

DESIGN CONSULTANT SERVICES AGREEMENT



Contract No. XXXXX

College:

Project Name:

Design Consultant:

COMPENSATION SUMMARY

Firm Fixed Price plus Reimbursable Expenses

Firm Fixed Price for authorized services	\$
Reimbursable Expenses (not to exceed)	\$
Maximum Fee (not to exceed)	\$

PREAMBLE

This **DESIGN CONSULTANT SERVICES AGREEMENT** ("Agreement") is effective on this _____ day of _____, 200__ by and between **THE LOS ANGELES COMMUNITY COLLEGE DISTRICT**, a community college district organized under the laws of the State of California, located at 770 Wilshire Boulevard, 9th floor, Los Angeles, California and _____, a _____, ("Design Consultant") located at _____.

RECITALS

A. District is a community college district duly organized and validly existing under the laws of the State of California.

B. Design Consultant is a _____ duly organized under the laws of the State of _____. Design Consultant represents it has the background, knowledge, licensing, experience and expertise necessary to provide the services set forth in this Agreement.

C. District and Design Consultant desire to enter into an agreement for Design Consultant to provide District with professional services in connection with the design of certain works of improvements described generally in Exhibit "A" attached to this Agreement for the campus of _____.

D. It is the intention of the parties that Design Consultant provide its services pursuant to this Agreement under the management and oversight of District's Program Manager and its College Project Manager for the Project that will enable the Project to be designed and constructed without burdening District or College staff, or District's Executive Director.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promise and covenants contained herein and other valuable consideration receipt of which is acknowledged by the parties it is mutually agreed by and between the undersigned as follows:

ARTICLE 1 GENERAL PROVISIONS

1.1 DEFINITIONS

1.1.1 Addendum means written or graphic information (including, without limitation, Drawings or Specifications) prepared and issued prior to the Date for Receipt of Bids, which modifies or interprets the Bidding Documents by additions, deletions, clarifications, or corrections.

1.1.2 Additional Services means those services listed in Article 3 of this Agreement, authorized in writing by College Project Manager or College and the Executive Director prior to their being performed by Design Consultant, that do not arise from either: (1) the negligence or willful misconduct of Design Consultant or its Subconsultants or the failure by Design Consultant to comply with this Agreement; or (2) the occurrence of an error, omission, conflict, ambiguity or violation of Applicable Laws in the Design Documents prepared by Design Consultant or its Subconsultants.

1.1.3 Agreement means this Design Consultant Services Agreement by and between District and Design Consultant.

1.1.4 Alternate means a proposed alternative described in the Bidding Documents for adding or deleting a particular material, system, product or method of construction.

1.1.5 Applicable Laws means all applicable federal, state and municipal laws (at law and in equity), statutes, building codes, ordinances, regulations and lawful orders of Governmental Authorities having jurisdiction over the Project, Work, Site, District, Design Consultant or College (including, without limitation, Environmental Laws) and all ordinances, rules and regulations enacted by District. In the event of a conflict between or among Applicable Laws governing Design Consultant's performance under this Agreement, the more stringent shall apply.

1.1.6 Application for Payment means the Contractor's certified application for payment for Work performed in accordance with the Contract Documents.

1.1.7 As-Built Documents means the collection of documents assembled and prepared by the Contractor (including, without limitation, the As-Built Drawings) showing the condition of the Work as actually built.

1.1.8 As-Built Drawings, As-Built Specifications means the set of Drawings and Specifications marked by the Contractor showing the condition of the Work as actually built, including, without limitation, the quantities, locations, lengths and dimensions of mechanical, electrical, plumbing, HVAC or similar portions of the Work that are shown diagrammatically in the Contract Documents.

1.1.9 Award means the action of the Board of Trustees duly approving by resolution District's entering into the Construction Contract with the Contractor.

1.1.10 Basic Services means those services to be provided by Design Consultant pursuant to Article 2 of this Agreement.

1.1.11 Bid means the written proposal submitted to District by a Contractor in accordance with the Bidding Documents for the performance of the Work.

1.1.12 Bidder means a person or entity submitting a Bid.

1.1.13 Bidding Documents means the following collection of documents prepared and issued for the purpose of soliciting Bids for the Work: (1) Notice to Bidders; (2) Instructions to Bidders; (3) Bid Form; (4) form of Construction Contract; (5) form of General Conditions; (6) Specifications; (7) Plans and Drawings; (8) Addenda; (9) Reference Documents; (10) College Construction Health, Safety and Environmental Program; (11) Project Labor Agreement (if applicable); (12) Labor Compliance Program (if applicable); and (13) those documents, or those portions or provisions of documents that, although not listed among the documents described in Clauses (1) through (12) hereinabove, are expressly cross-referenced therein or attached thereto.

1.1.14 Bid Phase means the Phase of Design Consultant's Basic Services described in Section 2.5 of this Agreement.

1.1.15 Board of Trustees means the governing board of the Los Angeles Community College District.

1.1.16 Bond Program means Los Angeles Community College Propositions A and AA Bond Program.

1.1.17 Bond Project means a work of improvement, the design and construction of which is funded more than fifty percent (50%) by funds from the Bond Program.

1.1.18 Building Program means the written statement of College's design objectives, constraints and criteria for the Project, as set forth in Exhibit "A" attached to this Agreement.

1.1.19 CADD Standards means the standards developed by Program Manager and set forth in the Program Management Plan setting forth the basic requirements for production and use of electronic files of documents depicting design information.

1.1.20 Chancellor means the Chancellor of the Los Angeles Community College District.

1.1.21 Change means a modification, change, addition, substitution or deletion in the Work or in Contractor's means, methods, manner, time or sequence of performing the Work arising from any cause or circumstances, including, without limitation, either directly at the request of District or constructively by reason of other circumstances.

1.1.22 Change Order means a written instrument signed (in the manner provided for in the General Conditions) by and on behalf of District and such other persons as designated by District, on the one hand, and by the Contractor, on the other hand, describing an adjustment in the Contract Sum or Contract Time, or both.

1.1.23 Claim means a written demand or assertion by District or Design Consultant seeking, as a matter of right, an interpretation of contract, payment of money, recovery of damages or other relief. A Claim does not include the following: (1) tort claims for personal injury or death; (2) stop notice claims by Subconsultants; or (3) the right of District to specific performance or injunctive relief to compel performance.

1.1.24 Claims Dispute Resolution Process means the process of resolution of Claims as set forth in Article 10 of this Agreement.

1.1.25 Close-Out Documents means the As-Built Documents, warranties, guarantees, maintenance and operations manuals and other documents (including, without limitation, electronic versions) that are required to be delivered by the Contractor to College Project Manager upon Final Completion of the Work or a portion of the Work designated by District.

1.1.26 College means the District's college for, and on the campus of, which the Project is being designed, acting by and through College President or his/her designee.

1.1.27 College Construction Health, Safety and Environmental Program means the plan applicable to Bond Projects, Multi-Funded Projects and Non-Bond Projects, typically prepared by College Project Manager for the District's Bond Projects, setting forth the policies, procedures and forms to be followed and used by Contractor and others in connection with safety, health and environmental conditions at the Site.

1.1.28 College/District Committees means those committees formed by College or District to oversee a Project, including, without limitation, the following: College Citizens' Committee, District Citizens' Oversight Committee, Chancellor's Bond Steering Committee and other College committees and committees formed or headed by District's department of Facilities Planning & Development.

1.1.29 College President means the person duly appointed by the Board of Trustees as President for College.

1.1.30 College Project Manager means the Project Team member primarily responsible for management, oversight and supervision of the implementation of the Project. College Project Manager may be an independent consultant retained by the District, or if none is retained for a particular Project then the College Project Manager for that Project will be deemed to be the Executive Director or his designee. College Project Manager may be replaced by District at any time, with notice to Design Consultant.

1.1.31 Compensation, Payments and Hourly Rates Schedule means the schedule attached hereto as Exhibit "C" stating: (1) the Hourly Rates; (2) the payment schedule for each Phase of Basic Services; (3) Design Consultant's Reimbursable Expense Estimates; and (4) any other special and supplemental terms relating to compensation, payment or reimbursement.

1.1.32 Consequential Damages means damages incurred by either District or Design Consultant for loss of use, loss of profit or income, loss of revenue, lost opportunity, additional or unabsorbed overhead, loss of management or services, loss of productivity, loss of financing or funding, loss of business reputation, loss of bonding and all similar indirect, economic damages that are caused as a result of either Delay or that result from a termination or suspension (for default or convenience) of all or any portion of Agreement or the Work. Consequential Damages do not include direct or indirect damage or injury to persons or tangible property, including, without limitation, the repair or replacement of tangible property damaged or lost.

1.1.33 Construction Contract means the written contract contained in the Bidding Documents and executed between District and the Contractor for the Work.

1.1.34 Construction Costs means the total costs to construct those elements of the Project designed or specified by Design Consultant. Construction Costs do not include any of the following: (1) the cost of professional services to be rendered by Design Consultant, Subconsultants, District Consultants, College Project Manager or Program Manager; (2) land acquisition costs; (3) finance costs; (4) College's or District's administrative costs; or (5) legal and audit fees and costs.

1.1.35 Construction Documents means the Drawings and Specifications for the Project prepared by Design Consultant as part of the Construction Documents Phase, consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

1.1.36 Construction Documents Phase means the Phase of Design Consultant's Basic Services described in Section 2.4 of this Agreement.

1.1.37 Construction Phase means the Phase of Design Consultant's Basic Services described in Section 2.6 of this Agreement.

1.1.38 Contract Documents means the following collection of documents governing the Contractor's performance of the Work: (1) the Construction Contract between District and the Contractor, other terms, conditions and requirements applicable to the performance of the Construction Contract and Work (including the General

Conditions, any Supplementary and Special Conditions and the General Requirements), Drawings, Specifications, Addenda issued prior to execution of the Construction Contract and other documents listed in the Construction Contract and Modifications issued after execution of the Construction Contract; (2) a Change Order signed by both District and the Contractor and/or such others, if any, as required by the General Conditions; (3) a Unilateral Change Order signed by District and/or such others, if any, as required by the General Conditions; (4) a Field Order signed by District and/or such others, if any, as required by the General Conditions; (5) a written order for a Minor Change in the Work issued by Design Consultant or College Project Manager; (6) College Construction Health, Safety and Environmental Program; (7) Reference Documents; (8) Project Labor Agreement (if applicable); (9) Labor Compliance Program (if applicable); and (10) those documents, or those portions or provisions of documents that, although not listed among the documents described in Clauses (1) through (9) hereinabove, are expressly cross-referenced therein or attached thereto.

1.1.39 Contract Sum means the total amount of compensation stated in a Construction Contract that is payable to a Contractor for the performance of the Work in accordance with the Contract Documents.

1.1.40 Contract Time means the total number of Days set forth in the Construction Contract within which Substantial Completion and/or Final Completion of the Project must be achieved by Contractor, including extensions of time permitted under the terms of the Contract Documents and approved by District.

1.1.41 Contractor means a person or firm under contract with District to serve as the general contractor for construction of all or a portion of the Work.

1.1.42 Day, whether capitalized or not, unless otherwise specifically provided, means calendar day, including weekends and legal holidays.

1.1.43 Defective Work means Work by a Contractor or its Subcontractors that is unsatisfactory, faulty, omitted, incomplete, deficient or does not conform to Applicable Laws, the Contract Documents or the requirements of any inspection, reference standard, test, code or approval specified in the Contract Documents.

1.1.44 Delay, whether capitalized or not, means any circumstances involving delay, disruption, hindrance or interference affecting time of performance.

1.1.45 Design and Construction Project Team means the following Project Team members: College, College Project Manager, Inspectors of Record, Contractor, Subcontractors, District Consultants, Subconsultants and Separate Contractors.

1.1.46 Design Consultant means the person or entity identified as Design Consultant in the preamble to this Agreement.

1.1.47 Design Consultant's Own Expense, when used in this Agreement with regard to a stated circumstance, means that Design Consultant agrees to pay for any Loss associated with such circumstance without reimbursement or compensation by District. In the case of compensation based on a Fixed Fee, this means that the Design Consultant shall receive no reimbursement for costs, no adjustment of the Fixed Fee and no compensation for Additional Services. In the case of compensation based on Hourly Rates (with or without a Guaranteed Maximum Amount) this means that the Design Consultant shall receive no reimbursement for costs, no Hourly Rate compensation for time expended, no adjustment of the Guaranteed Maximum Amount and no compensation for Additional Services.

1.1.48 Design Development Documents means the Drawings and Specifications prepared by Design Consultant as part of the Design Development Phase.

1.1.49 Design Development Phase means the Phase of Design Consultant's Basic Services described in Section 2.3 of this Agreement.

1.1.50 Design Documents means all plans, drawings, tracings, specifications, programs, reports, calculations, models, presentation materials and other materials or documents containing designs, specifications or engineering information prepared by Design Consultant, Subconsultants, District Consultants, Contractor, Separate Contractors or Subcontractors including, without limitation, computer aided design materials, electronic data files and paper copies. The term "Design Documents" includes, without limitation, all building and other designs depicted therein, as well as the written documents themselves.

1.1.51 Design Document Submission Standards means the standards for submissions of Design Documents by Design Consultant set forth in Exhibit "G" attached to this Agreement, which are applicable to all Project designed under this Agreement.

1.1.52 District means the Los Angeles Community College District, a community college district organized under the laws of the State of California, acting through its Chancellor, Executive Director or their designees designated by him/her in writing to act on his/her behalf.

1.1.53 District Consultant means a consultant, other than College Project Manager, Program Manager and Design Consultant, engaged by District to provided professional advice with respect to the design, construction or management of the Project.

1.1.54 District Website means the website maintained by District at <http://www.propositiona.org>.

1.1.55 Drawings means the graphic and pictorial portions of the Contract Documents prepared by Design Consultant or its Subconsultants showing the design, location and dimensions of the Work, including plans, elevations, details, schedules and diagrams. The term "Drawings" is used interchangeably with "Plans."

1.1.56 DSA means the Division of State Architect in the Department of General Services for the State of California.

1.1.57 Environmental Laws means all applicable federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority, which regulate, relate to, or impose liability or standards of conduct concerning any Hazardous Substance (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof), occupational or environmental conditions on, under, or about the Property (including, without limitation, soil, groundwater, and indoor and ambient air conditions), or occupational health or industrial hygiene (but only to the extent related to Hazardous Substances on, under, or about the Property), as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C.A. §§ 9601 *et seq.*]; the Resource Conservation and Recovery Act of 1976 [42 U.S.C.A. §§ 6901 *et seq.*]; the Clean Water Act (also known as the Federal Water Pollution Control Act) [33 U.S.C.A. §§ 1251 *et seq.*]; the Toxic Substances Control Act [15 U.S.C.A. §§ 2601 *et seq.*]; the Hazardous Materials Transportation Act [49 U.S.C.A. §§ 1801 *et seq.*]; the Insecticide, Fungicide, Rodenticide Act [7 U.S.C.A. §§ 136 *et seq.*]; the Superfund Amendments and Reauthorization Act [42 U.S.C.A. §§ 6901 *et seq.*]; the Clean Air Act [42 U.S.C.A. §§ 7401 *et seq.*]; the Safe Drinking Water Act [42 U.S.C.A. §§ 300f *et seq.*]; the Solid Waste Disposal Act [42 U.S.C.A. §§ 6901 *et seq.*]; the Surface Mining Control and Reclamation Act [30 U.S.C.A. §§ 1201 *et seq.*]; the Emergency Planning and Community Right to Know Act [42 U.S.C.A. §§ 11001 *et seq.*]; the Occupational Safety and Health Act [29 U.S.C.A. §§ 655 and 657]; the Residential Lead-Based Paint Exposure Act (Title X of the Housing and Community Development Act of 1992) [15 U.S.C.A. §§ 2681 *et seq.*]; the Lead-Based Paint Poisoning Prevention Act [42 U.S.C.A. §§ 4821 *et seq.*]; the California Underground Storage of Hazardous Substances Act [Cal. Health & Safety Code §§ 25280 *et seq.*]; the California Hazardous Substances Account Act [Cal. Health & Safety Code §§ 25300 *et seq.*]; the California Hazardous Waste Control Act [Cal. Health & Safety Code §§ 25100 *et seq.*]; the California Safe Drinking Water and Toxic Enforcement Act [Cal. Health & Safety Code §§ 24249.5 *et seq.*]; the Porter-Cologne Water Quality Act [Water Code §§ 13000 *et seq.*], and all similar federal, state or local laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements.

1.1.58 ENR Index means the "20-city average" construction cost index, as published in the Engineering News-Record by the McGraw-Hill Publishing Company or its successors.

1.1.59 Estimate of Project Construction Costs means Design Consultant's written estimate of the Construction Costs for the Project using the form attached as Exhibit "F" to this Agreement. If more than one Project is to be design by Design Consultant, then references in this Agreement to Estimate of Project Construction Costs that are phrased in the singular shall be understood to mean each Estimate of Project Construction Costs for each Project to be designed under this Agreement.

1.1.60 Excluded Services means those design and engineering services listed in Exhibit "B" to this Agreement that are excluded from the scope of Basic Services. Excluded Services shall be performed only if, when and on such terms as may be hereafter mutually agreed in writing between District and Design Consultant.

1.1.61 Executive Director means District's Executive Director, Facilities Planning & Development, or his/her designee designated by District in writing to act on his/her behalf.

1.1.62 Existing Improvements means improvements located on the Site as of the date of execution of this Agreement, whether above or below the surface of the ground, including, but not limited to, existing buildings, utilities, infrastructure improvements and other facilities.

1.1.63 Facilities Master Plan means the master plan showing where the improvements are proposed to be located for all Projects at College (including, without limitation, Bond Projects, Non-Bond Projects and Multi-Funded Projects) and specifying, where appropriate, approximate square footages, building footprints and infrastructure (outside plant) that comply with Applicable Laws.

1.1.64 Field Order means a written instrument signed in accordance with the requirements of the General Conditions that: (1) directs the performance of a Minor Change; (2) directs performance of Work or a Change with respect to which there exists a dispute or question regarding adjustment of the Contract Sum or Contract Time; or (3) establishes a mutually agreed basis for compensation to Contractor for a Compensable Change or Deleted Work under circumstances where performance needs to proceed in advance of the Contractor having completed its substantiation and evaluation of the impact thereof on the Contract Sum or Contract Time.

1.1.65 Final Building Program means the Building Program as adjusted for changes, additions and deletions recommended by Design Consultant and approved by District, College and College Project Manager during the Schematic Design Phase pursuant to Paragraph 2.2.1 of this Agreement. If more than one Project is to be design by Design Consultant, then references in this Agreement to Final Building Program that are phrased in the singular shall be understood to mean each Final Building Program for each Project to be designed under this Agreement.

1.1.66 Final Completion, Finally Complete mean the point at which the following conditions have occurred with respect to the Work or a portion of the Work designated by District for separate delivery: (1) the entirety of such Work is fully completed, including all minor corrective, or "punch list," items; (2) a permanent and unconditional certificate of occupancy, or equivalent certification issued by DSA, for the entirety of such Work has been delivered to District; (3) all documents required to be submitted by the Contractor as a condition of Substantial or Final Completion of such Work have been submitted, including, without limitation, warranties, guaranties and other Close-Out Documents; (4) such Work and the related portions of the Site have been thoroughly cleared of all construction debris and cleaned in accordance with the requirements of the Contract Documents, including, but not necessarily limited to where applicable, the following: removal of temporary protections; removal of marks, stains, fingerprints and other soil and dirt from painted, decorated and natural-finished woodwork and other Work; removal of spots, plaster, soil and paint from ceramic tile, marble and other finished materials; all surfaces, fixtures, cabinet work and equipment are wiped and washed clean and in an undamaged, new condition; all aluminum and other metal surfaces are cleaned in accordance with recommendations of the manufacturer; and all stone, tile and resilient floors are cleaned thoroughly in accordance with manufacturers recommendations and buff dried by

machine to bring the surfaces to sheen; and (5) all conditions set forth in the Contract Documents for Substantial and Final Completion of the Work of the Project have been, and continue to be, fully satisfied.

1.1.67 Final Completion Punch List means the list of items of Work to be completed or corrected by Contractor for Final Completion.

1.1.68 Final Payment means payment by District to the Contractor of the entire unpaid balance of the Contract Sum, as adjusted by Change Order.

1.1.69 Fixed Fee means a compensation arrangement under which District has agreed to pay Design Consultant a lump sum for Basic Services or Additional Services.

1.1.70 General Conditions means that portion of the Contract Documents between District and a Contractor so titled setting forth the general terms and conditions for construction of the Work, a copy of which is available for review on District Website.

1.1.71 General Requirements means the portion of the Specifications so titled setting forth additional requirements for administration of the Work.

1.1.72 Governmental Authority means the United States, the State of California, the City in which the Project is located, the County of Los Angeles and any other local, regional, state or federal political subdivision, agency, department, commission, board, bureau, court, judicial or quasi-judicial body, and any legislative or quasi-legislative body, or instrumentality of any of them, which exercises jurisdiction over the Project, Work, Site, the Contractor or District.

1.1.73 Guaranteed Maximum Amount means a compensation arrangement under which District agrees to pay Design Consultant a compensation for Basic Services or Additional Services that is based upon actual time reasonably and necessarily expended in performing those services multiplied times the Hourly Rates, not to exceed a guaranteed maximum amount either set forth in the Compensation, Payments and Hourly Rates Schedule or otherwise agreed upon in writing between District and Design Consultant.

1.1.74 Hazardous Substance means the following: (1) any chemical, material or other substance defined as or included within the definition of "hazardous substances," "hazardous wastes," "extremely hazardous substances," "toxic substances," "toxic material," "restricted hazardous waste," "special waste", "contamination" or words of similar import under any Environmental Law, including, without limitation, the following: petroleum (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs") and PCB-containing materials, whether or not occurring naturally; or (2) any substance that because of its quantity, concentration or physical or chemical characteristics poses a significant present or potential hazard to human health and safety or to the environment, and which has been determined by any Governmental Authority to be a hazardous waste or hazardous substance.

1.1.75 Hourly Rates means: (1) the hourly rates set forth in Compensation, Payments and Hourly Rates Schedule, and (2) such other hourly rates, approved by District in writing, for services of an approved Subconsultant performing Basic Services or Additional Services, where the Subconsultant's compensation therefor is based on actual hours expended, rather than a fixed fee.

1.1.76 Indemnitees means those persons or entities designated as "Indemnitees" in Paragraph 9.1.1, below.

1.1.77 Inspector of Record means a certified inspector and specialty inspector, or inspectors, approved by the Office of Regulations Services of the Division of State Architect for the Department of General Services of the State of California, to inspect the Work pursuant to the Field Act (California Education Code, Section 81130.3 *et seq.*) and applicable provisions of the California Code of Regulations.

1.1.78 Interest Rate means the lesser of: (1) the "prime rate" reported in the Wall Street Journal from time to time; or (2) the maximum rate permitted under California law for prejudgment interest.

1.1.79 Invoice for Payment means an itemized application for payment submitted by Design Consultant for review and approval by College Project Manager, Program Manager and District, which is prepared, submitted and accompanied by supporting documentation all in accordance with the requirements of this Agreement.

1.1.80 Key Personnel, Key Persons mean those individuals employed by Design Consultant or its Subconsultants listed in Exhibit "D" attached hereto who are considered of essence to Design Consultant's consideration for this Agreement.

1.1.81 Labor Compliance Program means the Labor Compliance Program, if any, that is identified in Paragraph 2.1.20 of this Agreement as being applicable to the Project.

1.1.82 Loss, Losses mean any and all economic and non-economic injuries, losses, costs, liabilities, claims, damages, actions, judgments, settlements, expenses, fines and penalties. "Losses" do not include attorney's fees or court costs, whether arising as an expense or cost of legal proceedings to which Design Consultant is a party or as a consequential damage claimed against Design Consultant by any third person or entity.

1.1.83 Master Files Archives System means the master filing system prepared by Program Manager whereby all documents (electronic and hard copy) for Bond Project, Multi-Funded and Non-Bond Projects are stored for ready access by authorized Project Team members or auditors of District.

1.1.84 Master Project Schedule means the schedule attached to this Agreement as part of Exhibit "E" setting forth the schedule for design and construction of the Project identified in said schedule.

1.1.85 Minor Change means a Change in the Work that does not involve an adjustment to the Contract Sum or Contract Time.

1.1.86 Multi-Funded Project means a work of improvement, the design and construction of which is funded less than fifty percent (50%) by funds from the Bond Program and the balance of which is funded from other sources, such as, but not limited to, deferred maintenance funds, general state funds or federal funds.

1.1.87 Non-Bond Project means a work of improvement, the design and construction of which is funded entirely from sources other than the Bond Program, such as, but not limited to, deferred maintenance funds, general state funds or federal funds.

1.1.88 Notice of Intent to Award means the written notice by or on behalf of District stating District's intent to Award the Construction Contract to the Contractor.

1.1.89 Notice to Bidders means the notice issued by or on behalf of District inviting submission of Bids.

1.1.90 Period of Inactivity means a period of time during which District has directed that no substantial services for the Project be performed.

1.1.91 Phase means a phase of Design Consultant's Basic Services.

1.1.92 Plans means the graphic and pictorial portions of the Contract Documents prepared by Design Consultant or its Subconsultants showing the design, location and dimensions of the Work, including plans, elevations, details, schedules and diagrams. The term "Plans" is used interchangeably with "Drawings."

1.1.93 Pre-Authorized Additional Services means Additional Services listed in Exhibit "B" attached to this Agreement that have been pre-approved for performance by Design Consultant.

1.1.94 Pre-Bid Conference means the conference, specified in the Notice to Bidders as either mandatory or optional, arranged prior to the Date for Receipt of Bids for the purpose of introducing the Bidders to the Project and which may, or may not, include a tour of the Site.

1.1.95 Product Data means illustrations, standard schedules, charts, instructional brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for the Work.

1.1.96 Program Design Standards means the manual developed by Program Manager and provided to Design Consultant pursuant to this Agreement setting forth the basic requirements for quality assurance and quality control to be followed by Design Consultant for the design and construction of a Project, including Bond Projects, Multi-Funded Projects and Non-Bond Projects.

1.1.97 Program Manager means the Project Team member responsible for management, oversight and supervision of all aspects of the Master Plan for the design and construction of improvements at Colleges, including Bond Projects, Multi-Funded Projects and Non-Bond Projects. Program Manager may be an independent consultant retained by the District, or if none is retained for a particular Project then the Program Manager for that Project will be deemed to be the Executive Director or his designee. Program Manager may be replaced by District, at any time, with written notice to Design Consultant.

1.1.98 Program Management Plan means the plan, prepared by Program Manager, that provides for the overall management, administration and oversight of all Projects, including Bond Projects, Non-Bond Projects and Multi-Funded Projects.

1.1.99 Project means a work of improvement or related work of improvements to be designed Design Consultant and constructed for District at the campus of a College, which may be a Bond Project, Multi-Funded Project or Non-Bond Project. If more than one Project is to be designed by Design Consultant under this Agreement, then references to Project that are phrased in the singular shall be understood to mean each Project to be designed under this Agreement.

1.1.100 Project Construction Budget means the budgets stated in Exhibit "A" attached to this Agreement that establish the parameters on expenditures for Construction Costs to construct the Project designed by Design Consultant under this Agreement. If more than one Project is to be design by Design Consultant under this Agreement, then references in this Agreement to Project Construction Budget that are phrased in the singular shall be understood to mean each Project Construction Budget for each Project to be designed under this Agreement.

1.1.101 Project Labor Agreement means the Project Labor Agreement authorized by the Board of Trustees on December 19, 2001 (including any amendments thereto executed prior to or after execution of this Agreement) that is applicable to Bond Projects.

1.1.102 Project Programmer means a consultant retained by District to advise and consult with College, College Project Manager, Design Consultant and Program Manager on establishment of the Building Program for the Project.

1.1.103 Project Representative means the individual identified to act on behalf of Design Consultant with the authority set forth in Paragraph 1.6.5 of this Agreement.

1.1.104 Project Schedule means the detailed schedule attached hereto as Exhibit "E", depicting in detail Design Consultant's proposed schedule for performance of its Basic Services, that strictly complies with the time periods set forth in the Master Project Schedule. References in this Agreement to a "Project Schedule" shall be deemed to mean the Project Schedule as adjusted for extensions of time permitted by Section 2.9 of this Agreement. No other adjustments to the Project Schedule are permitted. If more than one Project is to be designed by Design Consultant under this Agreement, then references to Project Schedule that are phrased in the singular shall be understood to mean each Project Schedule for each Project to be designed under this Agreement.

1.1.105 Project Team means College, District, College Project Manager, Program Manager, Design Consultant, District Consultants, the Contractor, the Subcontractors, the Separate Contractors, the Inspectors of Record and other firms or individuals retained by District, or retained by others with District's approval, participating in the planning, programming, design or construction of the Work.

1.1.106 Record Documents means final and coordinated Drawings and Specifications prepared by Design Consultant in accordance with the Design Document Submission Standards that consolidate, incorporate and coordinate all of the information available concerning the as-built condition of the Work, including, without limitation, the information in the As-Built Documents prepared by Contractor.

1.1.107 Reference Documents means, and is limited to, the documents provided or made available to the Bidders for their review in connection with the preparation of their Bids that contain information describing surface and subsurface conditions at the Site or as-built conditions of Existing Improvements.

1.1.108 Reimbursable Expense means those expenses that are reimbursable to Design Consultant as provided in Section 5.2 of this Agreement.

1.1.109 Reimbursable Expense Estimate means the agreed estimate(s), set forth in Compensation, Payments and Hourly Rates Schedule, of sums that Design Consultant is authorized, solely by virtue of District's execution of this Agreement and without further authorization except as required by Paragraph 5.2.4 of this Agreement, to expend for Reimbursable Expenses.

1.1.110 Samples means physical examples that, when approved by District and Design Consultant, illustrate materials, equipment or workmanship by which the Work is to be evaluated and judged.

1.1.111 Schematic Design Documents means the Drawings and Specifications and other Design Documents prepared by Design Consultant as part of the Schematic Design Phase

1.1.112 Schematic Design Phase means the Phase of a Design Consultant's Basic Services described in Section 2.2 of this Agreement.

1.1.113 Segregation of Costs/Schedule of Values means a detailed, itemized breakdown of the Contract Sum, which provides for a fair and reasonable allocation of the dollar values to each of the various parts of the Work.

1.1.114 Separate Contractor means a person or firm, other than a Contractor, under separate contract with District to perform construction or supply materials or equipment to the Project.

1.1.115 Shop Drawings means drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor to illustrate some portion of the Work.

1.1.116 Site means: (1) the parcel(s) of land that are owned or leased by District for use by College; (2) all areas adjacent to such parcel(s) that may be used by the Contractor or Subcontractors for staging, storage, parking or temporary offices; and (3) all land areas, both private and public, adjacent to such parcel(s) on which Work is required to be performed under the Contract Documents, Applicable Laws or permits relating to the Project.

1.1.117 Specifications means the portion of the Contract Documents consisting of the written requirements for materials, equipment, standards and workmanship for the Work and performance of related services.

1.1.118 Statement of Dispute means a written description of a disputed Claim required to be submitted as part of the Claims Dispute Resolution Process provided for in Article 10 of this Agreement.

1.1.119 Subconsultant means a person or entity that has a contract with Design Consultant to perform a portion of Design Consultant's services covered by this Agreement.

1.1.120 Subcontractor means a person or firm that has a contract with a Contractor to perform a portion of the Work to be performed by the Contractor, including without limitation, subcontractors, sub-subcontractors, suppliers and vendors, of every Tier.

1.1.121 Submittal means Shop Drawings, Product Data, Samples, detailed designs, exemplars, fabrication and installation drawings, lists, graphs, operating instructions, and other similar documents required to be submitted by the Contractor under the Contract Documents.

1.1.122 Submittal Schedule means the schedule prepared by the Contractor showing the timing for submission and review of Submittals during construction.

1.1.123 Substantial Completion, Substantially Complete means the point at which the Work, or a portion thereof designated by District for separate delivery, is: (1) sufficiently and entirely complete in accordance with Contract Documents so that such Work can be fully enjoyed and beneficially occupied and utilized by College for its intended purpose (except for minor items which do not impair College's ability to so occupy and use such Work); (2) receipt by District of all permits and certificates (such as, but not necessarily limited to, a certificate of occupancy or equivalent certification by DSA) required to occupy and use such Work; and (3) all systems included in the Work are operational as specified, all designated or required inspections and certifications by Governmental Authorities have been made and posted and instruction of College's personnel in the operation of the systems has been completed.

1.1.124 Substantial Completion Punch List means the list of items of Work to be completed or corrected by Contractor for Substantial Completion.

1.1.125 Substitution means a material, product or item of equipment proposed by the Bidder or Contractor in place of that specified.

1.1.126 Supplementary Conditions means that portion of the Contract Documents that supplements, by addition, modification or deletion, the General Conditions.

1.1.127 Sustainable Building Guidelines means the guidelines, titled "Sustainable Building-Principles, Standards and Processes", for sustainable building principles, standards and processes approved by the Board of Trustees on March 6, 2002 and the "Energy Policy", approved by the Board of Trustee on June 19, 2002, (including, without limitation, any amendments thereto and any rule, administrative regulations and guidelines issued by District for the implementation thereof) and related design procedures, criteria and standards as set forth in the Program Design Standards.

1.1.128 Term means the period to time that this Agreement is in effect, which shall begin on the effective date of this Agreement as stated in the Preamble to this Agreement and ends upon the earlier of: (1) full performance by Design Consultant; (2) termination of this Agreement by District or Design Consultant in accordance with Article 8, below; or (3) five (5) years from the date of execution of this Agreement by District and Design Consultant.

1.1.129 Tier means the contractual level of a Subconsultant with respect to Design Consultant, or a Subcontractor with respect to a Contractor. For example, a "first-tier" Subcontractor is under contract with the Contractor. A sub-subcontractor under contract with a first-tier Subcontractor is in the "second tier," and so on.

1.1.130 Unilateral Change Order means a writing issued by District in accordance with the General Conditions, in which District has unilaterally determined an adjustment to the Contract Sum or Contract Time due to Compensable Change or Deleted Work.

1.1.131 Warranty Observation Phase means the Phase of Design Consultant's Basic Services described in Section 2.7 of this Agreement.

1.1.132 Work means all labor, materials, equipment, services, permits, licenses and taxes and all other things necessary for the Contractor to perform its obligations under the Contract Documents, including, without limitation, any Changes requested by District, in accordance with the Contract Documents and all Applicable Laws. The Work may constitute the whole or a part of the Project.

1.2 APPLICATION OF DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings assigned to them in Section 1.1, above, or as defined in the General Conditions. If not defined in this Agreement or the General Conditions, such terms shall have the meanings reasonably understood to apply to them by the context in which they are used. Terms that are phrased in the singular shall be deemed to include the plural, and vice versa, where appropriate to the context or circumstances.

1.3 SCOPE OF SERVICES

District and Design Consultant have endeavored to delineate in Article 2, below, the scope of the Basic Services to be provided by Design Consultant. Such descriptions are not intended to be comprehensive, it being understood that, save and except in the case of Excluded Services, Design Consultant shall be required without adjustment or addition to the fixed rates or maximum compensation agreed to in this Agreement to provide any services, whether or not listed in Article 2, that are within the scope of its field of professional practice and that are reasonably inferable as being necessary, or that would be customarily furnished by other providers of professional services of the type and nature provided for in this Agreement, to accomplish the Basic Services set forth in Article 2, below.

1.4 PERFORMANCE STANDARD

Without limitation to Design Consultant's other express obligations set forth in this Agreement, all services performed by Design Consultant and its Subconsultants in connection with this Agreement shall be performed in a manner consistent with the standard of care under California law applicable to those who provide similar services for Project of the type, scope and complexity of the Project and in a manner consistent with College's and District's economic, educational and governmental best interests.

1.5 AUTHORITY OF DESIGN CONSULTANT

Design Consultant's authority to act on behalf of District is limited to its scope of authority set forth in this Agreement and in the General Conditions. Notwithstanding anything else stated in this Agreement or any of the Contract Documents, Design Consultant does not have the express or implied authority to obligate District to any expenditure of money or extension of contractual time periods, including, without limitation, any adjustment to the price or time of performance of any contract between District and Contractor, a Separate Contractor, a District Consultant, College Project Manager, Program Manager or any other person or entity.

1.6 KEY PERSONNEL

1.6.1 Of Essence. The services to be provided by Design Consultant under this Agreement shall be performed by the Key Personnel identified in Exhibit "D" attached hereto. The furnishing of services by these individuals, and any individuals approved by College, Program Manager and District to replace them, is of the essence to this Agreement.

1.6.2 Commitment, Cooperation. Recognizing the necessity of a close working relationship with College and Program Manager, Design Consultant's principals and employees, including without limitation, its Key Persons, shall furnish their best skill, efforts and judgment in the performance of their duties and responsibilities

under this Agreement, shall provide their knowledge, ideas, experience and abilities relating to the efficient design and construction of the Project and shall cooperate fully with all other members of the Project Team.

1.6.3 Additions, Removals, Replacements.

.1 Additions. It is contemplated that from time to time individuals will be added to the list of Key Personnel as necessary and appropriate to the stage of planning, programming, designing and constructing of the Project. Design Consultant shall anticipate the need for such additions by submitting to Program Manager and College, no later than seven (7) Days prior to the need therefor, a proposed amendment to the list of Key Personnel attached to this Agreement as Exhibit "D" setting forth Design Consultant's proposed additions and the reasons for such additions. College, Program Manager and District shall promptly review the proposed additions and either approve or disapprove thereof in writing, along with a statement of the reasons for any disapproval. Design Consultant shall not employ any individual to perform the functions of a Key Person without the advance approval of College, Program Manager and District, which approval may be granted or withheld in their sole discretion.

.2 Removals. Design Consultant shall not, for so long as any Key Person is employed by Design Consultant, remove, substitute or reduce the level of effort of such Key Person without College's, Program Manager's and District's prior written approval, which may be granted or withheld in their sole discretion. If either College or Program Manager is dissatisfied with the services rendered by any Key Person, Design Consultant shall promptly recommend a replacement.

.3 Replacements. If any Key Person ceases employment with Design Consultant or is requested to be removed pursuant to Subparagraph 1.6.3.2, above, then Design Consultant shall promptly notify College and Program Manager of a proposed replacement, of at least equal qualifications to perform the same functions. Such replacement shall perform no services for the Project until he/she has been approved by College, Program Manager and District, which approval may be granted or withheld in their sole discretion. Design Consultant shall bear, at Design Consultant's Own Expense, all costs associated with replacing, for any reason, any Key Person.

1.6.4 Engagement by District. In the event Design Consultant ceases its business operations altogether or in the Los Angeles area or this Agreement is terminated by District, District shall have the right, but not the obligation and without liability to Design Consultant or any other person or entity, to directly engage the services of any Key Person. In the event that Design Consultant learns that any Key Person will be leaving the employ of Design Consultant, Design Consultant shall promptly notify College, District and College Project Manager, whereupon District shall have the right described in this Paragraph 1.6.4 to engage directly the services of such person.

1.6.5 Project Representative. The Project Representative shall be the Key Person identified as such in Exhibit "D" attached hereto. The Project Representative has the authority to act on behalf of Design Consultant in respect to all matters that are the subject of this Agreement, including, without limitation, the power and authority to enter into agreements or modifications to agreements that contractually bind Design Consultant.

1.6.6 Design Consultant's Employees. All persons employed by Design Consultant shall be the employees of Design Consultant and not of College or District. Design Consultant shall be solely responsible for any workers' compensation obligations, withholding taxes, unemployment insurance and any other employer obligations with respect to all employees working for Design Consultant. Under no circumstances shall employees of Design Consultant have "bumping" rights or rights of return to any position of employment with District.

1.6.7 DSA Training. All Key Persons shall participate in training conducted by the Program Manager and/or DSA in processes and procedures relevant to DSA review and approval of Plans for construction, including, without limitation, training in the processes and procedures of DSA relative to review and approval of plans, drawings, specifications, structural safety plans, and fire & life safety plans.

1.7 SUBCONSULTANTS

1.7.1 Approval of Subconsultants. Design Consultant may, with prior written approval by College, District and College Project Manager, enter into written contracts with Subconsultants to perform portions of the services provided for in this Agreement. Design Consultant's request for hiring of a Subconsultant shall be submitted in a writing that describes the scope of services to be contracted, the name of the proposed Subconsultant and the total price and/or hourly rates for the Subconsultant's services. College, College Project Manager and District shall have absolute discretion in approving or disapproving any Subconsultant. Any such approval must be in writing to be effective. District shall use its best efforts to approve or disapprove of a proposed Subconsultant within seven (7) Days of Design Consultant's request. The Subconsultants listed in Exhibit "D" attached hereto shall be deemed approved by District in accordance with the requirements of this Paragraph 1.7.1. Design Consultant shall remain responsible for the services of its Subconsultants notwithstanding District's or College's approval thereof. The review or approval by District or College of a proposed contract between Design Consultant and a Subconsultant shall not be interpreted as modifying or limiting any of Design Consultant's responsibility, obligations or liabilities to District under this Agreement or Applicable Laws.

1.7.2 Responsibility for Subconsultants. Design Consultant is responsible to District for the quality and performance of all Subconsultants' services.

1.7.3 Replacement. Design Consultant may, upon advance written notice to College, District and Program Manager, terminate and replace the services of any Subconsultant, subject in all cases to the prior written approval of College and District, not to be unreasonably withheld.

1.7.4 Contingent Assignment. Each contract entered into by Design Consultant for performance of a portion of the services to be performed under this Agreement by a Subconsultant is assigned by Design Consultant to District or its designee, provided that such assignment is effective only after termination of this Agreement by District and only for those contracts which District or its designee accepts by notifying the Subconsultant in writing. District's and its designee's sole obligation in the event it accepts such assignment shall be to pay in accordance with the terms of such contract for the services performed after District's or its designee's written acceptance of such contract.

1.7.5 Assumption of Obligations. Every subcontract or agreement of any kind entered into between Design Consultant and a Subconsultant, and between a Subconsultant and a lower Tier Subconsultant, shall contain appropriate language whereby: (1) the Subconsultant, regardless of Tier, accepts and agrees to be bound by all of the obligations assumed by Design Consultant under this Agreement (excepting only the obligation to perform professional services beyond the scope of the professional services agreed to in the Subconsultant's contract), including, without limitation, those obligations pertaining to indemnification, insurance, accounting records, audit, resolution of Claim and ownership of documents; and (2) the Subconsultant agrees to the contingent assignment of its contract to District or its designee, effective upon written acceptance by District or its designee as provided in Paragraph 1.7.4, above.

1.7.6 DSA Training. All persons employed by a Subconsultant to supervise performance of the Subconsultant's services for the Project or otherwise identified by Design Consultant or District as critical or key in its/their view to the Subconsultant's performance of its services shall participate in training conducted by the Program Manager and/or DSA in the processes and procedures relevant to DSA review and approval of plans for construction, including, without limitation, training in the processes and procedures of DSA relative to review and approval of plans, drawings, specifications, structural safety plans, and fire & life safety plans.

1.8 OWNERSHIP OF DESIGN DOCUMENTS

1.8.1 Property of District. All Design Documents (including, without limitation, all electronic versions and paper copies thereof) are and shall remain the sole and exclusive property of District. Without derogation of District's rights under this Section 1.8, Design Consultant and the Subconsultants are granted a limited, non-

exclusive license, revocable at will of District, to use and reproduce applicable portions of the Design Documents as appropriate to and for use in the execution of the Work and for no other purpose.

1.8.2 Copyrights. Design Consultant hereby transfers and assigns, and will cause its Subconsultants to transfer and assign, to District all copyright rights and all other intellectual property rights in and to any Design Documents prepared by Design Consultant or its Subconsultants, including but not limited to, architectural works (as defined in 17 U.S.C. 101) and the designs and building designs depicted therein. The ownership of such rights is irrevocably vested solely in District. Such transfer and assignment will be effective for the entire duration of the copyrights and includes, but is not limited to, all rights including rights in related plans, specifications, documentation, derivative works and moral rights.

1.8.3 Use by District. District may use the Design Documents, without Design Consultant's consent, in connection with any Project, including, without limitation, future additions, alterations, connections, repairs, information, reference, use or occupancy of the Project. District shall hold harmless Design Consultant against Losses arising from District's use of the Design Documents for any other purpose, including use of the Design Documents on other Project.

1.8.4 Bidding. Design Consultant, upon request, shall provide copies of the Design Documents prepared by Design Consultant or its Subconsultants in the number required by District, College or College Project Manager for bidding and construction purposes in connection with each Project. Unless otherwise provided in Section 5.2, below, the reproduction expense thereof shall be reimbursed to Design Consultant by District as a Reimbursable Expense. District reserves the right to select the type of document reproduction and to establish where the reproduction will be accomplished.

1.8.5 Termination. In the event of termination of this Agreement by either party for any reason, District reserves the right to receive, and Design Consultant shall promptly provide to District, all Design Documents prepared by Design Consultant or its Subconsultants to the date of termination. Design Consultant shall be permitted to retain copies thereof, including reproducible copies, for its information and reference. Any dispute regarding the amount of any payment to be made by District under this Agreement shall not diminish the rights of District to unconditionally own, receive and use the Design Documents as provided in this Section 1.8.

1.9 COMPLIANCE WITH APPLICABLE LAWS

Design Consultant shall, at all times in its performance of its obligations under this Agreement, comply with all Applicable Laws, including, without limitation, those rules or regulations enacted or issued by District.

1.10 TIME OF ESSENCE

All time limits set forth in this Agreement pertaining to Design Consultant's performance of any obligation or act for the benefit of District are of the essence to this Agreement, subject to Design Consultant's right to extensions of time as permitted by Section 2.9 of this Agreement.

ARTICLE 2 BASIC SERVICES

With respect to each Project listed in Exhibit "A" attached to this Agreement, Design Consultant shall perform the following services as Basic Services:

2.1 GENERAL PROVISIONS

2.1.1 General Scope. Without limitation to the other provisions of this Agreement, Basic Services consist generally of the following professional design and engineering services, whether provided by Design Consultant or its Subconsultants, necessary for the complete and coordinated design and construction of the Project: (1) architectural services; (2) engineering and related design services for civil, structural, mechanical

(including HVAC), plumbing, fire/life safety (including, without limitation, fire protection/fire sprinklers), electrical engineering; (3) professional specialty services as set forth in Exhibit "A"; (4) specifications of all hardware; (5) construction cost estimating; and (6) construction administration as required by this Agreement, the General Conditions and the General Requirements. Basic Services designated in this Agreement for performance during a particular Phase shall, notwithstanding such designation, be performed by Design Consultant as part of any other Phase, where the furnishing of such Basic Services is reasonably necessary for the proper and complete design of the Project.

2.1.2 Other Services. Basic Services do not include the following professional services: (1) Additional Services listed in Article 3 of this Agreement, which shall be performed by Design Consultant as and when authorized by District in accordance with this Agreement; and (2) Excluded Services listed in Exhibit "B" attached hereto, which shall be performed by Design Consultant only if, and on such terms as may be, hereafter mutually agreed between District and Design Consultant.

2.1.3 Final Building Program. The Final Building Program, when established and approved as provided in Paragraph 2.2.1, below, sets forth the agreed criteria, requirements and objectives for the design of the Project. Design Consultant acknowledges and agrees that it assumes the obligation under this Agreement to design the Project in accordance with the Final Building Program for the Project. District has the right, exercised in its sole and absolute discretion, to direct in writing that Design Consultant modify a Final Building Program by making changes, additions, revisions or deletions. No other changes to a Final Building Program are permitted.

2.1.4 Project Construction Budget.

.1 Design Consultant Obligation. It is the obligation of Design Consultant to design the Project in a manner that will enable the Project to be constructed in accordance with the Final Building Program for a total of Construction Costs that does not exceed the Project Construction Budget for the Project as set forth in Exhibit "A" attached hereto.

.2 Increases in Project Construction Budget. District shall have the right, exercised in its sole discretion, to increase the amount of the Project Construction Budget for the Project. No other adjustments shall be made increasing the Project Construction Budget, except and unless on account of: (1) fluctuations in general levels of prices in the construction industry occurring after execution of this Agreement as reflected in, substantiated by and calculated pursuant to the ENR Index; (2) a written decision by District directing a change to the Final Building Program that increases the Construction Costs; or (3) a written decision by District declining to approve of a revision (other than a revision to the Final Building Program) proposed by Design Consultant to the Design Documents that is reasonably necessary in order to enable Design Consultant to satisfy its obligation to design the Project to meet the requirements of the Project Construction Budget for the Project.

.3 Notice by Design Consultant. Design Consultant is responsible to notify District and Program Manager within fourteen (14) Days after becoming aware of any circumstance that Design Consultant knows, or should have known in the exercise of the standard of care required by this Agreement, may require an adjustment in the Project Construction Budget. Failure by Design Consultant to provide such timely written notice shall result in its waiving the right to an adjustment of the Project Construction Budget on account of such circumstance. Adjustments of the Project Construction Budget that are permitted pursuant to Clauses (2) or (3) of Subparagraph 2.1.4.2, above, shall be based on and limited to an estimate, either agreed to between District and Design Consultant or if they are unable to agree as determined by an independent estimator retained by District, of the reasonable, additional Construction Costs directly resulting from District's written decision.

.4 Other District Remedies. Wherever it is stated in this Agreement that District has the right to direct that Design Consultant, at Design Consultant's Own Expense, furnish design services to redesign to meet the requirements of the Project Construction Budget, such right shall not be interpreted as a limitation on District's right, in lieu of requesting the performance of such redesign services, to exercise its other rights and remedies provided for by law or under this Agreement, including, without limitation, the right to terminate this Agreement for cause or for convenience.

.5 Final Building Program. Nothing stated in this Paragraph 2.1.4 or elsewhere in this Agreement shall be interpreted as obligating the District to agree to any change in the Final Building Program or as entitling the Design Consultant to change the Final Building Program in order to meet its obligation to design the Project to meet the requirements of the Project Construction Budget.

2.1.5 Review of Work Product. Design Consultant shall use its skills and expertise to review the work product prepared by other Design and Construction Project Team members that is delivered to Design Consultant. Design Consultant shall promptly report to the Program Manager and College Project Manager any information contained in such work product that Design Consultant believes is inaccurate, incomplete or insufficient, along with an appropriate recommendation; provided, however, that failure by Design Consultant to give such notice shall not relieve the preparer of such work product of its liability or responsibility therefor.

2.1.6 Selection of District Consultants. Design Consultant shall advise College and College Project Manager on the appropriate time for retention of any District Consultants whose services are necessary for the Project, being certain to allow sufficient time in advance for prequalification and selection of District Consultants in accordance with Applicable Laws and the guidelines, practices and procedures of College, District and College Project Manager. At points in time appropriate to the stage and status of the Project, Design Consultant shall assist College Project Manager with the following activities relative to prequalification and selection of District Consultants: (1) preparation of prequalification criteria; (2) preparation of requests for qualifications; (3) conduct of pre-qualification conferences and responses to questions by proposers; (4) evaluation of proposers; (5) establishment of a list of prequalified professionals; and (6) preparation of a definitive scope of services.

2.1.7 Project Schedule. Design Consultant has reviewed the Project Schedule and is satisfied that it integrates the activities of College, District, Design Consultant, College Project Manager and other Project Team members, as necessary to complete the design and construct the Project, and each Project, to be designed by Design Consultant. Design Consultant shall complete each Phase of Basic Services in accordance with the Project Schedule. Design Consultant shall, no less frequently than monthly, update the Project Schedule to reflect the status of actual progress of Basic Services, provided, however, that the time periods for completion of each Phase of Basic Services as set forth in the Project Schedule attached hereto shall not be changed except as permitted by Section 2.9, below. If significant variance from planned activities occurs, Design Consultant shall recommend recovery plans to District and, upon obtaining District's approval thereto, modify the Project Schedule to incorporate such recovery plans

2.1.8 Communications. Design Consultant shall comply with all written procedures issued by College Project Manager for conduct of communications among the Design and Construction Project Team members to deal with administrative matters relating to the planning, programming, design and construction of the Project.

2.1.9 Meetings. Design Consultant shall attend all necessary meetings with District, College, College Project Manager and other Project Team members and respond promptly with respect to matters assigned to Design Consultant for action or resolution. Without limitation to Design Consultant's obligations under Paragraph 2.6.4, below, Design Consultant shall promptly review minutes prepared by others and provide any requests for corrections to minutes to College Project Manager no later than five (5) Days after receipt. Except as otherwise described as an Excluded Service in Exhibit "B" attached hereto, all such meetings shall be deemed to be part of Basic Services.

2.1.10 Summaries. Except as otherwise directed by District or College Project Manager, Design Consultant shall receive, review and take appropriate action with respect to all information, reports, notices, requests and other materials prepared by its Subconsultants and shall provide to District, College and College Project Manager such materials and summaries thereof, along with Design Consultant's recommendations and advice with respect to the matters to which such materials relate.

2.1.11 Duplicative Services. Design Consultant shall promptly advise District and Program Manager if there appears to be an overlap or duplication of services being provided by or among Project Team members, along with Design Consultant's recommendations for eliminating such duplication or overlapping of services.

2.1.12 Sustainable Designs. With respect to a Project identified in Exhibit "A" attached hereto as requiring a United States Green Building Council LEED™ certified rating or LEED™ silver rating, Design Consultant shall as a Pre-Authorized Additional Service and for the Additional Services compensation identified in Exhibit "B" attached hereto, produce a final design for such Project that will enable the District to obtain the specified LEED™ certified rating or LEED™ silver rating. In all cases, whether or not a Project has been determined by District as being a Project which must receive from the United States Green Building Council a LEED™ certified rating or a LEED™ silver rating, Design Consultant shall endeavor, to the maximum extent possible without exceeding the Project Construction Budget, to incorporate into its designs for the Project the elements of sustainable building construction set forth in the Sustainable Building Guidelines, including, without limitation, any specific sustainable construction design elements deemed warranted by District. Whether or not such elements are requested by District, Design Consultant shall, prior to incorporating such elements into its Design Documents, give District notice of the anticipated impact thereof on Construction Costs and the Project Schedule and obtain District specific approval to incorporate such elements into the Design Documents. Such obligation shall include, without limitation, giving notice to District whenever, in Design Consultant's professional judgment, the incorporation of such matters into the Design Documents is likely to cause the total of Construction Costs for the Project to exceed the Project Construction Budget for such Project. Additionally, with respect to those Projects identified in Exhibit "A" attached hereto as "Non-LEED™ Project", Design Consultant shall prepare and present to the Board of Trustees such reports and presentation materials as may be necessary in order to establish the basis for their non-eligibility. If the Board of Trustees rejects the reasons presented as grounds for non-eligibility, then Design Consultant shall as part of Basic Services revise its reports and presentation materials for further presentation by Design Consultant. Design Consultant shall repeat this process as often as necessary until the Board of Trustees approves of the non-eligibility of the Project or until the Project is declared by District, in the exercise of its sole discretion, to be converted to a LEED™ Project.

2.1.13 College/District Committees. Design Consultant shall, when requested by College, College Project Manager or District: (1) attend meetings of College/District Committees; (2) assist College and Program Manager in preparing design presentations to, and responding to questioning by, College/District Committees; and (3) provide necessary follow-up to ensure that recommendations or directions of College/District Committees related to design matters are appropriately addressed.

2.1.14 Community Economic Development. Whether the Project is a Bond Project, Multi-Funded Project or Non-Bond Project, Design Consultant will, at all times in its performance of its obligations under this Agreement strictly adhere to the requirements of the Board of Trustees Resolution on Economic Community Outreach adopted October 17, 2001 and District Board Rule 7103.17, the Policy on Opportunities for Local, Small and Emerging Businesses adopted January 14, 2004, each of which shall, notwithstanding any provision thereof to the contrary, be deemed applicable to Design Consultant's performance of this Agreement.

2.1.15 Program Design Standards, Project Specifications. All Design Documents prepared by Design Consultant or its Subconsultants shall comply with the requirements of the Program Design Standards. All Specifications shall be prepared in accordance with the Construction Specifications Institute ("CSI") format.

2.1.16 Program Management Plan. Design Consultant shall comply with all portions, provisions, standards, processes, procedures, plans and protocols (including, without limitation, procedures for the use of Prolog software for electronic submissions) of the Program Management Plan, a copy of which is available to Design Consultant for review on District's Website.

2.1.17 Master Files Archives System. Design Consultant shall comply with all requirements of the Master Files Archives System, including, without limitation, all requirements thereof pertaining to use, transmission and storage of documents in electronic form.

2.1.18 Compliance with California Code of Regulations. Design Consultant shall, in connection with its services performed during all Phases of Basic Services, be responsible to comply with the requirements of the California Code of Regulations, including, without limitation Title 24, California Code of Regulations, relating to design and construction generally and construction of public schools specifically. Design Consultant shall fully

cooperate with the Inspectors of Record assigned to the Project pursuant to said provisions of the California Code of Regulations and other Applicable Laws.

2.1.19 Design Safety. Design Consultant is responsible for the safety of the design of the completed construction and for the interpretation of and any necessary amplification of the Drawings and Specifications prepared by it or its Subconsultants for each Project.

2.1.20 Project Labor Agreement If the Project is a Bond Project, Design Consultant will comply with applicable provisions, if any, of the Project Labor Agreement authorized by the Board of Trustees on December 19, 2001.

2.1.21 Labor Compliance Program. Pursuant to Labor Code Section 1771.7, this Project will will not be subject to District's approved Labor Compliance Program, initially approved on July 19, 2004. For questions or assistance concerning the Labor Compliance Program, contact Patricia Padilla or Miguel Cabral, Padilla & Associates, Inc., at (714) 577-5340. If neither box in the preceding sentence is checked, then it shall be deemed that there is no Labor Compliance Program that applies to the Project.

2.1.22 Labor Code Compliance. Design Consultant and its Subconsultants shall, to the extent applicable to work or services performed under this Agreement, comply with the provisions of the California Labor Code (including, without limitation, California Labor Code Sections 1720, 1735, 1775, 1777.5 and 1776.6) and Labor Compliance Program (if any) applicable to persons performing services or work for "construction" (including, without limitation, inspection and land surveying work, as defined in California Labor Code Section 1720) relating to prevailing wage, hours of work, apprentices, and maintenance and submission of certified payroll reports, and shall pay appropriate penalties to District for failure to comply pursuant to the California Labor Code, including, but not limited to, §§ 1775, 1777.7 and 1813. Pursuant to California Labor Code Section 1773, the Director of the Department of Industrial Relations has determined the general prevailing rates of wages per diem, and for holiday and overtime work, in the locality in which this Agreement is to be performed, for persons performing such work or services and said rates are on file with District at its principal office and available to any interested party upon request. If it becomes necessary for Design Consultant or any Subconsultant to employ any person in a capacity for which no minimum wage rate is specified, Design Consultant shall notify District which shall promptly seek determination of the applicable prevailing wage rate. Without limitation to any other remedies or penalties provided for by Applicable Laws, failure to comply with the requirements of this Paragraph shall result in Design Consultant being assessed penalties of up to fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the required prevailing wage. To the extent required by Applicable Laws, Design Consultant shall maintain and make available for inspection accurate, certified payroll records in accordance with California Labor Code Section 1776.

2.1.23 Design Document Submission Standards. All submissions by Design Consultant of Design Documents, Estimates of Project Construction Costs and other documents required to be submitted pursuant to this Agreement as part of the Schematic, Design Development and Construction Document Phases shall comply with the Design Document Submission Standards as set forth in Exhibit "G" attached hereto.

2.1.24 District-Furnished Materials. Design Consultant shall become familiar with any agreements that may exist between District and suppliers of District-furnished materials or equipment and shall make provision, including, without limitation, use of restrictive specifications that comply with Applicable Laws, in the Design Documents prepared by Design Consultant specifying use of such materials or equipment (by designated brand, manufacturer, trade name or otherwise) by Contractors in performing the Work.

2.1.25 DSA Requirements. If the Project is subject to DSA review and approval, Architect will comply with all DSA requirements applicable to design and construction of the Project, including, without limitation, the requirements of the Memorandum of Understanding dated September 27, 2005 and Amendment No. 1 thereto dated November 26, 2007, both of which are attached hereto as Exhibit "H".

2.2 SCHEMATIC DESIGN PHASE

2.2.1 Final Building Program. Design Consultant shall, in conjunction with the Project Programmer and District's Consultants in the areas of planning and programming, familiarize itself with the Building Program for the Project and make recommendations for revisions to the Building Program as may be required to verify compliance with, or make it comport with the requirements of, the Project Construction Budget and Master Project Schedule. Upon approval by District, College and College Project Manager at the conclusion of the Schematic Design Phase, the approved Building Program shall be deemed the Final Building Program.

2.2.2 Alternative Designs. Design Consultant shall make recommendations, including, without limitation, schematic presentations, to College, College Project Manager and District on alternative approaches to design of the Project, including, without limitation, recommendations on the range of possible alternatives that could be adopted for the design of the Project within the limitations of the Project Construction Budget and Master Project Schedule.

2.2.3 Contracting Approaches. Design Consultant shall review with and recommend to District alternative approaches to the design of the Project, and recommend the contracting mode best suited to the Building Program, Master Project Schedule, Applicable Laws and Project Construction Budget.

2.2.4 Schematic Design Documents. Design Consultant shall prepare, for written approval by College, College Project Manager and District, Schematic Design Documents for the Project consistent with and incorporating the Final Building Program requirements, including site plans, floor plans, elevations, sections, and other sketches or graphic materials needed to describe the Project in three dimensions. Design Consultant shall also prepare descriptive outline Specifications indicating proposed architectural, structural, mechanical and electrical systems and materials and other systems and materials within the scope of the professional services to be provided as Basic Services under this Agreement. Schematic Design Documents shall be consistent with the Project Construction Budget and Master Project Schedule for the Project and shall be revised until approved in writing by College Project Manager.

2.2.5 Estimate of Project Construction Costs. Design Consultant shall, contemporaneously with the submittal of the completed Schematic Design Documents for approval, prepare and submit in accordance with the Design Document Submission Standards, for College's, College Project Manager's and District's review and approval, Design Consultant's then-current Estimate of Project Construction Costs for the Project using the form attached hereto as Exhibit "F". If, at the point in time of such submittal, the Estimate of Project Construction Costs for the Project exceeds the Project Construction Budget, District may, at its sole discretion and without limitation to any of District's other rights or remedies for default that may exist under Applicable Laws or this Agreement, either: (1) give written approval of an adjustment in the Project Construction Budget; or (2) make such modifications to the Final Building Program as District, in its sole discretion, determines appropriate and require that the Design Documents be revised by Design Consultant to comport with such modifications; or (3) require that Design Consultant revise the Design Documents to satisfy the requirements of the Final Building Program and Project Construction Budget. All revisions to Design Documents and related services undertaken by Design Consultant pursuant to District's exercise of its rights under Clauses (2) and/or (3) of this Paragraph shall be at the sole expense of Design Consultant and without reimbursement of costs or payment of additional compensation by District. Nothing stated in this Paragraph or elsewhere in this Agreement shall be interpreted as permitting Design Consultant without the prior written approval by District, which approval may be granted or withheld in District's sole discretion, to make any revision to the Design Documents that if implemented would, in District's reasonable judgment, materially change the Final Building Program, including, without limitation, any aesthetic, structural or functional element thereof.

2.2.6 Existing Improvements and Subsurface Conditions. Design Consultant shall, to the extent necessary to fully inform itself of the conditions that may be encountered in constructing the Project, review information reasonably available concerning the existing conditions at the Site, including, without limitation, information available from College Project Manager on the as-built condition of Existing Improvements and reports, data or other information on conditions below the surface of the ground.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Phase Commencement. The Design Development Phase shall commence upon occurrence of the following conditions precedent:

.1 All Projects. The Design Consultant's performance of Basic Services for the Design Development Phase shall commence upon the Program Manager's written authorization to proceed and based on Schematic Design Documents approved in writing by College Project Manager.

.2 Non-Bond and Multi-Funded Projects. In the case of Non-Bond Projects and Multi-Funded Projects, an additional condition to commencement of Basic Services for the Design Development Phase shall be issuance of written confirmation by the Program Manager that Governmental Authorities have approved of funding for further performance of design services beyond the Schematic Design Phase.

.3 Unauthorized Phase Services. Unless otherwise agreed in writing by Program Manager, performance of Basic Services by Design Consultant for the Design Development Phase prior to occurrence of the aforesaid conditions to commencement of the Design Development Phase shall be deemed performed at the Design Consultant's risk, such that in the event that District terminates pursuant to Section 8.1 (for cause or convenience) this Agreement or a Project without authorizing performance of Design Development Phase services, then any Basic Services or Additional Services performed for a terminated Project beyond the Schematic Design Phase shall be deemed performed at the Design Consultant's Own Expense.

2.3.2 Design Development Documents. Following authorization as provided in Paragraph 2.3.1, above, Design Consultant shall prepare, for written approval by College, College Project Manager and District, Design Development Documents for the Project consisting of Drawings, outline Specifications and design narratives as needed to establish and describe the size and character of the Project. Design Consultant shall incorporate into the Design Development Documents architectural, structural, mechanical, and electrical systems, materials, and such other elements and systems appropriate to the Project. The Design Development Documents shall be consistent with the Final Building Program, the Project Construction Budget and the Project Schedule for the Project. Basic Services for the Design Development Phase performed by Design Consultant for Non-Bond Projects or Multi-Funded Projects without written confirmation of funding as required by Paragraph 2.3.1, above, shall be at the Design Consultant's risk and, if the funding approval is not received, shall be performed (whether Design Consultant's Basic Services compensation is a Fixed Fee or based on Hourly Rates) without any compensation or reimbursement of costs.

2.3.3 Systems Criteria. Design Consultant shall submit a "basis of design" narrative and supporting documentation for the design criteria for the structural elements (including structural loading), HVAC, plumbing, electrical, lighting and communication systems and other specialized building systems within the scope of the professional services to be provided as Basic Services under this Agreement.

2.3.4 Estimate of Project Construction Costs. Design Consultant shall, contemporaneously with the submittal of the completed Design Development Documents for District's approval, prepare and submit in accordance with the Design Document Submission Standards, for College's, College Project Manager's and District's review and approval, Design Consultant's then-current Estimate of Project Construction Costs for such Project using the form attached hereto as Exhibit "F". If, at the point in time of such submittal, the Estimate of Project Construction Costs for the Project exceeds the Project Construction Budget for such Project, District may, at its sole discretion and without limitation to any of District's other rights or remedies for default that may exist under Applicable Laws or this Agreement, either: (1) give written approval of an adjustment in the Project Construction Budget; or (2) make such modifications to the Final Building Program as District, in its sole discretion, determines appropriate and require that the Design Documents be revised by Design Consultant to comport with such modifications; or (3) require that Design Consultant revise the Design Documents to satisfy the requirements of the Final Building Program and Project Construction Budget. All revisions to Design Documents and related services undertaken by Design Consultant pursuant to District's exercise of its rights under Clauses (2) and/or (3) of this Paragraph shall be at the sole expense of Design Consultant and without reimbursement of costs or

payment of additional compensation by District. Nothing stated in this Paragraph or elsewhere in this Agreement shall be interpreted as permitting Design Consultant without the prior written approval by District, which approval may be granted or withheld in District's sole discretion, to make any revision to the Design Documents that if implemented would, in District's reasonable judgment, materially change the Final Building Program, including, without limitation, any aesthetic, structural or functional element thereof.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Construction Documents Phase Commencement. The Construction Documents Phase shall commence upon Program Manager's written authorization to proceed and based on Design Development Documents approved in writing by College Project Manager

2.4.2 Construction Documents. Following authorization as required by Paragraph 2.4.1, above, Consultant shall prepare, for written approval by College, College Project Manager and District, Construction Documents for each Project consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. The Construction Documents shall describe the quality, configuration, size and relationships of all components to be incorporated into the Project. The Construction Documents shall be consistent with the Final Building Program, Project Construction Budget and Project Schedule for that Project. Upon 50% and again upon 100% completion (including any corrections required by District, College and Governmental Authorities) of the Construction Documents, Design Consultant shall provide, in addition to the Construction Documents, a statement of the basis of the design, which includes the following: (1) an outline of Applicable Laws that apply to the Project; and (2) an outline of the criteria used as a basis of the design, including, without limitation, criteria for sustainability, architectural, structural, mechanical, plumbing, fire protection and electrical elements and systems and such other elements and systems as are within the scope of professional services to be provided as Basic Services under this Agreement.

2.4.3 Review. Design Consultant shall submit Construction Documents to College Project Manager, College and District for review and approval as follows: (1) at the point that the Construction Documents are 50% complete; (2) at the point that the Construction Documents are sufficiently complete for submission to DSA; and (3) upon 100% completion (including any corrections required by District, College, DSA and other Governmental Authorities). Such submittal shall be in electronic format that complies with the CADD Standards and the Design Document Submission Standards, a summary of the calculations for the structural, HVAC, electrical, plumbing, communications and other specialized building system calculations. Unless directed otherwise in writing by College Project Manager, the Construction Documents Phase shall not be considered 100% complete until all approvals by Governmental Authorities of the Construction Documents have been received by Design Consultant.

2.4.4 Content, Coordination, Completeness. Design Consultant shall be responsible for the content of all Construction Documents prepared by it and its Subconsultants. All Construction Documents prepared or signed by Design Consultant or its Subconsultants shall be complete, coordinated and contain directions as will: (1) enable a competent contractor to carry them out; (2) require a minimum number of correction requests by Governmental Authorities; and (3) be sufficiently complete and free of conflicts so as to be capable of definitive pricing by a Contractor with a minimum of further clarifications or detailing by Design Consultant or its Subconsultants.

2.4.5 Corrections. Construction Documents submitted by Design Consultant shall either incorporate any corrections required by College Project Manager, College, District or Governmental Authorities, or be accompanied by a written statement as to why such changes were not incorporated. Any of College, College Project Manager or District may, in its sole discretion, reject Design Consultant's explanation and require Design Consultant to make the changes or corrections to the Construction Documents as previously requested by College, College Project Manager or District. Such corrections shall be performed at Design Consultant's Own Expense and shall not constitute grounds for adjustment of any Project Construction Budget or Project Schedule.

2.4.6 Final Approval. When all the corrections required by College Project Manager, College, District and Governmental Authorities have been incorporated by Design Consultant, the corrected, 100% complete Construction Documents will be deemed to be final and ready for competitive pricing. Design Consultant shall

provide to College Project Manager sets of reproducible prints of the Drawings and Specifications comprising the 100% complete set of Construction Documents in such numbers as set forth in Design Document Submission Standards attached hereto as Exhibit "G". The Drawings and Specifications shall also be submitted in computer disk in a software language format that complies with the CADD Standards and Design Document Submission Standards. Construction Documents submitted by Design Consultant to District for bidding purposes shall be signed and stamped by Design Consultant and its Subconsultants responsible for preparing same.

2.4.7 Estimate of Project Construction Costs. Design Consultant shall, contemporaneously with each of the submittals of Construction Documents required by Paragraph 2.4.2, above, prepare and submit in accordance with the Design Document Submission Standards, for College's, College Project Manager's and District's review and approval, Design Consultant's then-current Estimate of Project Construction Costs for such Project using the form attached hereto as Exhibit "F". If, at the point in time of any such submittal, the Estimate of Project Construction Costs for the Project exceeds the Project Construction Budget for such Project, District may, at its sole discretion and without limitation to any of District's other rights or remedies for default that may exist under Applicable Laws or this Agreement, either: (1) give written approval of an adjustment in the Project Construction Budget; or (2) make such modifications to the Final Building Program as District, in its sole discretion, determines appropriate and require that the Design Documents be revised by Design Consultant to comport with such modifications; or (3) require that Design Consultant revise the Design Documents to satisfy the requirements of the Final Building Program and Project Construction Budget. All revisions to Design Documents and related services undertaken by Design Consultant pursuant to District's exercise of its rights under Clauses (2) and/or (3) of this Paragraph shall be at the sole expense of Design Consultant and without reimbursement of costs or payment of additional compensation by District. Nothing stated in this Paragraph or elsewhere in this Agreement shall be interpreted as permitting Design Consultant without the prior written approval by District, which approval may be granted or withheld in District's sole discretion, to make any revision to the Design Documents that if implemented would, in District's reasonable judgment, materially change the Final Building Program, including, without limitation, any aesthetic, structural or functional element thereof.

2.4.8 Governmental Approvals, Permits. Design Consultant shall take all steps necessary to submit required applications and promptly secure any necessary approvals and permitting by Governmental Authorities (including, without limitation, DSA) of District-approved, completed Construction Documents (together with any plans for relocation of Existing Improvements) and Alternates. Design Consultant shall notify College Project Manager in writing upon receipt of such approvals or permits specifying in detail the scope of Work covered thereby and shall recommend to College Project Manager whether and when all approvals and permits required by Applicable Laws have been obtained such that District may proceed to let contracts for the Work. Design Consultant shall notify College Project Manager and District ninety (90) Days prior to the date that any approval or permit by a Government Authority may expire.

2.5 BIDDING PHASE

2.5.1 Prequalification. If prequalification of Bidders is required by Program Manager, Design Consultant shall recommend prequalification criteria and assist Program Manager in preparation of the prequalification documents. If requested by Program Manager, Design Consultant shall participate with Program Manager and College in evaluation of prequalification submittals.

2.5.2 Addenda. Design Consultant shall prepare and obtain Governmental Authority approval of Addenda for issuance to the Contractors by Program Manager.

2.5.3 Alternates. Design Consultant shall prepare documentation of Alternates, assist College Project Manager in the ranking of Alternates for bidding and assist College Project Manager in the evaluation of portions of Bids relating to pricing of Alternates.

2.5.4 Substitutions. Design Consultant shall review and evaluate requests by Bidders for Substitution and make recommendations to College Project Manager for their approval or rejection within the time periods required by the Bidding Documents.

2.5.5 Pre-Bid Conferences. Design Consultant and its Subconsultants, as appropriate or as requested by Design Consultant, shall attend all scheduled Pre-Bid Conferences.

2.5.6 Bid Evaluations. Design Consultant shall assist College Project Manager and College in the review and evaluation of Bids.

2.5.7 Project Construction Budget Overrun. If the lowest price received from a responsible and responsive Bidder (as the terms "responsible" and "responsive" Bidder are interpreted under Applicable Laws) for the Project exceeds the Project Construction Budget for the Project, District may, at its sole discretion and without limitation to any of District's other rights or remedies for default that may exist under Applicable Law or this Agreement, do any of the following: (1) give written approval of an increase in the Project Construction Budget; (2) authorize re-bidding within a reasonable period of time; (3) make such modifications to the Final Building Program as District, in its sole discretion, determines appropriate and require that the Design Documents be revised by Design Consultant to comport with such modifications; (4) require Design Consultant to revise the Construction Documents in order to reduce the Construction Costs to a level that falls within the Project Construction Budget; or (5) abandon the Project. Nothing stated in this Paragraph or elsewhere in this Agreement shall be interpreted as permitting Design Consultant without the prior written approval by District, which approval may be granted or withheld in District's sole discretion, to make any revision to the Design Documents that if implemented would, in District's reasonable judgment, materially change the Final Building Program, including, without limitation, any aesthetic, structural or functional element thereof. Compensation to Design Consultant, if any, for revisions to Construction Documents that are ordered by District or otherwise permitted by this Paragraph 2.5.7 shall be determined as follows: District shall obtain an independent estimate of the Construction Costs based on the condition of the Construction Documents without such revisions. If such independent estimate is within the Project Construction Budget, then Design Consultant shall be entitled to receive compensation as Additional Services for the services required to execute such revisions in an amount equal to and not exceeding 50% of the total Additional Services and 50% of the Reimbursable Expenses involved in executing such revisions. The remaining 50% of such Additional Services and Reimbursable Expenses shall be borne by Design Consultant at Design Consultant's Own Expense. However, if District's independent estimate exceeds the Project Construction Budget, then Design Consultant shall perform all of the services and bear all of the costs required for the execution of such revisions entirely at Design Consultant's Own Expense.

2.6 CONSTRUCTION PHASE

2.6.1 Construction Phase Commencement. The Construction Phase shall commence upon occurrence of the following conditions precedent:

.1 All Projects. The Design Consultant's performance of Basic Services for the Construction Phase shall commence upon Program Manager's written authorization to proceed and based on Construction Documents approved in writing by College Project Manager following issuance of a Notice of Intent to Award by District.

.2 Non-Bond and Multi-Funded Projects. In the case of Non-Bond Projects and Multi-Funded Projects, an additional condition to commencement of Basic Services for the Construction Phase shall be issuance of written confirmation by the Program Manager that Governmental Authorities have approved of funding for further performance of services beyond the Construction Documents Phase.

.3 Unauthorized Phase Services. Unless otherwise agreed in writing by Program Manager, performance of Basic Services by Design Consultant for the Construction Phase prior to occurrence of the aforesaid conditions to commencement of the Construction Phase shall be deemed performed at the Design Consultant's risk, such that in the event that District terminates pursuant to Section 8.1 (for cause or convenience) this Agreement or a Project without authorizing performance of Construction Phase services, then any Basic Services or Additional Services performed for the Construction Phase of a terminated Project shall be deemed performed at the Design Consultant's Own Expense.

2.6.2 Duration. The Construction Phase will terminate upon the later of sixty (60) Days after Final Completion of the Work or delivery of completed Record Documents. Except as otherwise provided in Paragraph 3.1.18, below, all services required to be performed by Design Consultant and its Subconsultants during the Construction Phase shall be performed as part of Basic Services.

2.6.3 Contract Administration. Without limitation to any other provisions of this Agreement, Design Consultant's Construction Phase responsibilities shall include the following: (1) interpretation of the design requirements of the Contract Documents; (2) periodic Site observations; (3) review and certification of Applications for Payment; (4) review and approval or rejection of Submittals; (5) review and approval or rejection of requests for Substitutions; (6) responding to Requests for Information or clarification by Contractors and Separate Contractors; (7) preparation and evaluation of Change Orders and Unilateral Change Orders and associated supporting design and engineering information; (8) general consultation on design matters; (9) assistance to District in the evaluation of Claims by the Contractor or Separate Contractors; and (10) all other construction administration services required to be performed by Design Consultant under the terms of the General Conditions. In the event of any conflict between the obligations of Design Consultant under the General Conditions and this Agreement, such conflict shall be resolved by requiring Design Consultant to perform the greater scope of services as may be indicated in either this Agreement, the General Conditions or the General Requirements.

2.6.4 Notices. Design Consultant shall provide such notices as may be required by Applicable Laws or Governmental Authorities, including, without limitation, DSA, concerning the following: (1) that Work is being, or is about to be, carried on at the Site; (2) the identities of the Contractor and Separate Contractors performing the Work; and (3) other information concerning performance of the Work that is required by Applicable Laws to be provided by the design professional primarily responsible for the design and/or administration of the Project.

2.6.5 Meetings. Except as otherwise expressly described as an Excluded Service in Exhibit "B" attached hereto, Design Consultant shall attend all necessary construction meetings with the Project Team members. Attendees shall be Design Consultant, its Subconsultants (as appropriate to the subject matters to be discussed), Contractor, College Project Manager, and others as deemed necessary by Design Consultant or College Project Manager. Regular construction meetings with the Contractor shall occur weekly or more frequently if deemed necessary by College Project Manager. If requested by College Project Manager and approved by Program Manager, Design Consultant shall prepare and distribute meeting minutes that contain action lists for tracking outstanding items, respond to request for corrections to such minutes and make sure that responsibility for action items is assigned to a particular Project Team member along with a date for further action or resolution.

2.6.6 Communications. College Project Manager will furnish Design Consultant with copies of written communications from College Project Manager, College or District to the Contractor. With respect to matters relating to design that may be addressed in such communications, unless Design Consultant, within ten (10) Days of receipt of a written communication to the Contractor, provides written notification to College Project Manager that Design Consultant disagrees with the content of the written communication, specifying the reason for the disagreement, Design Consultant shall be deemed to agree with the content of such communication. Design Consultant shall on an on-going basis advise and consult with College Project Manager on, and shall keep College Project Manager informed of, the observed progress of the Work.

2.6.7 No Delay. Design Consultant shall not delay its interpretations, reviews, approvals or other functions pursuant to this Agreement or otherwise cause or contribute to a disruption of construction or a delay to the Project.

2.6.8 Corrections. Design Consultant shall, at Design Consultant's Own Expense, promptly and satisfactorily correct any and all errors, omissions, deficiencies, ambiguities, conflicts or violations of Applicable Laws in the Construction Documents prepared by Design Consultant or its Subconsultants.

2.6.9 Site Observations. Without limitation to any other provisions of this Agreement, Design Consultant and its Subconsultants shall, as appropriate to the stage of the Work of the Project or as otherwise reasonably requested by College Project Manager but not less frequently than weekly, conduct observations of the

Work in progress for the purpose of: (1) observing the progress, character and complexity of the Work at the Site; (2) checking fabricated materials and equipment located on or outside the Site when such checks are specified in the Contract Documents; (3) keeping informed on design issues or questions of concern to Design Consultant or its Subconsultants, or as noted in any inspection reports furnished to Design Consultant; (4) evaluating the observed quality of Contractor's performance; (5) reviewing of construction of crucial components of the Work and the performance of specified or directed tests significant to the acceptability of crucial components of the Work; and (6) ascertaining that the progress of the Work and that the character, scope, quality and detail of construction (including workmanship and materials) generally comply with the Contract Documents, College Project Manager's directives, approved Submittals and Design Consultant's clarifications. All observations shall be conducted deliberately and thoroughly. Observations shall be separate from any inspections which may be provided by others and such inspections by others shall not relieve Design Consultant of its responsibilities under this Agreement. Any Subconsultant who has prepared designs or specifications shall be responsible to observe in accordance with the provisions of this Agreement those portions of the Work that he/she has so designed or specified.

2.6.10 Submittals, Substitutions. Design Consultant shall review, approve, and recommend action and other steps necessary to securing approval by Design Consultant of Submittals and requests for Substitutions; evaluate and advise College Project Manager on the equivalence of proposed Substitutions for materials, products, or services specified by brand or trade names in the Contract Documents; and recommend either approval or rejection of the Substitutions as being equal in quality, utility and appearance.

2.6.11 Defective Work. Design Consultant is responsible to notify College Project Manager of the presence of Defective Work that is observed or that is reasonably observable by Design Consultant or any of its Subconsultants in the exercise of reasonable care in the performance of their obligations under this Agreement and shall recommend to College Project Manager in writing the rejection of Defective Work.

2.6.12 Testing, Inspection. Design Consultant shall, regardless of the status of the Work, recommend in writing special inspection or testing of the Work in accordance with the provisions of the Contract Documents if, in Design Consultant's professional judgment, such inspection or testing is necessary or advisable for the implementation of the Contract Documents or is required by Applicable Laws. Design Consultant shall review inspection reports, laboratory reports and test data to determine conformity of such data with the design requirements expressed in or implied by the Contract Documents and approved Submittals. Design Consultant shall recommend to College Project Manager, in writing, actions that need to be taken, as determined by Design Consultant from Site visits, inspections, observations, reports, laboratory reports and test data, or from Contractor proposals, schedules or other relevant documents.

2.6.13 Substantial, Final Completion. Design Consultant shall accompany and assist College Project Manager to evaluate whether the Work is ready for inspection for Substantial Completion and Final Completion, review the Substantial Completion Punch Lists and Final Completion Punch Lists prepared by the Contractor, ascertain any items of Work to be added to such lists, cause such items to be added to the Substantial Completion Punch List and Final Completion Punch Lists, and advise on whether the items listed have been completed in accordance with the requirements of the Contract Documents. Design Consultant shall issue such approvals or certifications of Substantial Completion and Final Completion as may be requested by College Project Manager. Design Consultant shall, based on its evaluations of the Work, notify College Project Manager when the Work is completed to the point that, in the opinion of Design Consultant, a notice of completion required by Section 4-3339, Part 1, Title 24 of the California Code of Regulations may be filed.

2.6.14 Close-Out Documents. Design Consultant shall review all Close-Out Documents and other items required by the Contract Documents to be delivered by Contractor as a condition of the Final Payment for conformance with the Contract Documents.

2.6.15 Interpretations. Design Consultant shall, upon request by College Project Manager, issue interpretations and clarifications of the requirements of the design requirements of the Contract Documents. Such clarifications and interpretations shall be transmitted to College Project Manager in writing. If directed by College

Project Manager, interpretations may be issued directly to the Contractor. Written or graphic interpretations by Design Consultant shall be consistent with the intent of, and reasonably inferable from, the Contract Documents.

2.6.15 Construction Means, Methods, Safety. The Contractor shall be solely responsible for construction means, methods, sequences, procedures and safety precautions and programs, and for implementation of College Construction Health, Safety and Environmental Program in connection with the Work. Design Consultant, in its capacity as a design professional and not as a general contractor, shall review and be familiar with College Construction Health, Safety and Environmental Program and shall report any actually observed unsafe conditions to College Project Manager.

2.6.17 Change Orders. Design Consultant shall prepare Drawings and Specifications as specifically requested by College Project Manager in connection with the issuance of Change Orders, Unilateral Change Orders and Field Orders and secure approvals thereof by Governmental Authorities, including, but not limited to, DSA, prior to the commencement of the portions of the Work related thereto. When requested by College Project Manager or when necessary to maintain progress of the construction, Design Consultant shall prepare, submit and obtain approval by DSA of preliminary change orders, followed promptly by submission of a formal Change Order. Design Consultant shall be entitled to compensation for the preparation of Drawings and Specifications in connection with the issuance of Change Orders, Unilateral Change Orders and Field Orders only to the extent allowed by Article 3 of this Agreement. Design Consultant shall not be entitled to compensation for the preparation of Drawings and Specifications necessitated by errors, omissions, deficiencies, ambiguities, conflicts or violations of Applicable Laws caused or created by Design Consultant or its Subconsultants.

2.6.18 As-Built and Record Documents.

.1 Design Consultant shall update its Construction Documents during the Construction Phase to incorporate changes to the Work reflected in Change Orders, Field Orders, Submittal revisions requested by Design Consultant or its Subconsultants or responses by Design Consultant or its Subconsultants to Requests for Information from Contractor. Such updating shall be accomplished electronically, using AutoCAD or other software satisfactory to District. Design Consultant shall transmit the updated Construction Documents to the Contractor on a frequent and regular basis, no less frequently than monthly or as often as required to maintain the progress of the Work and pricing of Changes. Such updated Construction Documents shall, without limitation, be used in preparation and maintenance by Contractor of As-Built Documents.

.2 Design Consultant shall carefully review As-Built Drawings and Specifications prepared, assembled and certified by Contractor and compare them to the observed and observable conditions on the Site and in the Work, as well as to other As-Built Documents. Discrepancies shall be noted by Design Consultant, whereupon Design Consultant shall return the As-Built Drawings and Specifications to College Project Manager, who shall coordinate further review and correction by the Contractor. Following corrections by the Contractor, Design Consultant shall review the As-Built Drawings and Specifications to confirm that the corrections have been properly made. At the point that all such discrepancies have been corrected, Design Consultant shall state in writing its approval of the As-Built Documents and return the As-Built Documents to College Project Manager. Such review and approval shall be understood to be limited confirming general conformance of the As-Built Documents with the visible, non-concealed conditions at the Site at the time of Final Completion.

.3 Within four (4) months after receipt of Contractor's complete and corrected As-Built Documents, Design Consultant shall, as part of Basic Services, furnish District with Record Documents, prepared in the manner required by the Design Document Standards, which consolidate, incorporate and coordinate all revisions, changes and other notations reflected in the As-Built Drawings and Specifications prepared by the Contractor and approved by Design Consultant, as well as any other information available concerning the as-built conditions of the Work, including, without limitation, conditions noted by District Consultants involved in the commissioning process. Each such revision, change and notation shall be accurately annotated and cross-referenced by Design Consultant in the Record Documents. The Record Documents (including each page of the Drawings and the cover page of the Specifications) shall prominently bear the words "Record Documents" and Design Consultant's approval by manual signature.

2.6.19 Title 24 Reports. Design Consultant and its Subconsultants who are in charge of general observation of the Work or any portion thereof shall, in accordance with the provisions of Part 1, Title 24 or the California Code of Regulations, prepare and file periodic verified reports on forms prescribed by DSA averring that of his/her own personal knowledge (as defined in California Education Code 81141) the Work performed during the period of time covered by the report has been performed and materials have been used and installed in every material respect in compliance with the Drawings and Specifications approved by DSA for the Project, together with such other detailed statements of fact as DSA may require.

2.7 WARRANTY OBSERVATION PHASE

2.7.1 Design Consultant shall conduct a review of the Work eleven (11) months after Final Completion for the purpose of observing the condition in the Work. Design Consultant shall make written recommendations to District for the correction of any Defective Work discovered in the course of Design Consultant's review within thirty (30) Days after the date of such review. Design Consultant shall be accompanied by College Project Manager and College during such review of the Work. The number of work hours to complete such review and preparation of written recommendations shall not exceed fifty (50) hours for any single Project, excluding review and preparation necessitated in whole or in part by errors and omissions in the services performed by Design Consultant or its Subconsultants. Hours in excess thereof shall be compensated as Additional Service only if approved in advance in writing by District.

2.8 INDEPENDENT REVIEWS

2.8.1 District may, at its option exercised in its sole discretion and at District's expense, direct the performance of independent design, constructability, compliance with Applicable Laws and/or value engineering reviews. Design Consultant shall cooperate with these reviews.

2.8.2 Design Consultant shall prepare written responses to the written review comments generated from an independent review and shall make changes to the Design Documents responsive only to those comments that Design Consultant deems to require such changes. If Design Consultant does not deem a comment to require a change, Design Consultant shall so state in the written response to the comment, providing reasons why no change should be implemented. If College Project Manager nevertheless directs Design Consultant to implement the requested change, Design Consultant will do so, unless doing so would result in a violation of Applicable Laws. Services to prepare responses to comments and make necessary changes to the Design Documents that do not arise from the errors, omissions, conflicts, ambiguities or violations of Applicable Laws in the Design Documents prepared by Design Consultant or its Subconsultants shall be compensated as Additional Services.

2.8.3 District shall have the right, but not the obligation, to have independent cost estimates conducted by an estimator designated by District and at District's expense. Design Consultant shall be available to answer the estimator's questions regarding the design and to attend meetings with the estimator as reasonably necessary to reconcile Design Consultant's estimates with the independent estimates.

2.9 PROJECT SCHEDULE

2.9.1 Design Consultant Responsibility. Design Consultant shall meet the requirements of the Project Schedule, including without limitation the dates for completion of each Phase of Design Consultant's Basic Services for the Project.

2.9.2 Adjustments to Project Schedule. Design Consultant shall be entitled to an adjustment to the Project Schedule for unavoidable Delays that are beyond Design Consultant's control and its responsibility under this Agreement; provided, however, that as a condition precedent to its right to an adjustment of the Project Schedule, Design Consultant shall have given written notice to College Project Manager of the circumstances of such Delay within fourteen (14) Days after such circumstances were first observed, or should have been observed by Design Consultant or its Subconsultants in the exercise of the standard of care required by this Agreement. Failure to provide such written notice shall result in a waiver by Design Consultant of any right to an adjustment to

the Project Schedule on account of such circumstances. Notwithstanding the foregoing, Design Consultant shall not be entitled to an extension of time to the Project Schedule due to Delays arising from or related to the fault, negligence or violation of a provision of this Agreement by Design Consultant or its Subconsultants.

2.9.3 Periods of Inactivity. The Project Schedule shall be extended as provided in Paragraph 2.9.2 for Periods of Inactivity.

2.9.4 Delay Costs. Notwithstanding anything to the contrary elsewhere in this Agreement, Design Consultant's sole and exclusive remedy and compensation for Losses related to Delay, of any kind, is its right to Additional Services pursuant to Paragraph 3.1.18, below, and its right to adjustment of compensation pursuant to Section 5.4, below. All other rights and claims by Design Consultant, on its own behalf and on behalf of its Subconsultants, for Losses relating to Delay are hereby waived. Design Consultant shall include the provisions of this Paragraph 2.9.4 in all contracts it enters into with its Subconsultants.

ARTICLE 3 ADDITIONAL SERVICES

3.1 LIST OF ADDITIONAL SERVICES

Additional Services must be authorized by District in writing prior to commencement of performance thereof. Compensation for Additional Services shall be governed by Section 5.3, below. Unless otherwise agreed in writing by District, the following constitutes the exclusive list of Additional Services:

3.1.1 providing services for planning surveys, Site evaluations, or environmental studies, beyond those required by Articles 1 or 2 of this Agreement as part of Basic Services;

3.1.2 providing services beyond those required by Articles 1 or 2 of this Agreement to investigate existing conditions or facilities, to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by District, College or College Project Manager;

3.1.3 providing planning services for tenant or rental spaces;

3.1.4 providing financial feasibility studies or other special studies;

3.1.5 providing services if and to the extent that they are solely and directly the consequence of: (1) changes to a Final Building Program that are requested and approved by District, College or College Project Manager in writing; or (2) issuance by District, College or College Project Manager of written directives or instructions during the Design Development, Construction Documents, Bidding or Construction Phases that conflict with prior written directives or instructions by District, College or College Project Manager; or (3) revisions to the Construction Documents, for which Design Consultant is entitled to compensation under Paragraph 2.5.7, above, to reduce the Construction Costs following receipt of Bid prices that exceed the Project Construction Budget; or (4) revisions to Design Development Documents or Construction Documents necessitated due to changes in Applicable Laws first enacted after the date that such Design Development or Construction Documents were prepared.

3.1.6 providing services that are the direct result of a written directive by District adding or deleting Project to or from the list of Project set forth in Exhibit "A" attached to this Agreement;

3.1.7 providing services related to future facilities, systems and equipment that are not intended to be constructed during the Construction Phase or that are not anticipated in the Final Building Program;

3.1.8 providing interior design, equipment planning and other similar services required for or in connection with the selection, procurement, or installation of furniture, furnishings, and equipment that are not provided for in the Final Building Program;

3.1.9 providing detailed quantity surveys or inventories of material, equipment and labor;

3.1.10 making investigations or take inventories of materials or equipment, or making valuations and detailed appraisals of existing facilities;

3.1.11 providing analyses of owning and operating costs (except as needed to prepare energy calculations, which are deemed part of Basic Services);

3.1.12 providing perspective drawings, computer generated perspectives, models and mock-ups, including slides thereof, to the extent not required as part of Basic Services;

3.1.13 providing services as necessary to correct Defective Work not caused or created by any errors, omissions, conflicts, ambiguities, or violations of Applicable Laws in the Design Documents prepared by Design Consultant or its Subconsultants;

3.1.14 providing extensive assistance in the selection or utilization of any equipment or system; preparing operation and maintenance manuals; and training personnel for operation and maintenance;

3.1.15 providing services in connection with a pending mediation, arbitration proceeding, or legal proceeding, except where: (1) Design Consultant is party thereto; or (2) Design Consultant is a party to any related proceeding in which Design Consultant is alleged to be responsible for a Loss that is the subject of such pending public hearing, mediation, arbitration proceeding or legal proceeding;

3.1.16 providing services made necessary by the termination of a Contractor, but only to the extent such services exceed the level of service that would have been provided in the absence of such termination;

3.1.17 providing services to make revisions in approved Design Development or Construction Documents due to a substantial inaccuracy in any surveys, test data or other information provided by District, College or College Project Manager pursuant to Section 4.2 of this Agreement;

3.1.18 providing Basic Services for the Construction Phase of the Project that, solely due to unavoidable Delays outside the control or responsibility of Design Consultant and its Subconsultants, are performed more than sixty (60) Days after the date for Final Completion as established in the Construction Contract at the time of Award and as adjusted by Excusable Delays (as that term is defined in the General Conditions); provided, however, that nothing herein shall be interpreted as entitling Design Consultant to be paid duplicative compensation, both as Additional Services and Basic Services, for services covered under and compensated by its Basic Services compensation under Article 5 of this Agreement. The effective date as provided for in this Paragraph 3.1.18 for commencement of District's obligation for payment of Additional Services for the Construction Phase of the Project shall be further extended on a Day-for-Day basis for any Periods of Inactivity occurring after the date that Bids are first received for the Project.

3.1.19 providing services for the Warranty Observation Phase beyond the hourly limits set forth in Section 2.7, above;

3.1.20 providing services for revisions to Design Documents as a result of independent design, constructability or value engineering reviews, to the extent permitted as Additional Services under Section 2.8, above;

3.1.21 providing services, under a lump sum agreement for Additional Services compensation, to conform a LEED™ eligible Project to the requirements of the Sustainable Building Guidelines where such Project has been determined by District to be the Project which must receive from the United States Green Building Council a LEED™ certified rating or a LEED™ silver rating;

3.1.22 providing detailed and extensive programming services, beyond the scope of those required as Basic Services;

3.1.23 providing landscaping design services; or

3.1.24 providing services that are necessary and sole result of District's directive for issuance of multiple bid packages for a single Project.

3.2 NOTICE, WAIVER, DISPUTED SERVICES

3.2.1 Notice by Design Consultant. Design Consultant shall notify College Project Manager in writing within seven (7) Days after it learns of any circumstance (including, without limitation, any direction or request by District, College or College Project Manager) that Design Consultant believes may give rise to performance of Additional Services. Except as provided in Paragraph 3.2.2, below, Design Consultant waives the right to compensation for Additional Services performed without advance written approval by District, or College Project Manager that expressly acknowledges that the service is an Additional Service.

3.2.2 Disputed Additional Services. If a dispute arises as to whether any service constitutes an Additional Service or a Basic Service, Design Consultant will nevertheless promptly perform such service, if requested to do so in writing by District or College Project Manager. Neither District's nor College Project Manager's request for performance, Design Consultant's performance nor the acceptance of performance, of disputed services will constitute or be deemed to be a waiver on the part of District or Design Consultant of its rights with respect to the appropriate classification of the services rendered.

3.3 APPROVAL, RATIFICATION BY BOARD OF TRUSTEES

Pursuant to California Education Code Section 81655, approval or ratification by the Board of Trustees is required as a condition precedent to District having any obligation to Design Consultant relating to the performance of or payment for Additional Services. Design Consultant shall, upon receipt of written direction from the Executive Director, proceed promptly with performance of Additional Services pending District's obtaining approval or ratification thereof by the Board of Trustees.

ARTICLE 4 DISTRICT RIGHTS AND RESPONSIBILITIES

4.1 ADMINISTRATION

4.1.1 District Responses. District shall promptly respond to Design Consultant's submittals and requests for decisions, approvals or information; provided, however, that no failure by District to respond shall entitle Design Consultant to an adjustment of the Project Schedule unless District has failed to respond within seven (7) Days after District's receipt of a written notice by Design Consultant to District expressly stating that a response is due and specifically informing District that a response is necessary in order to avoid a delay to the Project Schedule.

4.1.2 District Consultants. District shall furnish the services of District Consultants for design reviews and other services which Design Consultant is not required to provide pursuant to Article 2 of this Agreement.

4.1.3 Revisions by District. District reserves the right, exercised in its sole discretion, to revise the Facilities Master Plan, Final Building Program, Project Construction Budget, Project Schedule and to otherwise add, reduce or revise the list or descriptions of Project set forth in Exhibit "A" attached hereto. Design Consultant's sole and exclusive right to additional compensation and extension of time, if any, for such revisions shall be as set forth in elsewhere in this Agreement.

4.2 SURVEYS AND REPORTS

4.2.1 General. District shall furnish such structural, mechanical, electrical, chemical, soils and other tests, inspections and reports as required by Applicable Laws or by the Contract Documents and which are not required to be furnished by Design Consultant under this Agreement or by the Contractor under the Contract Documents.

4.2.2 Surveys, Legal Restrictions. If required for the performance of Design Consultant's services, District shall, upon request by Design Consultant, furnish a land survey of the Site, giving (as applicable) the following: (1) grades and lines of streets, alleys, pavements and adjoining property; (2) rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Site; (3) locations, dimensions and floor elevations pertaining to existing buildings, other improvements and trees; and (4) information in District's possession concerning available service and utility lines, both public and private.

4.2.3 Geotechnical, Soils. District shall furnish geotechnical data and reports, or employ District Consultants to provide such data or reports, when reasonably deemed necessary by Design Consultant, including test logs, soil classifications, soil bearing values and other data and information necessary to define subsoil conditions.

4.2.4 District Expense. The services, information, surveys and reports required by this Article 4 shall be furnished at District's expense.

4.3 NO WARRANTY BY DISTRICT

District does not expressly or impliedly warrant or represent the accuracy, completeness or suitability of the surveys, data, reports or other information provided under this Article 4. Notwithstanding the foregoing, Design Consultant shall be entitled, to the extent reasonable in the exercise of due care of a design professional performing services comparable to those provided for in this Agreement, to rely upon the completeness, accuracy and sufficiency of such information in performing its obligations under this Agreement; provided, however, that Design Consultant's sole right and remedy in the event that such District-furnished information is found to be inaccurate, incomplete or unsuitable shall be Design Consultant's right to receive additional compensation for Additional Services as authorized and performed in accordance with Article 3, above. Under no circumstances shall the existence of any inaccuracy, incompleteness or unsuitability in such surveys, data, reports or other information provided by District constitute a breach of contract or breach of an express or implied warranty on the part of District.

4.4 APPROVALS

Approvals by or on behalf of District, College, Program Manager or College Project Manager of Design Documents prepared by Design Consultant, or of any design or engineering services performed under this Agreement, shall not, under any circumstances, be deemed as relieving Design Consultant from its sole responsibility to produce and prepare such documents and perform such services in a manner consistent with this Agreement, Applicable Laws and the standards of performance applicable to Design Consultant's performance under this Agreement.

ARTICLE 5 COMPENSATION

5.1 BASIC SERVICES COMPENSATION

5.1.1 Basic Services for Project. Design Consultant's compensation for Basic Services is set forth in the Compensation, Payments and Hourly Rates Schedule. Such compensation consists of separate Fixed Fee(s) and/or Guaranteed Maximum Amount(s) for Basic Services for each of the Project listed in Exhibit "A" attached hereto.

5.1.2 Total Compensation. The compensation for Basic Services set forth in the Compensation, Payments and Hourly Rates Schedule constitutes the sole and exclusive compensation to Design Consultant for performance of Basic Services under this Agreement, save and except only for Reimbursable Expenses authorized under Section 5.2, below.

5.1.3 Approval of Funding (Non-Bond and Multi-Funded Projects). The Design Consultant understands that with respect to Non-Bond and Multi-Funded Projects, execution of this Agreement by the District constitutes confirmation by Program Manager that District has received approval from Governmental Authorities for the funding of Basic Services through completion of the Schematic Design Phase only and that a condition precedent to the District's obligation to make payment of Basic Services compensation to the Design Consultant for Basic Services performed beyond the Schematic Design Phase includes, without limitation, receipt of all required approvals from Governmental Authorities for funding to the District of the compensation provided for by this Agreement. The District reserves the right, in its sole and absolute discretion, to determine whether to request, as well as the timing of any requests, for such funding approvals by Governmental Authorities. The failure by the District to request or obtain, for any reason, approval of funding for any Phase of Basic Services shall not give rise to any claim or action on the part of the Design Consultant for any prospective damages, loss of profits, consequential damages or other Loss related to any unperformed Phases, or portions of Phases, of Basic Services. The District shall notify the Design Consultant in writing upon receipt of such approvals, specifying the Phase or Phases that have been approved for funding. Any suspension in the performance of services by the Design Consultant as a result of the failure of the District to receive such approvals shall, except to the extent caused by the negligence of the Design Consultant or its Subconsultants or the failure of the Design Consultant to comply with this Agreement, be deemed a Period of Inactivity for which the Design Consultant shall be entitled, upon timely notice to the District, to an extension to the Project Schedule in accordance with Section 2.9, above.

5.2 REIMBURSABLE EXPENSES

5.2.1 Reimbursement by District. District shall, in addition to the Basic Services compensation provided for by Section 5.1, above, and (unless otherwise agreed in writing) in addition to the Additional Services compensation provided for in Section 5.3, below, reimburse Design Consultant a sum for its reasonable out-of-pocket expenses listed in this Paragraph 5.2.1 that are incurred and paid for by Design Consultant in furtherance of performance of its obligations under this Agreement, but only to the extent that such expenses are generated in connection with the operations of, and incurred at, its branch office located nearest to the Site:

.1 outside printing of documents (including, without limitation, presentation materials requested by District or College Project Manager) that are required to be delivered and that are delivered to District, College or College Project Manager pursuant to this Agreement (costs of outside printing for internal uses by Design Consultant or its Subconsultants shall not be reimbursable);

.2 reproduction or reprographics costs for copies documents that are required to be delivered and that are delivered to District, College or College Project Manager pursuant to this Agreement (costs of reproduction or reprographics for internal uses by Design Consultant or its Subconsultants shall not be reimbursable);

.3 shipping, overnight mail, postage, messenger, courier and/or delivery services (but not including Design Consultant's company or corporate required communications or reports, such as, but not limited to, time sheets, expense reports, inter-office memoranda, newsletters, etc.);

.4 mileage for business travel (excluding travel from residence to the Site or Design Consultant's home or branch offices or between Design Consultant's home office and branch offices) at the rate established by Internal Revenue Service and related parking and/or tolls;

.5 out-of-town travel as approved in advance in writing by District; and

.6 fees and out-of-pocket costs of District-approved Subconsultants (limited to those costs listed in this Paragraph 5.2.1, plus a mark up thereon of three percent (3%) by Design Consultant only), but only if and to the extent that: (1) such out-of-pocket costs are due and payable by Design Consultant pursuant to terms of a contract approved by District pursuant to Section 1.7 of this Agreement; (2) such out-of-pocket costs are not included in or covered by any fixed fee agreed to by the Subconsultant for services or additional services; and (3) such out-of-pocket costs are not in excess of any not-to-exceed amount applicable thereto under the terms of the Subconsultant's contract.

5.2.2 Exclusive List. The list of Reimbursable Expenses set forth in Paragraph 5.2.1 is the sole and exclusive list of Reimbursable Expenses, whether incurred by Design Consultant or a Subconsultant, for which Design Consultant is entitled to reimbursement.

5.2.3 Property of District. All materials or equipment purchased for the Project and reimbursed by District as a Reimbursable Expense shall become property of District, be labeled as property of District and be delivered to District upon termination of this Agreement.

5.2.4 Approval Limitations. Advance written approval by District shall be required for the following: (1) any single item of Reimbursable Expense that exceeds \$500 in value, whether leased or purchased; or (2) any sum of Reimbursable Expenses that is in excess of the applicable Reimbursable Expense Estimate listed in Compensation, Payments and Hourly Rates Schedule. Failure to obtain such approval shall result in the cost of such item being borne by Design Consultant at Design Consultant's Own Expense.

5.2.5 Markups, Multipliers. Except as expressly permitted by Subparagraph 5.2.1.6, above, the reimbursement provided for in Paragraph 5.2.1 shall not include any administrative charge, multiplier or other markup by Design Consultant or its Subconsultants, of any Tier.

5.2.6 Records. Accurate and detailed records of Reimbursable Expenses pertaining to each Project shall be maintained in an orderly manner on the basis of generally accepted accounting practices and shall be available at Design Consultant's office (or at College's or District's request, shall be brought by Design Consultant to the College campus) for inspection, auditing and/or copying by College or District and its representatives pursuant to Article 7 of this Agreement.

5.3 ADDITIONAL SERVICES COMPENSATION

5.3.1 Fixed Fee. Prior to performance of any Additional Services, Design Consultant and District shall attempt in good faith to negotiate a Fixed Fee amount for such Additional Services. With respect to any such Fixed Fee, unless otherwise agreed to in writing, Design Consultant shall be entitled, in addition to payment of such Fixed Fee, to reimbursement of those Reimbursable Expenses listed in Section 5.2, above, that are incurred in the direct performance of the Additional Services, without any markup or multiplier other than that permitted by Paragraph 5.2.5, above.

5.3.2 Hourly Rates. District may direct in writing that Design Consultant proceed with performance of Additional Services without a Fixed Fee and instead based on actual employee time expended at the Hourly Rates, with or without an agreed Guaranteed Maximum Amount. Design Consultant's compensation for such Additional Services shall not exceed any Guaranteed Maximum Amount that has been agreed to between the parties as applicable to such Additional Services. Additional Services authorized in accordance with this Paragraph 5.3.2 that are performed by Design Consultant shall be compensated at the Hourly Rates. Hourly Rates charged by Subconsultants for Additional Services, if not specifically listed in the Compensation, Payments and Hourly Rates Schedule as approved rates permitted to be charged by the Subconsultant, must be approved by District prior to performance of the Additional Services, which approval will not be unreasonably withheld. Authorized Additional Services charged by Subconsultants at rates that are not so approved in advance by District will be deemed chargeable to District for no more than the lowest Hourly Rate chargeable by any employee of Design Consultant for Additional Services under this Agreement. With respect to Additional Services compensated on an hourly basis (with or without a Guaranteed Maximum Amount), unless otherwise agreed to in writing, Design Consultant shall

be entitled in addition to its hourly compensation to reimbursement of those Reimbursable Expenses listed in Section 5.2, above, that are incurred in the direct performance of the Additional Services, without any markup or multiplier other than that permitted by Paragraph 5.2.5, above.

5.3.3 Lack of Authorization. Except as otherwise provided in Paragraph 3.2.2, above, or Paragraph 5.3.4, below, Additional Services performed without either: (1) an agreed, written Fixed Fee; or (2) a written directive by District specifically and expressly authorizing compensation based on Hourly Rates, shall be deemed performed at by Design Consultant at Design Consultant's Own Expense.

5.3.4 Pre-Authorized Additional Services. Design Consultant's compensation for Pre-Authorized Additional Services listed in Exhibit "B" attached hereto shall be on the basis of either the Fixed Fee(s) or Hourly Rates/Guaranteed Maximum Amounts set forth in the Compensation, Payments and Hourly Rates Schedule attached hereto as Exhibit "C". Compensation and payment for Pre-Authorized Additional Services shall be governed by the provisions of this Section 5.3 and Article 6, below. The compensation for Pre-Authorized Additional Services set forth in the Compensation, Payments and Hourly Rates Schedule constitutes the sole and exclusive compensation to Design Consultant for performance of Pre-Authorized Additional Services under this Agreement, save and except only for Reimbursable Expenses authorized under Section 5.2, above.

5.4 EQUITABLE ADJUSTMENT TO COMPENSATION

Design Consultant's compensation for Basic Services and Additional Services shall be equitably adjusted for a Project with respect to which construction has not commenced within ____ () years of the date of signing of this Agreement by District and Design Consultant. The amount of such adjustment shall be consistent with the general escalation of Design Consultant's rates as determined by comparing the Hourly Rates that Design Consultant is entitled to charge under this Agreement and the lowest rates charged by Design Consultant at the end of the aforesaid period of years to its most-favored public agency clients for which it has performed any services in the preceding 12 months, or to its most-favored privately owned clients if there be no such public agency. For example, if the Design Consultant's compensation is a Fixed Fee and the Design Consultant's rates as aforesaid have escalated by 10%, then the Fixed Fee for Basic Services shall be equitably adjusted by a 10% increase. If the Design Consultant's compensation is based on Hourly Rates, then the Design Consultant's Hourly Rates for Additional Services shall be equitably adjusted to be consistent with the hourly rates currently charged to such other of its most-favored public or private clients. Any such equitable adjustment shall be limited to charges for services performed after the effective date of the equitable adjustment as stated herein. If this Agreement is for design of multiple Projects, then the foregoing equitable adjustment shall only be made for those services performed for a Project for which construction has not commenced within the aforesaid number of years after the date of signing of this Agreement. Design Consultant's compensation charged for services performed or to be performed for other Projects for which construction has commenced within the aforesaid period of time shall not be equitably adjusted.

ARTICLE 6 PAYMENTS

6.1 INVOICES FOR PAYMENT

6.1.1 Monthly Invoices. On or before the fifteenth (15th) Day of each month, Design Consultant shall submit an Invoice for Payment to Program Manager. Each such Invoice for Payment shall separately set forth the following: (1) such portion of the Basic Services compensation set forth in Section 5.1, above, that is due and payable pursuant to Paragraph 6.1.2, below, for Basic Services performed in accordance with this Agreement; (2) such portion of compensation due and payable to Design Consultant pursuant to Paragraph 6.1.2, below, for authorized Additional Services performed in accordance with this Agreement; and (3) authorized Reimbursable Expenses incurred and paid during the previous month for which reimbursement is permitted under the terms of this Agreement. Each such Invoice for Payment shall be mailed or delivered in triplicate to Program Manager with a review copy sent to College to the attention of College Project Manager.

6.1.2 Basic and Additional Services Compensation.

.1 Basic Services. Subject to the provisions of Paragraph 5.1.3, above, if the compensation to Design Consultant for Basic Services for the Project is based on a Fixed Fee, then the amount of District's payment for Basic Services shall be based on the percentage of Basic Services, as determined by District in the exercise of its reasonable discretion, performed for such Project during each Phase of Basic Services in accordance with the Compensation, Payments and Hourly Rates Schedule, less payments previously made. If the compensation for Basic Services for the Project is based on Hourly Rates subject to a Guaranteed Maximum Amount, then the amount of District's obligation to make any payment for Basic Services shall not, when added to sums previously paid, under any circumstances exceed a pro rata portion of the Guaranteed Maximum Amount as determined by multiplying (1) the percentage of Basic Services that District, in its reasonable discretion, judges to have been completed (not to exceed for any Phase or for all Phases the percentages set forth in the Compensation, Payments and Hourly Rates Schedule), times (2) the Guaranteed Maximum Amount. For example: If Basic Services compensation for a Project is a Fixed Fee of \$100,000, and if the percentage set forth in the Compensation, Payments and Hourly Rates Schedule for the Schematic Phase is 10%, and if District judges that the Schematic Phase is 50% complete, then Design Consultant may include in its Invoice for Payment for that month the sum of \$5,000 as compensation for Basic Services. If the compensation for Basic Services is based on Hourly Rates and a Guaranteed Maximum Amount of \$100,000, then Design Consultant may include in its Invoice for Payment for that month as compensation for Basic Services for 50% completion of the Schematic Phase its actual time expended in the performance of Basic Services multiplied times the Hourly Rates, but not to exceed a sum of \$5,000.

.2 Additional Services. If compensation for an Additional Service is based on a Fixed Fee, then payment for such Additional Service shall be based on the percentage of such Additional Services, as determined by District in the exercise of reasonable discretion, performed during the period of time covered by the Invoice for Payment. If compensation for an Additional Service is based on an Hourly Rates and a Guaranteed Maximum Amount, then payment for such Additional Service shall be based on the actual time expended in the performance of the Additional Service multiplied times the Hourly Rates, but not exceed the percentage of such Additional Services, as determined by District in the exercise of reasonable discretion, performed during the period of time covered by the Invoice for Payment multiplied times the Guaranteed Maximum Amount applicable to such Additional Services.

6.1.3 Accompanying Documentation. Invoices for Payment shall be accompanied by: (1) a detailed, narrative description of the progress of performance to date, including, without limitation, (a) a description of the status of completion of Basic Services, (b) the Projection of Basic Services anticipated to be performed over the next 30-Day period of time, (c) a description of the status of performance of Additional Services, (d) the Projection of Additional Services anticipated to be performed over the next 30-Day period of time, (e) Reimbursable Expenses incurred to date and projected to be incurred over the next 30-Day period of time, and (f) the status of Design Consultant's performance under the applicable Project Schedule, noting any delays, their impact on progress of the Project, and recommendations for recapturing time lost; (2) in the case of services performed and compensated on an hourly (as opposed to Fixed Fee basis), detailed time summaries for Basic Services and Additional Services performed that are broken down by time keeper, task and time expended (block billings are not permitted) and copies of time sheets; and (3) invoices, receipts and other documentation reasonably requested by District verifying the amounts of Reimbursable Expenses for which reimbursement is sought in the Invoice for Payment.

6.1.4 Releases. Each Invoice for Payment shall be accompanied by a statutory conditional waiver and release of stop notice rights executed by Design Consultant and its Subconsultants, of every Tier, releasing all stop notice rights with respect to services for which payment is sought in the Invoice for Payment. Such releases shall be in a form approved by District and shall comply with Applicable Laws.

6.2 PAYMENTS

6.2.1 Payment. Payments of undisputed sums due shall be made by District (through Program Manager) monthly within thirty (30) Days after receipt by Program Manager of a proper and timely Invoice for

Payment. In handling payments under this Section 6.2, Program Manager is acting as agent for District and Design Consultant shall have no direct right of action against Program Manager related to payment or non-payment under this Agreement.

6.2.2 Withholding. District shall have the right to withhold from payments to Design Consultant a sum equal to one hundred and fifty percent (150%) of any actual Loss, or District's estimate of any threatened Loss, associated with a breach by Design Consultant of any obligation under this Agreement.

6.3 PAYMENT DISPUTES

In the event of any good faith dispute as to whether a particular payment or a portion of a particular payment is owed or not owed by District to Design Consultant under this Agreement, District shall have the right to do either of the following: (1) make all or part of such disputed payment to Design Consultant without prejudice to District's right to contest the amount so paid; or (2) withhold up to one hundred and fifty percent (150%) of such disputed payment pending resolution of the dispute. Should District withhold all or a portion of any payment invoiced by Design Consultant, District shall so notify Design Consultant in writing of the reasons therefor. From and after Design Consultant's receipt of such notice, District and Design Consultant shall use their good faith efforts to resolve their dispute as quickly as practicable under the circumstances. If District has given such notice, Design Consultant shall not be entitled to terminate this Agreement or suspend its services hereunder on account of such nonpayment provided that District makes payment of all undisputed sums. If District chooses to withhold payments under Clause (2) of this Section 6.3 and if it is subsequently determined that District owes an additional payment to Design Consultant, District shall pay such amount to Design Consultant plus accrued interest, from and after the date such payment was due until paid, computed at the Interest Rate in effect on the date such payment was first due. If District chooses to proceed under Clause (1) of this Section 6.3 and it is subsequently determined that District overpaid Design Consultant, Design Consultant shall refund to District the amount of such payment plus accrued interest, from and after the date of such overpayment until refunded, computed at the Interest Rate in effect on the date that such overpayment was first made by District.

ARTICLE 7 DESIGN CONSULTANT'S RECORDS AND FILES

7.1 RECORDS

7.1.1 Maintenance of Project Books and Records. Design Consultant and its Subconsultants shall maintain complete and accurate books and records with respect to services, costs, expenses, receipts and other information required by District to verify the scope or charges for any services provided under this Agreement. Design Consultant and its Subconsultants shall maintain such records in sufficient detail to permit College, District, District's independent auditors, College Project Manager, or a designee of any of them, to thoroughly evaluate and verify the nature, scope, value and charges for services performed under this Agreement. All such books and records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Such records shall be kept separate from other documents and records unrelated to this Agreement for a period of four (4) years after the later of termination of this Agreement or Final Completion of all Project designed by Design Consultant under this Agreement.

7.1.2 Audit of Records. College, District's independent auditors, Program Manager or their designee shall have the right to examine and to audit books, records, documents, and other evidence sufficient to reflect properly all costs and expenses claimed to have been incurred in Design Consultant's and its Subconsultants' performance of this Agreement, including, without limitation, verification of the amounts and tasks performed for all time expended that is charged to District on an hourly basis. Such right to audit shall include inspection at all reasonable times at Design Consultant's offices or facilities. In addition, Design Consultant shall, at Design Consultant's Own Expense, furnish facilities and cooperate fully with the audit. Upon request, Design Consultant shall provide reproducible copies of books, records and other documents in the possession of Design Consultant and its Subconsultants that are applicable to this Agreement for reproduction by College, District, Program Manager or their designee.

7.1.3 Audit Reimbursement. To the extent that an audit by College, District or their independent auditors discloses excess charges, for Basic Services or Additional Services performed on an hourly basis or for Reimbursable Expenses, inaccurately or improperly charged to the Project by Design Consultant, Design Consultant agrees within thirty (30) Days after demand to remit the amount of the overpayment to District, together with interest thereon, from and after the date that the overpayment was made, at the Interest Rate in effect on the date that the overpayment was first made by District. With respect to any compensation not based on a Fixed Fee and any Reimbursable Expenses, if such audit discloses an overcharge of five percent (5%) or more for sums invoiced to District for any year audited, and such audit is correct, Design Consultant shall pay the actual cost of such audit, which cost, in the case of audits conducted by College or District using in-house staff, shall be computed on the basis of two (2) times the direct payroll of the audit staff completing the audit and audit report.

7.1.4 Privileged Communications. Design Consultant acknowledges that in the course of its services under this Agreement it will be necessary for Design Consultant or its Subconsultants to communicate with District's attorneys, including Office of the General Counsel and/or special legal counsels, or receive or perform work at the request of District's counsel, and that such work product and communications shall be protected by the attorney-client and attorney work product privileges and shall be maintained in confidence by Design Consultant and its Subconsultants, except as authorized in writing by District's general counsel or her/his designee.

7.1.5 Subconsultants. Design Consultant shall include the provisions of this Section 7.1 in all contracts it enters into with its Subconsultants.

ARTICLE 8 TERMINATION OF AGREEMENT

8.1 TERMINATION BY DISTRICT

8.1.1 For Cause.

.1 Notice to Cure. If District determines that Design Consultant has failed to perform in accordance with the terms and conditions of this Agreement, District may terminate all or any part of the Agreement (or any Project or portion of a Project) for cause. This termination shall be effective if Design Consultant does not cure its failure to perform within ten (10) Days (or longer, if authorized in writing by District) after receipt of a notice of intention to terminate from District specifying the failure in performance.

.2 Withholding of Payment.

(1) All Projects. If such termination by District results in a termination of all Projects to be designed by Design Consultant, District will have the right to withhold any or all monies otherwise payable to Design Consultant until Final Completion of the construction of all such Projects.

(2) Partial Termination. If such termination results in a termination of one or more, but not all, Projects, then District will have the right to withhold any or all monies otherwise payable to Design Consultant for the terminated Projects until Final Completion of the construction of all such Projects and if District reasonably determines that such withholding is insufficient to protect against the Losses resulting or threatened by Design Consultant's default, the District may withhold such additional amounts from payments otherwise due for Projects not terminated as may be necessary to protect against such Losses.

(3) Cross-Default. If District reasonably determines that the foregoing withholdings are insufficient to protect against Losses caused by Design Consultant's default, District shall further have the right to withhold sums payable to Design Consultant under any other agreement or contract between District and Design Consultant so as to protect against those Losses incurred or threatened due to the failure of Design Consultant to perform its obligations under this Agreement for which withholding under this Agreement is reasonably determined by District to be insufficient.

.3 Payment. If the amounts withheld exceed the District's Losses due to Design Consultant's default and as determined within a reasonable time after Final Completion of construction of all Projects, the difference will be paid by District to Design Consultant. If the District's Losses due to Design Consultant's default and as determined by District within a reasonable time after Final Completion of construction of all Projects exceed the amounts withheld, Design Consultant shall pay to District the difference.

.4 Other Rights and Remedies. The provisions of this Paragraph 8.1.1 are in addition to, and not a limitation upon, any other rights and remedies of District under Applicable Laws.

8.1.2 For Convenience. District may terminate or suspend performance of all or any part of this Agreement (or of any Project or portion of the Project) for convenience and without cause at any time upon ten (10) Days' written notice to Design Consultant, in which case District will pay Design Consultant as provided in Paragraph 6.1.2, above, for all Basic Services and authorized Additional Services performed, and all authorized Reimbursable Expenses incurred and paid, in accordance with this Agreement up to and including the date of termination. Such payment shall be Design Consultant's sole and exclusive compensation and District shall have no liability to Design Consultant for any other Losses, including without limitation, anticipated profit, prospective losses or consequential damages, of any kind.

8.1.3 Deletion of Services. In the event of termination by District, for cause or convenience, of a portion of this Agreement or the deletion of a portion of the Project to be designed by Design Consultant, then Design Consultant's compensation for Basic Services for the portion of such Project not so terminated shall be equitably adjusted to reflect the resulting reduction in Design Consultant's scope of Basic Services.

8.2 TERMINATION BY DESIGN CONSULTANT

8.2.1 Termination of the Agreement. Design Consultant's right to terminate this Agreement shall be limited to the following:

.1 Design Consultant may terminate if District fails to make any undisputed payment to Design Consultant when due in accordance with this Agreement and such failure remains uncured for thirty (30) Days after written notice to District of such default and of Design Consultant's intent to terminate.

.2 If the District orders in writing the suspension of all services under this Agreement and such suspension continues for more than one hundred twenty (120) consecutive Days, Design Consultant may terminate this Agreement upon thirty (30) Days' written notice to District, provided District does not reactivate the Project within such thirty (30) Day period. If the Project is reactivated and this Agreement is still in full force and effect, Design Consultant shall be entitled to payment of additional sums for reasonable expenses incurred and paid by Design Consultant, which are solely and directly attributable to the interruption and resumption of service. Except as provided in Section 5.4, above, no other additional compensation or adjustment to compensation under this Agreement shall be permitted. Under no circumstances shall District be responsible to compensate Design Consultant for any anticipated profit, prospective losses or damages, of any kind, associated with any suspension of services under this Agreement, regardless of its reason, cause or duration.

8.2.2 Payment for Services. In the event of a termination of this Agreement by Design Consultant in accordance with this Section 8.2, District's sole obligation shall be to pay Design Consultant an amount for its Basic Services, Additional Services and Reimbursable Expenses calculated in accordance with Paragraph 8.1.2 of this Agreement. Such payment shall be Design Consultant's sole and exclusive compensation and District shall have no further liability or obligation to Design Consultant for any other compensation or damages, including, without limitation, anticipated profit, prospective losses or damages, of any kind.

**ARTICLE 9
INDEMNIFICATION AND INSURANCE**

9.1 INDEMNIFICATION

9.1.1 General Indemnity. To the fullest extent permitted by Applicable Law, Design Consultant agrees to defend, indemnify and hold harmless, College, District, the Board of Trustees, and each of their respective members, officers, employees, agents and volunteers ("Indemnitee(s)"), and each of them, through legal counsel reasonably acceptable to District, from any and all Losses (other than a loss of allocation of State Funds based on enrollment) that arise out of or relate to any act or omission constituting ordinary and not professional negligence (including, without limitation, negligent breach of contract), recklessness or willful misconduct on the part of Design Consultant or its Subconsultants, or their respective employees, agents, representatives or independent contractors. The Indemnitees shall be entitled to the defense and indemnification provided for hereunder regardless of whether the Loss is in part caused or contributed to by the acts or omissions of an Indemnitee or any other person or entity; provided, however, that nothing contained herein shall be construed as obligating Design Consultant to indemnify and hold harmless any Indemnitee to the extent not required under the provisions of Paragraph 9.1.3, below.

9.1.2 Indemnity for Professional Negligence. To the fullest extent permitted by Applicable Law, Design Consultant agrees to indemnify and hold harmless the Indemnitees, and each of them against any and all Losses (other than a loss of allocation of State Funds based on enrollment), and reimburse any Indemnitee for any attorney's fees or court costs incurred in defense of any action brought against such Indemnitee, to the extent arising out of or relating to any act or omission constituting professional negligence on the part of Design Consultant or its Subconsultants, or their respective employees, agents, representatives or independent contractors. The Indemnitees shall be entitled to the indemnification and reimbursement provided for hereunder regardless of whether the Loss is in part caused or contributed to by the acts or omissions of an Indemnitee or any other person or entity; provided, however, that nothing contained herein shall be construed as obligating Design Consultant to indemnify and hold harmless any Indemnitee to the extent not required under the provisions of Paragraph 9.1.3, below.

9.1.3 Limitations on Indemnity Obligation. Without affecting the rights of District under any other provision of this Agreement, Design Consultant shall not be required to indemnify or hold harmless an Indemnitee for a Loss due to that Indemnitee's negligence, recklessness or willful misconduct; provided, however, that such negligence, recklessness or willful misconduct has been determined by agreement of Design Consultant and Indemnitee or has been adjudged by the findings of a court of competent jurisdiction. In instances where an Indemnitee's negligence accounts for only a percentage of the Loss involved, the obligation of Design Consultant will be for that portion of the Loss not due to the negligence of that Indemnitee.

9.1.4 Subconsultant Indemnity Agreements. Design Consultant agrees to obtain or cause to be obtained executed defense and indemnity agreements with provisions identical to those set forth in this Section 9.1 from each and every Subconsultant, of every Tier. In the event Design Consultant fails to do so, Design Consultant agrees to be fully responsible to provide such defense and indemnification according to the terms of this Section 9.1.

9.1.5 No Limitation by Insurance or Employee Benefits. In claims against any Indemnitee under Paragraphs 9.1.1 or 9.1.2, above, by an employee of Design Consultant or any Subconsultant, of any tier, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligations under said Paragraphs shall not be limited by the amount or type of damages, compensation or benefits payable by or for Design Consultant or a Subconsultant under any policy of insurance, workers' compensation acts, disability benefit acts or other employee benefit acts.

9.2 INSURANCE

9.2.1 Basic Insurance Requirements. Prior to commencing Work, Design Consultant and each of its Subconsultants shall, unless coverage is waived or the amount of coverage reduced in a writing executed by District, provide and maintain insurance, at Design Consultant's Own Expense, against all claims or losses which may arise from or in connection with the performance of services by Design Consultant or its Subconsultants, or either of their/its agents, representatives or employees.

.1 Without in any way affecting the indemnity provided in or by Section 9.1, above, Design Consultant shall secure before commencement of the Work the types and amounts of insurance specified in this Section 9.2. Design Consultant shall use existing insurance to comply with these requirements. If that existing insurance does not meet the requirements set forth here, it will be amended to do so.

.2 Insurance required by this Agreement to be provided by Design Consultant or its Subconsultants shall be placed with insurers with a current A.M. Best's rating of no less than A:VI unless otherwise approved by District.

.3 For each insurance coverage required by this Section 9.2 Design Consultant's insurer or insurance broker shall agree to provide thirty (30) Days' prior written notice to District in accordance with the notice provisions of this Agreement.

9.2.2 Minimum Limits of Insurance. Design Consultant and each of its Subconsultants shall obtain insurance of the types and in the amounts described below:

.1 Commercial General Liability Insurance (CGL) with a limit of not less than \$1,000,000 each occurrence/\$2,000,000 in the aggregate.

.2 Auto Coverage with a limit of not less than \$1,000,000 each accident.

.3 Professional Liability (Errors and Omissions) Insurance with a limit not less than \$1,000,000 each claim and aggregate.

.4 Workers' Compensation Insurance as required by the Applicable Laws, including employer's liability insurance in the amount of \$1,000,000 per accident for bodily injury or disease.

9.2.3 Minimum Scope of Insurance.

.1 CGL insurance shall be written on Insurance Services Office form CG 00 01 (or a substitute form acceptable to District providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and explosion, collapse and underground hazards.

.2 Auto Coverage shall cover liability arising out of any automobiles (including owned, hired and non-owned automobiles). Coverage shall be written on Insurance Services Office form CA 00 01, or a substitute form acceptable to District providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide the contractual liability coverage provided in the 1990 and later editions of CA 00 01, or a substitute form acceptable to District providing for equivalent coverage. In the event Design Consultant does not own any automobiles, this requirement may be satisfied by an endorsement to the Commercial General Liability policy covering non-owned and hired autos.

.3 If the Professional Liability Insurance policy is written on a claims made basis, it shall be maintained continuously for a period of no less than five (5) years after Final Completion of all Project designed or agreed to be designed by Design Consultant under this Agreement. If Design Consultant ceased to do business

during this period, Design Consultant agrees to purchase an extended reporting option on its last professional liability policy so that the period of coverage for reporting claims extends to at least five (5) years after Final Completion. The "retro date" must be shown and must be before the date of execution of this Agreement by District and Design Consultant.

9.2.4 Self-Insured Retentions. Any deductibles or self-insured retentions in excess of One Hundred Thousand dollars/no cents (\$100,000.00) must be declared to and approved by District, which approval may be granted or withheld in the sole discretion to District. In the event that District does not approve of such self-insured retentions, then, at the option of District exercised in its sole discretion, either: (1) the insurer shall reduce or eliminate such self-insured retentions as respects District, its officers, officials, employees or volunteers; or (2) Design Consultant shall provide a financial guarantee satisfactory to District guaranteeing payment of any Losses and related investigation, claim administration and defense expenses.

9.2.5 Other Insurance Provisions. The Commercial General Liability and Business Automobile Liability policies required by this Agreement are to contain, or be endorsed to contain, the following provisions:

.1 District, its officers, officials, employees, and volunteers and all other Indemnitees are to be covered as insureds with respect to: (1) liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the insured; (2) liability arising out of services, work or operations performed by or on behalf of Design Consultant and its Subconsultants including materials, parts or equipment furnished in connection with such services, work or operations; and (3) liability for occurrences, acts or events covered by Design Consultant's CGL policy, using the Insurance Services Office additional insured endorsement form CG 20 10 or a substitute form acceptable to District providing equivalent coverage. District and other additional insureds mentioned in this Subparagraph shall not, by reason of their inclusion as additional insured, become liable for any payment of premiums to carriers for such coverage.

.2 For any claims related to the Project, insurance coverage shall be primary as respects District, its officers, officials, employees and volunteers and all other Indemnitees. Any insurance or self-insurance maintained by District, its officers, officials, employees or volunteers shall be in excess of insurance required by this Agreement and shall not contribute with it.

.3 Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

9.2.6 Waiver of Subrogation. For Commercial General Liability, Workers' Compensation, and Employer's Liability insurance, the insurer shall agree to waive all rights of subrogation against District, its officers, officials, employees, and volunteers and all other Indemnitees for Losses arising from activities and operations of an insured in the performance of services under this Agreement.

9.2.7 Lapse in Coverage. If Design Consultant or any Subconsultant, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. District, at its sole option, may terminate this Agreement and recover any Losses resulting from Design Consultant's breach. Alternatively, District shall have the right, but not the obligation, without further notice to Design Consultant, to deduct from sums due to Design Consultant any premium costs advanced by District for such insurance and to purchase insurance as required for the protection of District as provided in this Agreement.

9.2.8 Verification of Insurance. Design Consultant shall furnish District with original certificates and amendatory endorsements effecting coverage required by this Section 9.2. All certificates and endorsements are to be received and approved by District before services under this Agreement commences. District reserves the right to require complete, certified copies of all required insurance policies at any time, including endorsements effecting the coverage required by these specifications. District shall the right to retain a copy of such policy provided that, if requested by Design Consultant in writing, reasonable steps will be taken by District to restrict review of such policies to representatives of District, College and Program Manager.

9.2.9 Subconsultants. Design Consultant shall include all of its Subconsultants as insureds under its policies of insurance required by this Section 9 or shall require that its Subconsultants maintain insurance coverages on the same terms and with the same coverage amounts as required of Design Consultant under this Agreement. Design Consultant shall, upon request by District, furnish separate certificates and endorsements evidencing compliance with the requirements of this Paragraph.

ARTICLE 10 DISPUTE RESOLUTION

10.1 RESOLUTION OF CLAIMS

Claims shall be resolved by the parties in accordance with the provisions of this Article 10, in lieu of any and all rights under the law that either party may have to have its rights adjudged by a trial court or jury. All Claims shall be subject to the Claims Dispute Resolution Process set forth in this Article 10, which shall be the exclusive recourse of Design Consultant and District for determination and resolution of Claims.

10.2 RESOLUTION OF OTHER DISPUTES

Disputes between District and Design Consultant that do not constitute Claims shall be resolved by way of an action filed in the Superior Court of the State of California, County of Los Angeles and shall not be subject to the Claims Dispute Resolution Process.

10.3 INITIATION OF CLAIMS DISPUTE RESOLUTION PROCESS

10.3.1 Claims by Design Consultant. Design Consultant's right to commence the Claims Dispute Resolution Process as set forth in Section 10.4, below, shall arise upon District's written response denying all or part of a Claim by Design Consultant. Design Consultant shall initiate the Claims Dispute Resolution Process by submitting a written Statement of Dispute to District within seven (7) Days after receipt of the decision by District denying all or a part of the Claim. Failure by Design Consultant to timely submit its Statement of Dispute shall result in the decision by District on the Claim becoming final and binding. Design Consultant's Statement of Dispute shall be signed under penalty of perjury and shall state with specificity the events or circumstances giving rise to the Claim, the dates of their occurrence and the asserted effect, if any, on the compensation due or time of performance obligations of Design Consultant under this Agreement. Such Statement of Dispute shall include adequate supporting data to substantiate the Claim. Adequate supporting data for a Claim relating to an adjustment of Design Consultant's obligations relative to time of performance shall include a detailed, event-by-event description of the impact of each Delay on Design Consultant's time for performance. Adequate supporting data to a Statement of Dispute submitted by Design Consultant involving Design Consultant's compensation shall include a detailed cost breakdown and supporting cost data in such form and including such detailed information and other supporting data as required to demonstrate the grounds for, and precise amount of, the Claim.

10.3.2 Claims by District. Subject to any statutes of limitations that may exist under Applicable Laws, District's right to commence the Claims Dispute Resolution Process shall arise at any time following District's actual discovery of the circumstances giving rise to a Claim by District. Nothing contained herein shall preclude District from asserting Claims in response to a Claim asserted by Design Consultant. A Statement of Claim submitted by District shall state the events or circumstances giving rise to the Claim, the dates of their occurrence and the damages or other relief claimed by District as a result of such events.

10.4 CLAIMS DISPUTE RESOLUTION PROCESS

The parties shall utilize each of the following steps in the Claims Dispute Resolution Process in the sequence they appear in Paragraphs 10.4.1 through 10.4.3, below. Each party shall participate fully and in good faith in each step and level in the Claims Dispute Resolution Process, which good faith effort shall be a condition precedent to the right of each party to proceed to the next step and level in the Claims Dispute Resolution Process.

10.4.1 First Step: Stepped Negotiations.

.1 Project Level Negotiations. Project-level representatives of District (consisting of a representative of College Project Manager) and Design Consultant (consisting of Design Consultant's project manager) shall meet as soon as possible (but not later than seven (7) Days after receipt by the responding party of a Statement of Claim) in a good faith effort to negotiate a resolution to the Claim. If the Claim involves the assertion of a right or claim by a Subconsultant, of any Tier, that is in turn being asserted by Design Consultant against District ("Pass-Through Claim"), then such Subconsultant shall also have the Project representative present of comparable seniority to Design Consultant's negotiating representative. Upon completion of the meeting, if the Claim is not resolved, District and Design Consultant may either continue the Project Level Negotiations or either may declare in writing the Project Level Negotiations ended. All discussions that occur during the Project Level Negotiations and all documents prepared solely for the purpose of Project Level Negotiations shall be confidential and privileged pursuant to California Evidence Code Sections 1119, 1120 and 1152.

.2 Mid-Management Level Negotiations. If the Project Level Negotiations fail to resolve the Claim, then management representatives of District (consisting of a representative of Program Manager) and Design Consultant (consisting of a representative at the level of vice-president or general operations manager) shall meet as soon as possible (no later than seven (7) Days after the end of the Project Level Negotiations) in a good faith effort to negotiate a resolution to the Claim. If the Claim involves a Pass-Through Claim by a Subconsultant, then such Subconsultant shall also have the Project representative present of comparable seniority to Design Consultant's negotiating representative. Upon completion of the meeting, if the Claim is not resolved, District and Design Consultant may either continue the Mid-Management Level Negotiations or either party may declare in writing the Mid-Management Level Negotiations ended. All discussions that occur during the Mid-Management Level Negotiations and all documents prepared solely for the purpose of the Mid-Management Level Negotiations shall be confidential and privileged pursuant to California Evidence Code Sections 1119, 1120 and 1152.

.3 Senior Management Level Negotiations. If the Mid-Management Level Negotiations fail to resolve the Claim, then senior management representatives of District (consisting of the Executive Director) and Design Consultant (consisting of a representative at the level of owner, president or chief executive officer) shall meet as soon as possible (no later than seven (7) Days after the end of the Mid-Management Level Negotiations) in a good faith effort to negotiate a resolution to the Claim. If the Claim involves a Pass-Through Claim by a Subconsultant, then such Subconsultant shall also have the Project representative present of comparable seniority to Design Consultant's negotiating representative. Upon completion of the meeting, if the Claim is not resolved, District and Design Consultant may either continue the Senior Management Level Negotiations or either party may declare in writing the Senior Management Level Negotiations ended. All discussions that occur during the Senior Management Level Negotiations and all documents prepared solely for the purpose of the Senior Management Level Negotiations shall be confidential and privileged pursuant to California Evidence Code Sections 1119, 1120 and 1152.

.4 Deferral of Further Resolution. Following the completion of the negotiations required by Subparagraphs 10.4.1.1 through 10.4.1.3, if any Claim remains unresolved that involves the rights or obligations of persons or entities other than Design Consultant and District, then continuation of the Claims Dispute Resolution Process as provided in Paragraphs 10.4.2 and 10.4.3, below, shall be deemed automatically suspended and deferred until Final Completion and Acceptance of the Project; provided, however, that District shall have the right, in its sole and absolute discretion, to elect and require that the Claims Dispute Resolution Process with respect to any such Claim or Claims not be deferred and that the Claims Dispute Resolution Process continue prior to such Final Completion and Acceptance. All Claims that have been deferred in accordance with the provisions of this Subparagraph 10.4.1.4 shall be consolidated within a reasonable time after such Final Completion and Acceptance and thereafter proceed to resolution in accordance with Paragraphs 10.4.2 and 10.4.3, below. Nothing contained herein or elsewhere in this Article 10 shall be interpreted as limiting the parties' right to continue informal negotiations of Claims that have been deferred pursuant to this Subparagraph 10.4.1.4; provided, however, that

such informal negotiations shall not be interpreted as a waiver by District of its right to defer further steps in the Contract Dispute Resolution Process until after Final Completion and Acceptance of the Project.

10.4.2 Second Step: Mediation. If the Claim remains unresolved after completion of stepped negotiations pursuant to Paragraph 10.4.1, above, the parties agree to submit the Claim to non-binding mediation before a third party mediator in accordance with the following provisions:

.1 Qualifications of Mediator. The parties shall endeavor to select a mediator who is a retired judge or an attorney with at least five (5) years of experience in public works construction contract law and in mediating public works construction disputes

.2 Submission to Mediation. The party initiating mediation of a Claim shall provide written notice to the other party of its decision to mediate.

.3 Selection of Mediator. In the event the parties are unable to agree upon a mediator within fifteen (15) Days after the receipt of such written notice, then the parties shall submit the matter to the American Arbitration Association (AAA) at its Los Angeles Regional Office for selection of a mediator in accordance with the AAA Construction Industry Mediation Rules.

.4 Mediation Process. The location of the mediation shall be at the offices of District. The costs of mediation shall be shared equally by both parties. The mediator shall provide an independent assessment on the merits of the Contract Dispute and recommendations for resolution. All discussions that occur during the mediation and all documents prepared solely for the purpose of the mediation shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152.

.5 End of Mediation. District or Design Consultant may, if either determines in good faith that further mediation would not be productive, declare in writing the end of the mediation

10.4.3 Third Step: Binding Arbitration. Upon either District or Design Consultant declaring in writing the end of the mediation conducted in accordance with Paragraph 10.4.2, if the Claim is not resolved, then the party wishing to further pursue resolution or determination of the Claim shall submit the Claim for final and binding arbitration administered by the Office of Administrative Hearings for the State of California and conducted in accordance with the provisions of Chapter 4 of Division 2 of Title 1 of the California Code of Regulations ("Public Works Contract Arbitration Rules"). The award of the arbitrator therein shall be final and may be entered as a judgment by any court of competent jurisdiction. Such arbitration shall be conducted in accordance with the Public Works Contract Arbitration Rules, as modified and supplemented by the following provisions:

.1 Arbitration Initiation. The arbitration shall be initiated by filing a complaint in arbitration in accordance with the regulations promulgated pursuant to the Public Works Contract Arbitration Rules.

.2 Qualifications of the Arbitrator. The arbitrator shall be selected based on mutual agreement of the parties. The arbitrator shall be a retired judge or an attorney with at least five (5) years of experience with public works construction contract law and in arbitrating public works construction disputes. In the event the parties cannot agree upon a mutually acceptable arbitrator, then the provisions of the Public Works Contract Arbitration Rules shall be followed in selecting an arbitrator possessing the qualifications required herein.

.3 Hearing Days and Location. Arbitration hearings shall be held at the offices of District and shall, except for good cause shown to and determined by the arbitrator, be conducted on consecutive business days, without interruption or continuance.

.4 Hearing Delays. Arbitration hearings shall not be delayed, continued or postponed except upon good cause shown or stipulation of the parties to the arbitration; provided, however, that Design Consultant and District agree to the stay of arbitration proceedings as provided in Subparagraph 10.4.1.4, above.

.5 Recording Hearings. All hearings to receive evidence shall be recorded by a certified stenographic reporter, with the costs thereof borne equally by District and Design Consultant and allocated by the arbitrator in the final award.

.6 Limitation of Depositions. Discovery shall be permitted in accordance with the provisions of the Public Works Contract Arbitration Rules; provided, however, that depositions shall be limited to both of the following: (1) ten (10) percipient witnesses for District and ten (10) percipient witnesses for Design Consultant; and (2) expert witnesses. Upon a showing of good cause, the arbitrator may increase the number of permitted depositions. An individual who is both percipient and expert shall, for purposes of applying the foregoing numerical limitation only, be deemed an expert. Expert reports shall be exchanged prior to receipt of evidence, in accordance with the direction of the arbitrator, and expert reports (including initial and rebuttal reports) not so submitted shall not be admissible as evidence.

.7 Authority of the Arbitrator. The arbitrator shall have the authority to hear dispositive motions and issue interim orders and interim or executory awards.

.8 Waiver of Jury Trial. Design Consultant and District each voluntarily waives its right to a jury trial with respect to any Claim that is subject to binding arbitration in accordance with the provisions of this Paragraph 10.4.3. Design Consultant shall include this provision for waiver of jury trial, waiving the right to jury trial in any action involving District as a party, in its contracts with its Subconsultants who provide any portion of the services required by this Agreement.

.9 Consolidation, Joinder. The parties hereto consent to the consolidation or joinder of any Claims involving other Project Team members to the extent that resolution of such Claims are reasonably necessary to the complete resolution of a Claim between District and Design Consultant or against whom District or Design Consultant may assert a Claim in the nature of indemnity or contribution.

.10 Interpretation. Although it is the intent of the parties that all of the provisions of the Public Works Contract Arbitration Rules (as modified and supplemented by the provisions of this Paragraph 10.4.3) be applicable to an arbitration conducted hereunder, the provisions of California Public Contract Code Sections 10240, whether or not duplicative of the provisions of the Public Works Contract Arbitration Rules, are not intended to be, and shall not be, applicable to an arbitration conducted pursuant to this Paragraph 10.4.3. The requirements of this Paragraph 10.4.3 shall, wherever possible, be interpreted as being modifications of and supplementary to the requirements of the Public Works Contract Arbitration Rules. In the event of a conflict between the provisions of this Paragraph 10.4.3 and the Public Works Contract Arbitration Rules that cannot be resolved by such an interpretation, then the Public Works Contract Arbitration Rules shall control.

10.5 NON-WAIVER

Participation in the Claims Dispute Resolution Process shall not constitute a waiver, release or compromise of any defense of District, including, without limitation, any defense based on the assertion that the rights of Design Consultant that are the basis of a Claim were previously waived by Design Consultant due to failure to comply with the Agreement, including, without limitation, Design Consultant's failure to comply with any time periods for providing notice of requests for adjustments of the Project Construction Budget or Project Schedule or for submission of Claims or supporting documentation of Claims.

ARTICLE 11 NON-DISCRIMINATION

11.1 NON-DISCRIMINATION IN SERVICES

11.1.1 Design Consultant shall not discriminate in the provision of services hereunder because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability in accordance

with the requirements of Applicable Laws. For the purpose of this Section 11.1, discrimination in the provision of services may include, but is not limited to any of the following:

- .1 denying any person any service or benefit or the availability of a facility;
- .2 providing any service or benefit to any person which is not equivalent, or in a non-equivalent manner or at a non-equivalent time, from that provided to others;
- .3 subjecting any person to segregation or separate treatment in any manner related to the receipt of any service;
- .4 restricting any person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; or
- .5 treating any person differently from others in determining admission, enrollment, eligibility, membership, or any other requirement or condition which persons must meet in order to be provided any service or benefit.

11.1.2 Design Consultant shall ensure that intended beneficiaries of this Agreement are provided services without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability.

11.1.3 Design Consultant shall establish and maintain written procedures under which any person, applying for or receiving services hereunder, may seek resolution from Design Consultant of a complaint with respect to any alleged discrimination in the provision of services by Design Consultant's personnel. At any time any person applies for services under this Agreement, he or she shall be advised by Design Consultant of these procedures. A copy of such procedures shall be posted by Design Consultant in a conspicuous place, available and open to the public, in each of Design Consultant's facilities where services are provided hereunder.

11.2 NON-DISCRIMINATION IN EMPLOYMENT

11.2.1 Design Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability in accordance with requirements of Applicable Laws. Design Consultant shall ensure that qualified applicants are employed, and that employees are treated during employment without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, in accordance with requirements of Applicable Laws. Such obligation shall include, but not be limited to, the following:

- .1 employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and
- .2 selection for training, including apprenticeship.

11.2.2 Design Consultant agrees to post in conspicuous places in each of Design Consultant's facilities providing services hereunder, available and open to employees and applicants for employment, notices setting forth the provisions of this Section 11.2.

11.2.3 Design Consultant shall, in all solicitations or advertisements for employees placed by or on behalf of Design Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, in accordance with requirements of Applicable Laws.

11.2.4 Design Consultant shall send to each labor union or representative co-workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of Design Consultant's commitments under this Section 11.2.

11.2.5 Design Consultant certifies and agrees that it will deal with its Subconsultants, bidders, or vendors without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability in accordance with the requirements of Applicable Laws.

11.2.6 In accordance with Applicable Laws, Design Consultant shall allow duly authorized representatives of the County, State, and Federal government access to its employment records during regular business hours in order to verify compliance with the provisions of this Section 11.2. Design Consultant shall provide such other information and records as such representatives may require in order to verify compliance with the provisions of this Section 11.2.

11.2.7 If District finds that any of the provisions of this Section have been violated, such violation shall constitute a material breach of this Agreement upon which District may cancel, terminate or suspend this Agreement. While District reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that Design Consultant has violated State or Federal anti-discrimination laws shall constitute a finding by District that Design Consultant has violated the provisions of this Section.

11.2.8 The parties agree that in the event Design Consultant violates any of the provisions of this Section, District shall be entitled, at its option, to the sum of five hundred dollars (\$500) pursuant to Civil Code Section 1671 as liquidated damages in lieu of canceling, terminating or suspending this Agreement.

11.2.9 Design Consultant hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by applicable federal regulations, and all guidelines and interpretations issued pursuant thereto, to the end that no qualified disabled person shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of Design Consultant receiving federal financial assistance.

ARTICLE 12 NOTICES

All notices, demands, or requests to be given under this Agreement shall be given in writing and conclusively shall be deemed received in any of the following ways:

- (1) on the date delivered if delivered personally or by commercial delivery service;
- (2) on the third (3rd) business day after the deposit thereof in the United States mail, postage prepaid, and addressed as hereinafter provided;
- (3) on the date sent if sent by facsimile transmission; and
- (4) on the date it is accepted or rejected if sent by certified mail.

All notices, demands or requests shall include the Project name and date of this Agreement and be addressed to the parties as follows:

To District at:

Build-LACCD
915 Wilshire Boulevard, Suite 1800
Los Angeles, CA, 90017
Attention: James Sohn, Program Director

Re: *(Insert Project Name and Contract No.)*

With an additional copy to:

Los Angeles Community College District
770 Wilshire Boulevard
Los Angeles, CA 90017
Attention: Larry Eisenberg, Executive Director, Facilities Planning & Development

In addition, copies of all notices of default or termination served by Design Consultant under this Agreement shall in order to be effective be provided to:

Camille A. Goulet, Esq.
Los Angeles Community College District
Office of General Counsel
770 Wilshire Boulevard
Los Angeles, CA 90017

To Design Consultant at:

**ARTICLE 13
GOVERNING LAW AND VENUE**

This Agreement shall be governed by the laws of the State of California. The Superior Court for the County of Los Angeles shall have exclusive jurisdiction over any litigation arising out of or relating to this Agreement.

**ARTICLE 14
NUISANCE**

Design Consultant shall not maintain, commit or permit the maintenance or commission of any nuisance in connection with the performance of services under this Agreement.

**ARTICLE 15
HAZARDOUS SUBSTANCES**

If Design Consultant becomes aware that a Hazardous Substance is on Site, or on the campus of a College, that has not been previously identified as requiring remediation or other action, Design Consultant shall immediately notify College Project Manager in writing describing in detail the conditions encountered. Design Consultant's obligation hereunder shall be limited to reporting Hazardous Substances of which Design Consultant or its Subconsultants acquire actual knowledge.

**ARTICLE 16
FEDERAL GRANTS**

In the event of a federal grant or other federal financing participation in the funding of the Project, Design Consultant shall permit access to and grant the right to examine its books covering its services performed and expenses incurred under this Agreement. Design Consultant shall comply with all applicable federal agency requirements including those pertaining to work hours, overtime compensation, non-discrimination, contingent fees, etc.

**ARTICLE 17
WAIVER**

Provisions of this Agreement may be waived by District only in writing signed by the Executive Director stating expressly that it is intended as a waiver of specified provisions of the Agreement. A waiver by either party to this Agreement of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein whether of the same or a different character.

**ARTICLE 18
NO THIRD PARTY RIGHTS**

Nothing contained in this Agreement is intended to make any person or entity who is not a signatory to this Agreement a third party beneficiary of any right created by this Agreement or by operation of law.

**ARTICLE 19
EXTENT OF AGREEMENT**

This Agreement represents the entire Agreement with District and Design Consultant for furnishing of services to District in connection with the Project covered by this Agreement and supersedes all prior negotiations, representations or agreements, either written or oral, and may be amended only by written instrument signed by both District and Design Consultant, and formally approved or ratified by the Board of Trustees.

**ARTICLE 20
SEVERABILITY**

Should any part, term, portion or provision of this Agreement, or the application thereof to any party or circumstance, be held to be illegal, invalid or in conflict with any Applicable Laws, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to other any party or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by Applicable Laws.

**ARTICLE 21
SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon District and Design Consultant and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any monies due or to become due hereunder, nor any claim hereunder, may be assigned by Design Consultant without the prior written consent and approval of District, which may be granted or withheld in District's sole discretion.

**ARTICLE 22
CONFIDENTIALITY**

Design Consultant shall treat all information and data furnished to it by College, District or College Project Manager or any other Project Team member or otherwise obtained or prepared by Design Consultant concerning

the Project as strictly confidential and shall not disclose any of the same to any other person or entity unless required to do so in connection with Design Consultant's performance of this Agreement or any governmental filings or applications. Design Consultant shall not engage in or permit any public references or statements to the Project, College, District or Design Consultant's services hereunder, including, without limitation, referring to the same in advertising or promotional brochures or materials or granting interviews to broadcast, print or other media, without the prior written consent of District, which may be granted or withheld in the sole discretion of District. Nothing herein shall be interpreted as limiting Design Consultant's rights under California Education Code Section 71025 (b), including, without limitation, the right to make any true and accurate statement in the course of stating his/her experience or qualifications for any professional or business credit or employment. Design Consultant shall instruct all of its employees of this obligation and shall use its best efforts to ensure full compliance in compliance with this Article 22. The provisions of this Article 22 shall survive any termination of this Agreement.

ARTICLE 23 INDEPENDENT CONTRACTOR

Design Consultant is and shall at all times remain as to District a wholly independent contractor. Neither District nor any of its agents shall have control over the conduct of Design Consultant or any of Design Consultant's officers, agents or employees, except as herein set forth. Design Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of District.

ARTICLE 24 FAIR EMPLOYMENT PRACTICES/EQUAL OPPORTUNITY ACTS

In the performance of this Agreement, Design Consultant shall comply with all applicable provisions of the California Fair Employment Practices Act (California Government Code Sections 12940-48) and the applicable equal employment provisions of the Civil Rights Act of 1964 (42 U.S. C. 200e - 217), whichever is more restrictive.

ARTICLE 25 PERMITS AND LICENSES

Design Consultant, at its sole expense, shall obtain and maintain during the Term of this Agreement, all required business and professional permits, licenses and certificates.

ARTICLE 26 CONFLICTS OF INTEREST

Design Consultant agrees not to accept any employment or representation during the Term of this Agreement which is or may likely make Design Consultant "financially interested" (as provided in California Government Code Sections 1090 and 87100) in any decision made by College or District on any matter in connection with which Design Consultant has been retained pursuant to this Agreement.

ARTICLE 27 WAIVER OF CONSEQUENTIAL DAMAGES

Design Consultant and District waive all rights and claims against each other for Consequential Damages arising out of or relating to this Agreement. This mutual waiver includes, without limitation, damages incurred by

either District or Design Consultant for loss of use, loss of profit or income, loss of management or services, loss of productivity, loss of financing or funding, loss of business reputation and all consequential damages due to termination or suspension by Design Consultant or District. Nothing herein shall be interpreted as a limitation on or a release or waiver of any rights of District under Section 9.1, above (Indemnity).

**ARTICLE 28
PROVISIONS REQUIRED BY APPLICABLE LAWS**

Each and every provision of law and clause required by Applicable Laws to be inserted in this Agreement shall be deemed to be inserted in this Agreement and this Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or if inserted and requires correction, then upon request of either party this Agreement shall forthwith be amended by the parties to this Agreement to make such insertion or correction.

**ARTICLE 29
SURVIVAL**

All provisions of this Agreement that either expressly, or by their nature, require performance or assumption by Design Consultant of an obligation that extends beyond termination of this Agreement or Final Completion of the Project, including, without limitation, Design Consultant's obligations of, or relating to, indemnification, insurance, confidentiality, retention and audit of books and records, resolution of Claims and ownership of documents shall be deemed to survive either termination or complete performance of this Agreement.

**ARTICLE 30
EXPIRATION OF TERM**

Expiration of the Term of this Agreement at the end of five (5) years after its execution shall not be construed as relieving Design Consultant from its liability or responsibility to District, if any, for failing to complete or timely complete its performance under and in accordance with this Agreement within the Term of this Agreement nor as obligating District to pay a compensation to Design Consultant for services performed during the Term that exceeds a compensation due under this Agreement that is proportionate to the services actually completed.

**ARTICLE 31
EXHIBITS**

The following Exhibits are attached hereto and incorporated herein by this reference:

<u>Exhibit "A"</u>	-	Project Descriptions, Building Programs and Project Construction Budgets
<u>Exhibit "B"</u>	-	Excluded Services and Pre-Authorized Additional Services
<u>Exhibit "C"</u>	-	Compensation, Payments and Hourly Rates Schedule
<u>Exhibit "D"</u>	-	Key Personnel and Pre-Approved Subconsultants
<u>Exhibit "E"</u>	-	Master Project Schedule
<u>Exhibit "F"</u>	-	Estimate of Project Construction Costs Form
<u>Exhibit "G"</u>	-	Design Document Submission Standards
<u>Exhibit "H"</u>	-	DSA Memoranda of Understanding

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

LOS ANGELES COMMUNITY COLLEGE DISTRICT (DESIGN CONSULTANT)

Larry Eisenberg
Executive Director
Facilities Planning and Development

Signature

Print Name

Title

Firm's Professional License/Registration