ATTACHMENT B
MASTER AGREEMENT

This Agreement for On-Going Architectural Services ("Agreement") is entered into by and between SANTA CLARA UNIFIED SCHOOL DISTRICT ("District") and ("Architect"); the District and the Architect are collectively referred to herein as “the Parties.” This Agreement is entered into with reference to the following Recitals, all of which are incorporated herein by this reference.

RECITALS

WHEREAS, the District desires to retain an Architect as an independent contractor to provide professional Architectural AND Engineering Services in connection with planning, designing, bidding and/or constructing the Assigned Projects; the specific terms and conditions for an Assigned Project will be as set forth in the Project Assignment Amendment ("PAA") in substantially the form attached hereto as Exhibit A.

WHEREAS, the District issued a Request for Qualifications ("RFQ") requesting that qualified firms submit proposals to provide Ongoing Architectural and Engineering Services ("Services").

WHEREAS, the Architect submitted a written response to the RFQ ("the RFQ Response"); by this reference, the RFQ and the RFQ Response are incorporated into this Agreement.

WHEREAS, personnel of the Firm providing Architectural Services are duly licensed as architects or registered as engineers under the laws of the State of California.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the District and Architect agree as follows:

AGREEMENT

ARTICLE 1 BASIC SERVICES

1.1 General. Architect shall provide Basic Services and authorized Additional Services for the Project as enumerated in this Agreement. All Basic Services and authorized Additional Services for the Project shall be performed and completed by employees of the Architect and/or the Architect’s Consultants. The Architect shall complete Basic Services in accordance with the Basic Services Completion Schedule incorporated in this Agreement and with professional skill and care to avoid hindrance, interruption, or delay to the orderly progress and completion of the Project.

1.2 Relationship of Architect to Other Project Participants. The Architect’s services shall be provided in conjunction with the services of other Project participants including District staff, District Consultants, and District Commissioning Agents. The Architect’s services shall conform to processes, procedures, and standards established by the District for the Project.
1.3 **Architect Independent Contractor Status.** The Architect is an independent contractor to the District. The express terms of this Agreement set forth the limited extent to which Architect is authorized to act on behalf of the District in its independent contractor capacity. The Architect shall be liable for the consequences of Architect’s actions or conduct which exceeds the express limited scope of Architect’s authority to act on behalf of the District as set forth herein.

1.4 **Architect Standard of Care.** Architect and its Consultants shall provide the Basic Services and authorized Additional Services for the Project: (i) using their professional skill and judgment; (ii) acting with due care and in accordance with the applicable standards of care for those providing similar services for projects of the size, scope, and complexity of the Project; (iii) the terms of this Agreement; and (iv) in accordance with applicable standards of care regarding application and interpretation of applicable law, code, rule or regulation at the time services are rendered. Neither the Architect, its Consultants nor their respective employees shall engage in any conduct or activity, accept any employment or compensation which actually or reasonably appears to compromise the Architect’s obligations to the District under this Agreement.

1.5 **Meetings.** The Architect and its Consultants, as necessary, appropriate or requested by the District, shall attend and participate in meetings, forums and other conferences (“Meetings”) relating to the Project. Without limiting the generality of the foregoing, the Architect and Consultants shall attend and participate in Meetings with the District, District Consultants, end-user groups, District councils/committees, Board of Trustees and District-organized public forums relating to the Project. The Architect and its Consultants shall promptly respond to matters assigned to or designated for response, review or other action by the Architect or its Consultants. The Architect shall prepare and distribute agendas and minutes of Meetings relating to the Project unless otherwise directed by the District.

1.6 **Architect’s Consultants.** The Basic Services for Architect include the following Architecture in house or consultants as needed per project:

- Structural, Mechanical, Acoustical, Plumbing, Civil, Electrical, Doors and Hardware including access key systems, Communications (Phone, VoIP, Wireless), Security Cameras, Fire Suppression, Food Service, Construction/OPSC Estimates, Landscaping, Sports Fields, CDE Submittals, CHPS and/or LEED Certifications.

   District has the right to review Architect’s recommended consultants for each project and disallow consultants based on previous performance. District has the right to choose to hire their own consultant to work with the Architect.

1.7 **Site Conditions.** The Architect shall review information provided by the District regarding the Project to ascertain the requirements and constraints of the Project. The Architect shall visit the Site to become familiar with physical conditions at the Site as they relate to planning for the Project.

1.7.1 **Site Observations.** The Architect and its Consultants shall visit the Site of the Project to observe and become familiar with physical conditions and existing improvements at the Site. The Site observations of the Architect and its Consultants do not include observations of concealed conditions or testing unless directed by the District. The foregoing notwithstanding, by conducting Site observations, the Architect is responsible for noting and incorporating patently observable existing Site conditions into the Project Master Planning, or other Project Documents.
1.7.2 **District Provided Site Data.** The Architect shall review and verify the accuracy of all materials, information and data provided to the Architect by or through the District relating to the as-built and existing condition of the improvements on or about the Site. The Architect shall promptly notify the District in writing of discrepancies encountered between the existing conditions observed by the Architect and the materials provided by or through the District.

**ARTICLE 2 ADDITIONAL SERVICES**

2.1 **Additional Services; General.** The District may, by written instrument, direct or authorize the Architect to complete other Additional Services relating to the Project. The Architect shall not complete any Additional Services without express prior direction or authorization of the District; no payment will be made by the District for any Additional Services completed without the Architect’s prior direction or authorization.

2.2 **Additional Services Compensation.** If the District authorizes or directs the Architect to complete Additional Services and such Additional Services are not necessary as a result (in whole or in part) of deficiencies in the Planning Documents for the Project or fault/neglect of the Architect, the Architect will be compensated for such District-requested Additional Services as set forth in this Agreement. If any Additional Services are the result of deficiencies in the Planning Documents for the Project and/or fault/neglect of the Architect, no compensation is due from the District to the Architect for completing such Additional Services.

2.3 **Additional Services.** Without limiting any Additional Service the District may authorize or direct the Architect to complete Additional Services which may include the following:

2.3.1 **Document Revisions.** Making significant revisions to the Drawings, Specifications or other Documents where such revisions are: (i) inconsistent with approval or instructions previously given by the District, including revisions necessary due to significant adjustments in the District’s Program, budget or construction completion time for the Project; (ii) required by enactment of, or revisions to codes, laws, rules or regulations applicable to the Work of the Project where such enactment or revision could not have been reasonably foreseen by Architect; or (iii) due to the District’s failure to render decisions in a timely manner.

2.3.2 **Existing Conditions.** Services to investigate existing conditions or facilities not included within the scope of the Project or to provide measured drawings thereof.

2.3.3 **Furniture, Furnishings, Equipment.** Services in connection with the District’s selection, procurement or installation of furniture, furnishing or equipment not included within the scope of the Construction Contracts.

2.3.4 **Financial/Special Studies.** Providing financial feasibility or other special study in connection with the Project.

2.3.5 **Special Surveys.** Providing planning surveys or special surveys for Site evaluations, comparative studies or assessment of environmental conditions, to the extent not included in the scope of Basic Services for the Project.

2.3.6 **Operational/Maintenance Cost Analysis.** Analysis of ownership, operational or maintenance costs of the Project or the components thereof to the District.

2.3.7 **Additional Consultants.** Providing services of Consultants for design disciplines not included in the Basic Services.
ARTICLE 3  DISTRICT RESPONSIBILITIES

3.1  **Information.** The District shall provide full information regarding the Project, including the District’s objectives, general description of the scope, schedule requirements, construction budget, and other constraints and requirements, which may affect the Project. Except as set forth herein, the Architect shall be entitled to rely on the accuracy and completeness of information relating to the Project provided by the District. The foregoing notwithstanding, if any information provided by the District to the Architect consists of information relating to existing “as built” conditions of improvements on or about the Site, the Architect shall be entitled to rely upon information in concealed or covered conditions, but the Architect shall independently verify the accuracy and completeness of information of existing “as built” conditions which are visually apparent without opening or uncovering any existing improvements. If in such independent verification, the Architect encounters conditions different than noted in the District provided information, the Architect shall notify the District, and the Construction Manager in writing of such encountered discrepancies.

3.2  **District Representative.** The District shall designate a representative to act on the District’s behalf with respect to the Project and who shall be authorized to render decisions on behalf of the District and to carry out the District’s responsibilities under this Agreement, all of which shall be discharged or performed in a manner so as to avoid unreasonable delay in the orderly and sequential progress of design and construction of the Project and Architect’s services hereunder.

3.3  **District Consultants.** Except for the Consultants retained by the Architect, the District shall furnish all legal, accounting, insurance and other consulting services as may be necessary for the Project.

3.4  **District Notice of Non-Conformity.** The District will give prompt written notice to the Architect if the District becomes aware of any fault, failure or neglect of Architect or the services provided by Architect hereunder; provided that the failure or delay by District in giving such written notice shall not constitute a waiver of any right or remedy of the District arising out of such fault, failure or neglect of the Architect. Upon receipt of such notice, a material obligation of the Architect under this Agreement is its prompt action to fully remedy the fault, neglect or failure identified by the District in the District’s written notice.

ARTICLE 4  ARCHITECT COMPENSATION

4.1  **Contract Price for Architectural Services.** The Contract Price for the Architectural Services subject to a Project Assignment Amendment (“PAA”) will be set forth in the PAA. The Contract Price set forth in a PAA for the Architectural Services described in the PAA is the full amount due from the District to the Architect for the Architectural Services described in the PAA.

4.2  **Fees, Costs and Expenses Incorporated Into Project Contract Price.** The Contract Price for the Project includes the Architect’s fee, Consultants’ fees, personnel expense of the Architect and Consultants, inclusive of all benefits and burdens, travel for the personnel of the Architect and Consultants, insurance and all other administrative and overhead costs, including all costs and expenses of a non-capital nature reasonably and necessarily incurred by Architect to perform the Basic Services including without limitation expenses for telephone, postage, delivery, office supplies, reproduction of
plans and prints, basic renderings of projects needed for meetings to better explain
design of projects, photography, and travel to and from the offices of the Architect and
Consultants to the Project and the District’s Administrative offices. Unless expressly
authorized in advance by the District, no payment will be made by the District for
expenses or costs of any kind, type, or nature.

4.3 Additional Services. If the District authorizes or directs the Architect to perform or
provide Additional Services described generally in Paragraph 3 of this Agreement in
connection with the Project, Architect shall be compensated for its personnel providing
such Additional Services in accordance with the hourly personnel rate schedule
attached to this Agreement (“the Rate Schedule”).

4.4 District Payments.

4.4.1 Allocation of Contract Price. The District’s payment of the Contract Price for Basic
Services for the Project shall be allocated amongst the various Phases of the Basic
Services for the Project as set forth in this Agreement.

4.4.2 Architect Billings to District. During the course of providing Basic Services for the
Project, Architect shall submit monthly billing invoices to the District for payment
of the Contract Price for Basic Services and authorized Additional Services
performed in the immediately prior month. Architect’s billings shall be in such
form and format and accompanied by substantiating data as may be reasonably
requested by District.

4.4.3 District Payments to Architect. Within thirty (30) days of receipt of Architect’s
billing invoices, District will make payment to Architect of undisputed amounts of
the Contract Price due for Basic Services and authorized Additional Services for
the Project. The District may withhold or deduct from amounts otherwise due
Architect hereunder if Architect shall fail to timely and completely perform material
obligations to be performed on its part under this Agreement, with the amounts
withheld or deducted being released after Architect has fully cured such failure of
performance, less costs, damages or losses sustained by the District resulting
therefrom. Notwithstanding any provision of this Agreement to the contrary, if
the District shall, in good faith, dispute the amount due Architect under any billing
invoice rendered by Architect under this Agreement, pursuant to Civil Code
§3320(a), the District may withhold from payment to the Architect an amount not
to exceed one hundred and fifty percent (150%) of the disputed amount.

ARTICLE 5 INSURANCE; INDEMNITY

5.1 Architect Insurance. At all times while providing or performing services under this
Agreement, the Architect and its Consultants shall obtain and maintain the policies of
insurance described in this Article 5. The minimum coverage amounts of each policy
of insurance to be obtained and maintained by the Architect and its Consultants while
providing or performing services in connection with the Project shall be as set forth in
this Agreement.

5.2 Workers Compensation and Employers Liability Insurance. Architect shall purchase
and maintain Workers’ Compensation Insurance covering claims under workers’ or
workmen’s compensation, disability benefit and other similar employee benefit acts
may be liable. Architect shall purchase and maintain Employer’s Liability Insurance
covering bodily injury (including death) by accident or disease to any employee which
arises out of the employee’s employment by Architect. The Employer’s Liability
Insurance required of Architect hereunder may be obtained by Architect as a separate
policy of insurance or as an additional coverage under the Workers’ Compensation Insurance required to be obtained and maintained by Architect hereunder.

5.3 **Commercial General Liability and Property Insurance.** Architect shall purchase and maintain Commercial General Liability and Property Insurance as will protect Architect from the types of claims set forth below which may arise out of or result from Architect’s services under this Agreement and for which Architect may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than Architect’s employees; (ii) claims for damages insured by usual personal injury liability coverage; (iii) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; and (v) contractual liability insurance applicable to Architect’s obligations under this Agreement. District shall be an additional insured to Architect’s commercial general liability insurance policy. Additional insured verification must include District name and address.

5.4 **Professional Liability Insurance.** Architect will procure and maintain professional liability insurance covering liabilities of the Architect arising out of the performance of services under this Agreement.

5.5 **Consultants’ Insurance.** Each of the Consultants retained by the Architect to provide or perform a portion of the services or obligations of the Architect under this Agreement shall obtain and maintain policies of insurance for Workers Compensation, Employers Liability, Commercial General Liability/Property Damage and Professional Liability. Each policy of insurance to be obtained by each of the Architect’s Consultants shall conform to the standards or requirements set forth in Articles 5.1-5.4, above.

5.6 **Policy Endorsements; Evidence of Insurance.** Architect shall deliver Certificates of Insurance to the District evidencing each of the policies of insurance in the coverage amounts required hereunder. All policies of insurance required hereunder shall be issued by insurer(s) admitted to issue insurance by the State of California and to the reasonable satisfaction of the District. Coverages under each policy of insurance required hereunder, whether by endorsement or otherwise, shall provide that such policy will not be modified or canceled without at least thirty (30) days advance written notice to the District.

5.7 **Architect’s Insurance Minimum Coverage Limits.** Minimum coverage limits for policies of insurance to be obtained and maintained by the Architect are:

<table>
<thead>
<tr>
<th>Insurance Policy</th>
<th>Minimum Coverage Limit</th>
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<tbody>
<tr>
<td>Workers Compensation</td>
<td>In accordance with law</td>
</tr>
<tr>
<td>Employers Liability</td>
<td>Two Million Dollars ($2,000,000)</td>
</tr>
<tr>
<td>Commercial General Liability</td>
<td>Per Occurrence: Two Million Dollars ($2,000,000)</td>
</tr>
<tr>
<td></td>
<td>Aggregate: Four Million Dollars ($4,000,000)</td>
</tr>
</tbody>
</table>
Auto Mobile Liability

<table>
<thead>
<tr>
<th>Insurance Policy</th>
<th>Minimum Coverage Limit</th>
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<tbody>
<tr>
<td>Workers Compensation</td>
<td>In accordance with law</td>
</tr>
<tr>
<td>Employers Liability</td>
<td>One Million Dollars ($1,000,000)</td>
</tr>
<tr>
<td>Commercial General</td>
<td>Per Occurrence: One Million Dollars ($1,000,000)</td>
</tr>
<tr>
<td>Liability</td>
<td>Aggregate: Two Million Dollars ($2,000,000)</td>
</tr>
<tr>
<td>Automobile Liability</td>
<td>Combined Single Limit: One Million Dollars ($1,000,000)</td>
</tr>
<tr>
<td>Professional Liability</td>
<td>Per Claim: One Million Dollars ($1,000,000)</td>
</tr>
<tr>
<td></td>
<td>Aggregate: One Million Dollars ($1,000,000)</td>
</tr>
</tbody>
</table>

5.8 Architect’s Consultants’ Insurance; Minimum Coverage Limits. Minimum coverage limits for policies of insurance to be obtained and maintained by each of the Architect’s Consultants are:

5.9 Indemnity.

5.9.1 Architect Indemnity. To the fullest extent permitted by law, the Architect shall indemnify, defend and hold harmless the District and its employees, officers, Board of Trustees, each individual member of the Board of Trustees, agents and representatives (collectively “the Indemnified Parties”) from any and all claims, actions, causes of action, demands, losses, responsibilities or liabilities (collectively “Claims”) for: (i) injury or death of persons; (ii) damage to property, and (iii) other costs, losses, expenses or charges which result from the negligent, grossly negligent or willful conduct of the Architect, Consultants to the Architect, employees of the Architect or Consultants or the agents/representatives of the Architect or Consultants to the Architect. The foregoing includes without limitation, reasonable attorneys’ fees and costs (including expert witness fees) incurred by the Indemnified Parties. The Architect shall defend the Indemnified Parties from Claims with counsel retained by the Architect who is reasonably
5.9.2 **District Indemnity of Architect.** The District shall indemnify and hold harmless Architect from all claims arising out of bodily injury (including death) and physical damage (other than to the Project(s) itself and property covered by a policy of Builder's Risk Insurance) which arise out of the negligent or willful acts, omissions or other conduct of the District.

**ARTICLE 6 TERM; TIME**

6.1 **Term.** The Term of this Agreement commences upon the District and the Architect each executing a counterpart copy hereof, delivery of an executed counterpart copy hereof to the other and ratification of this Agreement by the District's Board of Trustees.

6.2 **Time.** All of the Basic Services and authorized Additional Services for the Project(s) shall be completed by the Architect in a prompt and diligent manner as is consistent with professional skill and care. The Architect shall be liable to the District for all costs, losses, damages or other liabilities arising out of the failure of the Architect to complete Basic Services for the Project in accordance with an agreed upon schedule included in this Agreement as the PAA, Exhibit A, provided that the Architect's liabilities hereunder shall not extend to costs, losses, damages or other liabilities caused by factors beyond the reasonable control of the Architect.

**ARTICLE 7 TERMINATION; SUSPENSION**

7.1 **Termination for Default.** Either the District or Architect may terminate this Agreement upon seven (7) days advance written notice to the other if there is a default by the other Party in its performance of a material obligation hereunder and such default in performance is not caused by the Party initiating the termination. Such termination shall be deemed effective the seventh (7th) day following the date of the written termination notice, unless during such seven (7) day period, the Party receiving the written termination notice shall commence to cure its default(s) and diligently thereafter prosecute such cure to completion. In addition to the District’s right to terminate this Agreement pursuant to the foregoing, the District may terminate this Agreement upon written notice to Architect if: (i) Architect becomes bankrupt or insolvent, which shall include without limitation, a general assignment for the benefit of creditors or the filing by Architect or a third party of a petition to reorganize debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for Architect or any of Architect’s property on account of Architect’s insolvency; or (ii) if Architect disregards applicable laws, codes, ordinances, rules or regulations. If District exercises the right of termination hereunder, the Contract Price due the Architect, if any, shall be based upon Basic Services and authorized Additional Services for the Project as of the date of termination provided prior the effective date of the District’s termination of this Agreement, reduced by the District’s prior payments of the Contract Price due for such Projects and losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or the cause(s) for termination of this
Agreement. Payment of the amount due the Architect, if any, shall be made by District only after completion of the Post Construction Phase of the Project. Architect shall remain responsible and liable to District all losses, damages or other costs sustained by District arising out of termination pursuant to the foregoing or otherwise arising out of Architect’s default hereunder, to the extent that such losses, damages or other costs exceed any amount due Architect hereunder for Basic Services or authorized Additional Services.

7.2 District’s Right to Suspend. The District may, in its discretion, suspend all or any part of the design or construction of the Project or the Architect’s services; provided, however, that if the District shall suspend construction of the Project or Architect’s services for a period of sixty (60) consecutive days or more and such suspension is not caused by the Architect’s default or the acts or omissions of Architect or its Consultants, upon rescission of such suspension, the Contract Price will be subject to adjustment to reflect actual costs and expenses incurred by Architect, if any, as a direct result of the suspension and resumption of Project construction or Architect’s services.

7.3 District’s Termination for Convenience. The District may, at any time, upon seven (7) days advance written notice to Architect terminate this Agreement, in whole or in part, for the District’s convenience and without fault, neglect or default on the part of Architect. In such event, the Agreement shall be deemed terminated seven (7) days after the date of the District’s written notice to Architect or such other time as the District and Architect may mutually agree upon. In such event, the District shall make payment of the Contract Price to Architect for services provided through the date of termination plus actual costs incurred by Architect directly attributable to such termination.

7.4 Architect Suspension of Services. If the District shall fail to make payment of the Contract Price for the Project when due Architect hereunder, Architect may, upon seven (7) days advance written notice to the District, suspend further performance of services relating to such Project hereunder until payment in full is received. In such event, Architect shall have no liability for any delays or additional costs of construction of the Project due to, or arising out of, such suspension.

7.5 Architect Obligations Upon Termination. Upon the District’s exercise of the right of termination under Paragraph 14.1 or Paragraph 14.3 of this Agreement, the Architect shall take action as directed by the District relative to on-going preparation of the Master Planning, Planning, Design, Construction, and Post Construction Documents of the Project. If requested by the District, the Architect shall within ten (10) days of such request, assemble and deliver to the District all work product, instruments of service and other items of a tangible nature (whether in the form of documents, drawings, samples or electronic files) prepared by or on behalf of the Architect under this Agreement. The Architect shall deliver the originals of all work product, instruments of service and other items of a tangible nature requested by the District pursuant to the preceding sentence; provided, however, that the Architect may, at its sole cost and expense, make reproductions of the originals delivered to the District.

ARTICLE 8 MISCELLEANOUS

8.1 Governing Law; Interpretation. This Agreement shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against the District or Architect.
8.2 **Marginal Headings; Captions.** The titles of the various Paragraphs of the Agreement are for convenience of reference only and are not intended to and shall in no way enlarge or diminish the rights or obligations of Architect and District hereunder.

8.3 **Severability.** If any provision of this Agreement is deemed illegal, invalid unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted herefrom, but all remaining provisions will remain and continue in full force and effect.

8.4 **Cumulative Rights; No Waiver.** Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by District or Architect hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default by the other.

8.5 **Successors; Non-Assignability.** This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors of Architect and the District. Neither Architect nor District shall assign rights or obligations hereunder without the prior consent of the other, which consent may be withheld or granted in sole discretion of the Party requested to grant such consent.

8.6 **Authority.** The individual(s) executing this Agreement on behalf of Architect warrant and represent that they are authorized to execute this Agreement and bind Architect to all terms hereof. The individual(s) executing this Agreement on behalf of District warrant and represent that they are authorized to execute this Agreement and subject to approval and ratification by the District’s Board of Trustees, to bind District to all terms hereof and authority granted to enter into this Agreement.

8.7 **Notices.** Notices under this Agreement will be addressed and delivered as set forth as follows.

**If to District:**

Chief Business Official
Santa Clara Unified School District
1889 Lawrence Road
Santa Clara, CA 95051

**If to Architect:**

_________________________

8.8 **Disputes.**

8.8.1 **Continuation of Architect Services.** Notwithstanding any disputes between District and Architect hereunder or in connection with the Project, Architect and District shall each continue to perform their respective obligations hereunder; including the obligation of the Architect to continue to provide and perform services hereunder pending a subsequent resolution of such disputes.

8.8.2 **Mandatory Mediation.** All claims, disputes and other matters in controversy between the Architect and the District arising out of or pertaining to this Agreement or the Project shall be submitted for resolution by non-binding mediation conducted under the auspices of the JAMS and the Construction Mediation Rules of JAMS in effect at the time that a Demand For Mediation is filed. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the District or the Architect commencing arbitration proceedings pursuant to the following Paragraph.
Mediation shall be conducted at the JAMS regional office situated closest to the Site.

8.8.3 **JAMS Binding Arbitration.** All claims, disputes and other matters in controversy between the Architect and the District arising out of or pertaining to this Agreement or the Project which are not fully resolved by the mandatory mediation proceedings shall be resolved by binding arbitration conducted before a retired judge in accordance with the Construction Arbitration Rules and Procedures of Judicial Arbitration Mediation Services (“JAMS”) in effect as of the date that a Demand for Arbitration is filed, except as expressly modified herein. The locale for any arbitration commenced hereunder shall be the regional office of the JAMS closest to the Site. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the District or the Architect commencing arbitration proceedings.

8.8.3.1 **Architect Compliance with Government Code §900 et seq.** All claims, demands, disputes, disagreements or other matters in controversy asserted by the Architect against the District in a Demand for Arbitration are deemed a “suit for money or damages” under Government Code §900 et seq. An express condition precedent to the Architect’s commencement of binding arbitration proceedings hereunder is the Architect’s compliance with and exhaustion of remedies and procedures under Government Code §900 et seq, including without limitation, §§945.4, 945.6 and 946. Notwithstanding the arbitration provisions set forth herein, all claims demands, disputes, disagreements or other matters in controversy asserted by the Architect against the District seeking money or damages shall first be presented to the District’s Board of Trustees and acted upon or deemed rejected by the Board of Trustees in accordance with Government Code §900 et seq. prior to the Consultant’s initiation of binding arbitration proceedings.

8.8.3.2 **Demand for Arbitration.** A Demand for Arbitration shall be filed and served within a reasonable time after the occurrence of the claim, dispute or other disagreement giving rise to the Demand for Arbitration, but in no event shall a Demand for Arbitration be filed or served after the date when the institution of legal or equitable proceedings based upon such claim, dispute or other disagreement would be barred by the applicable statute of limitations. Arbitration proceedings commenced hereunder are subject to consolidation with any other arbitration proceedings relating to the Project and the Master Planning Documents prepared by or through the Architect for the Project or the Architect’s services in completing architectural and related services for the Project.

8.8.3.3 **Discovery.** In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference.
8.8.3.4 **Arbitration Award.** The award rendered by the Arbitrator(s) ("Arbitration Award") shall be final and binding upon the District and the Architect only if the Arbitration Award is: (i) supported by substantial evidence; (ii) based on applicable legal standards in effect that the time the Arbitration Award is issued; and (iii) supported by written findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296. Any Arbitration Award that does not conform to the foregoing is invalid and unenforceable. The District and Contractor hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§1286.4 and 1296, vacate the Arbitration Award if, after review, the Court determines either that the Arbitration Award does not fully conform to the foregoing. The confirmation, enforcement, vacation or correction of an arbitration award rendered hereunder shall be made by the Superior Court of the State of California for the county in which the Site is situated. The substantive and procedural rules for such post-award proceedings shall be as set forth in California Code of Civil Procedure §1285 et seq.

8.8.3.5 **Arbitration Fees and Expenses.** The expenses and fees of the Arbitrator(s) shall be divided equally among all of the parties to the arbitration. Each party to any arbitration commenced hereunder shall be responsible for and shall bear its own attorneys’ fees, witness fees and other costs or expenses incurred in connection with such arbitration. The foregoing notwithstanding, the Arbitrator(s) may award arbitration costs, including Arbitrators’ fees but excluding attorneys’ fees, to the prevailing party.

8.8.3.6 **Limitation on Arbitrator.** The Superior Court for the State of California for the County in which the Site is situated has the sole and exclusive jurisdiction, and an arbitrator has no authority, to hear and/or determine a challenge to the commencement or maintenance of an arbitration proceeding on the grounds that: (i) the subject matter of the arbitration proceeding is barred by the applicable statute of limitations; (ii) the subject matter of the arbitration proceeding is barred by a provision of the California Government Claims Act; (iii) the subject matter of the arbitration proceeding is outside the scope of the arbitration clause; (iv) the Architect has failed to satisfy all conditions precedent to commencement or maintenance of an arbitration proceeding; (v) waiver of the right to compel arbitration; (vi) grounds exist for the revocation of the arbitration agreement; and/or, (vii) there is the prospect that a ruling in arbitration would conflict or potentially with a ruling in a pending proceeding regarding the Project on a common issue of law or fact.

8.8.4 **Limitation on Special/Consequential Damages.** In the event of the District’s breach or default of its obligations under this Agreement, the damages, if any, recoverable by the Architect shall be limited to general damages which are directly caused by the breach or default of the District and shall exclude any and all special
or consequential damages, if any. By executing the Agreement, the Architect expressly acknowledges the foregoing limitation to recovery of only general damages from the District if the District is in breach or default of its obligations under the Contract Documents; the Architect expressly waives and relinquishes any recovery of special or consequential damages from the District.

8.9 Confidentiality. Unless disclosure is required by applicable law or valid court order, the Architect and its Consultants shall maintain the confidentiality of all information provided by or through the District to the Architect or its Consultants and shall not disclose or otherwise disseminate any information conveyed by or through the District to the Architect or its Consultants relating to this Agreement or the Project.

8.10 Definitions.

8.10.1 Construction Contract. The Contract for Construction awarded by the District to a Contractor for the construction of a portion of the Project. If the Project is constructed by multiple trade contractors, each under contract to the District, references to the Construction Contract in this Agreement for such the Project shall be such contracts individually or collectively as required by context in which such term if used.

8.10.2 Contractor. The individual or entity awarded the Construction Contract by the District for the Project. If the Project is constructed by multiple trade contractors, references to the contractor in the Agreement shall be to such multiple trade contractors, individually or collectively, as required by the context in which such term is used.

8.10.3 Design Documents. The Drawings, Specifications, calculations and other work product prepared by the Architect or its Consultants for an Assigned Project or any portion thereof. Design Documents include Drawings, Specifications and other documents prepared by the Architect or a Design Consultant for an Assigned Project.

8.10.4 Design Consultant(s). Design Consultant(s) or Subconsultants are individuals or entities retained by Architect to provide or perform a portion of the Architect’s services or work product hereunder, including any portion of the Design Documents. Consultants shall be duly licensed as required by law, rule or regulation and shall be qualified to perform or provide the portion of Architect’s services or work product assigned by having previously provided design consulting services for California public school project design and construction. The District shall have the right to reasonably disapprove a Design Consultant. Architect shall be responsible for the adequacy, timeliness and quality of services or work product provided or performed by Consultants; Architect shall be liable to District for, and shall defend, indemnify and hold harmless District and its Board of Trustees, employees, officers, agents and representatives from and against, all losses, costs, damages, liabilities, actions or demands arising out of the services or work product provided or performed by Consultants.

8.10.5 Submittals. Shop Drawings, Product Data or Samples prepared or provided by a Contractor or its Subcontractor(s) or supplier(s) illustrating some portion of the Work of an Assigned Project.

8.10.6 Site. The physical area for construction and related activities of an Assigned Project.
8.10.7 **Drawings and Specifications.** The Drawings are the graphic and pictorial portions of the Design Documents showing generally the location, design and dimensions of the Work of an Assigned Project, including without limitation, plans, elevations, sections, details, schedules and diagrams. Specifications are the portion of the Design Documents, which consist of written requirements for materials, equipment, construction systems, standards, criteria and workmanship for the Work and related services for an Assigned Project.

8.10.8 **Work.** All of the construction and other services required by the terms of a Construction Contract, including all labor, materials, equipment and other services required of the Contractor under the terms of the Construction Contract to complete an Assigned Project.

8.10.9 **Project Construction Budget.** The Project Construction Budget refers to the total costs allocated by the District for construction of an Assigned Project, exclusive of the Contract Price under this Agreement, site acquisition costs and the costs of furniture, furnishing and/or equipment for the Project. The Project Construction Budget established by the District may be modified by the District upon notice to the Architect. As used in this Agreement, the term “Project Construction Budget” refers to the then current amount allocated for construction of the Project as modified from time-to-time.

8.10.10 **Construction Cost Estimate.** Construction Cost Estimates are estimates prepared by or on behalf of the Architect of the current costs of labor, materials, equipment and services plus a reasonable allowance for the Contractor’s profit, overhead and administrative cost as necessary to complete construction of an Assigned Project in accordance with the Design Documents. Construction Cost Estimates shall include a reasonable allowance for contingencies relating to market conditions at the time of solicitation of Contractor bids for the Work of the Project and Changes in the Work during construction of an Assigned Project; the allowance for contingency costs shall be consistent with the contingency established by the District in the Project Construction Budget, if any.

8.10.11 **Construction Manager.** The Construction Manager is the individual or entity retained by the District as an independent contractor to provide certain management, planning, other services and/or work product in connection with the design and/or construction of the Project. Services, functions and responsibilities of the Construction Manager shall be provided in conjunction with and complementary to the Architect’s services and work product under this Agreement.

8.10.12 **Assigned Project.** An Assigned Project is a Project described in a Project Assignment issued by the District under this agreement.

8.10.13 **Project Assignment.** A Project Assignment is the written instrument issued by the District and mutually executed by the District and the Architect which establishes the specific terms and conditions for the Architect’s performance and provision of Architectural and related services for an Assigned Project. The form of Project Assignment is attached as Exhibit A to the Agreement. Notwithstanding execution of the Agreement by the District and the Architect, the Architect shall have no right to provide Architectural services or to be compensated for any Project which may be undertaken by the District unless the District has theretofore issued a
Project Assignment for such Project and the Project Assignment is mutually executed by the District and the Architect.

8.11 Use and Ownership of Documents.

8.11.1 Ownership. Subject to the provisions hereof, all Drawings, Specifications, estimates, Instruments of Service and other tangible items ("Project Documents") prepared by or through the Architect for the Project shall be and remain the property of the District. The Project Documents shall be and remain the property of the District regardless of the format on which said items are prepared or stored, including without limitation paper copies, AutoCAD files, Revit files, (or similar computer-aided drafting of design formats), or other types of computerized data. The District specifically maintains ownership of the design of the Project and the design of any buildings or other improvements which are a part thereof, notwithstanding creation/preparation of such design by or through the Architect, and such design may not be re-used by the Architect or its employees or Consultants without the specific prior written consent of the District which may granted, denied or conditioned in the sole exclusive discretion of the District. Subject to the District’s ownership of tangible Project Documents, the copyright and other intellectual property rights in all Project Documents shall remain with the Architect.

8.11.2 Right to Use. The Architect grants to the District a perpetual license to use and/or reuse all or any part of the Project Documents at the District’s sole discretion with no additional compensation to the Architect for the purposes of: (i) construction of all or part of the Project; (ii) the repair, renovation, modernization, replacement, reconstruction or expansion of the Project; or (iii) the construction of another project by or for the District for the District’s ownership and/or use. The District is not bound by this Agreement to employ the services of the Architect in the event any of the Project Documents are used for such purposes. The District shall be authorized to use or reuse the Project Documents for these purposes without liability to the Architect, its Consultants or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall be not be construed or interpreted to waive or limit the District’s right to recover for latent defects or for errors or omissions of the Architect; provided, however, that any use or reuse by the District of the Project Documents on any project other than the Project for which the Project Documents were prepared without employing the services of the Architect shall be at the District’s own risk. If the District uses or reuses the Project Documents on any project other than the Project for which the Project Documents were prepared for, the District shall remove the Architect’s seal from the Project Documents and indemnify and hold harmless the Architect from claims arising out of the use or re-use of the Project Documents on such other project.

8.11.3 District License to Use Project Documents. This Agreement creates a non-exclusive and perpetual license for the District to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. The Architect shall require any and all of the Architect’s Consultants to agree in writing that the District is granted a non-exclusive and perpetual license for the work of such Consultants performed pursuant to this Agreement.

8.11.4 Architect Right to Grant License. The Architect represents and warrants that the Architect has the legal right to license any and all copyrights, designs and other
intellectual property embodied in the Project Documents prepared by or through the Architect under this Agreement.

8.12 **Entire Agreement.** This Agreement and the following are all of the documents forming a part of the Agreement:

- The RFP and the RFP Response
- Exhibit A- Project Assignment Amendment (“PAA”)

The foregoing constitute the entire agreement and understanding between the District and Architect concerning the subject matter hereof, replacing and superseding all prior agreements or negotiations, whether written or verbal. The foregoing notwithstanding, in the event of conflict or inconsistency between the terms of this Agreement or the RFQ, as applicable, shall control and govern. No term or condition of this Agreement shall be modified or amended except by writing executed by the District and Architect.

IN WITNESS WHEREOF, the District and Architect have executed this Agreement as of the date set forth above.

---

“**District**
SANTA CLARA UNIFIED SCHOOL DISTRICT

By: _____________________________
Name: Eric Dill
Title: Chief Business Official

“**Architect**

By: _____________________________
Name: ___________________________
Title: ___________________________
This Project Assignment Amendment ("PAA") is entered into between SANTA CLARA UNIFIED SCHOOL DISTRICT ("District") and __________________________ ("Architect") as of _______________ with reference to the following.

WHEREAS, the District and Architect have entered into an agreement entitled Agreement for Ongoing Architectural and Engineering Services ("Agreement") pursuant to which the Architect agreed to provide Architectural Services for the Projects assigned by the District ("Assigned Projects").

WHEREAS, the Consultant will complete the Architectural Services for the following Assigned Project as set forth herein.

1. **Assigned Project.** The Assigned Project subject to this PAA is described as:

2. **Architectural Scope Description.** The scope of Architectural Services subject to this PAA is generally described as:

3. **Architectural Services Completion Schedule.** Consultant will complete Architectural Services in accordance with the following completion schedule:

<table>
<thead>
<tr>
<th>Architectural Service</th>
<th>Completion Date</th>
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4. **Contract Price for Architectural Services.** The Contract Price for Architectural Services under this PAA is:

5. **Consultant Personnel Rates.** The following hourly rates for the Architect’s personnel completing Architectural Services for the Assigned Project will be used for: (i) calculating the Contract Price if the Contract Price is a "Not to Exceed" based on Consultant personnel rates;
time to complete Architectural Services; (ii) calculating the Contract Price if the Contract Price is based on Consultant personnel time to complete Architectural Services; or (iii) for calculating adjustments to the Contract Price if the District authorized Additional Architectural Services for the Assigned Project.

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Hourly Rate</th>
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<tr>
<td>Principal</td>
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<td>Architect</td>
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<td>Interior Designer</td>
<td>$___________</td>
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<tr>
<td>Project Manager</td>
<td>$___________</td>
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<tr>
<td>Construction Project Manager</td>
<td>$___________</td>
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<tr>
<td>(if different from Project Manager)</td>
<td>$___________</td>
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<tr>
<td>Clerical</td>
<td>$___________</td>
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6. **Architect Personnel.** The Architect designates and the District accepts the following Architect personnel for the functions/positions described herein. Architect personnel identified below shall not be replaced by the Architect except under the following conditions: (i) the Architect terminates any of the identified personnel for cause; (ii) death or incapacitation of identified personnel; or (iii) any of the identified personnel voluntarily cease employment with the Architect without duress or coercion. Architect personnel for the Project are:

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<tr>
<th>Name</th>
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7. **No Modification to Agreement.** Except as expressly modified in the foregoing, the Agreement is not modified by this PAA. All of the foregoing described Architectural Services for the Assigned Project will be completed by the Consultant in accordance with the applicable terms and requirements of the Agreement.

IN WITNESS HEREOF, the District and Consultant have executed this PAA as of the date set forth above.

<table>
<thead>
<tr>
<th>&quot;District&quot;</th>
<th>&quot;Architect&quot;</th>
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<tbody>
<tr>
<td>SANTA CLARA UNIFIED SCHOOL DISTRICT</td>
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<tr>
<td>By: _________________________</td>
<td>By: _________________________</td>
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<tr>
<td>Eric Dill</td>
<td>Name: _________________________</td>
</tr>
<tr>
<td>Chief Business Official</td>
<td>Title: _________________________</td>
</tr>
</tbody>
</table>

[END OF DOCUMENT]