

AGREEMENT

Between

Woodside Elementary School District

And

Murakami/Nelson Architectural Corporation

For

**2017 Renovation Project –
Middle School Roof Repairs**

Architectural/Engineering Services

Table of Contents

Page

ARTICLE 1. DEFINITIONS.....	3
ARTICLE 2. APPROVED CONSTRUCTION BUDGET	4
ARTICLE 3. BASIC AND PROFESSIONAL SERVICES OF A-E	4
ARTICLE 4. INDEPENDENT CONTRACTOR	10
ARTICLE 5. CONFLICTS OF INTEREST	10
ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING	10
ARTICLE 7. ADDITIONAL SERVICES OF A-E	10
ARTICLE 8. OWNER’S RESPONSIBILITIES	12
ARTICLE 9. ARCHITECT-ENGINEER COMPENSATION	13
ARTICLE 10. PAYMENTS TO THE ARCHITECT-ENGINEER.....	14
ARTICLE 11. DEFAULT AND TERMINATION OF AGREEMENT	15
ARTICLE 12. PERFORMANCE TIME SCHEDULE	17
ARTICLE 13. RECORDS OF THE ARCHITECT-ENGINEER; AUDIT	18
ARTICLE 14. INSURANCE TO BE CARRIED BY ARCHITECT-ENGINEER.....	18
ARTICLE 15. REPRODUCTION OF DOCUMENTS	19
ARTICLE 16. RECORD DOCUMENTS.....	19
ARTICLE 17. OWNERSHIP OF DOCUMENTS AND USE UPON TERMINATION OR RE-USE OF DOCUMENTS	20
ARTICLE 18. NOTICE OF CLAIMS AND DISPUTE RESOLUTION.....	21
ARTICLE 19. SUCCESSORS AND ASSIGNS	22
ARTICLE 20. INDEMNITY.....	22
ARTICLE 21. ADDITIONAL PROVISIONS	23
ARTICLE 22. FINGERPRINTING.....	23
ARTICLE 23. ENTIRE AGREEMENT	24
ARTICLE 24. INTENDED BENEFICIARIES.....	25
EXHIBIT A – APPROVED SCOPE, CONSTRUCTION BUDGET, A-E FEES, AND PROJECT SCHEDULE	26
EXHIBIT B – HOURLY RATES FOR ADDITIONAL SERVICES	32
EXHIBIT C – Not Used.....	33
EXHIBIT D – DELIVERABLES AND ADDITIONAL SCOPE OF SERVICES.....	34
EXHIBIT E – A-E CERTIFICATION	35
EXHIBIT F – LIST OF EMPLOYEES WHO ARE AUTHORIZED TO COME ON TO SCHOOL CAMPUSES	36
EXHIBIT G – SUB-CONSULTANTS.....	37

Woodside Elementary School District
Agreement for Architectural/Engineering Services

2017 Renovation Project – Middle School Roof Repairs

THIS AGREEMENT, made in three copies on November 9, 2016, by and between Woodside Elementary School District (“WESD”), hereinafter called “Owner”, and murakami/Nelson Architectural Corporation, hereinafter called the “Architect-Engineer” or “A-E”, duly licensed by the laws of the State of California to practice architecture or engineering in the State of California.

Owner desires to retain Architectural and Engineering services for 2017 Renovation Project – Middle School Roof Repair, hereinafter called “Project” and intends to design various site and building improvements for WESD. Owner desires to retain A-E to provide DSA approved Construction Documents, Award and Bidding, Construction Phase, and Project Closeout Services in connection with the Project and in accordance with this Agreement.

ARTICLE 1. DEFINITIONS

A. ARCHITECT-ENGINEER (A-E): The organization or individual identified in the first paragraph of this Agreement providing those professional design services associated with construction, alteration, or repair of real property.

B. CONTRACTOR: The construction contractor who receives the contract award for construction of the Project, as defined below.

C. CONTRACT DOCUMENTS: Contract Documents as used in this Agreement and intended for construction shall include the Notice to Bidders, the Instructions for Bidders, the Proposal Form, the Agreement for Construction, the Bid Bond, the Performance Bond, the Payment Bond, the General Conditions, the Special Provisions, the General Requirements, Exhibits, the Technical Specifications, the Contract Drawings and Plans, all duly issued Addenda, Interpretations, change orders, Supplemental Drawings, Construction Change Documents (CCD’s), Architect’s Instruction Bulletins (“AIB’s”).

D. OWNER: The Woodside Elementary School District (WESD) (sometimes referred to herein as the “District”).

E. OWNER’S PROGRAM MANAGER (hereinafter “PM”) – Capital Program Management, Inc. (CPM): The agent appointed by Owner as Owner’s representative(s) to provide overall project/program management during the design and construction phases of the Project. For purposes of this Agreement, the PM shall be considered to possess the same rights as Owner, except that the terms of this Agreement shall not be modified without the approval of Owner and that the rights of ownership described in Article 19 do not extend to the PM.

F. PROJECT: 2017 Renovation Project – Middle School Roof Repairs inclusive of the scope described in Exhibit A.

ARTICLE 2. APPROVED CONSTRUCTION BUDGET

A. Approved Construction Budget, as established in Exhibit A, is the total cost to the Owner for all work to be constructed, including but not limited to: site development; costs of all labor, equipment, and supervision; materials to be furnished; project contingencies and allowances; contractor's fee; amounts to cover bidding and price escalations.

B. A-E shall design the Project in a manner that it can be constructed for a cost within the Approved Construction Budget.

C. A-E shall provide estimates and the Owner will validate estimates of construction cost provided by the A-E after each design phase and shall advise the Owner, in writing, if such estimates exceed the Approved Construction Budget, at no additional cost to the Owner.

D. A-E shall collaborate with the Owner and keep the Project within all scope constraints set by the Owner, as well as the Approved Construction Budget, unless otherwise modified by written authorization by the Owner.

E. If any estimates of the construction cost exceed the Approved Construction Budget, A-E shall collaborate and cooperate with the Owner to determine what actions to take in order to align the current cost model and the Approved Construction Budget.

F. A-E shall follow the Owner's programmatic requirements and selection of materials, systems, and components affecting the quality of construction.

G. Estimates referred to in this Agreement shall be prepared in a format acceptable to Owner providing the appropriate level of detail for the phase of Project development. The format shall be Construction Specification Institute's six-digit MasterFormat, unless otherwise directed by Owner. Estimates shall consider prevailing wage construction costs and include all work for which bids will be received. It is understood that the Approved Construction Budget is affected by the labor or material market, as well as other conditions beyond the control of A-E or Owner.

ARTICLE 3. BASIC AND PROFESSIONAL SERVICES OF A-E

A. A-E's Basic and Professional Services shall consist of those services performed by the Architect, Architect's employees, and Architect's Sub-consultants as described herein, all in accordance with this Agreement, and applicable laws and regulations.

B. A-E's Basic Services shall be divided into the following components:

1. Conceptual Design Phase – Provided under separate Agreement.
2. Construction Document Phase

a. A-E shall prepare, based on the approved conceptual drawings, as-built information, survey information, base drawings and basic program scope or any further adjustment in the scope or quality of the Project authorized by Owner, working drawings and specifications setting forth in detail and prescribing the work to be done and the materials, workmanship, finishes, and equipment

required for the architectural and structural components (the "Construction Documents").

b. The Construction Documents shall be consistent with a design that can be constructed within the Approved Construction Budget and A-E shall prepare an estimate at 100% completion Construction Documents. A-E shall notify the Owner in writing if such estimates exceed the Approved Construction Budget.

c. When the Construction Documents are completed, fully coordinated and its quality control review completed, A-E shall submit to DSA and Owner. The Owner will perform third party review. A-E shall cooperate with Owner in submitting the Construction Documents to a third party for peer review and shall incorporate agreed upon third party peer review comments into the Construction Documents. The updated set will be used for bidding purposes prior to obtaining DSA approval. Construction contract award will be after DSA approval has been achieved.

d. The final DSA approved Construction Documents, bidding documents, construction general conditions and any other information determined to be included by A-E and Owner shall constitute the Construction Contract Documents ("Contract Documents"). A-E shall be responsible for coordinating its specifications with the documents supplied by Owner.

e. Refer to Exhibit D for additional deliverable and scope requirements.

3. Agency Approval Phase

a. A-E shall advise and assist Owner in applying for and obtaining required approvals from all applicable governmental agencies having jurisdiction in a timely manner so as not to unreasonably delay the Project. The A-E shall use its best efforts, but shall not be responsible for governmental plan check scheduling delays.

b. A-E shall provide all prints necessary, including any electronic media in a format acceptable to the agencies, to submit Project to the Division of the State Architect and Local Agencies for Project approval as part of the A-E's basic services.

4. Bid and Award Phase

a. A-E shall assist Owner during bid and award phase as follows:

- (i) Attendance at and participation in pre-bid meetings.
- (ii) Responding to technical questions from bidders in a timely manner so as not to delay bid.
- (iii) Preparation of addenda as requested by Owner or as recommended by A-E and approved by Owner.

b. Refer to Exhibit D for additional deliverable and scope requirements.

5. Construction Phase

a. A-E shall provide general direction to a Project Inspector employed by and responsible to Owner, as required by the Education Code and the Building Standards published by the ICBO, California Building Code, California Code of Regulations, Title 24. A-E shall advise the inspector and Contractor in the preparation of a marked set of prints, indicating dimensioned location of buried utility lines and other construction features (record documents), which shall be forwarded to A-E upon completion of the Project.

b. A-E shall administer the construction phase, as required by this Agreement, the Contract Documents, and the applicable statutes and regulations. A-E shall comply with all time lines set forth in the Contract Documents for its construction phase services. A-E shall observe and become familiar with the general quality of construction and report in writing to Owner any observed instance where the materials, workmanship, or the general quality of construction is not in conformance with the plans and specifications, building code requirements, or generally accepted industry standards of quality.

c. In providing services during the construction phase, A-E shall employ individuals on the Project to whom Owner has no reasonable objection. In the event Owner has a reasonable objection to any employee of A-E performing work at the Project, it shall notify A-E, which shall promptly cause the individual to be removed from the Project.

d. A-E, as a representative of Owner, shall make visits to the construction site at least once per week to 1.) render architectural observations to become generally familiar with and to keep Owner informed about the progress and quality of the portion of the work completed, 2.) to endeavor to guard Owner against defects and deficiencies in the work, and 3.) to determine, in general, if the work is being performed in a manner such that, when fully completed, it will comply with the Contract Documents. A-E shall attend on-site construction meetings at least once per week and shall otherwise be available to Owner and the inspector for site meetings on an "as-needed" basis.

e. A-E shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. A-E shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, since these are solely Contractor's rights and responsibilities under the Contract Documents.

f. A-E shall make regular reports as may be required by applicable state agencies; review submittals and shop drawings for conformance with design intent; review RFI's and promptly issue responses; review requests for substitution

of materials, equipment, and the laboratory reports thereof; assist in the preparation of change orders in a format acceptable to the Division of the State Architect, for written approval of Owner; and provide a color schedule of all materials in the Project for Owner's review and approval.

g. A-E shall compose and submit Construction Change Documents (CCD) in accordance with DSA IR A-6.

h. A-E shall submit an interim Architect Engineer Verified Report (form DSA 6-AE) to DSA and a copy to the Project Inspector for each of the applicable sections of the form DSA 152 within twenty-four (24) hours to avoid delay of progress of work, prior to the project inspector signing off that section of the project inspection card, and in accordance with DSA PR 13-01.

i. A-E shall review Contractor's applications for payment and certify the amounts due to Contractor and shall issue certificates for payment in such amounts. A-E's certification for payment shall constitute a representation to Owner, based on A-E's evaluation of the work and on the data comprising Contractor's application for payment, that the work has progressed to the point indicated and that, to the best of the A-E's knowledge, information, and belief, the quality of the work is in accordance with the Contract Documents. The foregoing representations are subject to: (1) evaluation of the work at subsequent milestones including without limitation at final completion; (2) the results of subsequent tests and inspections; (3) correction of minor deviations from the Contract Documents; and, (4) any specific qualifications expressed by the A-E.

j. A-E shall interpret, advise Owner, and decide matters concerning the Contract Documents or performance of Owner and Contractor under the requirements of the Contract Documents on written request of either Owner or Contractor. A-E's response to such requests shall be made with reasonable promptness and within any time limits agreed upon or set forth in the Contract Documents. Interpretations and decisions of the A-E shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, A-E shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either.

k. At Owner's written request, A-E shall assist Owner with any claim resolution process involving Contractor and Owner, including, without limitation, serving as a witness or providing other professional services relating to hearings or other legal proceedings.

i. The parties recognize that this clause is a means of expediting resolution of claims among Owner, Contractor, and A-E. However, it is understood that Contractor is not an intended third party beneficiary of this clause.

ii. Compensation for these services under this paragraph j of Article 3.B.6 shall be provided as set forth in the payment provisions for Additional Services under Articles 7 and shall be computed and invoiced at hourly rates, not to exceed A-E's normal and customary hourly rates for such services, to be negotiated with Owner at the time Owner authorizes these services, subject to the following:

1. Owner may believe that A-E's work under this Agreement is connected with errors, or omissions or problems related to a claim. As a result, and upon notice of same by Owner, A-E's payment for these Add Services may be withheld by Owner, at Owner's sole discretion, until final determination in accordance with Article 18 of this Agreement or by a court of law or mediation the proportion that A-E's fault bears to the fault of all parties concerned.

2. Such withheld amount, proportionate to the final determination that A-E's fault bears to the fault of all parties concerned, shall not be paid to A-E. However, the remainder of any such withheld amount shall be paid to A-E after a final determination in accordance with Article 18 of this Agreement or by a court of law or mediation is made and A-E submits a proper invoice to Owner, which shall be paid in accordance with Owner's normal and customary practice of payment of A-E's invoices under this Agreement.

iii. Nothing in this paragraph j, including its subparagraphs, of Article 3.D.6 shall in any way limit Owner's rights and remedies under this Agreement against A-E for any errors or omissions or breaches of any kind related to this Agreement and/or A-E's responsibilities under it.

I. The A-E agrees to continue to work diligently to completion so long as progress payments continue to be made except for those amounts which are withheld and which are in dispute under this Agreement.

6. Project Closeout Phase

a. A-E shall assist in determining date of final completion; make final review of the Project; review (i) written guarantees to ensure compliance with contract requirements, (ii) instruction books, (iii) diagrams, and (iv) charts required of the Contractor; issue A-E's certificate of completion and final certificate for payment; and provide all close-out documentation required by applicable state agencies, as well as as-built (record) documents within sixty (60) days of Owner's Notice of Completion.

C. A-E accepts the relationship of trust and confidence established between Owner and A-E by this Agreement. A-E represents that it is familiar with the statutes, regulations, and design requirements applicable to public school construction that all of its work will conform to

current professional practices and standards regarding such requirements, and that A-E will exercise due professional care and will cooperate with any Contractor or PM also employed by Owner in connection with the Project. A-E agrees to perform its work with the skill and judgment of a prudent school designer practicing in California and in an expeditious and economical manner consistent with the interests of Owner. A-E will prepare accurate and fully coordinated plans and specifications. Any review, approval or acceptance of any of A-E's work under this Agreement shall not relieve A-E from responsibility for errors and/or omissions in its work or the work of its sub-consultants.

D. Except with Owner's knowledge and consent, the A-E shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the A-E's professional judgment, impartiality or professionalism with respect to this Project.

E. A-E shall, as part of the basic professional services, furnish, at its expense, the services of structural, civil, mechanical, and electrical engineers, and other necessary design professionals as determined by A-E and acceptable to Owner, properly skilled and licensed in the various aspects of the design and construction of facilities required. Refer to Exhibit G for sub-consultant listing. Owner does not assume any liability, duty, or obligation to A-E's sub-consultants or their agents and employees by execution or performance of this Agreement, and nothing in this Agreement shall create any contractual relation between Owner and any sub-consultants, or their agents and employees, employed by A-E. No sub-consultants, agents, employees or other parties are third party beneficiaries of this Agreement. A-E shall be responsible to Owner for the acts and omissions of its employees, sub-consultants, and their agents and employees, and other persons performing any of the work under this Agreement.

F. A-E shall, as part of basic services, coordinate work with the following professional consultants hired directly by Owner:

1. Hazardous Material Consultant (Hazardous Material Consultants)

G. A-E shall not, either during or after the term of this Agreement, make public any reports or articles, or disclose to any third party any information specifically designated as confidential by Owner, without the prior written consent of Owner. A-E shall require of its sub-consultants similar agreements not to disclose such confidential information.

H. A-E shall review laws, codes, and regulations applicable to A-E's services. A-E shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

I. At its sole cost and expense, A-E shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of its work, including those relating to safety of its employees and sub-consultants, hazardous materials, and equal employment opportunities; obtain all permits and licenses necessary for performance of its work; pay all local, state, and federal taxes associated with its work; and pay all benefits, insurance, taxes, and contributions for Social Security and Unemployment which are measured by wages, salaries, or other remuneration paid to A-E's

employees. Upon Owner's request, A-E shall furnish evidence satisfactory to Owner that any or all of the foregoing obligations have been fulfilled.

J. A-E shall advise and assist Owner in applying for and obtaining required approvals from all applicable governmental agencies having jurisdiction in a timely manner so as not to delay the Project.

ARTICLE 4. INDEPENDENT CONTRACTOR

A. A-E shall be an independent contractor, and neither A-E nor any employee of A-E or its sub-consultants shall be deemed to be an employee of Owner.

ARTICLE 5. CONFLICTS OF INTEREST

A. A-E affirms that, to the best of its knowledge, there exists no actual or potential conflict between family, business, or financial interests of A-E and services under this Agreement. A-E agrees to advise Owner of any actual or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement.

ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING

A. Except as expressly authorized herein, A-E shall neither assign its rights nor delegate its duties under this Agreement without prior written consent of Owner. This prohibition of assignment and delegation extends to all assignments and delegations that lawfully may be prohibited by agreement.

ARTICLE 7. ADDITIONAL SERVICES OF A-E

A. The Owner shall have the right to make changes in the A-E's Basic and Professional Services specified in Article 3 of this Agreement. The A-E shall promptly notify the Owner of changes that increase or decrease the A-E's compensation or the duration of the A-E's Basic and Professional Services or both. The A-E shall be entitled to receive additional compensation when the scope or duration of the A-E's Basic Services is increased or extended through no fault of the A-E.

B. Changes in the A-E's Basic Services or duration of the Agreement, and entitlement to additional compensation, shall be made by a written Amendment to this Agreement executed by the Owner and the A-E. The Amendment shall be executed promptly by the Owner and the A-E. The A-E shall proceed to perform the services required by the Amendment only after receiving written authorization directing the A-E to proceed.

C. The following services, if necessitated by unusual circumstances and through no fault or neglect on the part of A-E or its sub-consultants, shall be paid for by Owner, as provided in Articles 9 and 10. Additional compensation for Additional Services shall be conditioned upon prior receipt of formal written notice from Owner to perform the work as Additional Services and no claim for any additional compensation or reimbursement shall be valid unless so authorized.

1. Plan preparation and/or construction phase work on that portion of a project let on a multiple prime contractor basis, unless the work is administered by a PM. It is understood that the PM may segregate the work into multiple contracts, and, providing that the PM provides for the management of these multiple contracts, this action shall not give rise to Additional Services and shall not result in additional compensation to A-E.
2. Contract administration of the repair of fire or other damage to the Project.
3. The selection by A-E at Owner's request of moveable furniture, equipment, artwork, graphics, signage or articles that are not included in the Contract Documents.
4. Preparation of additional plans or specifications in order to satisfy the requirements of the applicable public authority, provided that the requirement for these additional documents is the result of changes in policy mandated after completion of the Conceptual Design Phase, and that the extra work is not contributed to by the negligence or carelessness of A-E.
5. If directed by Owner, the employment of special consultants, the preparation of special renderings and models, and overtime work by A-E's employees.
6. Revisions required as a result of changes in the Owner's previous instructions or approvals and through no fault of the A-E.
7. Project changes after Owner approval.
8. Providing assistance such as testing, adjusting and balancing in the utilization of equipment or systems and preparation of operation and maintenance manuals.
9. Preparation of construction contract change orders which necessitate additional work by A-E, provided that the change order and/or extra work of A-E is not contributed to by the negligence or carelessness of A-E. Compensation for Additional Services necessitated by construction change orders shall be pursuant to the hourly fees set forth in Exhibit B. A-E shall keep accurate records of the time spent during construction with respect to such Additional Services and shall provide monthly statements of the same to Owner during construction, identified as to each specific change order item.
10. Performance of a follow-up review and preparation of a written report for Owner on apparent deficiencies in construction not later than one (1) month prior to the expiration of the two-year General construction contract guarantee period of the Project.
11. Time and expenses preparing special presentation models, renderings or mock-ups requested by the Owner, not required under Basic Services.
12. Preparing to serve or serving as a witness in connection with any hearing, dispute resolution proceeding or legal proceeding, other than that necessitated by negligent and/or willful acts or omissions of A-E.

13. Providing services made necessary by the failure of performance, the termination or default of a contractor; or by major defects or deficiencies in the work of any contractor.

14. Special Meeting with the Bond Oversight Committee, community groups and other committees other than as reasonably required or noted elsewhere in the Agreement.

15. Preparation of design and documentation for alternate bid not required under Basic Services or proposal requests by the Owner when not required to meet the approved Construction Budget.

16. Assistance with environmental and EIR studies other than those which would normally be required to complete the A-E's Basic Services.

17. Formal value engineering sessions and detailed life-cycle cost analysis beyond those normally provided.

D. In no event shall A-E be entitled to receive compensation for Additional Services if required as a result of A-E's or its sub-consultants' errors, omissions, or failure to perform in accordance with this Agreement.

ARTICLE 8. OWNER'S RESPONSIBILITIES

A. Owner shall provide full information as to the requirements of the Project, including realistic budget limitations and schedule for the Project.

B. Owner shall furnish, or direct A-E to procure, at Owner's expense, a certified survey of the site, if required, including grades and lines of streets, pavements, and adjoining properties; rights-of-way, restrictions, easements, boundaries, and contours of the building site; locations, dimensions and floor elevations of existing buildings, other improvements, and trees; and full information as to available service and utility lines, both public and private.

C. Owner shall furnish, or direct A-E to procure, at Owner's expense, geotechnical, chemical, mechanical, or other tests required for proper design and borings or test pits necessary for determining subsoil conditions.

D. Owner shall furnish available as-built drawings of existing structures.

E. Owner shall furnish all inspection and testing services in conjunction with the Project.

F. Owner shall furnish all legal advice and services required for the Project.

G. Owner shall provide a complete Division 0 and Division 1 package documents for inclusion in the Contract Documents.

H. Owner shall notify A-E of administrative procedures required and name a representative authorized to act in its behalf. Owner shall promptly render decisions pertaining thereto to avoid unreasonable delay in the progress of the Project.

I. Owner shall provide hazardous materials consultant services for the Project. Hazardous materials specifications shall be part of the project manual, but Owner shall assume responsibility for their accuracy and completeness and full liability for work done under said specifications.

J. During Contractor's two-year guarantee period, Owner shall notify A-E in writing of apparent deficiencies in materials or workmanship.

ARTICLE 9. ARCHITECT-ENGINEER COMPENSATION

A. Professional Services: A-E agrees to perform professional services provided by this Agreement, and Owner agrees to pay A-E for such services in accordance with attached Exhibits A and B. A-E's compensation for Additional Services shall be calculated as provided in paragraph D of this Article 9, below, and in accordance with Exhibit B.

B. A-E shall submit one (1) invoice monthly to the Owner for the fee associated with the applicable progress to completion percentage per Article 10, reimbursable expenses (if any) and added services (if any) incurred for the billing period. Invoices requesting reimbursement for expenses incurred during the billing period must clearly list items for which reimbursement is being requested and be accompanied by proper documentation (e.g. receipts, invoices) including a copy of Owner's authorization notice for invoiced item(s). Invoices requesting payment for added services must reflect hours being charged and a copy of Owner's authorization notice. No payments will be made by the Owner to the A-E for monthly invoices requesting reimbursables or added services absent the prior written authorization of the Owner. All charges incurred under this Agreement shall be due and payable within thirty (30) days of approval of the invoice.

C. Reimbursable A-E Allowances:

1. Owner recognizes that certain costs and expenses associated with the professional services performed are reimbursable to A-E. Provided that A-E obtains Owner's prior written approval, costs and expenses will be reimbursed to A-E in accordance with Exhibit A. Owner's prior written approval is an express condition precedent to any reimbursement to A-E of such costs and expenses, and no claim for any additional compensation or reimbursement shall be valid absent such prior written approval by Owner.

2. The following are descriptive categories of work that may be considered for reimbursable costs, provided Owner issues its written approval before the costs are incurred:

a. Any prints necessary to submit Project to the Division of the State Architect and Local Agencies for Project approval.

b. Expenses of outside technical assistance recommended by the A-E and agreed to by the Owner.

c. Approved reproduction of drawings and specifications in excess of the copies required by this Agreement, at rates prevailing in the community for bulk reproduction, or at other rates approved in advance by Owner.

- d. Approved fees advanced for securing approval of authorities having jurisdiction over the Project.
 - e. Additional insurance coverage above those coverages identified in Article 14.
 - f. Postage and Delivery.
- 3. Reimbursement of prior Owner approved expenses, shall be reimbursed at one hundred five percent (105%) of the direct billing.
- 4. Payments to A-E for reimbursable costs/expenses will be made only after the specific costs/expenses have been incurred and invoicing has been verified by submission of substantiating documentation, such as copies of paid invoices or other documentation confirming that such costs/expenses have been incurred by A-E. All charges incurred under this Agreement shall be due and payable within thirty (30) days of approval of the invoice. Disputed invoices shall be returned to A-E within ten (10) working days of receipt.
- D. For payments to A-E for Additional Services under Article 7, the parties agree as follows:
 - 1. Hourly rates shall be per Exhibit B.
 - 2. One hundred five percent (105%) of the direct billings of consultants performing authorized Additional Services.

ARTICLE 10. PAYMENTS TO THE ARCHITECT-ENGINEER

- A. A-E is entitled to payments of the agreed compensation per Article 9 and Exhibit A.
- B. Billings shall be monthly or lump sum, in arrears based upon work completed and shall be according to the following fee schedule:
 - 1. Conceptual Design Phase: N/A
 - 2. Construction Document Phase: Based upon work completed, in an amount up to sixty percent (60%) of total Basic Services compensation stated in Exhibit A. Work during this phase includes fully coordinated and quality-controlled documents by A-E, submittal to Owner, and third party peer review (retained and compensated by the Owner under separate agreement), incorporation of review comments, and actual submittal to the Division of the State Architect ("DSA").
 - 3. Agency Approval Phase: Based upon work completed, in an amount up to seventy percent (70%) of total Basic Services compensation stated in Exhibit A. Work during this phase includes incorporation of back-check comments from DSA into Construction Documents and Final Construction Documents approved and stamped by DSA.

4. Bid and Award Phase: On all or that portion of the Project for which bids have been received and contracts awarded, in an amount up to eighty percent (80%) of total Basic Services.

5. Construction Phase: Construction complete and accepted by Owner, in an amount up to ninety-five percent (95%) of the total Basic Services.

a. Subsequent billings shall be submitted monthly, in arrears, in proportion to the percentage of work certified complete by A-E in response to construction progress payment requests. (Billings shall show, as a separate line item, site visit hours used that month, total used to date and hours remaining.)

6. Project Closeout Phase: Project documentation, including, without limitation, record documents, forwarded to Owner and the applicable governmental agencies having jurisdiction, in an amount up to one hundred percent (100%) of the total Basic Services. Owner expects that the required documents (independent of Owner requirements) will be filed within sixty (60) days of Project acceptance.

C. Payments in event of the following circumstances shall be as set forth below:

1. Deferred Bids: Delay in the award of the contract shall not affect A-E's compensation unless additional services are required.

2. Delayed Completion: Except as provided elsewhere in this Agreement, A-E's compensation shall be paid at the time and in the amount noted.

D. Payments for Additional Services provided under Article 7 shall be made monthly, in arrears, as services are rendered and expenses incurred.

E. Reimbursement for fees and other expenses shall be made to A-E as incurred, but no more often than monthly.

F. Owner may withhold, or on account of subsequently discovered evidence nullify, the whole or a part of any payment to such extent as may be necessary to protect Owner from loss on account of (1) defective or deficient work product not remedied; (2) failure of A-E to make payments properly to its employees or sub-consultants; or (3) failure to adhere to the Project schedule or to achieve sufficient progress with the design work such that A-E is unlikely to achieve timely completion.

ARTICLE 11. DEFAULT AND TERMINATION OF AGREEMENT

A. A-E Default: If A-E at any time refuses or neglects to prosecute its work in a timely fashion or in accordance with the Project schedule, or is adjudicated as bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without Owner's consent, or fails to make prompt payment to persons furnishing labor, equipment, or materials, or fails in any respect to properly and diligently prosecute its work, or becomes delinquent with respect to contributions or payments required to be made to any employee benefit programs or trust, or otherwise fails to perform fully any and all of the agreements herein contained, A-E shall be in default.

B. Cure: If A-E fails to cure the default within seven (7) days after written notice thereof, Owner may, at its sole option, take possession of any documents, files (including electronic files), or other materials prepared or used by A-E in connection with the Project and provide any such work, labor, or materials as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to A-E under this Agreement.

C. Default Termination: In the event Owner elects to terminate due to A-E default, Owner shall have the right to immediate possession of all plans, specifications, and other work in progress prepared by A-E, whether located at the Project, at A-E's place of business, or at the offices of a sub-consultant, and may employ any other person or persons to finish the design work and provide the materials therefor. In case of such default termination, A-E shall not be entitled to receive any further payment under this Agreement until the Project is completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by Owner in finishing the Project, such excess shall be paid by Owner to A-E, but, if such expenses shall exceed such unpaid balance, then A-E shall promptly pay to Owner the amount by which such expenses exceeds such unpaid balance. The expenses referred to in the last sentence shall include expenses incurred by Owner in causing the services called for under this Agreement to be provided by others, for attorneys' fees, and for any damages sustained by Owner by reason of A-E's default or defective work, plus a markup of ten percent (10%) on any and all such expenses.

D. Owner Default: A-E may terminate this Agreement for cause upon seven (7) days' written notice to Owner for any of the following reasons: 1.) Owner fails to timely pay undisputed sums due to A-E; 2.) Owner assigns this Agreement or transfers ownership of the Project prior to completion of A-E's services under this Agreement if the assignment or transfer is made without the prior written consent of A-E; or 3.) Owner suspends the Project or A-E's services for more than 180 consecutive days. Owner shall have the right to cure the stated ground for termination within the seven (7) day notice period, and, in the event of cure, A-E's notice shall become null and of no further force or effect.

E. Termination for Convenience. In addition to the foregoing right to terminate for default, Owner reserves the absolute right to terminate this Agreement without cause, for any reason whatsoever, upon thirty (30) days' written notice to A-E. In the event of such a termination without cause, Owner shall have the right to immediate possession of all plans, specifications, and other work in progress prepared by A-E, whether located at the Project, at A-E's place of business, or at the offices of a sub-consultant, and may employ any other person or persons to finish the design work and provide the materials therefor. Also in the event of such a termination without cause, A-E shall be entitled to payment in an amount not to exceed the contract price which shall be calculated as follows: 1.) Payment for any phase of the work then satisfactorily completed and accepted by Owner, according to the percentages set forth in Article 10; plus 2.) Reimbursable Costs actually incurred by A-E in connection with performance according to Article 9; plus 3.) a portion of the percentage applicable to a phase which is in progress, which bears the same ratio to the total amount to be earned for that phase as the work then completed in that phase bears to the total work to be accomplished in that phase. There shall be deducted from such sums as provided in this section the amount of any payment made

to A-E prior to the date of termination of this Agreement. A-E shall not be entitled to any claim or lien against Owner or the Project for any additional compensation or damages in the event of such termination and payment. In addition, Owner's right to withhold funds under Article 10.F shall be applicable in the event of a termination for convenience.

F. Saving Clause: If this Agreement is terminated by Owner for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this Article and A-E shall be entitled to receive only the amounts payable hereunder in the event of a termination for convenience.

G. Survival of Obligations: Except as otherwise stated in this Agreement, no termination of this Agreement shall excuse or otherwise relieve A-E of its responsibilities under this Agreement, including, without limitation, the standard of care for its work and services, with respect to any work and/or services performed prior to the date of termination. All of A-E's responsibilities under this Agreement with respect to work and/or services performed prior to the date of termination shall survive any termination.

ARTICLE 12. PERFORMANCE TIME SCHEDULE

A. A-E shall prepare and submit for Owner approval a schedule for the performance of A-E's services in accordance with Exhibit A. This schedule shall include reasonable allowances for review and approval times required of Owner, performance of services by Owner's consultants, and review and approval times required by public authorities having jurisdiction over the Project. This schedule shall be equitably adjusted as the Project progresses, allowing for changes in scope, character, or size of the Project requested by Owner, or for delays or other causes beyond the A-E's reasonable control.

B. A-E shall respond to the following specific items within the time frames indicated below:

1. Progress Verified Reports: 24 hours
2. Requests for Information: 48 hours
3. Change order requests: 5 days
4. Submittals: 7 days

C. In the event A-E fails to perform its obligations under this Agreement within the times specified in the approved schedule for its work and thereby significantly delays the Project, Owner may withhold monthly progress payments until all work within the particular phase at issue is completed or the schedule for A-E's work has been recovered. This remedy shall be in addition to, and not in derogation of, Owner's other rights and remedies relating to A-E's default, whether under this Agreement or applicable law.

ARTICLE 13. RECORDS OF THE ARCHITECT-ENGINEER; AUDIT

A. Records of A-E's direct personnel and reimbursable expenses pertaining to any Additional Services on this Project and records of accounts between Owner and Contractor shall be kept on a generally recognized accounting basis and shall be available to Owner or its authorized representative at mutually convenient times.

B. Owner or the Owner's authorized representative shall have access, upon reasonable notice, during normal business hours, to any plans, Specifications, books, documents, accounting records, papers, Project correspondence, Project files and other records of A-E and/or its sub-consultants directly or indirectly related to the Project. Such access shall include the right to examine and audit such records and make excerpts, transcriptions and photocopies at Owner's expense.

ARTICLE 14. INSURANCE TO BE CARRIED BY ARCHITECT-ENGINEER

A. A-E shall procure and maintain insurance on all of its operations during the progress of its work on the Project, with reliable insurance companies approved by the State of California Department of Insurance and with a Bests' rating of no less than (B+) Level VII, on forms acceptable to Owner, for the following minimum insurance coverages:

1. Workers' Compensation insurance and occupational disease insurance, as required by the State of California, with Statutory Limits, and employer's liability insurance, with minimum limits of \$1,000,000 per accident for bodily injury or disease, covering all workplaces involved in this Agreement.

2. Commercial general liability insurance, with limits of not less than as indicated in either (1) or (2) as follows: (1) Bodily Injury Liability - \$1,000,000 each person, \$1,000,000 each occurrence; Property Damage Liability - \$1,000,000 each occurrence, \$2,000,000 aggregate; (2) single limit for Bodily Injury Liability and Property Damage Liability combined of \$1,000,000 each occurrence and \$2,000,000 aggregate.

- a. The insurance shall cover all operations of A-E except professional service, including but not limited to the following: (1) broad form property damage liability; (2) personal injury liability endorsement; and (3) automobile bodily injury and property damage insurance, including all owned, if any, hired and non-owned equipment.

- b. All general liability policies shall name Owner and Project Manager(s) as an additional insured and shall provide that such policy is primary insurance.

3. A-E shall also provide Professional Liability Insurance for the Project, written on a "Claims Made Basis," with limits of liability in amounts not less than \$1,000,000 per claim and \$2,000,000 aggregate, insuring A-E, for its own acts and for the acts of all persons for whose acts A-E may be liable, against liabilities arising out of or in connection with the negligent acts, errors, or omissions of any of the foregoing in connection with the carrying out of their professional responsibilities for the Project. A-E

shall provide Owner proof of professional liability insurance coverage for five years following final completion of the Project. All such professional liability policies shall include an endorsement or other provision covering the indemnification provisions of Article 20. With respect to this Claims Made policy, the Retroactive Date must be shown and must be before the date of this Agreement or the beginning of A-E's work under this Agreement.

4. A-E shall also provide Certificates of Insurance, or other evidence of insurance as requested by Owner, to Owner within ten (10) days after receipt by A-E of a signed version of this Agreement. The certificates shall provide that there will be no cancellation, suspension or voiding of coverage without thirty (30) days' prior written notice to Owner except for non-payment of premiums for which ten (10) days written notice shall be given.

5. There shall be no reduction or modification of coverage of insurance required by this Agreement without the written consent of Owner and each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to the Owner.

6. Any deductibles or self-insured retentions must be declared to and approved by the Owner. The Owner may require A-E to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention.

ARTICLE 15. REPRODUCTION OF DOCUMENTS

A. A-E shall provide, at no expense to Owner, copies of the drawings and specifications and Contract Documents in accordance with Exhibit D.

B. A-E shall provide one (1) reproducible master and one electronic master in AutoCAD (most current version) compatible format for drawings, Microsoft Word most current version for specifications of the final approved Contract Documents for bidding and construction purposes.

ARTICLE 16. RECORD DOCUMENTS

A. At completion of the Project (or any portion that is constructed as a discrete unit), A-E shall prepare and furnish to Owner one (1) set of reproducible record drawings and one (1) set of marked specifications showing materials and methods of construction as actually accomplished. These shall be prepared by revision of the original drawings from field work drawings to show changes incorporated in the work, based upon Contractor's representation of actual construction. Owner shall furnish A-E one (1) set of field working drawings and specifications noting changes, and direct A-E as to level of detail and completeness desired in record drawings.

B. The A-E may insert the following notice on all Record Drawings; “These record drawings [or corrected specifications] have been prepared based on information submitted, in part, by others. The Architect has provided a review consistent with its legal standard of care.”

C. At completion of all construction tasks, A-E shall furnish to Owner one reproducible master and one electronic master (in AutoCAD most current version) compatible format for drawings, Microsoft Word most current version for project manual.

ARTICLE 17. OWNERSHIP OF DOCUMENTS AND USE UPON TERMINATION OR RE-USE OF DOCUMENTS

A. All plans for the Project, including, but not limited to, record documents, specifications, and Estimates prepared pursuant thereto, shall be and remain the property of the Owner for the purposes of repairs, maintenance, renovations, modernization, or other purposes, only as they relate to the Project. Notwithstanding same, Owner may use the plans, record documents, specifications, or Estimates related to the Project for the purposes of additions, alignments, or other development on the site.

B. Notwithstanding Section A above, if the Owner proposes to reuse the plans prepared by the A-E within the District or if the Owner proposes to employ any other person or persons to finish the design work and provide the materials therefore because of a Termination for Convenience as set out in Article 11.E above, the terms and the conditions for the use or reuse shall be set forth in an Amendment to this Agreement or other subsequent writing executed by Owner and A-E. However, under any circumstances, in the event of any use, reuse or modification of the A-E’s drawings, specifications or other documents by any person, firm or legal Contractor, the names and seals of the A-E and the A-E’s Consultants, if any, shall first be removed from the A-E’s drawings, specifications or other documents. The Owner further agrees to indemnify, defend and hold A-E harmless from any and all claims, liabilities, suits, demands, losses, costs, expenses including, but not limited to, reasonable attorney’s fees accruing to or resulting from any and all persons, firms or any other legal Contractor, on account of any damage or loss to property or persons, including, but not limited to, death arising out of such use, reuse or modifications of the A-E’s drawings, specifications or other documents. Notwithstanding anything in this Agreement to the contrary, in the event of a termination of A-E for default under Article 11, there shall be no limitation on the Owner’s right to use any of the plans, specifications or other documents prepared by A-E.

C. Except as otherwise permitted in this Agreement, Owner shall not assign, delegate, sublicense, pledge or otherwise transfer the right to use and re-use the documents to any other party without the prior written authorization of A-E. However, in addition to the rights to use and re-use the documents as set forth in this Article 17, Owner shall be permitted to authorize Contractor or any construction subcontractor, equipment supplier or material supplier to use and reproduce, to the fullest extent necessary, applicable portions of the documents appropriate to and for use in their work for this Project.

D. Any re-use of the documents shall be at Owner’s sole risk and without liability to A-E. Owner agrees to indemnify and hold harmless A-E and its sub-consultants against any

damages, liabilities or costs, including reasonable legal fees and disbursements, arising from the unauthorized re-use or modification of the documents. Submission or distribution of the documents to meet official regulatory requirements or for similar purposes does not constitute an unauthorized re-use of the documents.

ARTICLE 18. NOTICE OF CLAIMS AND DISPUTE RESOLUTION

A. A-E shall give written notice of any claims arising out of or relating to this Agreement within fifteen (15) days of the event(s) giving rise to the claim. Said written notice shall specify the nature, amount and basis of the claim and shall be certified under penalty of perjury and in compliance with the California False Claims Act, as set forth below. Failure to include these required certifications shall constitute grounds for rejection of the claim. Failure to provide notice of the claim within the time limit set forth herein shall constitute grounds for rejection of the claim.

B. Mediation. The parties agree that all claims, disputes or controversies between the parties arising out of or relating to this Agreement, or breach thereof, shall initially be submitted to non-binding mediation before a mediator mutually agreed upon by the parties. In the event the parties are unable to agree upon the identity of the mediator within fifteen days from the date either party submits a written request to mediate a claim, dispute or controversy, the mediator shall be selected and the mediation administered under the Construction Mediation Rules of the American Arbitration Association. The costs and fees of the mediator shall be paid equally by the parties. The parties shall negotiate in good faith in an effort to reach an agreement with respect to the claim, dispute or controversy. Neither party shall commence or pursue arbitration or litigation until the completion of mediation proceedings.

C. Arbitration: In the event that a Claim remains unresolved after mediation, pursuant to Public Contract Code section 22200, et seq., the Claim may be submitted to non-binding arbitration. If the parties agree to arbitrate, the arbitrator shall be selected through the San Mateo County Bar Association and shall be mutually agreed upon by both parties. If the parties do not opt for non-binding arbitration or non-binding arbitration is unsuccessful, either party may file an action in San Mateo Superior Court.

D. It is expressly agreed that no mediation or arbitration shall be initiated prior to the completion of the Project or termination of this Agreement, whichever is earlier.

E. Claim certification: A-E acknowledges that it has read and is familiar with the provisions of the California False Claims Act (California Government Code section 12650 *et seq.*). Submission by A-E of a claim (as the term "claim" is defined in the False Claims Act) to Owner in connection with the Project, whether on its behalf or on behalf of a sub-consultant, shall constitute a representation by A-E to Owner that submission of the claim does not in any respect violate the False Claims Act. Any party with an interest in the claim, including any sub-consultant(s), shall certify under penalty of perjury the validity and accuracy of any claimed submitted to Owner, as provided below. Compliance with this claims certification requirement shall be a condition precedent to any obligation Owner might otherwise have to review the claim,

and failure to provide such certification shall constitute a waiver of the claim. The claim certification required by this paragraph shall provide as follows:

CLAIM CERTIFICATION

Under penalty of perjury, and with specific reference to the California False Claims Act, Government Code section 12650, et seq., I certify that submission of the attached claim is made in good faith; that the supporting data prepared by the undersigned company is accurate and complete to the best of my knowledge and belief; that submission of the claim to Owner does not violate the False Claims Act; and that I am duly authorized to certify the claim on behalf of claimant.

Dated: _____

Company: **murakami/Nelson Architectural Corporation**

Signature

Title

ARTICLE 19. SUCCESSORS AND ASSIGNS

A. It is mutually understood and agreed that this Agreement shall be binding upon Owner and its successors and upon A-E, its partners, successors, executors, and administrators. Neither this Agreement, nor any monies due or to become due thereunder, may be assigned by A-E without the consent and approval of Owner.

ARTICLE 20. INDEMNITY

A. A-E shall, with respect to all work which is covered by or incidental to this Agreement, defend, indemnify, and hold harmless Owner, its officers, directors and employees (collectively "Owner"), from and against any and all liens and claims asserted by firms or individuals claiming through A-E, and claims, liability, loss, damage, costs, or expenses, including reasonable attorneys' fees, expert's fees, awards, fines, or judgments, relating to the death or bodily injury to persons, injury to property, design defects, or other loss, damage, or expense to the extent caused by the negligent acts, errors or omissions of A-E. However, A-E shall not be obligated under this Agreement to indemnify Owner to the extent that the damage is caused by the willful misconduct of Owner or its agent or servants other than A-E.

B. A-E shall indemnify, defend, and hold Owner harmless against any claim, suit, or action, or any alleged violation or infringement of patent rights, copyrights, or other intellectual property rights which may be made against Owner by reason of the use in connection with or as

a part of the Project anything which is now or may hereafter be covered by patent, copyright, trademark, or other intellectual property rights, and also against all expenses, including attorneys' fees and expert witness' fees, which Owner may incur in defending or adjusting any such claim, suit, or action.

C. Owner shall defend, indemnify and hold harmless A-E, its officers, directors, employees and sub-consultants (collectively "A-E") from and against any and all claims, liability, loss, damage, costs or expenses, including reasonable attorneys' fees, expert's fees, awards, fines or judgments, to the extent caused by Owner's negligent acts, errors or omissions in the performance of its obligations under this Agreement. However, Owner shall not be obligated under this Agreement to indemnify A-E to the extent that the damage is caused by the active or sole negligence or willful misconduct of A-E or its agents or servants other than Owner. Notwithstanding the above, neither A-E, nor the Owner shall have an obligation to pay for any defense related cost prior to a final determination of its liability. Following any such determination of its liability, the A-E or the Owner shall be responsible to pay an amount of such costs equal to the finally determined percentage of liability based upon the comparative fault of A-E or the Owner.

D. A-E and Owner each agree to promptly serve notice on the other party of any claims arising hereunder, and shall cooperate in the defense of any such claims.

E. The acceptance by Owner or its representatives of any certificate of insurance providing for coverage of any kind shall in no event be deemed a waiver of any of the provisions of this Article 20. None of the foregoing provisions shall deprive Owner or A-E of any action, right or remedy otherwise available by law.

ARTICLE 21. ADDITIONAL PROVISIONS

A. The furnishing of available as-built drawings of existing structures is the responsibility of Owner.

ARTICLE 22. FINGERPRINTING

A. Education Code Section 45125.1 shall apply to this Agreement. The District administrator initiating and/or responsible for this Agreement shall, pursuant to section 45125.1 and District policy and guidelines, determine whether fingerprinting is required of A-E and/or its employees. Once such determination is made, the administrator shall verify his/her determination on the signature page of this Agreement. If the Administrator concludes fingerprinting is required, the following shall apply:

1. The A-E shall, prior to commencement of work pursuant to this Agreement, require any person affiliated with A-E (or, in appropriate cases, him or herself) to be fingerprinted by the Department of Justice (DOJ) if that person will have unsupervised access to school campuses. Upon verification from DOJ that those persons fingerprinted have no record of a serious or violent felony, A-E will so certify by signing and submitting the A-E Certification attached as Exhibit E and incorporated by reference. In addition, A-E shall submit the names of those persons who have received clearance and

are authorized to have unsupervised access to school campuses on a form as indicated in Exhibit F. Any person whose name is not on the cleared list may not have such access. In that case, A-E must make arrangements with District for appropriate access. No person with a violent or serious felony as reported by DOJ may have access to the school campuses.

2. Failure to comply with this provision, or permitting unsupervised access by an employee whose name has not been cleared by DOJ as certified by A-E, shall constitute grounds for termination of this Agreement.

ARTICLE 23. ENTIRE AGREEMENT

A. All of the agreement between the parties is included herein, and no warranties, expressed or implied, representations, promises, or statements have been made by either party unless endorsed hereon in writing, and no charges or waiver of any provision hereof shall be valid unless made in writing and executed in the same manner as the Agreement.

B. Neither amendments to nor modifications of this Agreement shall be effective unless signed by officials of A-E and Owner having authority equal to or greater than that of the officials signing this Agreement. Owner and A-E hereby agree to the full performance of the covenants contained herein.

ARTICLE 24. INTENDED BENEFICIARIES

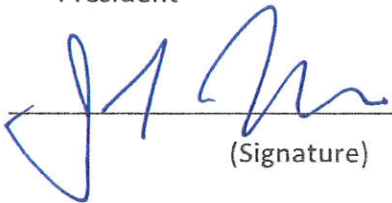
The Agreement and all rights and obligations set forth herein are intended for the sole benefit of A-E and Owner and are not intended to create any third party rights or benefits.

Murakami/Nelson Architectural Corporation

Woodside Elementary School District

By: John S. Nelson, Architect, AIA, LEED AP
President

By: Dr. Beth Polito
Superintendent


(Signature)

(Signature)

100 Filbert Street
Oakland, CA 94607
Tel.: (510) 444-7959
Fax: (510) 893-5244

3195 Woodside Road
Woodside, CA 94062-2598
Tel.: (650) 851-1571
Fax: (650) 851-5577

Tax ID# 95-3193937

Date: 11/3/16

Date: _____

Date Received: 11/3/16

Board Approval Date: _____

Department of Justice (DOJ) Fingerprinting:

Required ☒ N/A

Not Required ☒

Date Received: 11/3/16

Date: 11/3/16

EXHIBIT A – APPROVED SCOPE, CONSTRUCTION BUDGET, A-E FEES, AND PROJECT SCHEDULE

Project Scope:

Following are scope items and initial construction budget. All items to be incorporated into one set of DSA approved plans and will be bid and awarded to a General Contractor:

Prepare construction documents and provide construction administration services for the repair of the roofs at Classroom Buildings S, T and U at the Woodside Middle School. The extent of the dry rot damage at those roofs is described in AM E's report of 8/19/16. That report, MNA's own investigation and a review of the original construction documents identified the likely cause of the dry rot as inadequate rafter space ventilation at the cathedral ceilings. The damage documented by AME varies dramatically. This is likely related to the buildings' orientation since the ridge at Building S is oriented east/west and the ridges at Buildings T and U are oriented north/south.

Building S has structural damage along the north side of the ridge while Building T has damage only at an exposed eave on the west side and Building U has minor damage along the east side of the ridge. To minimize repair costs at the District's direction, MNA suggested a reduced repair scope that focuses on only repairing the dry rot damage and adding ridge ventilation. To avoid impacting the classrooms this work will be done from above, which means that ventilation channels that were originally proposed won't be installed. However, if the ventilation problem persists after the ridge vents are installed the District can add the ventilation channels and relocate or replace the ceiling insulation from below at some later time.

Repairs to Building S will consist of removing and replacing the damaged plywood sheathing and repairing or replacing rotted roof joists. To accomplish this, work the shingle roofing in the area of dry rot will be completely removed, the damaged areas repaired and the roofing replaced. To alleviate the ventilation problem, we will add a continuous ridge vent. During construction, the contractor should inspect each rafter space to assess whether airflow is impeded by the roof insulation. If it is, the future project mentioned in the previous paragraph may be necessary. For the base bid, shingles will be replaced only in the areas of the repair work. The replacement shingles may not exactly match the existing shingle color or profile. Additive Alternate #1 would be to re-roof the entire building.

Roof repairs for Building U will be similar to Building S; however, since the extent of the damage is less, there will be fewer repairs. A portion of the shingle roof at Building U will be replaced and a ridge vent will be installed. The work at Building U will be Additive Alternate #2.

Roof repair work at Building T will include repairing the dry rot and roofing at the eave and installing a ridge vent. The work at Building T will be Additive Alternate #3.

Assisting MNA with the design of the repair project is RP Gallagher Associates, structural engineers and Mack 5, cost estimators. Electrical and lighting systems will not be impacted by the project since there will be no construction inside the classrooms. Therefore, we will not need an electrical consultant. Should electrical consulting be required we will submit an additional

services request.

The scope of our services is as listed below:

Assumptions

- Repairs limited to the roof areas with dry rot at Buildings S, T and U
- DSA will review the project
- The roofs will be bid in the spring of 2017 and repaired in the summer of 2017
- Work will comply with 2016 CBC requirements
- Drawings will be prepared in AutoCAD

Exclusions

- Title 24 compliance
- Access or Fire/Life Safety compliance work
- Other repair or replacement work
- Cathedral ceiling ventilation
- Electrical consulting
- CA services for repair of Buildings T and U if that construction doesn't occur in the summer of 2017.

Architectural Scope

Construction Documents

- Review the proposed repair documents
- Coordinate work of the consultants
- Visit the site specifically to look at the ridge and eaves
- Code Review
- Update roof plans and floor plans
- Prepare roof details (rake, eave, ridge vent, transition to existing asphalt shingles, etc.)
- Specify asphalt shingle roofing, ridge vent, flashing, exterior paint, caulking, building paper, etc.
- Coordinate and review the cost estimate
- Submit documents for CPM and District Review
- Incorporate constructability review comments
- Meet with District once during CD's

DSA Review

- Submit project application, forms, calculations and drawings to DSA
- Respond to plan review comments
- Attend back check meeting with DSA
- Scan Drawings and distribute to District and team
- Coordinate with DSA to set up Box
- Interview the IOR
- Submit project forms to DSA

Bidding & Construction

- Attend Pre-bid meeting
- Answer contractor questions during bidding
- Issue addendum if necessary
- Attend Pre-construction meeting
- Attend weekly job site meetings (total of 9)
- Respond to RFI's
- Review submittals
- Assist in determining whether to replace or repair the existing roof rafters
- Prepare clarification sketches
- Review PCO's
- Prepare and submit Category A, CCD's to DSA (a maximum of 2)
- Prepare Category B, CCD's
- Prepare change orders (assume 2)
- Conduct punchlist review and write up
- Backcheck punchlist
- Closeout project with DSA

Structural Scope

Construction Documents

- Review the original construction drawings, AME report, and the concept repair documents
- Design repairs for the rotted roof joists, including both the replacement and sistering" options.
- Prepare the required structural calculations
- Prepare roof framing plans for each building and structural member and connection repair details
- Prepare the structural sections of the specifications, or alternately place these on the drawings as notes
- Coordinate the work with the architect and other consultants as required

DSA Review

- Provide stamped and signed copies of the calculations and the repair drawings
- Answer plan review questions and otherwise assist in obtaining DSA approval of the drawings

Bidding & Construction

- Answer contractor questions during bidding
- Answer contractor questions and respond to RFI's
- Review submittals
- Assist in determining whether to replace or repair the existing roof rafters
- Make up to five (5) site visits
- Prepare clarification sketches

Approved Total Construction Budget = \$222,000

A-E Fees:

A. The total not-to-exceed fee is Seventy-Two Thousand One Hundred Dollars (\$72,100)
Included in this not-to-exceed fee is the following:

1. Compensation for Basic Services: The Owner shall compensate A-E for performing the, as follows:
 - a. 60% of Fixed Fee or \$42,660.00 for completion of 100% CD
 - b. 10% of Fixed Fee or \$7,110.00 for DSA approval
 - c. 10% of Fixed Fee or \$7,110.00 for Bid and Award Phase
 - d. 15% of Fixed Fee or \$10,665.00 for Construction Phase
 - e. 5% of Fixed Fee or \$3,555.00 for Closeout Phase
2. Reimbursable Allowances - Included in the aforementioned fee, the following allowances have been provided. The use of any allowances stated below shall be subject to Owner's approval as stated in Article 9.C. The A-E will not exceed these allowances without prior written authorization.
 - a. Expense Allowance \$1,000.00
This allowance established for reimbursement of those items stated in Article 9.C. Reimbursement shall be at cost for reproductions, deliveries and fees advanced with prior authorization. Reimbursement may be billed to the Owner at one hundred five percent (105%) of the direct billing.

The total cost to the Owner for the Services described in this Agreement shall not exceed the above amount without the written agreement of the Owner.

Project Schedule:

A-E shall complete the Basic and Professional Services described in Article 3, within timeframes established in Article 12 and as follows:

Notice to proceed: November 10, 2016**Construction Document Phase: November 10, 2016 – March 17, 2016**

Start of Construction Document Phase: November 10, 2016

100% Construction Document DSA Submittal: January 18, 2017

Constructability comments: February 1, 2017

Anticipated Date for DSA Back-check: March 8, 2017

Obtain DSA approval: March 10, 2017*

* Estimate based on 49-day review period per DSA website.

Obtain DSA approved documents: March 17, 2017

Bid and Award Phase: March 20, 2017 – April 21, 2017

Bid Period: March 20, 2017 – April 12, 2017

Bid Date: April 12, 2017

Issue Notice of Intent to Award: April 14, 2017

Award Bid: May 1, 2017

Construction Phase: May 1, 2017 – August 4, 2017

Issue Notice to Proceed: May 1, 2017

Pre-construction submittals: May 1, 2017 – June 1, 2017

Start of Construction: June 12, 2017

Construction Complete and Accepted by Owner: August 4, 2017

Project Closeout Phase: August 4, 2017 – September 1, 2017

Project Close-Out: September 1, 2017

EXHIBIT B – HOURLY RATES FOR ADDITIONAL SERVICES

A-E shall receive additional compensation for Additional Services as described in Article 7 provided that formal written authorization was received from Owner prior to the performance of such Additional Services.

murakami/Nelson Architectural Corporation

Principal	\$190/hr.
Associate Principal	\$165/hr.
Project Architect	\$145/hr.
Project Manager	\$135/hr.
Senior Designer	\$ 95/hr.
Designer	\$ 75/hr.
Clerical/Administrative	\$ 70/hr.

R.P. Gallagher Associates, Inc.

Principal Engineer	\$180/hr.
Project Engineer	\$150/hr.
Senior Engineer	\$125/hr.
Staff Engineer II	\$110/hr.
Staff Engineer I	\$ 90/hr.
CAD Drafter	\$ 85/hr.
Word Processor/Typist	\$ 65/hr.

Mack5

Principal/Managing Principal	\$195/hr.
Senior Cost and Project Managers	\$170/hr.
Cost and Project Managers	\$155/hr.
Project and Cost Engineers	\$120/hr.
Administrative Support	\$ 70/hr.

EXHIBIT C – Not Used

EXHIBIT D – DELIVERABLES AND ADDITIONAL SCOPE OF SERVICES

Deliverables by Phase:

In addition to the requirements of Article 3, the following deliverables shall be provided:

100% Construction Documents – Provide the following copies:

- (1) CD containing all files electronically

DSA Approval – Provide the following copies:

- (1) CD containing all files electronically

EXHIBIT E – A-E CERTIFICATION

I, **John S. Nelson** , on behalf of **murakami/Nelson Architectural Corporation** certify that, pursuant to Education Code Section 45125.1 and Article 22 of this Agreement, this business Contractor has conducted the required criminal background check(s) of all persons who will be providing services to the **Woodside Elementary School District** on behalf of this business Contractor, and that none of those persons have been reported by the Department of Justice as having been convicted of a serious or violent felony as specified in Penal Code sections 667.5(c) and/or 1192.7(c). I understand that this Certification is not to be signed and submitted until I have received clearance from DOJ regarding those persons named. As further required by Education Code 45125.1, attached hereto as Exhibit F is a list of names of the employees or agents of A-E who will be providing services to **Woodside Elementary School District** and who are required to be fingerprinted as provided in the Agreement. I agree to keep this list current and to notify the **Woodside Elementary School District** of any addition/deletions as they occur.

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

Executed this ___ day of _____, 2016, in _____ County, California.

By: John S. Nelson

(Seal of business)

(Title)

(Signature)

EXHIBIT F – LIST OF EMPLOYEES WHO ARE AUTHORIZED TO COME ON TO SCHOOL CAMPUSES

<u>Name:</u>	<u>School Site (if known)</u>

EXHIBIT G – SUB-CONSULTANTS

Please refer to Article 3.E for the required list of sub-consultants.

<u>Company Name</u>	<u>Professional Service</u>