4 No Joint Venture. Architect is an independent contractor of Owner, and Owner and Architect are not joint venture partners. Nothing in this Agreement is intended to create a joint venture or partnership arrangement of the parties.

9.5 Integration Clause. This Agreement represents the entire and integrated agreement between Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral, including the preliminary services letter agreements referenced in Section 1.2 and attached hereto as Exhibit F (except the compensation terms of such letter agreements, which shall survive execution of this Agreement). This Agreement may be amended only by written instrument signed and dated by both Owner and Architect.

9.6 Confidentiality.

9.6.1 Architect's Confidentiality Obligations. Architect shall use all commercially reasonable efforts to maintain the confidentiality of the terms of this Agreement (except that non-monetary terms may be disclosed to Architect's Consultants, insurers, lenders and others on a reasonable basis), as well as Owner's confidential or proprietary information. In performing services under this Agreement, Architect will come in contact with certain confidential and proprietary information of the Owner. Architect agrees that it will not divulge to third parties, without the prior written consent of the Owner, any information obtained from the Owner in connection with the performance of services under this Agreement unless the Architect can clearly demonstrate: (a) the information is known to Architect prior to obtaining same from the Owner; (b) the information is, at the time of disclosure by Architect, then in the public domain; (c) the information is obtained by Architect from a third party who did not receive the same, directly or indirectly, from the Owner; or (d) the information consists of pricing data for construction services and materials that Architect discloses following completion of Architect's services for the Owner. Architect

further agrees that it will not, without the prior written consent of the Owner, disclose to any third party any information developed or obtained by Architect in the performance of services under this Agreement, except to the extent that said information falls within one of the categories described in (a), (b), (c) or (d) above. Architect agrees that the provisions of this Section 9.7 shall extend beyond the termination of this Agreement for a period of five years.

9.6.2 Injunctive Relief. The parties hereto acknowledge and agree that the extent of damage to the Owner in the event of a breach by Architect of any of the covenants contained in Paragraph 9.7.1 would be difficult or impossible to ascertain and that there would be no adequate remedy at law available to the Owner in the event of such a breach. Consequently, Architect agrees that, in the event of such breach, the Owner shall be entitled to enforce any or all of the covenants contained in this Article 6 by injunctive or other equitable relief, in addition to receiving damages or other relief to which the Owner may be entitled.

9.7 Publicity. Subject to Owner's approval, Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among Architect's promotional and professional materials. Architect's materials shall not include Owner's confidential or proprietary information.

9.8 Severability. Every part, term or provision of this Agreement is severable from all others and notwithstanding any possible future finding by duly constituted authority that a particular part, term or provision is invalid, void or unenforceable, this Agreement has been made with the clear intention that the validity and enforceability of the remaining parts, terms and provisions shall not be affected thereby.

9.9 Waivers. Waivers by either party of any default by the other party shall not be deemed a waiver by such party of any other default.

9.10 Notices. Written notice shall be deemed to have been duly served if (a) sent by Federal Express (or other national overnight courier service), or (b) faxed, provided a hard copy is sent as required herein within one business day, or (c) sent by registered or certified mail, return receipt requested, to:

Owner: Hartnell College  
411 Central Ave.  
Salinas, CA 93901

With a copy to:

Architect:

9.11 Paragraph Headings. Paragraph headings are intended for convenience only and do not alter or affect the text of this Agreement.

**ARTICLE 10  
PAYMENTS TO ARCHITECT**

10.1 Payments on Account of Basic Services. Payments for Basic Services shall be made monthly upon presentation of Architect's invoices in accordance with the Compensation Schedule attached to this Agreement as Exhibit D, based on the percentage of completion of each applicable Phase of the Project. The Compensation Schedule may be adjusted by mutual agreement of the parties.

If and to the extent that the time initially established in this Agreement is exceeded or extended for reasons not within the reasonable control of Architect, compensation for any services rendered during the additional period of time shall be computed in the manner set forth for Additional Services under Article 11, except as otherwise specifically set forth in this Agreement. Architect shall not charge Owner for costs resulting from delays for which Architect bears sole or concurrent responsibility.

10.2 Hourly Rates for Purposes of Additional Services. For purposes of this Agreement, the term "Hourly Rate" shall mean the hourly rate payable by Owner for each respective employee of Architect as compensation for Additional Services performed by Architect under this Agreement, which Hourly Rates shall not exceed the amounts shown on Exhibit E attached to this Agreement. For any new employee of Architect, the Hourly Rate shall be subject to the written approval of Owner. Architect shall be entitled to revise the Hourly Rates on an annual basis in January of each year to correspond to annual salary increases, provided that the Hourly Rates payable by Owner under this Agreement for each respective employee of Architect shall not be increased by more than 5% per year.

10.3 Reimbursable Charges. The following Reimbursable Charges are due Architect from Owner, in addition to the compensation for Basic Services, for charges incurred or established by Architect and any consultants in relation to the Project:

10.3.1 Renderings, models and mock-ups requested by Owner that are prepared other than by Architect's employees.

10.3.2 If authorized in advance by the Owner, reasonable transportation in connection with the Project to the extent the travel is outside the Central Coast Area.

10.3.3 Reproductions, photocopies, photography costs, long-distance communications, shipping costs and delivery services.

10.3.4 If authorized in advance by the Owner, expense of overtime work which by law requires higher than regular rates.

10.4 Items Not Reimbursable. Expenses that are not allowed as permissible charges include computing time of any type, including CAD time and plotting time for CAD documents. Compensation for such items is included in the Basic Services fees and/or Additional Services billing rates.

10.5 Monthly Payments. The Architect shall bill monthly during the course of this Agreement for services rendered and Reimbursable Charges incurred on an invoice form reasonably acceptable to Owner. Payment of each invoice shall be made monthly subject to Owner's review and approval.

10.6 Payment Withheld. Owner may withhold payments to Architect up to 100% of the amounts in good-faith dispute between Owner and Architect.

10.7 Architect's Accounting Records. Architect shall make available to Owner during regular business hours any and all records reasonably requested by Owner to support Reimbursable Charges and all Services performed under this Agreement.

10.8 Late Payments - Service Charge. Payments are due no later than thirty (30) days after presentation of Architect's invoice. If Payments are not made within forty-five (45) days after the date of the invoice, a service charge at the "prime rate" quoted by the main San Francisco office of Wells Fargo Bank, N.A. plus two percent (2%), or the maximum rate permitted by law, whichever is less, will be charged on any unpaid balance, except as otherwise determined pursuant to mediation or arbitration pursuant to Article 7.

## **ARTICLE 11 BASIS OF COMPENSATION**

Owner shall compensate Architect as follows:

11.1 For Basic Services. Compensation for Basic Services shall be paid based on the compensation shown on the attached Exhibit D plus Reimbursable Charges.

11.2 For Additional Services. Compensation for Additional Services shall be paid based on the Architect's Hourly Rates shown on the attached Exhibit E (as may be adjusted annually pursuant to Article 10.2), plus Reimbursable Charges. For Additional Services performed by Architect's Consultants retained by Architect to work on the Project at Owner's request, as described in Section 3.1, Owner shall reimburse Architect for the actual fees approved by Owner, multiplied by a factor of 1.10.

11.3 For Reimbursable Charges. For Reimbursable Charges as defined in Article 10.3, compensation shall be based on the actual costs incurred multiplied by a factor of 1.10, and are limited to the actual expenditures made by Architect on behalf of Owner for the Project.

## **ARTICLE 12 LIABILITY AND INSURANCE**

12.1 Indemnification.

12.1.1 General Indemnity. Architect shall indemnify, hold harmless and, at Owner's request defend (with counsel reasonably approved by Owner) Owner and its officers, partners, employees, attorneys, accountants, and agents (all of whom are referred to herein collectively or individually as "Indemnitees") from and against any and all claims, losses, damages, liabilities, costs, expenses, judgments, or obligations whatsoever, including without limitation reasonable attorneys' and experts' fees and costs (all of which are referred to herein collectively as "Claims"), resulting from negligent acts, errors or omissions, or willful misconduct, associated with the performance of or failure to perform any obligations under this Agreement by Architect, its officers, partners, employees, consultants, contractors, or agents. The foregoing indemnification shall not apply to the extent that such Claims are caused by the active, passive or concurrent negligence or willful misconduct on the part of any Indemnitee. The foregoing obligations of Architect include and apply without limitation to any and all loss or injury, death or damage to Indemnitees, third parties, or any or all of them, their respective officers, partners, employees or agents and their respective property. This indemnification provision shall be applicable regardless of any limitations on insurance coverage as described in Section 12.2, and shall survive the termination of this Agreement.

12.1.2 Liens. If any claim of lien, stop-notice, equitable lien or any other demand for payment or security therefor, including claims or demands upon performance and payment and sureties for the Work, is made or filed with the Owner or the Project by any person claiming that the Architect or any Architect's Consultants or any other person claiming under any of them has failed to perform its contractual obligations or to make payment for any labor, services, trust fund contribution, materials, equipment, taxes or other item furnished or obligation incurred for, or in connection with, the Work, or if at any time there shall be evidence of such nonperformance or nonpayment of any claim or lien or stop notice or other demand for which, if established, the Owner or the Project might become liable, then the Architect shall immediately and at its own expense procure, furnish and record appropriate statutory release bonds which will extinguish or expunge said claim, stop-notice, lien or lis pendens unless the reason for said claim, stop-notice, lien or lis pendens is the Owner's non-payment of an undisputed invoice from the Architect. Should the Architect not provide such bonds on a timely basis, the Owner shall have the right to retain from any payment then due or thereafter to become due the Architect or to be reimbursed by the Architect for an amount sufficient to (i) satisfy, discharge and defend against any such claim of lien or stop-notice or other demand, or any action or proceeding thereon which may be brought to judgment or award; (ii) make good any such nonpayment, non-performance, damage, failure or default; and (iii) compensate the Owner for and indemnify it against any and all loss, liability, damage, cost and expense (including attorneys' and consultants' fees and costs) which may be sustained or incurred in connection therewith.

12.1.3 Hazardous Materials. Unless otherwise specified, Architect shall have no responsibility for the discovery, presence, handling, removal, disposal of, or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, products, polychlorinated biphenyls (PCB) or other toxic substances, except to the extent that such materials are brought to or released from the Project site by Architect or its Consultants.

## 12.2 Insurance Requirements.

12.2.1 Insureds. The Architect shall insure its liability under its indemnity contained in Section 12.1. The Architect shall include the Indemnitees defined in Section 12.1 as additional insureds on the Commercial General Liability, Business Auto Liability and Employer's Liability Insurance below by causing endorsements to be attached to the insurance policies described below. The insurance coverage afforded under these policies shall be primary to and noncontributory with any insurance carried independently by the Indemnitees. Said policies shall indicate that as respects the Indemnitees, there shall be severability of interests under such insurance policies for all coverages provided thereunder.

12.2.2 Architect Insurance. The Architect shall obtain and maintain, at its own expense throughout the life of this Agreement and for 3 years following final completion of the Work, the types and amounts of insurance set forth below, insuring the Architect, its employees, agents and designees, which insurance shall be placed with insurance companies rated at least "A X" by Best's Key Rating Guide or underwriters at Lloyd's London. Each policy of insurance shall incorporate a provision requiring the giving of written notice to the Owner at least thirty (30) days prior to the cancellation, non-renewal or material reduction in coverage of any such policies as evidenced by return receipt of United States certified mail.

- (a) Professional Liability Insurance covering claims arising out of the performance of professional services under this Agreement which may be caused by any error, omission or negligent act for which Architect may be legally liable. Professional Liability Insurance shall have a minimum limit of liability of Five Million Dollars (\$5,000,000) per claim and in the annual aggregate.

(b) Statutory insurance covering claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed.

(c) Employer's Liability Insurance covering employees of the Architect performing services under this Agreement providing a limit of not less than Two Million Dollars (\$2,000,000) per accident.

(d) Commercial General Liability Insurance equivalent to standard ISO occurrence form CG 00 01 in the amount of (i) Two Million Dollars (\$2,000,000) per occurrence and Five Million Dollars (\$5,000,000) general aggregate, if general aggregate applies only to losses on a per project basis, or (ii) Two Million Dollars (\$2,000,000) per occurrence and Ten Million Dollars (\$10,000,000) general aggregate otherwise. The insurance policy shall cover Bodily Injury and/or Property Damage Liability including:

- (1) Premises Operations coverage.
- (2) Endorsement CG 20 10 - Additional Insured Owners, Lessees or Architects.
- (3) Products-Completed Operations coverage.
- (4) Broad Form Property Damage, including Completed Operations coverage.
- (5) Blanket Contractual Liability coverage.
- (6) Personal or Advertising Injury coverage.
- (7) Unintentional Errors and Omissions coverage.
- (8) An endorsement naming the Owner and the other Indemnitees as additional insureds.
- (9) 30 days' advance written notice of cancellation shall be provided to the Owner by United States certified mail, return receipt requested, in the event of cancellation, non-renewal or material reduction in coverage.
- (10) Such insurance as is afforded under the Architect's policy is primary insurance as respects the Indemnitees and that any other insurance maintained by any of the Indemnitees is excess and noncontributing with the insurance required hereunder.
- (11) Endorsement CG 25 03 evidencing a separate general aggregate limit for this project, if project-specific coverage is provided.
- (12) Cross-Liability coverage.

The Commercial General Liability Insurance may be obtained under a single policy for the full limits required or by a combination of a primary policy with the balance provided by an excess or umbrella liability policy.

(e) Business Auto Liability in the amount of Two Million Dollars (\$2,000,000) each accident for bodily injury and/or property damage liability including:

- (1) Owned autos.

- (2) Hired or borrowed autos.
- (3) Non-owned autos.
- (4) An endorsement affording 30 days' advance written notice to the Owner by United States certified mail, return receipt requested, in event of cancellation, non-renewal or material reduction in coverage.

12.2.3 Consultant Insurance. The Architect shall require each of its Consultants to obtain and maintain, at their own expense throughout the life of this Agreement and for 3 years following final completion of the Work, the types and amounts of insurance set forth below, insuring the Architect's Consultant, its employees, agents and designees and the Indemnitees and Architect as required herein, which insurance shall be placed with insurance companies rated at least "A X" by Best's Key Rating Guide or underwriters at Lloyd's London. Each policy of insurance shall incorporate a provision requiring the giving of written notice to the Owner at least thirty (30) days prior to the cancellation, non-renewal or material reduction in coverage of any such policies as evidenced by return receipt of United States certified mail.

- (a) Professional Liability Insurance covering claims arising out of the performance of professional services under this Agreement which may be caused by any error, omission or negligent act for which Architect may be legally liable. Professional Liability Insurance shall have a minimum limit of liability of One Million Dollars (\$1,000,000) per claim.
- (b) Statutory insurance covering claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed.
- (c) Employer's Liability Insurance covering employees of the Architect's Consultant performing services under this Agreement providing a limit of not less than One Million Dollars (\$1,000,000) per accident.
- (d) Commercial General Liability Insurance on an "occurrence" basis with a limit of not less than One Million Dollars (\$1,000,000) for bodily injury and/or property damage liability including:
  - (1) Premises Operations coverage.
  - (2) Endorsement CG 20 10 - Additional Insured Owners, Lessees or Architects.
  - (3) Products-Completed Operations coverage.
  - (4) Broad Form Property Damage, including Completed Operations coverage.
  - (5) Blanket Contractual Liability coverage.
  - (6) Personal or Advertising Injury coverage.
  - (7) Unintentional Errors and Omissions coverage.
  - (8) An endorsement naming the Owner and the other Indemnitees as additional insureds.

(9) 30 days' advance written notice of cancellation shall be provided to the Owner by United States certified mail, return receipt requested, in the event of cancellation, non-renewal or material reduction in coverage.

(10) Such insurance as is afforded under the Architect's Consultant's policy is primary insurance as respects the Indemnitees and that any other insurance maintained by any of the Indemnitees is excess and noncontributing with the insurance required hereunder.

(11) Endorsement CG 25 03 evidencing a separate general aggregate limit for this project, if project specific coverage is provided.

(12) Cross-Liability coverage.

The Commercial General Liability Insurance may be obtained under a single policy for the full limits required or by a combination of a primary policy with the balance provided by an excess or umbrella liability policy.

(e) Business Auto Liability in the amount of One Million Dollars (\$1,000,000) each accident for bodily injury and/or property damage liability including:

(1) Owned autos.

(2) Hired or borrowed autos.

(3) Non-owned autos.

(4) An endorsement affording 30 days' advance written notice to the Owner by United States certified mail, return receipt requested, in event of cancellation, non-renewal or material reduction in coverage.

12.2.4 Certificates. The Architect shall submit to the Owner and shall require each of its Consultants to submit to the Owner, valid certificates in form and substance satisfactory to the Owner evidencing the effectiveness of the foregoing insurance policies within 30 days of the actual execution of this Agreement by the parties. Such certificates shall state that all of the above coverages are currently in force. Architect shall cause additional certificates to be submitted upon annual renewal of each policy throughout the life of this Agreement.

12.2.5 Purchase of Insurance by Owner. If the Architect or its Consultants fail to provide the certificates or otherwise to furnish and maintain the insurance required by this Section 12.2, the Owner, after 10 days notice to Architect, may purchase such insurance and the Architect shall pay the cost thereof to the Owner upon demand and shall furnish to the Owner any information needed to obtain such insurance.

IN WITNESS WHEREOF, Owner and Architect have caused this Architect Agreement to be executed by their duly authorized representatives as of the Effective Date first above written.

OWNER:

By: \_\_\_\_\_

ARCHITECT:

By: \_\_\_\_\_

EXHIBIT A  
DESIGN SCHEDULE

The following Design Schedule shall apply until and unless Owner directs increases or reductions in the Project scope pursuant to Paragraph 2.1.15.

EXHIBIT B  
ARCHITECT'S CONSULTANTS

Consultants to be retained by Architect include:

EXHIBIT C  
LIST OF DELIVERABLES

Description of Work

Deliverables

EXHIBIT D  
COMPENSATION

PROJECT PHASE

BASIC FEE

EXHIBIT E  
HOURLY RATES

Principal	\$	per hour
Project Manager	\$	per hour
Senior Arch. Designer	\$	per hour
Interior Designer	\$	per hour
Senior Job Captain	\$	per hour
Intermediate Tech. Staff	\$	per hour
Junior Tech. Staff	\$	per hour

EXHIBIT F  
PRELIMINARY SERVICES