

Project: Emeryville Center of Community  
Life

Project No. 10-001

### **AGREEMENT FOR ARCHITECTURAL SERVICES**

This agreement (Agreement) made and entered into by and between Emery Unified School District, a political subdivision of the State of California (hereinafter "DISTRICT") and Miller Kelley Architects, Inc., DBA MKThink, (hereinafter "ARCHITECT"),

WITNESSETH:

WHEREAS, DISTRICT proposes to undertake the pre-design planning of an improvement project herein described which requires the services of a highly qualified and licensed architect, and

WHEREAS, ARCHITECT represents that ARCHITECT is licensed to practice architecture in the State of California, is specially qualified to provide the services required by DISTRICT, and is expert at the services required for this project, and

WHEREAS, the parties have negotiated upon the terms pursuant to which ARCHITECT will provide such services and have herein reduced such terms to writing.

NOW, THEREFORE, in consideration of the mutual benefit to be derived by the parties, it is hereby agreed:

#### **1. AGREEMENT**

DISTRICT retains ARCHITECT to perform, and ARCHITECT agrees and undertakes to provide to DISTRICT, for the consideration and upon the terms and conditions herein set forth, the architectural services specified in this Agreement and those related services incidental thereto.

#### **2. DESCRIPTION OF PROJECT**

Architectural pre-design services shall be provided for the project known as the Emeryville Center of Community Life (hereinafter "ECCL") and as further described in **Exhibit A**, "Project Description, Project Schedule, and Project Scope," which is hereby incorporated by reference (hereinafter "Project"). The Project is located at 1100 47<sup>th</sup> Street, Emeryville, CA.

Included in **Exhibit A** is a Project Schedule indicating duration and milestone dates for key project tasks. ARCHITECT shall perform services consistent with this schedule as required by Paragraph 21, Time Schedule. ARCHITECT shall regularly report to DISTRICT on actions required to meet milestone schedule dates and recommend further refinements in the schedule.

### 3. TERM OF AGREEMENT

This Agreement begins on 17 November 2009 and completes by 1 May 2010, unless terminated sooner. Should none of the services stated herein be commenced by or before three (3) months from the date set forth by the parties in the execution clause, this Agreement is void, unless that deadline is extended by mutual written agreement.

### 4. COMPENSATION

As compensation for all services of ARCHITECT in performance of this Agreement, DISTRICT shall pay to ARCHITECT:

- a. BASIC SERVICES: For all "Basic Services," as set forth in Paragraph 5 below, and as specified in **Exhibit B**, "Tasks and Responsibilities," which is attached and incorporated by this reference, compensation in the amount of Four Hundred Forty-Eight Thousand Sixty Dollars (\$448,060.00) as set forth in **Exhibit C**, "Compensation and Schedule of Hourly Billing Rates," which is attached and hereby incorporated by reference.
- b. ADDITIONAL SERVICES: For all additional services other than Basic Services, a fee to be agreed upon by the parties in writing prior to performance of such services by ARCHITECT, which fee may be a flat amount, or ARCHITECT's standard hourly rates, as set forth in **Exhibit C**, and necessary consultants at 1.10 times cost. Only the Superintendent or authorized designee may authorize additional or changed services. The parties expressly acknowledge that any other DISTRICT employees are without authorization to order either additional or changed services or to waive contractual requirements of this Agreement. Failure of the ARCHITECT to secure proper authorization for additional or changed services shall constitute a waiver of any and all right to adjustment in the contract price as set forth herein, and ARCHITECT shall not be entitled to compensation for such unauthorized services.
- c. REIMBURSABLE EXPENSES: "Reimbursable Expenses" are in addition to compensation for Basic and Additional Services and include expenses incurred by ARCHITECT and ARCHITECT's employees and consultants in the interest of the Project, only as identified in Sections 4.c i and ii below. Payment of Reimbursable Expenses in excess of the total estimated reimbursable expenses set forth in **Exhibit C** is subject to prior written approval by DISTRICT. Reimbursable Expenses shall be itemized and presented monthly by ARCHITECT to DISTRICT for payment upon approval by DISTRICT's authorized representative. Reimbursable Expenses shall be compensated at 1.10 times the actual cost for the following expenses:
  - i. No expenses for travel shall be considered reimbursable except as otherwise agreed and set forth in writing in **Exhibit C** hereto.
  - ii. Printing expense for bid sets of Project construction documents only (not including DISTRICT copies as provided for in this Agreement).

d. **TIME OF PAYMENTS:** ARCHITECT's compensation shall be paid by DISTRICT to ARCHITECT monthly, in arrears in accordance with the following conditions:

- i. Payments on account of Basic Services shall be made monthly in proportion to services performed within each phase as reasonably determined by DISTRICT up to the amounts set forth in writing in **Exhibit C** hereto.
- ii. Payments on account of agreed-upon 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 in writing when such services are agreed upon.

Each payment to ARCHITECT shall be made monthly in the usual course of DISTRICT business after presentation by ARCHITECT of an invoice approved by DISTRICT's authorized representative designating services performed, method of computation of amount payable, and amount payable. For Basic Services, ARCHITECT shall be paid within thirty (30) days from receipt of approved invoice. Payments due ARCHITECT and unpaid beyond 30 days of receipt of invoice will bear finance charges compounded at a rate of 1.5 percent per month.

Payments are to be sent via check to:

MKThink  
T.I.N. 94-3358324  
Roundhouse One  
1500 Sansome Street  
San Francisco, CA 94111

e. **CHANGE ORDERS:** Payment of fees to ARCHITECT as a result of change orders shall be handled as follows:

- i. DISTRICT-initiated changes: If a change order is requested by DISTRICT, ARCHITECT's fee for such change order shall be calculated on a lump sum or hourly basis as agreed in writing by DISTRICT and ARCHITECT prior to commencement of work on the change order.
- ii. Change orders beyond DISTRICT or ARCHITECT control: If a change order is necessitated as a result of changes in law or actual conditions inconsistent with available drawings of existing conditions or which could not be discovered by site observation, such change orders shall be handled in the same manner as DISTRICT-initiated change orders.

## 5. **BASIC SERVICES TO BE RENDERED BY ARCHITECT**

ARCHITECT's Pre-Design Phase Basic Services shall consist of the following items and as further specified in **Exhibits A and B** attached hereto:

- a. PRE-DESIGN PHASE: Review, reconsideration, and confirmation of the conceptual master plan and program furnished by DISTRICT to ascertain the requirements of the Project and arrive at a mutual understanding of such requirements with DISTRICT. ARCHITECT will accomplish, as part of this pre-design phase, preparation of design studies, drawings and other necessary documents showing site utilization and the scale and relationship of the components of the Project for the review and approval of authorized representatives of DISTRICT and the City of Emeryville (hereinafter "City"); meetings with school faculty, community services staff, or other representatives, including the entity or contractor chosen as the project builder (hereinafter "Project Builder"); preparation of a written preliminary estimate of probable construction costs based on current area, volume or other unit costs; and a written time schedule for the performance of its services hereunder.

ARCHITECT shall attend weekly Emeryville Center of Community Life Working Group meetings at the District Office, shall attend Facilities Committee meetings with Board Members on an as-needed basis, shall attend City/School Committee meetings, City Council meetings, and School Board Meetings as requested by staff, and will attend pre-construction services meetings with the Project Builder as requested by staff. During this Phase, the ARCHITECT shall provide leadership for meetings and/or presentations to Community Groups identified by the DISTRICT as described in the Scope of Work portion of **Exhibits A and B**.

ARCHITECT shall deliver to DISTRICT complete copies of all Pre-Design Phase documents and materials for review and approval, as stipulated in Exhibit A, paragraph B. "Deliverables".

The pre-design phase documents shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations currently existing and as amended, enacted, issued or adopted which are applicable to these documents. Approval by DISTRICT shall be deemed to be approval of the concept, though not the means, techniques or particular material recommended by ARCHITECT. ARCHITECT shall prepare all forms required by the Office of Public School Construction to submit to the State Allocation Board for a School Facilities Program project required within the stipulated Term of Agreement.

b. **RESPONSIBILITY FOR CONSTRUCTION COSTS:**

- i. DISTRICT's budget for the Project shall include a contingency of ten percent (10%) over and above any estimate of construction cost or evaluation prepared or agreed to by ARCHITECT.
- ii. Evaluation of DISTRICT's budget for the Project, preliminary estimates of the probable construction cost and any updated estimates of the probable construction cost prepared by ARCHITECT represent ARCHITECT's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither ARCHITECT nor DISTRICT has control over the cost of labor, materials

or equipment, over the contractor's methods of determining bid or proposal prices, or over competitive bidding, market or negotiating conditions. Accordingly, ARCHITECT cannot and does not warrant or represent that bids or negotiated prices will not vary from DISTRICT's budget for the Project or from any estimate of construction costs or evaluation prepared or agreed to by ARCHITECT.

- iii. In preparing estimates of construction cost, ARCHITECT shall include and disclose reasonable contingencies for design, bidding and price escalation as agreed to by DISTRICT. ARCHITECT shall hire, at its own expense and as part of Basic Services, a reputable cost estimating consultant knowledgeable of current construction activity in the Emeryville area who shall prepare the various required construction cost statements.

c. CONSULTANTS AND STAFF

DISTRICT and ARCHITECT agree that the professional services under this Agreement require adequate staffing and continuity of qualified people. All key staff listed below have been approved by DISTRICT and ARCHITECT and may not be changed without prior approval except for an individual leaving the firm's employ. If DISTRICT finds the performance of an approved individual not acceptable, DISTRICT will notify ARCHITECT, who will take necessary corrective action. If unable to correct performance to DISTRICT's satisfaction, ARCHITECT will make appropriate staffing changes acceptable to DISTRICT.

<u>Position</u>	<u>Individual</u>	<u>Firm</u>
Principal in charge	Steven Bingler	Concordia LLC
Principal in charge	Steve Kelley	MKThink
Principal in charge	Mark Seiberlich	dsk architects
Principal in charge	Darolyn Davis	Davis & Assoc.
Principal	Nate Goore	MKThink
Project Manager	Marijke Smit	MKThink
Project Manager	Jeff Hebert	Concordia LLC
Principal Engineer, Structural	Ray Pugliesi	Degenkolb
Principal Engineer, Civil	Robert Stevens	BKF
Principal Engineer, Mechanical	Peter Rumsey	Rumsey Engineers
Principal Engineer, Electrical	David Kaneda	IDeAs
Principal, Landscape Architect	Marta Fry	Marta Fry Landscape
Principal, Cost Estimator	Jeff Saylor	Leland Saylor
Principal, Acoustical Engineer	Tom Schindler	Charles M. Salter
Principal, Food Service	Steve Marshall	Marshall Assoc.
Principal, Security Consultant	Kevin Wood	Catalyst

- i. All engineers and experts and consultants employed by ARCHITECT not listed herein shall be approved in advance, in writing, by DISTRICT prior to

their engagement. ARCHITECT shall confer and cooperate with educational planners and other professional consultants employed by DISTRICT.

- ii. ARCHITECT shall cause each engineer and consultant listed above, before the time such engineer or consultant shall commence any services relating to the Project, to provide DISTRICT with evidence that each such engineer and consultant has in effect a policy of comprehensive general liability insurance, which shall have the same limits, endorsements and requirements as specified in Paragraph 9 of this Agreement, and, in addition, is covered by a policy of professional liability insurance in a minimum amount of \$2,000,000.00 with an insurance carrier satisfactory to DISTRICT, and which shall name DISTRICT as an additional insured. Consultants excepted from this requirement shall specifically be Darolyn Davis of Davis and Associates, Leslie Pritchard (Art consultant), and Gloria Stockton (library consultant).
- iii. ARCHITECT shall promptly notify DISTRICT of reassignment or replacement of engineers, consultants and experts specified above. ARCHITECT shall also notify DISTRICT of staff changes of all other key personnel working on the Project.

d. YOUTH INVOLVEMENT and COMMUNITY INVOLVEMENT

As part of Basic Services, ARCHITECT shall engage the community in the pre-design phase of work in collaboration with City and District leaders and staff and Nexus Partners consultants. Community engagement activities for the ARCHITECT include facilitation of PCL meetings, community workshops, living room conversations and WEB 2.0 tools. The ARCHITECT will work with City and DISTRICT staff to engage youth in school and community-based activities to support the Project. The ARCHITECT's principals and staff will also attend various City and District events such as parent, teacher, arts and other events in the community and participate in community meetings whenever possible and appropriate.

e. COMMUNITY BENEFITS FROM ARCHITECT'S WORK

As part of Basic Services, ARCHITECT shall conduct activities and its work in such a way as to consistently provide tangible benefits to the community of Emeryville throughout the planning process. Benefits shall include the open sharing of project information and data with the community so that residents can better understand decisions regarding taxpayer investments; holding community forums to gather input and ideas, and address questions and concerns; providing information about the costs of specific components of ECCL; enhancing potential for implementing new programs and partnerships, and making a concerted effort to reduce the cost burden on community residents and taxpayers.

ARCHITECT will further engage the community by providing a web-based social networking tool to expand the reach of community conversation and involve some from the community that otherwise would not participate in traditional public meeting venues. Also, ARCHITECT will offer the opportunity to work with teachers and students on hands-on school-based projects and /or internship(s) managed through the leadership of Emery Secondary School and DISTRICT staff. Such efforts, aligned by DISTRICT staff to curricular objectives and standards, will expose interested youth to the workings of a community planning process, to the tasks of a professional design office, and to efforts to shape the ECCL. ARCHITECT will also sponsor a team selected from the DISTRICT's elementary school age students to participate in some of the art-making activities associated with the ECCL project, providing valuable exposure to youth in a hands-on learning experience that involves art and architecture.

Additionally, ARCHITECT will continue to voluntarily participate in various Emeryville public meetings and activities including City/Schools meetings, DISTRICT meetings, and other scheduled community events. This voluntary involvement demonstrates the ARCHITECT's attention to the multiple facets of involvement in Emeryville, and helps ensure that positive benefits result from the ECCL project which effectively support and enhance community life.

- f. Other than minor modifications, ARCHITECT shall not make modifications to plans, designs or specifications which would increase the size or scope of the project or which would increase the probable cost of construction, without the prior express written instruction of DISTRICT. Before performing any substantial work on any modification or change in design, plans or specifications, ARCHITECT shall notify DISTRICT in writing of the amount of any increase in the probable cost of construction due to any such proposed modification or change.
- g. ARCHITECT will consult as necessary with representatives of DISTRICT and with representatives of any funding, licensing, or reviewing agencies or organizations concerned in the Project throughout the planning phase noted above.
- h. ARCHITECT, as part of the Basic Services, shall furnish, at ARCHITECT's own expense, all designers, draftsmen, technical, and clerical personnel necessary to perform the services described herein.
- i. As part of Basic Services, ARCHITECT shall copy DISTRICT on any and all correspondence relating to the Project.
- j. As part of Basic Services, ARCHITECT shall provide those specific services designated as ARCHITECT's tasks and responsibilities in **Exhibit B** hereto.
- k. As part of Basic Services, ARCHITECT shall interface, work with and cooperate with the Project Builder, as required for progression of planning, design and progress of the Project, and as requested by the DISTRICT.

**6. ADDITIONAL SERVICES TO BE RENDERED BY ARCHITECT**

The following services are not included in the Basic Services. These additional services shall be provided by ARCHITECT if authorized in writing by DISTRICT, pursuant to Section 4.b.

- a. Providing financial feasibility or other special studies.
- b. Providing services to make measured drawings of existing facilities other than those to be remodeled as part of this Project, or to revise or verify the accuracy of drawings or other information furnished by DISTRICT.
- c. Providing detailed quantity surveys or inventories of material, equipment and labor other than would ordinarily and customarily be part of probable construction cost statements.
- d. Providing services required for or in connection with the selection of furniture or equipment not included in the construction contract.
- e. Providing services for planning tenant or rental spaces. Preparing contract documents required in connection with temporary housing during or related to construction.
- f. Making revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given or are due to causes beyond the control of ARCHITECT (except as otherwise provided in this Agreement).
- g. Preparing supporting data and other services such as extra drawings, trips, estimates, studies, correspondence and presentations in connection with DISTRICT initiated changes to the services described in Exhibit A if the change in the basic compensation resulting from the adjusted contract sum is not commensurate with the services required of ARCHITECT.
- h. Making investigations involving detailed appraisals and valuations of existing facilities or inventories required in connection with construction performed by DISTRICT.
- i. Providing professional services made necessary by the failure of performance, termination or default of the Project Builder.
- j. Preparing to serve or serving as an expert witness in connection with any public hearing, dispute resolution proceeding or legal proceeding.
- k. Providing any other services not otherwise included in this Agreement and not customarily furnished in accordance with generally accepted architectural practice.

- l. Community and other public liaison services: Preparation time and materials for presentation to community for required community meetings excluding DISTRICT board meetings and beyond those specifically required in Basic Services; attending community and other public meetings in excess of those specifically required in Basic Services, excluding DISTRICT board meetings.
- m. Services for the following disciplines: off-site civil engineering, and traffic/parking.
- n. Time and expenses preparing special presentation models, renderings or mock-ups other than those specifically required in Basic Services.
- o. Enactment or revisions of codes, laws or regulations or changes in official interpretations which necessitate changes to previously approved documents other than those changes which ARCHITECT should have reasonably foreseen.
- p. Seeking variances or changes to agency guidelines on behalf of DISTRICT when so directed by DISTRICT.
- q. Formal value engineering and detailed life-cycle cost analyses beyond any described in the scope of Basic Services for the pre-design phase.
- r. Assistance with environmental and EIR studies other than those which would normally be required to complete ARCHITECT's Basic Services.
- s. If the Project is suspended by DISTRICT for more than three hundred sixty-five (365) consecutive days through no fault of ARCHITECT, the parties shall negotiate equitable adjustment to ARCHITECT's compensation due to such suspension.

## **7. RESPONSIBILITIES OF DISTRICT**

It shall be the duty of DISTRICT to:

- a. Make available to ARCHITECT all necessary data and information concerning the purposes and requirements of the Project, including realistic scheduling and budget limitations and a conceptual master plan and program which sets forth DISTRICT's objectives, space requirements and relationships, site requirements, facilities standards, special equipment and systems.
- b. Upon ARCHITECT's request, furnish ARCHITECT with a survey in an electronic CADD format approved by ARCHITECT of the Project site prepared by a registered surveyor or civil engineer which shall indicate legal limitations, existing structures, land features, improvements, sewer, water, gas, electrical and utility lines and locations including inverts and depths, topographical information and boundary dimensions of the site, and provide a soils investigation report, if required by law, and a geological report.

- c. Pay all fees required by any reviewing or licensing agency.
- d. Designate a representative authorized to act as liaison between ARCHITECT and DISTRICT in the administration of this Agreement and the construction contract.
- e. Review all documents submitted by ARCHITECT and advise ARCHITECT of decisions thereon within a reasonable time after submission.
- f. Issue any orders to contractors through ARCHITECT or with notice to ARCHITECT.
- g. Provide copies of floor plans of existing buildings to be remodeled.
- h. Provide other services identified as "District's Responsibilities" in **Exhibit B**.
- i. ARCHITECT shall be entitled to rely upon the accuracy of all surveys and reports provided or furnished by DISTRICT unless, based upon ARCHITECT's professional judgment, such material or information appears to be inaccurate or incomplete, in which case ARCHITECT shall conduct further investigation to ascertain an accurate knowledge and understanding of the circumstances. ARCHITECT shall not be required to provide detailed or exhaustive investigations to determine the accuracy of such surveys and reports.

## **8. INDEMNITY**

ARCHITECT shall indemnify, and hold harmless DISTRICT, the Governing Board of DISTRICT, each member of the Board, and their officers, employees, and agents from all claims of any kind to the extent caused by the negligence, recklessness, or willful misconduct of ARCHITECT and ARCHITECT's agents or employees arising out of this Agreement, but excluding liability as to the sole negligence or willful misconduct of DISTRICT. This indemnification obligation is not limited in any way or by any limitation on the amount or type of damages or compensation payable to ARCHITECT or its agents and employees under applicable policies of insurance, workers' compensation acts, disability benefits acts, or other employees, benefits acts. This indemnification obligation survives the performance of services under this Agreement or any termination under the provisions of this Agreement except as specifically stated in this Agreement.

## **9. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE**

ARCHITECT shall purchase and maintain insurance with an insurer or insurers, qualified to do business in the State of California as California admitted carriers and that are acceptable to DISTRICT, policies of insurance, which will protect ARCHITECT and DISTRICT from claims which may arise out of or result from ARCHITECT's actions or inactions relating to the Agreement, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

- a. Commercial general and automobile liability insurance with limits of not less than Two Million Dollars (\$2,000,000.00) combined single limit, bodily injury and property damage liability per occurrence, and Two Million Dollars (\$2,000,000.00) aggregate, including:
  - i. owned, non-owned and hired vehicles;
  - ii. blanket contractual;
  - iii. broad form property damage;
  - iv. products/completed operations; and
  - v. personal injury.
- b. Each policy of insurance required in this section shall name DISTRICT and its trustees, officers, employees and agents as additional insureds; shall state that, with respect to the operations of ARCHITECT hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributory with such primary insurance; shall state that not less than thirty (30) days' written notice shall be given to DISTRICT prior to cancellation, non-renewal or reduction in required limits of liability or amount of insurance; and, shall waive all rights of subrogation. ARCHITECT shall notify DISTRICT in the event of material change in, or failure to renew, each policy. Prior to commencing work, ARCHITECT shall deliver to DISTRICT certificates of insurance as evidence of compliance with the requirements herein. In the event ARCHITECT fails to secure or maintain any policy of insurance required hereby excepting professional liability, DISTRICT may, at its sole discretion, secure such policy of insurance in the name of and for the account of ARCHITECT, and in such event ARCHITECT shall reimburse DISTRICT upon demand for the cost thereof.
- c. In the event that ARCHITECT subcontracts any portion of ARCHITECT's duties, ARCHITECT shall require any such subcontractor to purchase and maintain insurance coverage for the types of insurance referenced in Paragraphs 9.a. and 9.b., in the amounts which are appropriate with respect to that subcontractor's part of work, and which shall in no event be less than those stated above.
- d. DISTRICT reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.
- e. Any deductibles or self-insured retention must be declared to and approved by DISTRICT. At the option of DISTRICT, either, the insurer shall reduce or eliminate such deductibles or self-insured retention as respects DISTRICT, its officers, officials, employees and volunteers; or ARCHITECT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and legal defense expenses.

- f. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Additional insureds.
- g. ARCHITECT's insurances shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

#### **10. WORKERS' COMPENSATION INSURANCE**

Before the Agreement is entered into, ARCHITECT shall furnish to DISTRICT satisfactory proof that ARCHITECT and all engineers, consultants, and subcontractors ARCHITECT intends to employ have taken out, for the period covered by the proposed contract, full compensation insurance and Employer's Liability with an insurance carrier satisfactory to DISTRICT for all persons whom they may employ in carrying out the work contemplated under this Agreement in accordance with the act of the Legislature of the State of California, known as the Workmen's Compensation Insurance and Safety Act, approved May 26, 1913, and all acts amendatory or supplemental thereto. Such insurance shall be maintained in full force and effect during the period covered by the contract. In the event ARCHITECT is self-insured, ARCHITECT shall furnish a valid Certificate of Permission to Self-Insure, signed by the Department of Industrial Relations Administration of Self-Insurance, Sacramento, California.

The policies represented by the certificates must contain the provision (and the certificates must so state) that the insurance cannot be canceled until thirty (30) days after written notice of intended revocation has been given to DISTRICT.

#### **11. ERRORS AND OMISSIONS INSURANCE**

Immediately upon execution of this Agreement, and before commencing any services hereunder, ARCHITECT shall furnish to DISTRICT satisfactory proof that ARCHITECT has and shall maintain in force for the period covered by this Agreement, professional liability (errors and omissions) insurance covering ARCHITECT's activities under this Agreement, in an amount not less than Two Million Dollars (\$2,000,000.00), with an insurance carrier satisfactory to DISTRICT.

In addition, to the extent that the activities and services of engineers or consultants are not covered under ARCHITECT's professional liability insurance, ARCHITECT shall cause each engineer and consultant, before the time such engineer or consultant shall commence any services relating to the project, to obtain and maintain a policy of professional liability insurance in an amount of not less than \$2,000,000.00 with an insurance carrier satisfactory to DISTRICT. Refer to paragraph 5.c.ii for specific exceptions to this requirement.

- a. ENDORSEMENTS: Where possible, such professional liability policy (or policies) specified above shall provide the following:

DISTRICT is named as additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for bodily injuries, deaths or property damage or destruction arising in any respect directly or indirectly in the performance of the Agreement.

The professional liability policy (or policies) specified above shall also be endorsed with or include the following specific or equivalent language:

- i. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured and the coverage afforded shall apply as though separate policies have been issued to each insured.
  - ii. The insurance provided herein is primary and no insurance held or owned by DISTRICT shall be called upon to contribute to a loss.
  - iii. Coverage provided by this policy shall not be canceled or the dollar amount reduced without thirty (30) days written notice given to DISTRICT.
  - iv. The certificate must state that the insurance is on an occurrence (not a claims-made or modified occurrence) basis.
- b. DOCUMENTATION: The following documentation of insurance shall be submitted to DISTRICT and approved prior to execution of this Agreement:

Certificates of insurance showing the limits of insurance provided and signed copies of the specified endorsements for each policy.

At the time of making application for an extension of time, ARCHITECT shall submit evidence that the insurance policies will be in effect during the requested additional period of time.

## **12. ERRORS AND OMISSIONS**

In addition to any other remedy which may be available to DISTRICT under this Agreement or under the laws of the State of California, DISTRICT may require ARCHITECT to pay all reasonable costs made necessary and to the extent caused by any negligent or intentional error or omission of ARCHITECT, including, but not limited to, costs for the removal or replacement of materials and labor or both, and ARCHITECT shall not receive any fee for any of its work performed in correcting said error or omission. DISTRICT agrees to file a claim for the costs claimed against ARCHITECT pursuant to this paragraph. ARCHITECT's maximum liability, under this Agreement only and regarding Errors and Omissions only, shall be limited to the amount of fees paid for services rendered to the point in time when the error or omission occurred, or was discovered, whichever is later. The liability limitation contained in the preceding sentence shall not impact or limit any other rights, obligations or protections contained elsewhere in this agreement.

### **13. COMPLIANCE WITH LAWS AND STANDARD OF CARE**

- a. ARCHITECT's services shall be performed in a manner which is consistent with professional skill and care, and in a manner consistent with the degree of skill and care usually exercised by architects in the community in which the Project is being constructed, and in a manner consistent with the orderly progress of the work. ARCHITECT acknowledges that the Project is of a unique nature, that ARCHITECT has made itself familiar with all components of the Project, and that ARCHITECT possesses the necessary and requisite experience and is specifically qualified to perform the work set forth under this Agreement. ARCHITECT has represented itself as an expert for the purposes of this Project.
- b. Using reasonable professional judgment, ARCHITECT shall determine compliance with and interpretation of all applicable requirements of federal, state and local law including, but not limited to, the Uniform Building Code with California amendments, the Education Code, Title 19, and Title 24 of the California Code of Regulations, and all requirements prescribed by the California Department of General Services, as these codes and regulations may be amended from time to time. Conflicts of codes or regulations which should be disclosed, based on ARCHITECT's reasonable professional judgment and based on the Project schedule, scope of services or significance of the conflict, shall be made known to DISTRICT and its legal advisor. DISTRICT shall decide the course of action after recommendation, if any, by ARCHITECT and the legal advisor.
- c. ARCHITECT and all engineers, and consultants retained by ARCHITECT in performance of this Agreement shall be currently licensed as required by law to practice in their respective professions.
- d. ARCHITECT acknowledges that the requirements of the Americans With Disabilities Act ("ADA") will apply to this Project. ARCHITECT will use the standard of care referred to in Section 13.a. above to meet applicable ADA requirements. ARCHITECT's failure to adequately interpret or apply the ADA shall not relieve ARCHITECT from liability arising therefrom.

### **14. RECORDS**

ARCHITECT shall maintain all records concerning the project for a period of four (4) years after its completion. ARCHITECT shall keep and maintain full and complete documentation and accounting records concerning all additional services performed that are compensable by other than a flat rate. ARCHITECT shall make such documents and records available to authorized representatives of DISTRICT for inspection or audit at any reasonable time.

### **15. TERMINATION OF CONTRACT**

- a. DISTRICT shall have the right to terminate this Agreement at will and without cause upon thirty (30) days written notice to ARCHITECT and upon compensation to ARCHITECT as set forth in this Section 15. If DISTRICT terminates this Agreement under this provision the parties shall be relieved of the remaining

executory obligations of the Agreement except for such liability arising out of services performed prior to the date of termination.

- b. DISTRICT may, at its election, terminate this Agreement if ARCHITECT defaults in any material respect on any provision hereunder and fails to cure such material default within fifteen (15) days following written notice, or if the default cannot be cured within fifteen (15) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from DISTRICT. If DISTRICT terminates this Agreement based upon the material default of ARCHITECT, and notwithstanding any other provision herein, DISTRICT shall be entitled to pursue any remedy available under the law against ARCHITECT including, without limitation, an action for damages for breach of contract.
- c. ARCHITECT may, at its election, terminate this Agreement if DISTRICT defaults in any material respect on any provision hereunder and fails to cure such material default within fifteen (15) days, or if the default cannot be cured within fifteen (15) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from ARCHITECT. If ARCHITECT terminates this Agreement based upon the material default of DISTRICT, ARCHITECT shall be entitled to pursue any remedy available under the law against DISTRICT, including, without limitation, an action for damages for breach of contract.
- d. Should DISTRICT terminate this Agreement pursuant to subsection (a) or (b) above, ARCHITECT shall, upon notice of such termination, forthwith cease all services hereunder. If this Agreement is terminated for any reason other than a material breach of the Agreement by ARCHITECT, ARCHITECT's shall be paid for services actually performed and approved to the date of notice of termination, and shall include compensation for services within the phase of performance at which ARCHITECT's services stopped, proportionate to the degree of approved completion of the work on such phase. If this Agreement is terminated due to subsection (b) above, then ARCHITECT shall be entitled to compensation as provided in the preceding sentence, less an amount necessary, in the DISTRICT'S discretion, to remedy the ARCHITECT'S material breach of this Agreement.
- e. Upon termination of this Agreement for any reason, ARCHITECT shall promptly and without further cost or charge to DISTRICT, deliver to DISTRICT all of the documents and other work product relating thereto.

## **16. ARCHITECT AN INDEPENDENT CONTRACTOR**

It is specifically agreed that in the making and performance of this Agreement, ARCHITECT is an independent contractor. ARCHITECT understands and agrees that it and all of its employees shall not be considered officers, employees or agents of DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of DISTRICT and/or to which DISTRICT's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's

Compensation. ARCHITECT assumes the full responsibility for the acts and/or omissions of his or her employees or agents as they relate to the services to be provided under this Agreement. ARCHITECT shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective ARCHITECT's employees.

**17. STANDARDIZED MANUFACTURED ITEMS**

ARCHITECT shall consult with and cooperate with DISTRICT's staff in the use and selection of manufactured items to be used in the Project. Manufactured items, including, but not limited to, paint, finish, hardware, plumbing fixtures and fittings, mechanical equipment, electrical fixtures and equipment, roofing materials, and floor covering, shall be standardized to DISTRICT's criteria so long as the same does not seriously interfere with building design. ARCHITECT is responsible for ensuring that any specification calling for a designated material, product, thing, or service by a specific brand or trade name is drafted in compliance with Section 3400 of the Public Contract Code.

**18. OWNERSHIP OF DOCUMENTS, CONTRACTUAL WORKS OF AUTHORSHIP, RE-USE, LICENSES, COPYRIGHTS AND USE OF THESE**

Pursuant to Section 17316 of the Education Code, all plans, including, but not limited to, record drawings, specifications, and estimates prepared by ARCHITECT pertaining to the Project pursuant to this Agreement shall be and shall remain the property of DISTRICT. Nothing in this paragraph shall preclude DISTRICT from using the plans, record drawings, specifications, or estimates related to the Project for the purposes of additions, alignments, or other development on or adjacent to the site.

Any use or re-use or modification of any portion of the plans, specifications, or estimates or other documents prepared by ARCHITECT under this Agreement, by DISTRICT or any other person with DISTRICT's consent, for any purpose other than as contemplated in this Agreement, shall be at the sole risk of DISTRICT and without liability to ARCHITECT, with no warranty of merchantability or fitness, and DISTRICT shall indemnify, hold harmless and defend ARCHITECT and its officers, directors, agents, employees and consultants from all claims of any kind arising out of such use, re-use or modification of said plans, specifications, estimates or other documents prepared by ARCHITECT.

After the completion of this project, ARCHITECT shall not permit any reproductions to be made of any DISTRICT owned documents without the written approval of DISTRICT and shall refer all requests for such documents by other persons to DISTRICT.

The ARCHITECT and DISTRICT shall have the right to include photographic or graphic representations of the design of the Project among their respective promotional and professional materials.

In the event that ARCHITECT utilizes or relies upon any Works of Authorship that were previously prepared by other design professionals, ARCHITECT shall be responsible for giving appropriate recognition to such other design professionals in any materials prepared by ARCHITECT pursuant to this Agreement.

This Agreement creates a non-exclusive and perpetual license for the DISTRICT to copy, use, modify, reuse or sublicense any and all copyrights, designs and other intellectual property embodied in Contractual Works of Authorship. ARCHITECT shall require any and all subcontractors and consultants to agree in writing that the DISTRICT is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

ARCHITECT represents and warrants that ARCHITECT has the legal right to license any and all copyrights, designs and other intellectual property embodied in Contractual Works of Authorship. ARCHITECT shall indemnify and hold the DISTRICT harmless pursuant to Article 8 of this Agreement for any breach of this warranty. ARCHITECT makes no such representation and warranty in regard to Works of Authorship that were prepared by design professionals other than ARCHITECT and provided to ARCHITECT by the DISTRICT.

At the completion of construction of the Project, ARCHITECT at its own expense will provide the DISTRICT with a complete set of reproducible Contractual Works of Authorship. ARCHITECT will retain, on the DISTRICT'S behalf, the original documents for a period of no less than fifteen (15) years ("the Retention Period"). ARCHITECT shall provide any Contractual Works of Authorship to the DISTRICT promptly upon the earlier of a request by the DISTRICT or the end of the Retention Period.

## **19. DISPUTE RESOLUTION PROVISIONS**

### **a. MEDIATION**

- i. Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to any other legal proceeding.
- ii. A request for mediation shall be filed in writing with the other party to this Agreement. The request may be made concurrently with the filing of a request for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of ninety (90) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.
- iii. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon.
- iv. Any matter that relates to or is the subject of a lien arising out of ARCHITECT's services, ARCHITECT may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or arbitration.

b. **ARBITRATION**

- (i) Any claim, dispute or other matter in question arising out of or related to this Agreement may be subject to arbitration if the parties mutually agree. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the mediation provisions above.
- ii. A request for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the request for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- iii. Such arbitration shall be advisory unless the parties otherwise agree.

c. **COSTS AND FEES**

Subsequent to any legal proceeding to enforce the terms of this Agreement (other than mediation), the prevailing party shall be entitled to recover their costs and reasonable attorney's fees.

**20. SUCCESSORS AND ASSIGNMENTS**

This Agreement is binding upon and inures to the benefit of the successors, executors, administrators, and assigns of each party to this Agreement, provided, however, that ARCHITECT shall not assign or transfer by operation of law or otherwise any or all of ARCHITECT's rights, burdens, duties, or obligations, professional or otherwise, without the prior written consent of DISTRICT's Governing Board. Any attempted assignment without such consent shall be invalid.

**21. TIME SCHEDULE**

- a. **TIME SCHEDULE:** Time is of the essence in the performance of this Agreement. ARCHITECT shall perform all services hereunder as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. ARCHITECT shall submit for DISTRICT's approval, as part of **Exhibit A** hereto, a schedule for the performance of ARCHITECT's services which shall be adjusted, as required, as the Project proceeds, and shall include allowance for periods of time required for DISTRICT's review and approval of submissions and for approvals of authorities having jurisdiction over the Project. The schedule when approved by DISTRICT shall not be exceeded unless extended in writing by DISTRICT. ARCHITECT shall at all times maintain adequate staffing and resources necessary for the timely performance of ARCHITECT's services under this Agreement. ARCHITECT shall review and respond to submittals, requests for information, and the like, as expeditiously as possible to avoid delays in the work, but in any case no longer than a ten working day turnaround period.

- b. DELAYS: If ARCHITECT is delayed in ARCHITECT's services by acts of DISTRICT or those in a direct contractual relationship with DISTRICT or by the California Department of General Services or other agencies having jurisdiction over the Project or by acts of God or other occurrences which were not or could not have been reasonably foreseen and provided for, and which are not due to any fault or negligence on the part of ARCHITECT, the time for ARCHITECT's performance shall be extended accordingly. Notwithstanding the foregoing, ARCHITECT shall endeavor to avoid or minimize such delay. DISTRICT shall not be liable for the damages to ARCHITECT on account of such delays.

## **22. HAZARDOUS MATERIALS**

Unless otherwise specified, the services provided under this Agreement do not include the discovery, identification, removal, handling, or disturbance of any hazardous substances or materials at the project site. If such substances or materials are knowingly encountered by ARCHITECT, construction work shall cease in that area and DISTRICT shall be notified to take appropriate action for removal or otherwise abating the condition in accordance with current regulations applicable to DISTRICT.

ARCHITECT shall certify pursuant to 40 CFR Section 763.99 (a)(7) that no asbestos containing material was specified as a building material in any construction document for the Project, and will ensure that Contractors provide DISTRICT with certification that all materials used in the construction of any school building are free from any asbestos containing building materials ("ACBMs"). This certification shall be part of the final Project submittal.

## **23. SCHOOL SITE CONDITIONS**

District has determined, pursuant to California Education Code section 4125.2 that fingerprinting is not applicable to this Agreement, however, ARCHITECT expressly acknowledges that the following conditions shall apply to any work performed by ARCHITECT and/or ARCHITECT's employees on a school site: (1) ARCHITECT and ARCHITECT's employees shall check in with the school office each day immediately upon arriving at the school site; (2) ARCHITECT and ARCHITECT's employees shall inform school office staff of their proposed activities and location at the school site; (3) Once at such location, ARCHITECT and ARCHITECT's employees shall not change locations without contacting the school office; (4) ARCHITECT and ARCHITECT's employees shall not use student restroom facilities; and (5) if ARCHITECT and/or ARCHITECT's employees find themselves alone with a student, ARCHITECT and ARCHITECT's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location. Further, ARCHITECT shall promptly notify DISTRICT in writing of any facts or circumstances which might reasonably lead DISTRICT to determine that contact will be more than "limited" as defined by California Education Code section 45125.1(d).

## **24. MISCELLANEOUS**

The following terms and conditions shall applied to this Agreement:

- a. GOVERNING LAW AND VENUE: This Agreement shall be construed in accordance with, and governed by the laws of the State of California. Venue shall be in the Superior Court of the State of California in the County of Alameda.
- b. ENTIRE AGREEMENT: This Agreement with its exhibits supersedes any and all other prior or contemporaneous 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 agreement shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.
- c. SEVERABILITY: Should any provision in this 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.
- d. NON-WAIVER: None of the provisions of the Agreement shall be considered waived by either party unless such waiver is specifically specified in writing. DISTRICT's failure to enforce any provision of this Agreement or the waiver of any provision in a particular instance shall not be construed as a general waiver of any part of such provision.
- e. DISCRIMINATION PROHIBITED: It is the policy of DISTRICT that in connection with all work or services performed under contracts, there will be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, handicap, or marital status. ARCHITECT agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment Practice Act, beginning with Government Code Section 12900, et seq. In addition, ARCHITECT agrees to require like compliance by any consultants or subcontractors employed on the Project.
- f. DISABLED VETERANS and DISADVANTAGED BUSINESS PARTICIPATION GOALS: In accordance with Education Code section 17076.11, the DISTRICT has a participation goal for disabled veteran business enterprises ("DVBE") of at least 3 percent per year of the overall dollar amount of funds allocated to DISTRICT by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act of 1998 for construction or modernization and expended each year by the DISTRICT. Prior to, and as a condition precedent for final payment under any contract for such Project, ARCHITECT shall provide appropriate documentation to DISTRICT identifying the amount paid to disabled veteran business enterprises in conjunction with the contract, so that DISTRICT can assess its success at meeting this goal.

This contract is subject to Federal regulations that set goals for DBE participation in all contracts. It is the ARCHITECT'S responsibility to be fully informed regarding the requirements of current State and Federal programs for DVBE and DBE program participation. It is also the ARCHITECT'S responsibility to comply with all of those requirements when performing and

completing this contract. Neither the District nor the City of Emeryville has established program participation rates for DVBE or DBE other than those required for participating in State or Federal funding programs.

- g. **RETENTION OF DVBE and DBE RECORDS:** ARCHITECT agrees that, for all contracts subject to DVBE and/or DBE participation goals, the State, the Federal Government, and the DISTRICT have the right to review, obtain and copy all records pertaining to performance of the contract in accordance with DVBE and DBE requirements. ARCHITECT agrees to provide the State, the Federal Government, or DISTRICT with any relevant information requested and shall permit the State, the Federal Government, or DISTRICT access to its premises upon reasonable notice for purposes of interviewing employees and inspecting records. ARCHITECT agrees to maintain such records for a period of three years after final payment under the contract.
- h. **CONFIDENTIALITY:** Prior to referencing the work to be performed hereunder, or utilizing any of the work product created hereunder, for any purpose (by way of illustration and not limitation, marketing, presentation or advertising), ARCHITECT shall obtain DISTRICT's prior written consent, not to be unreasonably withheld
- i. **DISTRICT RECORDS:** ARCHITECT shall take all steps necessary to protect any and all DISTRICT records provided to ARCHITECT under this Agreement, and shall treat all such records as strictly confidential, and will not at any time, directly or indirectly divulge, disclose, or communicate such records to any third party. A violation by ARCHITECT of this provision shall be a material violation of this Agreement, and will be cause for legal and/or equitable relief.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed this 9 day of March, 2010.

ARCHITECT.

By:   
STEVEN KELLEY

DISTRICT

By: 

**EXHIBITS:**

- Exhibit A: Project Description and Schedule
- Exhibit B: Tasks and Responsibilities
- Exhibit C: Compensation and Schedule of Hourly Billing Rates

## Exhibit A – Project Description and Schedule

### *Project Description:*

The Emeryville Center of Community Life (ECCL) is the community's vision of a unique and special community center; a place where schools, community services, arts and recreation programs are integrated to serve the entire Emeryville community. The Emeryville Center of Community Life has evolved with guidance from the Education and Youth Services Advisory Committee (now called the Partners for Community Life) and input from the Emeryville community. In 2003 a program plan was developed through community meetings and workshops with stakeholders that identified facility elements for recreational, educational, and cultural components of the Emeryville Center of Community Life. Starting from that base of information, a team of architects was hired in 2008 to develop a conceptual master plan for the new facility. That conceptual master plan has now estimated the size of the facility would be approximately 180,000 square feet of interior space made up of general instruction classrooms, meeting rooms, administrative offices, 2 gymnasiums, multi-purpose areas, art and music studios, dance and fitness studios, space for preschool and before and after school activities, technology centers, teacher work areas, parent and teacher resource areas, library, and a health and wellness center, and approximately 215 parking spaces. The outdoor space would include soccer field, football field, baseball field, basketball courts, a year-round swimming pool, a running track, gardens, and green open space. For a detailed description of the entire program of the project, refer to the full conceptual master plan attached to this RFP.

The project now being commissioned will build on the community's initial vision and will continue to honor a thorough community process involving as many stakeholders as possible to carry the conceptual master plan forward into reality. The City and the District are contracting with a design team that will partner with the community to begin from the imaginative starting point of the conceptual master plan and move the project forward through further critical pre-design investigations.

The vision that the community has developed over a number of years is reflected in the conceptual master plan that has been created for the Emeryville Center of Community Life. That master plan foresees a group of joint use facilities and flexible spaces clustered on a single site in a central part of the City, comprised of all the desired educational and community services programs needed and wanted by the community, and formed in a manner consistent with a number of goals. One primary goal is to produce within Emeryville a more connected and engaged network of community members and personal inter-relationships. The Center will serve as both a hub and a portal to that network. It will house activities that engage community members in ways that build and strengthen their bonds. It will facilitate the connections that allow people to encounter and know one another. Other goals are to embed life-long learning into the daily activities of everyone in Emeryville, to provide access to fellow citizens and to information, and to share the deep values that are crucial in determining how that information will be put to use and how those citizens can be in productive relationship with one another. Yet another goal is to create new open public spaces (particularly outdoor spaces) where there is room to share time and experiences, and build the network

of social interactions that is, fundamentally, the essence of community. Especially for people living at the hectic pace of an urban core environment, time is one of the scarcest of resources. So, the Center of Community Life seeks to place a high value on time spent sharing and experiencing a wide variety of social, educational, and cultural activities within the facilities, thus providing opportunities to develop social interconnections through the every-day use of those places. In addition, the goal of fostering an eminently sustainable and “green” set of community spaces also seeks expression in the Center which would become part of a city that is more walkable, more cohesive, smart in its growth, sustainable in all its endeavors, and the pride of its citizens. And finally, it is important in the Emeryville community for the Center to epitomize the cultural richness born from the collaborative diversity of the multi-cultural, multi-ethnic, and multi-generational citizens of Emeryville. All of those goals will be maintained throughout the right-sizing and analysis work that is included in the scope of this contract.

### ***Project Design:***

The City of Emeryville and the Emery Unified School District are interested in, and committed to, creativity in their approach to accomplishing the goals of this project. The Consultant’s demonstration of his/her ability to think and design creatively are critical components of this work.

We are also committed to a proactive and engaged community process in undertaking the work that we do. A particular focus within this overall concern is the topic of youth engagement in these efforts. The process of envisioning the Emeryville Center of Community Life, building community consensus and support for it, advocating publicly for the policies that move toward accomplishing it, investigating the options for implementing its plans, and designing both the program for and physical appearance of that Center are all greatly instructive and rich as learning tools for interested community members of all ages. Therefore, the process has been to date, and will continue to be, as open to and inviting of input as possible. Likewise, the ultimate construction, or dismantling and reconstruction, of new and existing facilities are potentially enriching educational experiences. These circumstantial opportunities can and will be used to great advantage by both school and community services programs. Designing and building the new Center must be of benefit to the community now and in on-going ways throughout the multi-year process of its development. This contract addresses specifically the Architect’s commitments to developing this important aspect of our work.

We are interested in enhancing the recreational, cultural, learning, and nurturing opportunities available in our programs and facilities. All environmental design will be focused on producing warm, welcoming, and inviting places for students, teachers, staff, parents, and all community members to gather and share experiences. The work of this contract will clearly demonstrate the Architect’s capabilities to assist us in these goals.

We are strongly devoted to goals of equitable recreational and educational outcomes for all of our families, students and community members, and realize that there is much diversity in our community. This is a fact to be celebrated and used as a source of richness in program and facility design. The work produced as a result of this contract

will provide evidence of the Architect's ability to think and act in ways that enhance these priorities.

We are committed to "green and sustainable" design, processes, and materials choices. Therefore, this contract places much emphasis on the Architect's experience with LEEDs certified projects and energy conscious and environmentally sensitive designs. In addition, a sustainable design is one that is frugal, flexible, and adaptable over time. The work produced as a result of this contract will demonstrate the Architect's ability to deliver sensible long-term operations and facility use strategies.

As a result of the process you facilitate and the architectural design products you produce for this contract, we expect Emeryville to be a healthier, more equitable and sustainable city.

***Project Location:***

The project location has been identified as the existing Emery Secondary School site. The property is an approximately 7.5 acre parcel that is bounded by 47<sup>th</sup> and 53<sup>rd</sup> Streets on the south and north, by San Pablo Avenue on the east, and by the Emery Bay Village on the west. The site currently houses grades 7-12 for the Emery Unified School District, but will be vacated so that construction of the new Center of Community Life can occur.

***Project Construction Delivery Method:***

The District and the City have chosen to pursue a lease/leaseback approach as the construction delivery method for the Center of Community Life project. It is the intent of the District and the City to request pre-construction phase services from the lease/leaseback partner. The architect will work as a team member along with the lease/leaseback builder, the District, and the City to pursue the design and construction of the Center.

## EXHIBIT A

### A. PROJECT SCOPE:

#### 1. Meetings and Administration

##### 1.1 Weekly meetings with City and DISTRICT staff

The project lead (Concordia) will meet with the City and DISTRICT staffs for a one hour administrative coordination meeting every week. Other members of the project team (dsk, MKThink, etc) will meet with city and district staffs every other week to coordinate, review and gather input on the overall goals and technical specifications of the project as well as updated project recommendations.

##### 1.2 Monthly meetings with the PLC

The project team will meet the PLC on a monthly basis (6 meetings total) to review the progress of the project and discuss any outstanding project issues.

##### 1.3 Project Documentation

The project will be documented through meeting minutes and updates posted to the Web 2.0 or designated ECCL website.

#### 2. Facility Specifications

##### 2.1 Summary of Existing Documents

Review the existing master plan and facility specification documents to confirm and summarize the intent of the ECCL project's educational, health, art, athletics, social service and other programs, space allocations, time of operation and other relevant data at a level of detail as required for further analysis in later phases. Develop narrative summary, diagrams of previous master plan and education specification documents in preparation for Workshop #1.

##### 2.2 Program Workshop #1

The project team will meet with key representatives of the city and school staff in a one-day workshop to review and define revisions to master plan and educational specifications programs and space allocations.

##### 2.3 Program Allocation Validation

Following input from Workshop #1 the project team will review the current space program and identify opportunities for square foot reduction by reconciling space allocations for program areas, assigning specific square footage in place of grossing factors, and eliminating redundancies. The focus will be on achieving higher efficiency in space use without loss of program opportunity. Develop narrative summary, diagrams of Program Allocation Validation analysis documents in preparation for Workshop #2.

#### 2.4 Program Workshop #2

The project team will meet with key representatives of the city and school staff in a second all day workshop to review the results of Workshop #1 and the Draft Program Allocation Validation and follow up analysis for creation of Program and Operational Streamlining.

#### 2.5 Program and Operational Streamlining

The team will model the use and utilization of the program components by time of day, day of week, and season to develop strategies for optimizing the overall utility of the program areas. The program and operational streamlining analysis will:

- Define the specific trade-offs in terms of space requirements and hours of availability associated with program areas;
- Identify potentially under-used program areas and propose alternatives for improving the long-term utilization of these areas;
- Identify 'program pressure points': areas susceptible to peak loading and/or demand fluctuations;
- Identify program areas that could be served through alternate means (shared space, outdoors, off-site);
- Identify program areas that may cause operational and/or governance inefficiencies/duplication of effort;
- Assist the City and District program teams (Community Services, Instructional Services, and Wellness Services) in conceptualizing and maximizing space-sharing opportunities.

The team will work with the PCL to apply these findings to the current space program. As a result of this effort, the program will reflect usage and operational efficiencies yielding an overall reduction in square feet required to meet the programmatic goals of the ECCL.

#### 2.6 Amended ECCL Program and Facilities Document

The project team will apply the findings of Workshop #2 to create an amended ECCL Program and Facility Specifications document.

#### 2.7 Presentation to PCL, School Board, & City/Schools Council

The project team will prepare and present the Amended Program and Facilities Document to the PCL. As a result of this effort, the program will reflect usage and operational efficiencies yielding an overall reduction in square feet required to meet the programmatic goals of the ECCL.

### 3. Technical Analysis

#### 3.1 Culvert Analysis: Explore means for mitigation

Preparation and meeting with Alameda Flood Control to explore means for Mitigation

#### 3.2 Culvert Analysis: Mitigation Proposal

Preparation and meeting with Alameda Flood Control to present mitigation proposal.

#### 3.3 AC Transit: Confirm access and use

The project team will work with AC Transit to study layout, security, access, efficiency and other functional issues for ECCL parking at the AC Transit site.

3.4 AC Transit: Prepare Floor Plan Diagram

The project team will develop a floor plan diagram illustrating changes required in AC Transit facility to accommodate shared use by ECCL.

3.5 AC Transit: Prepare budget for improvements

The project team will develop an estimate of probably costs for changes and improvement to the AC Transit site to accommodate shared use by ECCL.

3.6 AC Transit: Review with Turner Construction

The project team will review and affirm the proposed improvements and costs with Turner Construction

3.7 Prepare Final Technical Analysis Report and Diagrams

The project team will finalize recommendations and deliver a final written report for inclusion into the amended master plan document.

4. Update Master Plan with Community Engagement

4.1 Staff input sessions and updated planning concepts

The project team will work with city and school staff to establish direction for aligning amended program document with new site planning alternatives.

4.2 Develop master plan updates

The project team will develop revised master plan layouts and cross-sections illustrating all levels of the project based on the city and district staff input. The master plan updates will be presented in three-dimensional Sketch-up format without architectural forms and materials. (If requested by the owner, architectural forms and materials will be developed as an additional service).

4.3 Prepare updated master plan cost estimate

The project team will develop a cost estimate for the final draft of the revised master plan layout for review by the EUSD Board and the Emeryville City Council.

4.4 Review/adjust revised planning layouts with PCL

The project team will develop revised master plan layout presentation materials and meet with the PCL to review revised master plan updates.

4.5 Adjust revised master planning layouts based on PCL input

The project team will revise master plan layouts based on input and feedback from the PCL.

4.6 Coordinate/facilitate public presentation and workshop

The project team will develop agenda and presentation materials and facilitate a public presentation of the revised master plan layouts.

#### 4.7 Develop final addendum to master plan document

The project team will develop an addendum to the existing educational specification document that will summarize all alterations and revisions as determined through the revised programming and educational facilities planning process.

The project team will develop an addendum to the existing master plan document that will summarize all alterations and revisions as determined through the revised master planning process.

#### 4.8 Present final addendum to master plan to PCL, School Board, & City/Schools Council

The project team will deliver a final master plan document and powerpoint presentation to the PCL community.

### 5. Cost Benefit Analysis

The project team will model the short- and long-term economic impact of the programmatic, building, and operational strategies under consideration. We will analyze the alternatives and programmatic components in terms of:

- Total project costs (Costs associated with creating the specific program areas)
- Long-term district-wide operational costs impact (ongoing operating costs, value of consolidating operations to a single site, energy cost reductions achieved through sustainability programs, etc.)
- Revenue generation opportunities (Income potential associated with program components)
- Social and community impact (direct contribution towards meeting ECCL guiding principles).

This analysis will allow the ECCL leadership to develop a holistic understanding of the overall economics of the ECCL and inform their decision making process. It will also identify components of the space program that should be further optimized to deliver the highest long-term value to the city, district, and community.

### 6. Community Program Opportunity Assessment utilizing Existing Facilities

Prior to the opening of the ECCL on the Emery Secondary School site, Emeryville is already and will continue to develop and incubate community programs which will ultimately reside in the ECCL. This not only provides opportunities for the community to have access to programs earlier than the planned ECCL opening date, but also allows for program operators to develop a successful operating model prior to occupying the ECCL. We believe this continuity will be very important to the early success of the ECCL. In order to understand the potential to operate these programs in existing facilities, we recommend assessing the current district/city facilities to identify available inventory (space and schedule) and the operational costs and challenges associated with using any available capacity for community program use. These findings will clarify further potential for establishing additional programs or augmenting existing ones, as well as describe the types of programs that are best supported by the available infrastructure.

7. Partnership Mapping

The project team will collect data and analyze the urban systems surrounding the ECCL site. Context data shall include transportation, community services, demographics, housing, public and private neighborhood assets, as well as historical and contemporary development patterns and streetscapes. This contextual data will guide the project team in the development of the final master plan. The project team will study the possibilities and facilities/programs for possible programmatic connections to other community resources and facilities.

8. Designated Services

A. State and National Partnerships

The project team will assist the ECCL in coordination with various state and national partners to as directed by the ECCL staff.

B. District Consultant Coordination

This proposal includes only services provided directly by principals and employees of dsk, Concordia LLC and MK Think. The project team will retain and coordinate with additional consultants as needed for evaluation of structural, mechanical, electrical, cost estimating, health and wellness, public art, and other special services as directed and approved by the client.

B. DELIVERABLES:

The Pre Design Services described herein will include the following deliverables:

One ☐ reproducible addendum to the existing master plan document (pdf) and three bound copies of the final report.

One powerpoint presentation with approximately ☐ twenty slides to illustrate final recommendations.

One ☐ written report to document the programming and facility planning update process.

One ☐ powerpoint presentation with approximately sixty slides to document the programming and facility planning update process.

One binder and one Compact Disc of compiled ☐ analysis data.

C. OPTIONAL ADDITIONAL SERVICES:

Full 3-D Design & Presentation Package

The project team will develop a conceptual design package with three-dimensional drawings to further illustrate the amended master plan layout. The design package will not include building materials and other detailed architectural design elements as the focus of the conceptual design package will be to illustrate the use by various groups of stakeholders for various purposes and at various times of day. The conceptual design package deliverables will include one concept level sketch-up model of the full project site and three architectural renderings.

This optional additional service shall be developed for a total cost of \$ 25,000.00.

D. PROJECT TIME LINE:

The project will begin on November 17, 2009 and conclude 1 May, 2010.

## **Exhibit B – Tasks and Responsibilities**

Scope of Services		-- Provided By --			
		District's Responsibilities	----- A/E Team -----		Not Provided
	Pre-Design Basic Services required for the completion of the deliverables defined in Exhibit A		Additional Services		
<b>A. Project Administration Services</b> (throughout all phases)					
1	Project Team Selection				
	- Selection of District's additional consultants (soils, geo-hazard, haz-mat, const. mgrs., financing, energy mgmt., schedule & claims analysts, legal, inspectors, others.)	X			
	- Coordination of District's additional consultants	X			
2	Project Communications				
	- Develop / implement a Community Relations & Public Information plan	X	X		
	- School board presentations & community meetings	X	X		
	- Status reports to Board & Oversight Committee	X	X		
	- Establish a community engagement web site (Web 2.0) and provide materials to District to upload to the City's ECCL website		X		
3	Project Administration meetings				
	- As required for A/E basic services		X		
	- Other than required for A/E basic services	X			
4	Agency consultations / approvals as required for services defined in Exhibit A				
	- Local Fire Marshal		X		
	- State Office of Reg. Services (DSA, SFM)		X		
	- State Dept. of Education, School Facilities Planning		X		
5	Prepare applications & supporting documents				
	- OPSC funding applications		X		
	- Bond issue funding information	X			
<b>B. Programming, Planning &amp; Evaluation Services</b>					
1	Special investigations				
	- Geotechnical and soils engineering	X			
	- Hazardous materials reports & studies	X			
2	Investigation of readily observable existing conditions				
	- Property surveys / building measurements (if not available from exist'g drawings)	X			
	- On-site utility studies (locations, condition, capacity, etc)		X		
	- Off-site utility studies (locations, condition, capacity, etc)		X		
3	Develop detailed program				
	- Educational specifications/program, design criteria & standards		X		
	- Detailed space/adjacency programming		X		
	- Food service plan/program		X		
	- Equipment program		X		
4	Assistance with environmental, Negative Declaration & EIR studies				
	off-site parking alternatives	X	X		
	- Hearings and community meetings	X	X		
<b>F. Other Design Services</b>					
1	Hazardous materials identification / determination of mitigation measures	X			

Scope of Services		District's Responsibilities	-- Provided By --		
			----- A/E Team -----		
			Pre-Design Basic Services required for the completion of the deliverables defined in Exhibit A	Additional Services	Not Provided
2	FF&E design (furnishings & movable equipment)			X	
3	Graphic & signage design				
	- Fire/life safety graphics & signage				X
	- Other graphics & signage				X
4	Mock-Up services (workstations, classroom design, etc.)				X

## **Exhibit C – Compensation and Schedule of Hourly Billing Rates**

The Architect's total compensation consists of basic services, additional services and reimbursable expenses as follows:

### **Basic Services**

The architectural fee arrangement for Basic Services shall be a lump sum amount mutually agreed to.

For Basic Services under this Agreement, the parties have agreed to a fee of \$448,060.00. This fee includes all costs for travel, hotel accommodations, printing and other expenses as required to complete the above scope of work.

### **Additional Services**

Any additional services that may be required during the project must be requested by Architect and approved in writing by District before they are performed. Additional Services shall be compensated as described in Article 4.

### **Reimbursable Expenses**

Allowable reimbursable expenses as defined in paragraph 4.c. may be billed at 110% of direct cost.

### **Standard Hourly Billing Rates**

The following hourly rates shall be used for any Time and Materials services:

Principal:	\$225/hr
Senior Staff:	\$180/hr
Intermediate Staff:	\$120/hr
Jr. Staff	\$85/hr

These rates shall be adjusted annually on the anniversary date of the Agreement in accordance with the Consumer Price Index issued by the U.S. Department of Labor, Bureau of Labor Statistics for "All Urban Consumers" in "San Francisco-Oakland" for "All Items."