



## ARCHITECTURAL SERVICES AGREEMENT

### 1. PARTIES AND DATE.

This Agreement is made and entered into as [REDACTED], 20[REDACTED] by and between WestEd, a Joint Powers Agency organized and operating under the laws of the State of California with its principal place of business at 730 Harrison Street, San Francisco, California 94107 ("WestEd"), and [\*\*INSERT NAME\*\*], a [\*\*INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY\*\*] with its principal place of business at [\*\*INSERT ADDRESS\*\*] (hereinafter referred to as "Architect"). WestEd and Architect are sometimes individually referred to herein as "Party" and collectively as "Parties."

### 2. RECITALS.

**2.1 WestEd.** WestEd is a Joint Powers Agency organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

**2.2 Architect.** Architect desires to perform and assume responsibility for the provision of certain professional architectural services required by WestEd on the terms and conditions set forth in this Agreement. Architect warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Architect is a corporation or other organization, the Project Architect designated pursuant to Section 3.2, and not the Architect itself, shall be fully licensed to practice as an architect in the State of California.

**2.3 Project.** WestEd desires to engage Architect to render such services for the [INSERT PROJECT NAME] ("Project") as set forth in this Agreement.

### 3. TERMS

#### 3.1 Employment of Architect.

**3.1.1 Scope of Services.** Architect promises and agrees to furnish to WestEd all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional architectural and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Architect shall be subject to the sole and discretionary approval of WestEd, which approval shall not be unreasonably withheld. **[INSERT IF FEDERAL FUNDS WILL BE USED; OTHERWISE ALWAYS DELETE:** Additionally, Architect shall comply with all Federal requirements applicable to the Services as set forth in Exhibit "A-I."]

3.1.2 Term. The term of this Agreement shall be from **[INSERT DATE]** to **[INSERT DATE]**, unless earlier terminated as provided herein. **\*\*\*INSERT THE FOLLOWING SENTENCE FOR MULTI-YEAR, AUTOMATIC RENEWAL NOT TO EXCEED THREE CONSECUTIVE YEARS; OTHERWISE, ALWAYS DELETE:** WestEd shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than **[INSERT NUMBER]** additional one-year terms.**\*\*\*** Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

### **3.2 Project Architect; Key Personnel.**

3.2.1 Project Architect. Architect shall name a specific individual to act as Project Architect, subject to the approval of WestEd. Architect hereby designates **[INSERT NAME OF INDIVIDUAL ARCHITECT]** (License No. **[INSERT NUMBER]**) to act as the Project Architect for the Project. The Project Architect shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Architect for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with WestEd and all contractors, consultants, engineers and inspectors on the Project. Any change in the Project Architect shall be subject to WestEd's prior written approval, which approval shall not be unreasonably withheld. The new Project Architect shall be of at least equal competence as the prior Project Architect. In the event that WestEd and Architect cannot agree as to the substitution of a new Project Architect, WestEd shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Project Architect, Architect has represented to WestEd that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Architect may substitute others of at least equal competence upon written approval of WestEd. In the event that WestEd and Architect cannot agree as to the substitution of key personnel, engineers or consultants, WestEd shall be entitled to terminate this Agreement for cause. As discussed below, any personnel, engineers or consultants who fail or refuse to perform the Services in a manner acceptable to WestEd, or who are determined by WestEd to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Architect at the request of WestEd. The key additional personnel, engineers and consultants for performance of this Agreement are as follows: **[INSERT NAMES, AND TITLES OF KEY PERSONNEL, AND LICENSE NUMBERS, IF APPLICABLE]**.

### **3.3 Hiring of Consultants and Personnel.**

3.3.1 Right to Hire or Employ. Architect shall have the option, unless WestEd objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Architect may delegate without relieving Architect from administrative or other responsibility under this Agreement. Architect shall be responsible for the coordination and cooperation of Architect's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by WestEd in its sole and reasonable discretion. Architect shall notify WestEd of the identity of all consultants at least fourteen (14) days prior to their

commencement of work to allow WestEd to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

3.3.2 Qualification and License. All architects, engineers, experts and other consultants retained by Architect in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Architect shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by WestEd in writing. Unless changes are approved in writing by WestEd, Architect's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Architect shall promptly obtain written WestEd approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Architect's consultants and key personnel shall be subject to approval by WestEd.

3.3.5 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Architect at Architect's sole expense.

### **3.4 Standard of Care.**

3.4.1 Standard of Care. Architect shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform the Services in the same discipline in the State of California, and shall be responsible to WestEd for damages sustained by WestEd and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Architect shall be fully responsible to WestEd for any increased costs incurred by WestEd as a result of any such delays in the design or construction of the Project. Architect represents and maintains that it is skilled in the professional calling necessary to perform the Services. Architect warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Architect represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Architect shall perform, at its own cost and expense and without reimbursement from WestEd, any services necessary to correct errors or omissions which are caused by the Architect's failure to comply with the standard of care provided for herein.

3.4.2 Performance of Employees. Any employee or consultant who is determined by WestEd to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to WestEd, shall be promptly removed from the Project by the Architect and shall not be re-employed to perform any of the Services or to work on the Project.

### **3.5 Laws and Regulations.**

3.5.1 Knowledge and Compliance. Architect shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Architect by law. Architect shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. If the Architect performs any work knowing it to be contrary to such laws, rules and regulations, Architect shall be solely responsible for all costs arising therefrom. Architect shall defend, indemnify and hold WestEd, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 Drawings and Specifications. Architect shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Architect. Architect shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Architect shall use Computer Aided Design ("CAD") (e.g., AutoCAD) or other technology acceptable to the Architect and WestEd.

3.5.3 Americans with Disabilities Act. Architect will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Architect shall inform WestEd of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide WestEd with its interpretation of such inconsistencies and conflicting interpretations. Unless Architect brings such inconsistencies and conflicting interpretations to the attention of WestEd and requests WestEd's direction on how to proceed, the Architect's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Architect, and the Architect shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Architect request's WestEd's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Architect shall be responsible to WestEd only pursuant to the indemnification provisions of this Agreement.

3.5.4 Permits, Approvals and Authorizations. Architect shall provide WestEd with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Architect shall then assist WestEd in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by WestEd.

3.5.5 Water Quality Management and Compliance.

(a) Compliance with Water Quality Laws, Ordinances and Regulations. Architect shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of WestEd's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Architect shall additionally comply with the lawful requirements of WestEd, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges.

(b) Standard of Care. Architect warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in Sections 3.5.5(a) of this Agreement. Architect further warrants that it, its employees and subcontractors will receive adequate training, as determined by WestEd, regarding these requirements as they may relate to the Services.

(c) Liability for Non-compliance.

(i) Indemnity: Failure to comply with laws, regulations, and ordinances listed in Sections 3.5.5(a) of this Agreement is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Architect agrees to indemnify and hold harmless WestEd, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which WestEd, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Services, except for liability resulting from the sole established negligence, willful misconduct or active negligence of WestEd, its officials, officers, agents, employees or authorized volunteers.

(ii) Defense: WestEd reserves the right to defend any enforcement action or civil action brought against WestEd for Architect's failure to comply with any applicable water quality law, regulation, or policy. Architect hereby agrees to be bound by, and to reimburse WestEd for the costs associated with, any settlement reached between WestEd and the relevant enforcement entity.

(iii) Damages: WestEd may seek damages from Architect for delay in completing the Services caused by Architect's failure to comply with the laws, regulations and policies described in Section 3.5.5(a) of this Agreement, or any other relevant water quality law, regulation, or policy.

### **3.6 Independent Contractor.**

3.6.1 Control and Payment of Subordinates. WestEd retains Architect on an independent contractor basis and Architect is not an employee of WestEd. Architect is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to WestEd's employees. Any additional personnel performing the Services under this Agreement on behalf of Architect shall also not be employees of WestEd, and shall at all times be under Architect's exclusive direction and control. Architect shall pay all wages,

salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Architect shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

### **3.7 Schedule of Services.**

3.7.1 Architect Services. Architect shall fully and adequately complete the Services described in this Agreement and in Exhibit "A" attached hereto and incorporated herein by reference.

3.7.2 Timely Performance Standard. Architect shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Architect shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by WestEd and within any completion schedules adopted for the Project. Architect agrees to coordinate with WestEd's staff, contractors and consultants in the performance of the Services, and shall be available to WestEd's staff, contractors and consultants at all reasonable times.

3.7.3 Performance Schedule. Architect shall prepare an estimated time schedule for the performance of Architect's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to WestEd's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for WestEd's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If WestEd and Architect cannot mutually agree on a performance schedule, WestEd shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Architect without the prior written approval of WestEd. If the Architect's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that WestEd will suffer damage for which the Architect will be responsible pursuant to the indemnification provision of this Agreement.

3.7.4 Excusable Delays. Any delays in Architect's work caused by the following shall be added to the time for completion of any obligations of Architect: (1) the actions of WestEd or its employees; (2) the actions of those in direct contractual relationship with WestEd; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Architect; and (5) any act of God or other unforeseen occurrence not due to any fault or negligence on the part of Architect. Neither WestEd nor the Architect shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.7.5 Request for Excusable Delay Credit. The Architect shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify WestEd in writing of the causes of delay (unless WestEd grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). WestEd will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. WestEd's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the

Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Architect for extensions of time shall be an extension of the performance time at no cost to WestEd. If Additional Services are required as a result of an excusable delay, the parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Architect make an application for an extension of time, Architect shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

### **3.8 Additional Architect Services.**

3.8.1 Request for Services. At WestEd's request, Architect may be asked to perform services not otherwise included in this Agreement, not included within the basic services listed in Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted architectural practice.

3.8.2 Definition. As used herein, "Additional Services" mean: (1) any work which is determined by WestEd to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary for the Architect to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached hereto. Architect shall not perform, nor be compensated for, Additional Services without prior written authorization from WestEd and without an agreement between WestEd and Architect as to the compensation to be paid for such services. WestEd shall pay Architect for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Architect pursuant to the indemnification provision of this Agreement.

3.8.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Architect was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to WestEd, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services made necessary by the failure of Architect to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Architect.

(e) Legal Proceedings. Serving as an expert witness on WestEd's behalf or attending legal proceedings to which the Architect is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Architect's services for the Project.

**3.9 WestEd Responsibilities.** WestEd's responsibilities shall include the following:

3.9.1 Data and Information. WestEd shall make available to Architect all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget limitation information, WestEd shall provide the Architect with a preliminary construction budget ("WestEd's Preliminary Construction Budget").

3.9.2 Project Survey. If required pursuant to the scope of the Project and if requested by Architect, WestEd shall furnish Architect with, or direct Architect to procure at WestEd's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

3.9.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.9.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications. Architect shall not be entitled to rely on any previously prepared soils, geological, or other tests/surveys and shall exercise its own independent standard of care to retain the appropriate consultants necessary to conduct any such tests/surveys required for design of the Project.

3.9.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

3.9.6 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.9.7 WestEd's Representative. WestEd hereby designates \_\_\_\_\_, or his or her designee, to act as its representative for the performance of this Agreement ("WestEd's Representative"). WestEd's Representative shall have the power to act on behalf of WestEd for all purposes under this Contract. WestEd hereby designates **[INSERT NAME AND TITLE]**, or his or her designee, as WestEd's contact for the implementation of the Services hereunder. Contractor shall not accept direction or orders from any person other than WestEd's Representative or his or her designee.



3.9.8 Review and Approved Documents. Review all documents submitted by Architect, including change orders and other matters requiring approval by the WestEd Board of Directors or other officials. WestEd shall advise Architect of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

### **3.10 Compensation.**

3.10.1 Architect's Compensation for Basic Services. WestEd shall pay to Architect, for the performance of all Services rendered under this Agreement, the total not to exceed amount of **[INSERT WRITTEN AMOUNT]** Dollars (**[\$[INSERT NUMERICAL AMOUNT]**) ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

3.10.2 Payment for Additional Services. At any time during the term of this Agreement, WestEd may request that Architect perform Additional Services. As used herein, Additional Services means any work which is determined by WestEd to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the parties. If WestEd requires Architect to hire consultants to perform any Additional Services, Architect shall be compensated therefore at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the parties. WestEd shall have the authority to review and approve the rates of any such consultants. In addition, Architect shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.10.3 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Architect shall not be reimbursed for any expenses unless authorized in writing by WestEd, which approval may be evidenced by inclusion in Exhibit "C" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Architect in the interest of the Project. Architect shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of \$1,000; and (5) other costs, fees and expenses in excess of \$1,000.

3.10.4 Payment to Architect. Architect's compensation and reimbursable expenses shall be paid by WestEd to Architect no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the phasing and funding schedule provided in Exhibit "B" and the compensation rates indicated in Exhibit "C" attached hereto and incorporated herein by reference. In order to receive payment, Architect shall present to WestEd an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and

the amount to be paid. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Architect shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B" attached hereto. WestEd shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Architect shall present to WestEd an itemized statement which indicates the Additional Services performed, percentage of Additional Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. WestEd shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Architect shall be compensated as set forth in the termination provision herein.

3.10.5 Withholding Payment to Architect. WestEd may withhold payment, in whole or in part, to the extent reasonably necessary to protect WestEd from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by WestEd to deduct any sums from a progress payment shall not constitute a waiver of WestEd's right to such sums. WestEd may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by WestEd, incurred by WestEd for which Architect is liable under the Agreement or state law. Payments to the Architect for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Architect shall not be withheld, postponed, or made contingent upon receipt by WestEd of offsetting reimbursement or credit from parties not within the Architect's reasonable control.

3.10.6 Prevailing Wages. Architect is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If any portion of the Services are deemed to be "public works" or "maintenance" work, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Architect agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. WestEd shall provide Architect with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Architect shall make copies of the prevailing rates of per diem wages for each craft,

classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Architect's principal place of business and at the Project site. Architect shall defend, indemnify and hold WestEd, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Architect or its consultants to comply with the Prevailing Wage Laws.

3.10.7 Registration. If any portion of the Services are deemed be "public works" or "maintenance" work under Prevailing Wage Laws, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Architect and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Architect shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Architect's sole responsibility to comply with all applicable registration and labor compliance requirements.

### **3.11 Notice to Proceed.**

Architect shall not proceed with performance of any Services under this Agreement unless and until WestEd provides a written notice to proceed.

### **3.12 Termination, Suspension and Abandonment.**

3.12.1 Grounds for Termination; Architect's Termination for Cause. WestEd hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Architect shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Architect shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by WestEd as a result of the default, if any, by Architect. Architect hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Architect may terminate this Agreement for substantial breach of performance by WestEd such as failure to make payment to Architect as provided in this Agreement.

3.12.2 WestEd's Suspension of Work. If Architect's Services are suspended by WestEd, WestEd may require Architect to resume such Services within ninety (90) days after written notice from WestEd. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of WestEd and Architect.

3.12.3 Documents and Other Data. Upon suspension, abandonment or termination, Architect shall provide to WestEd all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined below, to which WestEd would have been entitled at the completion of Architect's Services under this Agreement. Upon payment of the amount required to be paid to Architect pursuant to the termination provisions of this Agreement, WestEd shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Architect under this Agreement. Architect shall make such documents available to WestEd upon request

and without additional compensation other than as may be approved as a reimbursable expense.

3.12.4 Employment of other Architects. In the event this Agreement is terminated in whole or in part as provided herein, WestEd may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

### **3.13 Ownership and Use of Documents; Confidentiality.**

3.13.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, architectural presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of WestEd. Although the official copyright in all Project Documents shall remain with the Architect or other applicable subcontractors or consultants, the Project Documents shall be the property of WestEd whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Architect shall provide to WestEd copies of all Project Documents required by WestEd. In addition, Architect shall retain copies of all Project Documents on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to WestEd upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, Architect shall make a reasonable effort to notify WestEd and provide WestEd with the opportunity to obtain the documents.

3.13.2 Right to Use. Architect grants to WestEd the right to use and reuse all or part of the Project Documents, at WestEd's sole discretion and with no additional compensation to Architect, for the following purposes:

- (a) The construction of all or part of this Project.
- (b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;
- (c) The construction of another project by or on behalf of WestEd for its ownership and use;

WestEd is not bound by this Agreement to employ the services of Architect in the event such documents are used or reused for these purposes. WestEd shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Architect 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 not be construed or interpreted to waive or limit WestEd's right to recover for latent defects or for errors or omissions of the Architect.

Any use or reuse by WestEd of the Project Documents on any project other than this Project without employing the services of Architect shall be at WestEd's own risk with respect to third parties. If WestEd uses or reuses the Project Documents on any project other than this Project, it shall remove the Architect's seal from the Project Documents and hold harmless Architect and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

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

3.13.4 Right to License. Architect represents and warrants that Architect has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Architect prepares or causes to be prepared pursuant to this Agreement. Architect shall indemnify and hold WestEd harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Architect makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Architect and provided to Architect by WestEd.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Architect in connection with the performance of this Agreement, shall be held confidential by Architect to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of WestEd, be used or reproduced by Architect for any purposes other than the performance of the Services. Architect shall not disclose, cause or facilitate the disclosure of the Project Documents to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Architect which is otherwise known to Architect or is generally known, or has become known, to the related industry shall be deemed confidential. Architect shall not use WestEd's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the written consent of WestEd.

### **3.14 Indemnification.**

3.14.1 Scope of Indemnity. To the fullest extent permitted by law, Architect shall defend, indemnify and hold WestEd, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Architect, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Architect's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Architect's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Architect.

3.14.2 Additional Indemnity Obligations. To the fullest extent permitted by law, Architect shall defend, with counsel of WestEd's choosing and at Architect's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.14.1 that may be brought or instituted against WestEd, or its directors, officials, officers, employees, volunteers and agents. Architect shall pay and satisfy any judgment, award or decree that may be rendered against WestEd, or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Architect shall

also reimburse WestEd for the cost of any settlement paid by WestEd or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for WestEd's attorney's fees and costs, including expert witness fees. Architect shall reimburse WestEd, and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Architect's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by WestEd, its directors, officials, officers, employees, agents or volunteers.

**3.15 Insurance.** **[WESTED RISK MANAGER TO REVIEW PRIOR USE]** Architect shall not commence work under this Agreement until it has provided evidence satisfactory to WestEd that it has secured all insurance required under this Section. In addition, Architect shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to WestEd that the subconsultant has secured all insurance required under this section.

**3.15.1 Types of Insurance Required.** As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, Architect shall, at its expense, procure and maintain in full force and effect for the duration of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Architect agrees to amend, supplement or endorse the policies to do so.

**3.15.2 Additional Insured.** WestEd, its officials, officers, employees, agents, and volunteers shall be named as additional insureds on Architect's and its subconsultants' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

**3.15.3 Commercial General Liability**

(a) The Architect shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to WestEd.

(b) Coverage for Commercial General Liability insurance shall be at least as broad as the following: Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent. Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted/coverage included

- (7) Contractual Liability with respect to this Contract
- (8) Broad Form Property Damage
- (9) Independent Consultants Coverage

(c) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(d) The policy shall give WestEd, the WestEd Board of Directors and each member of the WestEd Board of Directors, its officers, employees, agents and WestEd designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(e) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by WestEd, and provided that such deductibles shall not apply to WestEd as an additional insured.

#### 3.15.4 Automobile Liability

(a) At all times during the performance of the work under this Agreement, the Architect shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to WestEd.

(b) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(c) The policy shall give WestEd, its Board of Directors and each member of the Board of Directors, its officers, employees, agents and WestEd designated volunteers additional insured status.

(d) Subject to written approval by WestEd, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to WestEd as an additional insured, but not a self-insured retention.

#### 3.15.5 Workers' Compensation/Employer's Liability

(a) Architect certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(b) To the extent Architect has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Architect shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers'

Compensation and Insurance Act,” Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer’s Liability Coverage in amounts indicated herein. Architect shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers’ compensation coverage of the same type and limits as specified in this Section.

### 3.15.6 Professional Liability (Errors and Omissions)

(a) At all times during the performance of the work under this Agreement the Architect shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to WestEd and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Architect. “Covered Professional Services” as designated in the policy must specifically include work performed under this Agreement. The policy must “pay on behalf of” the insured and must include a provision establishing the insurer’s duty to defend.

### 3.15.7 Minimum Policy Limits Required

(a) The following insurance limits are required for the Agreement:

|                              | <u>Combined Single Limit</u>   |
|------------------------------|--|
| Commercial General Liability | \$3,000,000 per occurrence/\$5,000,000 aggregate for bodily injury, personal injury, and property damage |
| Automobile Liability         | \$3,000,000 per occurrence for bodily injury and property damage   |
| Employer’s Liability         | \$3,000,000 per occurrence   |
| Professional Liability       | \$5,000,000 per claim and aggregate (errors and omissions)   |

(b) Defense costs shall be payable in addition to the limits.

(c) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

### 3.15.8 Evidence Required

(a) Prior to execution of the Agreement, the Architect shall file with WestEd evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer’s equivalent) signed by the insurer’s representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and



shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

#### 3.15.9 Policy Provisions Required

(a) Architect shall provide WestEd at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Architect shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Architect shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to WestEd at least ten (10) days prior to the effective date of cancellation or expiration.

(b) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Architect's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by WestEd or any named insureds shall not be called upon to contribute to any loss.

(c) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Architect shall maintain such coverage continuously for a period of at least ten (10) years on the Professional Liability policy and at least five (5) years on all other policies, after the completion of the work under this Agreement. Architect shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(d) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of WestEd, its officials, officers, employees, agents, and volunteers or shall specifically allow Architect or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Architect hereby waives its own right of recovery against WestEd, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(e) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Architect from liability in excess of such coverage, nor shall it limit the Architect's indemnification obligations to WestEd and shall not preclude WestEd from taking such other actions available to WestEd under other provisions of the Agreement or law.

#### 3.15.10 Qualifying Insurers

(a) All policies required shall be issued by acceptable insurance companies, as determined by WestEd, which satisfy the following minimum requirements: Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

### 3.15.11 Additional Insurance Provisions

(a) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Architect, and any approval of said insurance by WestEd, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Architect pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(b) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, WestEd has the right but not the duty to obtain the insurance it deems necessary and any premium paid by WestEd will be promptly reimbursed by Architect or WestEd will withhold amounts sufficient to pay premium from Architect payments. In the alternative, WestEd may cancel this Agreement.

(c) WestEd may require the Architect to provide complete copies of all insurance policies in effect for the duration of the Project.

(d) Neither WestEd nor WestEd Board of Directors, nor any member of WestEd Board of Directors, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

### 3.15.12 Subconsultant Insurance Requirements

(a) Architect shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to WestEd that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name WestEd as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Architect, WestEd may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

### **3.16 Records.**

Architect shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Architect shall allow a representative of WestEd during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Architect shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

### **3.17 Standardized Manufactured Items.**

Architect shall cooperate and consult with WestEd in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to WestEd's criteria to the extent such criteria do not interfere with building design.

### **3.18 Limitation of Agreement.**

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other WestEd site, will be covered by, and be the subject of, a separate Agreement for architectural services between WestEd and the architect chosen therefor by WestEd.

### **3.19 Mediation.**

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the parties.

### **3.20 Successors and Assigns.**

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Architect shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of WestEd. Any attempted assignment without such consent shall be invalid and void.

### **3.21 Asbestos Certification.**

Architect shall certify to WestEd, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Architect prepares for the Project. Architect shall require all consultants who prepare any other documents for the Project to submit the same written certification. Architect shall also assist WestEd in ensuring that contractors provide WestEd with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Architect shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

### **3.22 No Third Party Rights.**

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

### **3.23 Governing Law.**

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in Contra Costa County.

### **3.24 Exhibits and Recitals.**

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

### **3.25 Severability.**

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

**3.26 Non-Waiver.**

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

**3.27 Safety.**

Architect shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Architect shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

**3.28 Harassment Policy.**

Architect shall provide a copy of WestEd's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Architect shall submit to WestEd's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of WestEd's Harassment Policy and certifying that they have read the Harassment Policy. A finding by WestEd that any of Architect's employees has harassed a WestEd employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at WestEd's request.

**3.29 Delivery of Notices.**

All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

WESTED:

WestEd

730 Harrison Street

San Francisco, CA 94107

Attn: [\*\*\*INSERT NAME & DEPARTMENT\*\*\*]

ARCHITECT:

[\*\*\*INSERT NAME, ADDRESS & CONTACT PERSON\*\*\*]

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

**3.30 Time of Essence.**

Time is of the essence for each and every provision of this Agreement.

### **3.31 WestEd's Right to Employ Other Consultants.**

WestEd reserves right to employ other consultants, including Architects, in connection with this Project or other projects.

### **3.32 Prohibited Interests.**

3.32.1 Solicitation. Architect maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Architect, to solicit or secure this Agreement. Further, Architect warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Architect, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, WestEd shall have the right to rescind this Agreement without liability.

3.32.2 Conflict of Interest. For the term of this Agreement, no director, official, officer or employee of WestEd, during the term of his or her service with WestEd, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

### **3.33 Equal Opportunity Employment.**

Architect represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Architect shall also comply with all relevant provisions of WestEd's minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

### **3.34 Labor Certification.**

By its signature hereunder, Architect certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

### **3.35 Subcontracting.**

As specified in this Agreement, Architect shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of WestEd. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.

### **3.36 Supplemental Conditions.**

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

**3.37 Entire Agreement.**

This Agreement, with its exhibits, contains the entire agreement of the parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.

**[SIGNATURES ON FOLLOWING PAGE]**

SAMPLE

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT  
BETWEEN WESTED  
AND [\*\*\*INSERT NAME\*\*\*]**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

WESTED

[INSERT NAME OF CONSULTANT]

By:

\_\_\_\_\_  
[INSERT NAME]  
[INSERT TITLE]

By:

\_\_\_\_\_  
Its: \_\_\_\_\_

SAMPLE

**EXHIBIT "A"**  
**ARCHITECT'S SCOPE OF SERVICES**

**1. GENERAL REQUIREMENTS.**

**1.1 Basic Services.** Architect agrees to perform all the necessary professional architectural and any necessary engineering services mutually agreeable to the parties and construction administration services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

**1.2 Exclusions from Basic Services.** The following services shall be excluded from the basic services listed above, including: **civil engineering, landscape architectural, soils engineering, geotechnical services, hazardous waste or toxic substances engineering.**

**1.3 Additional Services.** Architect shall perform the following Additional Services for the Project: **[INSERT SERVICES OR "N/A" IF NOT APPLICABLE]**

**1.4 Communication with WestEd.** Architect shall participate in consultations and conferences with authorized representatives of WestEd and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and WestEd. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Architect shall take direction only from WestEd's Representative, or any other representative specifically designated by WestEd for this Project, including any construction manager hired by WestEd.

**1.5 Coordination and Cooperation with Construction Manager.** WestEd may hire a construction manager to administer and coordinate all or any part of the Project on its behalf. If WestEd does so, it shall provide a copy of its agreement with the construction manager so that the Architect will be fully aware of the duties and responsibilities of the construction manager. The Architect shall cooperate with the construction manager and respond to any requests or directives authorized by WestEd to be made or given by the construction manager. The Architect shall request clarification from WestEd in writing if the Architect should have any questions regarding the authority of the construction manager.

**2. INITIAL PLANNING PHASE.**

During the initial planning phase of the Project, Architect shall do all of the following, as well as any incidental services thereto:

**2.1 Project Feasibility.** Provide advice and assistance to WestEd in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

**2.2 Meeting Budget and Project Goals.** Architect shall notify WestEd in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project budget and time line, including WestEd's Preliminary Construction Budget.



Architect shall use its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Project's budget and construction allowance. It shall be the duty of the Architect to design the Project within budget. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by the stated amount, Architect may be required to make the necessary changes in the drawing and specifications, at its sole cost and expense, to bring the bids within the required budget.

**2.3 Permits, Approvals and Authorizations.** As indicated in Section 3.5.4 of the Agreement, Architect shall assist WestEd in securing easements, encroachment permits, rights of way, dedications, infrastructures and road improvements, as well as coordinating with utilities and adjacent property owners.

### **3. SCHEMATIC PLAN PHASE.**

During the schematic plan phase of the Project, Architect shall do all of the following, as well as any incidental services thereto:

**3.1 Funding Documents.** Architect shall provide a site plan and all other Project-related information necessary and required for an application by WestEd to any federal, state, regional, or local agencies for funds to finance the construction Project.

**3.2 Schematic Plans.** In cooperation with WestEd, Architect shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed architectural concept of the Project ("Schematic Plans"). Architect shall incorporate the functional requirements of WestEd into the Schematic Plans. The Schematic Plans shall meet all laws, rules and regulations of the State of California. The Schematic Plans shall show all rooms incorporated in the Project in single-line drawings, and shall include all revisions required by WestEd or by any federal, state, regional or local agency having jurisdiction over the Project. All architectural drawings for the Project shall be in a form suitable for reproduction.

**3.3 Preliminary Project Budget.** Architect shall use WestEd's Preliminary Construction Budget and its own expertise and experience with the Project to establish a preliminary project budget or allowance in a format required by WestEd ("Architect's Preliminary Project Budget"). The purpose of the Architect's Preliminary Project Budget is to show the probable Project cost in relation to WestEd's Preliminary Construction Budget and the construction standards of any applicable funding agency. If Architect perceives site considerations which render the Project expensive or cost prohibitive, Architect shall disclose such conditions in writing to WestEd immediately. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by more than the stated amount, Architect may be required to make the necessary changes in the drawings and specifications, at its sole cost and expense, to bring the bids within the required budget. Architect shall provide a preliminary written time schedule for the performance of all construction work on the Project.

**3.4 Copies of Schematic Plans and Other Documents.** Architect, at its own expense, shall provide a complete set of the Schematic Plans described herein for WestEd's review and approval. Additionally, at WestEd's expense, Architect shall provide such documents as may be required by any federal, state, regional or local agencies concerned with

the Project. Any additional copies required by WestEd shall be provided at actual cost to WestEd.

#### **4. DESIGN DEVELOPMENT PHASE.**

During the design development phase of the Project, Architect shall do all of the following, as well as any incidental services thereto:

**4.1 Design Development Documents.** Once WestEd provides Architect with specific written approval of the Schematic Plans described herein, Architect shall prepare design development documents consisting of: (1) site and floor plans; (2) elevations; and (3) any other drawings and documents sufficient to fix and describe the types and makeup of materials, and to outline the Project specifications ("Design Development Documents"). The Design Development Documents shall be prepared in sufficient form to present to the WestEd Board of Directors for approval.

**4.2 Copies of Design Development and Other Documents.** Architect, at its own expense, shall provide a complete set of the Design Development Documents described herein for WestEd's review and approval. Additionally, at WestEd's expense, Architect shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by WestEd shall be provided at actual cost to WestEd.

**4.3 Updated Project Budget.** Architect shall use its Preliminary Project Budget and expertise and experience with the Project to establish an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents as set forth herein and containing a breakdown based on types of materials and specifications identified herein ("Architect's Updated Project Budget").

**4.4 Timetable.** Architect shall provide a written timetable for full and adequate completion of the Project to WestEd.

**4.5 Application for Approvals.** Architect shall assist WestEd in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project. Architect shall furnish and process all architectural and engineering information required to prepare and process applications to applicable utilities in order to secure priorities and materials, to aid in the construction of the Project and to obtain final Project approval and acceptance by any of the above agencies as may be required.

**4.6 Color and Other Aesthetic Issues.** Architect shall provide, for WestEd's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project.

#### **5. BID PHASE**

During the bid phase of the Project, Architect shall do all of the following, as well as any incidental services thereto:

**5.1 Reproducible Construction Documents.** Once WestEd provides Architect with specific written approval of the Construction Design Development Documents and Architect's

Final Estimate Updated Project Budget, Architect shall provide to WestEd one set of reproducible Preliminary Construction Documents.

**5.2 Distribution of Contract Documents and Review of Bids.** Architect shall assist WestEd in distributing the Construction Documents to bidders and conducting the opening and review of bids for the Project.

**5.3 Bid and Contract Documents.** If so required by WestEd, Architect shall assist WestEd in the completion of all bid and construction documents, including but not limited to, the Notice Inviting Bids, Instructions to Bidders, Contract Bid Forms (including Alternate Bids as requested by WestEd), Contract, General Conditions, Supplementary General Conditions, Special Conditions, DVBE and other applicable affirmative action documents, Performance Bond, Payment Bond, Escrow Agreement for Security Deposits, and any other certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of WestEd and WestEd's legal counsel.

**5.4 Over Budget.** If the apparent lowest responsive and responsible bid on the Project exceeds the Architect's Final Estimate by more than ten percent (10%), WestEd may request Architect to amend, at Architect's sole cost and expense, the Design Development Documents Final Drawings and Specifications other specifications in order to rebid the Project and receive a lowest responsive and responsible bid equal to or less than the Architect's Updated Project Budget Final Estimate. All revisions necessary to bring the lowest responsive and responsible bid within the Architect's Updated Project Budget Final Estimate, including any omissions, deferrals or alternates, shall be made in consultation with, and subject to the approval of, WestEd.

## **6. FINAL WORKING DRAWINGS AND SPECIFICATIONS.**

During the final working drawings and specifications phase of the Project, Architect shall do all of the following, as well as any incidental services thereto:

**6.1 Final Working Drawings and Specifications.** Once WestEd provides Architect with specific written approval of the Design Development Documents described herein, Architect shall prepare such complete working drawings and specifications as are necessary for the selected general contractor firm to develop the Final Construction Budget and to properly execute the Project work in an efficient and thorough manner ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be developed from the Schematic Plans and Design Development Documents approved by WestEd. The Final Working Drawings and Specifications shall set forth in detail all of the following: (1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. As indicated in Section 3.9.2 of the Agreement, WestEd may be requested to supply Architect with the necessary information to determine the proper location of all improvements on and off site, including record drawings ("as-built drawings") in WestEd's possession. Architect will make a good-faith effort to verify the accuracy of such information by means of a thorough interior and exterior visual survey of site conditions. WestEd shall also make a good-faith effort to verify the accuracy of the as-built drawings and provide any supplemental information to Architect which may not be shown on the as-built drawings.

**6.2 Form.** The Final Working Drawings and Specifications must be in such form as will enable Architect and WestEd to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project. In addition, the Final Working Drawings and Specifications must be in such form as will enable WestEd to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Architect.

**6.3 Approval and Revisions.** WestEd shall review, study, and check the Final Working Drawings and Specifications presented to it by Architect, and request any necessary revisions or obtain any necessary approvals by the WestEd Board of Directors, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Architect shall make all WestEd-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier WestEd direction or Architect's professional judgment. Architect shall bring any such conflicts and/or inconsistencies to the attention of WestEd. The parties agree that Architect and the Project General Contractor, and not WestEd, possesses the requisite expertise to determine the constructability of the Final Working Drawings and Specifications. However, WestEd reserves the right to conduct one or more constructability review processes with the Final Working Drawings and Specifications, and to hire an independent architect or other consultant to perform such reviews. Any such independent constructability review shall be at WestEd's expense. Architect shall make all WestEd-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications which may result from any constructability review, at no additional cost to WestEd, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier WestEd direction or Architect's professional judgment. If such changes, additions, deletions or corrections are inconsistent with prior WestEd direction, Architect shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

**6.4 Costs of Construction.** It is understood by Architect that should the Final Working Drawings and Specifications be ordered by WestEd, WestEd shall specify the sum of money set aside to cover the total cost of construction of the work, exclusive of Architect's fees. Should it become evident that the total construction cost will exceed the specified sum, Architect shall at once present a statement in writing to WestEd's Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based.

**6.5 Copies of Final Working Drawings and Specifications and Other Documents.** Architect, at its own expense, shall provide a complete set of the Final Working Drawings and Specifications described herein for WestEd's review and approval. Additionally, at WestEd's expense, Architect shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by WestEd shall be provided at actual cost to WestEd.

## **7. CONSTRUCTION PHASE.**

During the construction phase of the Project, Architect shall do all of the following, as well as any incidental services thereto:

**7.1 Observation.** The Project Architect shall observe work executed from the Final Working Drawings and Specifications in person, provided that WestEd may, in its discretion, consent to such observation by another competent representative of Architect.

**7.2 General Administration.** Architect shall provide general administration of the Construction Documents and the work performed by the contractors.

**7.3 Pre-Construction Meeting.** Architect shall conduct one or more pre-construction meetings, as WestEd determines is needed for the Project, with all interested parties.

**7.4 Site Visits of Contractor's Work.** Architect shall conduct site visits to observe each contractors' work for general conformance with the Construction Documents and with any approved construction schedules or milestones. Such site visits shall be conducted as often as are necessary and appropriate to the stage of construction, according to WestEd's sole discretion, but in no event less than weekly.

**7.5 Site Visits of Inspector's Work.** Architect shall conduct site visits to communicate and observe the activities of WestEd inspectors. Such site visits shall be conducted as often as is mutually acceptable to Architect and WestEd. Architect shall direct WestEd inspectors and the Project contractors to coordinate the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.

**7.6 Coordination of Architect's Consultants.** Architect shall cause all architects, engineers and other consultants, as may be hired by Architect or WestEd, to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

**7.7 Reports.** Architect shall make regular reports as may be required by applicable federal, state or local laws, rules or regulations, as well as the federal, state, regional or local agencies concerned with the Project.

**7.8 Construction Meetings; Minutes.** Architect shall attend all construction meetings and will review written reports/minutes provided by the Project General Contractor for accuracy and to make sure WestEd is informed of any issues related to the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the Project work, according to WestEd's sole discretion.

**7.9 Written Reports.** Architect shall make written reports to WestEd as necessary to inform WestEd of problems arising during construction, changes contemplated as a result of each such problems, and progress of the Project work.

**7.10 Written Records.** Architect shall keep accurate written records of the progress and quality of the Project work and the time schedules, and shall advise the contractors and WestEd of any deviations from the time schedule which could delay timely completion of the Project.

**7.11 Material and Test Reports.** Architect shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Architect shall

provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the contractors and WestEd.

**7.12 Review and Response to Submissions.** Architect shall review and respond, in a timely manner, to all schedules, submittals, shop drawings, samples, information requests, change requests, and other submissions of the contractor and subcontractors for compliance with, or alterations and additions to, the Construction Documents. Architect's review and response shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

**7.13 Rejection of Work.** Architect shall promptly reject, as discussed with WestEd, work or materials which do not conform to the Construction Documents. Architect shall immediately notify WestEd and contractor(s) of such rejections. Architect shall also have the authority to recommend to WestEd that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

**7.14 Substitutions.** Architect shall consult with WestEd, in a timely manner, with regard to substitution of materials, equipment and laboratory reports thereof, prior to WestEd's final written approval of such substitutions. Architect's consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

**7.15 Revised Documents and Drawings.** Architect shall prepare, at no additional expense to WestEd, all documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

**7.16 Change Requests and Material Changes.** Architect shall evaluate and advise WestEd, in a timely manner and in writing, of any change requests and material change(s) which may be requested or necessary in the Project plans and specifications. Architect shall provide WestEd with its opinion as to whether such change requests should be approved, denied or revised. If WestEd has not hired a construction manager or other person to do so, the Architect shall prepare and execute all change orders and submit them to WestEd for authorization. If WestEd has designated a construction manager or other person to prepare all change orders, the Architect shall review all change orders prepared by such person, execute them and deliver them to WestEd for authorization if they meet with the Architect's approval, or submit them to WestEd with recommendations for revision or denial if necessary. Architect shall not order contractors to make any changes affecting the contract price without approval by WestEd of such a written change order, pursuant to the terms of the Construction Documents. Architect may order, on its own responsibility and pending WestEd Board of Directors approval, changes necessary to meet construction emergencies, if written approval of WestEd's Representative is first secured.

**7.17 Applications for Payment.** Architect shall examine, verify and approve contractor's applications for payment, and shall issue certificates for payment in amounts approved by WestEd's inspector.

**7.18 Final Color and Product Selection.** Architect shall coordinate final color and product selection with WestEd's original design concept.

**7.19 Substantial Completion.** Architect shall determine the date of substantial completion, in consultation with WestEd.

**7.20 Punch List.** After determining that the Project is substantially complete, Architect shall participate in the inspection of the Project and shall review all remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the contractor ("Punch List Items"). Architect shall notify contractor in writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Architect shall also notify WestEd of all Punch List Items.

**7.21 Warranties.** Architect shall review materials assembled by the contractor and subcontractors with regard to all written warranties, guarantees, owners' manuals, instruction books, diagrams, record "as built" drawings, and any other materials required from the contractors and subcontractors pursuant to the Construction Documents. Architect shall coordinate and provide these materials to WestEd.

**7.22 Certificate of Completion.** Architect shall participate in any further inspections of the Project necessary to issue Architect's Certificate of Completion and final certificate for payment.

**7.23 Documents for Project Close-Out.** Architect shall cause all other architects, engineers and other consultants, as may be hired by Architect, to file any and all required documentation with WestEd or other governmental authorities necessary to close out the Project. Architect shall assist WestEd in obtaining such documentation from all other architects, engineers, or other consultants.

## **8. AS-BUILT DRAWINGS.**

During the as-built drawings phase of the Project, Architect shall do all of the following, as well as any incidental services thereto:

**8.1 As-Built Drawings and Specifications.** Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Architect shall review and forward the Final Working Drawings and Specifications, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing an "as-built" set of Final Working Drawings and Specifications ("As-Built Drawings and Specifications"). The As-Built Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Architect shall personally review and certify that the As-Built Drawings and Specifications are a correct representation of the information supplied to Architect by any inspectors and the contractor, and shall obtain certifications from any inspectors and the contractor that the drawings are correct.

**8.2 Approval.** Once WestEd provides Architect with specific written approval of the As-Built Drawings and Specifications, Architect shall forward to WestEd the complete set of original As-Built Drawings and Specifications or a complete set of reproducible duplicate As-Built Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

**8.3 Documents for Final Payment.** Prior to the receipt of Architect's final payment, Architect shall forward to WestEd all of the following: (1) one clear and legible set of reproductions of the computations; (2) the original copy of the specifications; (3) the As-Built Drawings and Specifications as required herein; and (4) Architect's Certificate of Completion.

**9. WARRANTY PERIOD.**

During the warranty period phase of the Project, Architect shall do all of the following, as well as any incidental services thereto:

**9.1 Advice.** Architect shall provide advice to WestEd on apparent deficiencies in the Project during any applicable warranty periods for the Project.

SAMPLE



**EXHIBIT "B"**  
**FEE AND PHASING/FUNDING SCHEDULES**

**1. FEE SCHEDULE.**

The Architect and WestEd shall use WestEd's Preliminary Construction Budget to establish an estimate of the Architect's Total Compensation based upon the following Fee Schedule:

| <b>FEE SCHEDULE</b>       |               |   |
|---------------------------|---------------|---|
| <b>CONSTRUCTION COSTS</b> | <b>% RATE</b> | <b>FEE<br/>(100% OR FRACTION THEREOF)</b> |
| first \$500,000           | ___%          | \$ _____                                  |
| next \$500,000            | ___%          | \$ _____                                  |
| next \$1,000,000          | ___%          | \$ _____                                  |
| next \$4,000,000          | ___%          | \$ _____                                  |
| next \$4,000,000          | ___%          | \$ _____                                  |
| excess of \$10,000,000    | ___%          | \$ _____                                  |

The estimated Total Compensation shall be inserted in Section 3.10.1 of the Agreement. For periodic payment purposes, this amount may be adjusted upon mutual agreement of WestEd and Architect according to the Architect's Preliminary Project Budget, the Architect's Updated Project Budget and the Architect's Final Estimate.

The actual Total Compensation will be determined based on the actual construction costs for the Project. The term "Actual Construction Costs" shall be defined as: (1) the sum of all of the contracts between WestEd and the contractors who will actually construct the Project and for whose work Architect or its consultants prepared Final Working Drawings and Specifications acceptable to WestEd; and (2) all authorized additive change orders for such contracts, so long as any such additive change orders were not made necessary by the negligent or willful acts or omissions of the Architect or its consultants; and (3) general conditions and all other construction management fees for CM/multiple prime contracts, if any. The Actual Construction Costs shall not include the following: (1) compensation paid to the Architect, the Architect's consultants or other consultants hired by WestEd; (2) the costs of land or rights-of-way; (3) the costs of furnishings, equipment or other articles furnished by WestEd for the Project; (4) testing and inspection fees; (5) reimbursable costs as outlined in this Agreement or any other agreement for the Project; and (6) other costs which are the responsibility of WestEd, including those provided for in Section 3.9 of the Agreement.

**2. PHASING/FUNDING SCHEDULE.**

Progress payments towards Total Compensation shall never exceed the following percentages of Total Compensation as of the phase indicated:

|  |                         |
|--|-------------------------|
| Initial Planning Phase:                        | _____ percent (% _____) |
| Schematic Plan Phase:                          | _____ percent (% _____) |
| Design Development Phase:                      | _____ percent (% _____) |
| Bid Phase:                                     | _____ percent (% _____) |
| Final Working Drawings & Specifications Phase: | _____ percent (% _____) |
| Construction Phase:                            | _____ percent (% _____) |
| As-Built Drawings Phase:                       | _____ percent (% _____) |
| Warranty Period Phase:                         | _____ percent (% _____) |

SAMPLE

**EXHIBIT "C"**

**COMPENSATION RATES AND REIMBURSABLE EXPENSES**

**1. HOURLY COMPENSATION RATES.**

[INSERT ARCHITECT'S HOURLY RATES]

**2. REIMBURSABLE EXPENSES.**

[INSERT AUTHORIZED REIMBURSABLE EXPENSES]

**3. ADDITIONAL SERVICES.**

Additional Services shall be computed at the actual hourly rates listed above.

**4. ADDITIONAL CONSULTANTS.**

If WestEd requires Architect to hire consultants to perform any Additional Services, Architect shall be compensated therefore at the Architect's actual hourly rates plus **[INSERT AMOUNT OR PERCENTAGE]**. Owner shall have the authority to review and approve the rates of any such consultants.