

MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT

TO: Board of Education

DATE: February 6, 2006

ITEM: **INFORMATION:** Review Governor's Proposal for Education for 2006-07

Information

The Governor of California presented his proposal for the 2006/07 State Budget in January.

Background:

The Governor's Budget proposes to fund k-12 education under Proposition 98 at a level considerably higher than last year. Unlike last January, when the education community was deeply disappointed that the Governor did not honor the terms of the "Deal" – the 2006-07 proposal recognizes and funds not only the base increase in the guarantee, but also a significant portion of the maintenance factor that has accumulated over the last two years. The combination of the estimated cost of living adjustment of 5.18% and the Proposition 98 maintenance factor restoration will increase unrestricted funding over 5.8% in 2006/07.

Objective(s):

To update the board on the Governor's Proposal for 2006/07 and anticipated changes to the district budget.

Recommendation(s):

That the governing board review the Governor's Proposal for Public Education for 2006/07. The Board will review district financial information in light of the governor's proposal to consider incorporation into the budget assumptions for approval at a subsequent meeting.

Prepared by:

Approved for Submission to the
Board of Education



Thomas Woodruff
Chief Business Officer



John Lamb
Superintendent

**MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT
2006-2007 GOVERNOR'S PROPOSAL FOR K-12
AND MPUSD PROJECTIONS**

Budget Adoption Scheduled June 19, 2006

GOVERNOR'S PROPOSAL

UNRESTRICTED FUNDING

The Governor's Budget proposes a significant increase in unrestricted funding for 2006-07. The proposals include:

COLA - \$2.273 billion to fully fund a 5.18% statutory COLA for revenue limits and virtually all other categorical programs in 2006-07. This compares to the 4.23% increase for the current year.

GROWTH - \$156 million for enrollment growth projected at .21%, for revenue limit ADA, special education, child care, and other categorical programs. This small increase reflects the overall slowdown in enrollments statewide. For the current year, ADA is expected to increase only .47%, a drop from the budgeted increase of .69%.

DEFICIT REDUCTION - \$205 million to reduce the deficit factor for school districts from .892% in the current year to .299% in 2006-07. Based on the average revenue limit, this provides \$31/ADA for elementary districts, \$38/ADA for high school districts, and \$33/ADA for unified districts. The county offices' deficit factor would drop to .106%.

EQUALIZATION - \$200 million for equalization to be allocated on the current ADA-based formula, which equates to almost 45% of the amount needed to fully equalize revenue limits to the 90th percentile level. For the large districts, this proposal provides up to \$77/ADA, depending upon the district type and its revenue limit relative to the equalization target. Under this proposal, about four in five districts will receive some equalization funding in 2006-07 and these districts will account for almost 90% of the total ADA statewide.

MANDATE REIMBURSEMENT - \$133 million to fund ongoing mandate claims in 2006-07, which the Administration estimates at \$175 million. Authorization would be provided to the State Controller to prorate payments if the appropriation is insufficient to cover the amount claimed. The Budget proposes an additional \$133 million to fund the backlog of claims that have accumulated because of prior-year deferrals. This backlog is estimated at \$1.3 billion.

2006-07 Unrestricted Funding Increases

District Type	COLA	Amount per ADA	
		Deficit Reduction ¹	Equalization ²
Elementary	\$258	\$31	\$0-\$74
High School	\$310	\$38	\$0-\$77
Unified	\$269	\$33	\$0-\$66

¹ Calculated for the average district.

² Calculated for large districts.

For the Monterey Peninsula Unified School District, the unrestricted funding levels are expected to increase 5.9 percent or approximately \$4.2 million. Below is a listing of the cost items that must be included in the 2006/07 budget for the district.

Note (all numbers are estimates)	in \$000
New unrestricted income	\$4,200
Decrease in income due to declining enrollment (3% of revenue limit ada)	\$1,700
Court stipulated judgment (2 % of MBTA salaries)	\$ 810
Column and Step increases for district staff	\$ 720
Special Education increase in program costs	\$ 300
Monterey HS field	\$ 200
 Total of Obligations	 \$3,730
 Excess (deficiency) of new income obligations	 \$ 470

Marina High School

The governing board is considering a new “starter” high school in the City of Marina. The current cost estimate is \$536k. The Marina High School would need all excess money after the district’s legal obligations shown above are funded. Based on current estimates, there would be a shortfall of \$66k (\$536k-\$470k).

GOVERNOR’S MAJOR NEW PROPOSALS

The Governor’s Budget proposes several new categorical programs and greatly expands a few existing programs. Unlike the majority of last year’s initiatives, these proposals include significant new ongoing funding.

PHYSICAL EDUCATION GRANTS - \$85 million for a new grant program to expand physical education instruction in grades K-8 to combat childhood obesity and improve student health, including \$25 million for PE teacher recruitment. The program would provide a minimum site award of \$3,000.

ARTS AND MUSIC GRANTS - \$100 million (roughly \$20/ADA) for a new block grant to support the development and implementation of fine arts and music instruction for all schools serving students in grades K-8. Funding would be provided at \$20 per student, with a minimum site award of \$3,000.

DIGITAL CLASSROOM GRANTS - \$25 million for a new block grant to schools for classroom technology. These would be competitive grants and successful applicants would receive \$3,000 per classroom on a one-time basis. Grants would support hardware and software purchases, staff development, and other one-time uses that advance technology in the classroom.

CAREER TECHNICAL EDUCATION PROGRAMS - \$30 million to improve the content and expand the number of “2+2” and similar Career Technical Education courses offered at high schools, ROC/Ps and community colleges.

CALIFORNIA HIGH SCHOOL EXIT EXAM SUPPORT SERVICES- \$40 million in 2006-07 to fund instruction and support services for students struggling to pass the CAHSEE. The 2005 Budget Act provided “one-time” funds to assist students who have failed the exam (\$20 million) and students with disabilities (\$48 million).

In addition to these instructional initiatives, the Governor’s Budget proposes several augmentations designed to strengthen the teaching profession and increase the supply of teachers statewide.

SCHOOL ENRICHMENT BLOCK GRANT - \$100 million for a block grant program to help districts to hire teachers and principals for hard-to-staff schools to increase the overall number of teachers in shortage areas, such as math, science, and special education. Funding is to be provided to schools in the bottom three deciles on the API at a rate of \$50 per student, with the minimum award set at \$5,000 per school site.

BEGINNING TEACHER SUPPORT AND ASSESSMENT PROGRAM - \$65 million to support a third year of induction for teachers who are beginning their careers in school ranked in Deciles 1-3. The initiative would also support a year of voluntary BTSA participation, at the discretion of the employing district, for experienced teachers who are new to a Decile 1-3 school.

SCIENCE AND MATH TEACHER TRAINING - \$1.5 million augmentation to boost the number of teachers trained in science and math instruction at UC and CSU.

GOVERNOR'S SCHOOL FACILITIES PROPOSALS

In addition to the 2006-07 operational budget proposed for K-12 education, the Governor's Budget presented a 10-year Strategic Growth Plan for facilities, centered around \$26.3 billion in General Obligation bonds, with an initial \$7 billion to be presented to voters in 2006, and the remaining \$19.3 billion staggered over election cycles through 2014.

Purpose	Authorizations (in billions)	
	2006	2008-2014
Modernization	\$3.3	\$8.8
New Construction	\$1.7	\$7.7
Charter Schools	\$1.0	\$1.4
Career Tech	\$1.0	\$1.4

Of these amounts, the Governor's proposal earmarks 10% of the proceeds allocated for modernization and new construction for "small school development" (\$500 million from 2006 authorization and \$1.65 billion from the remaining authorizations).

WILLIAMS SETTLEMENT – The *Williams* settlement provides \$800 million for emergency repairs for schools in Deciles 1-3 to be paid over several years, and, to date, more than \$200 million has been provided. The Governor's Budget proposes \$107 million in 2006-07 for the School Emergency Repair Account toward this agreement.

DEFERRED MAINTENANCE - The Governor's Budget proposes almost \$269 million for deferred maintenance, which fully funds the program. This would fund the basic apportionment at 92% to 95%, after reserving 10% for extreme hardship projects.

STATE BONDS – The Office of Public School Construction reports that, as of December 15, 2005, there remains less than \$5.5 billion in Proposition 47 and 55 funding available.

Type of Project	Balance (in millions)
New Construction	\$4,223
Modernization	\$601
Charter Schools	\$16
Critically Overcrowded	\$571
Joint Use Projects	\$32

For Monterey Peninsula Unified School District, it is expected that the state will have sufficient resources to fully fund its 50% obligation for new school facilities. Additionally, the district should pursue joint use projects with other public agencies as it considers new facility construction. These monies are available and underutilized in California. The district should continue to aggressively seek additional eligibility for modernization and deferred maintenance projects.

MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT

TO: Board of Education

DATE: February 6, 2006

ITEM: **INFORMATION:** "LEVEL 1" DEVELOPER FEE RATE

INTRODUCTION:

State law allows school districts to charge mitigation fees to builders of new homes and commercial projects, and allows fees on certain additions to existing homes. Two fees are in effect in the state, commonly known as "Level 1" or "Statutory" fees, and "Level 2" or "Alternative" fees. MPUSD uses only Level 1 fee as it is not eligible at this time to impose Level 2 fees. In January of each even-numbered year the state adjusts the maximum amount that may be imposed as a Level 1 fee. After the state adjusts the maximum fee, individual school district may change their maximum fee amount and readopt required findings.

BACKGROUND:

On January 25 the state adjusted maximum Level 1 fee as shown below. Driving the increase is a 17.24% increase in the "Class B" Construction Cost Index between December 2003 and December 2005. Staff will prepare an updated justification study and implementing resolution for action at a future board meeting. This documentation must be provided to the public at least ten days before any action by the governing board. Notice also must be published in a local newspaper. Approval must occur at a regular meeting of the governing board and takes effect 60 days later.

Type of Project	2006 (new)	2004 (old)
Residential	\$2.63	\$2.24
Commercial	\$0.42	\$0.36

Residential projects include new construction and additions of more than 500 square feet. Commercial fees include all types of non-residential projects. Qualifying senior citizen residential care facilities are eligible for a fee no higher than the commercial fee. Fees for agricultural projects must be calculated on a case-by-case basis and may not exceed the commercial fee rate). Government and religious projects are exempt from these fees. For a typical 2,000 square foot house the adjusted fee will result in a \$780.00 increase.

RECOMMENDATION:

It is recommended that the Board review the attached materials in anticipation of adjusting the Level 1 fee rate at a future meeting.

PREPARED BY:

APPROVED BY:



Tom Woodruff
Chief Business Officer



John Lamb
Superintendent

A Brief Look at California's Developer Mitigation Fees for Schools

California has two types of school fees:

Level 1 fees have existed since 1987 and may not exceed \$2.24 per square foot for residential projects and \$0.36 for non-residential projects. These fees are authorized in Education Code section 17620 and Government Code section 65995.

Level 2 fees have existed since 1999 and are authorized by Govt. Code section 65995.5. These fees are designed to pay the local 50% match for a New Construction project (the state is assumed to pay the other half). This fee is based on actual land and development costs in the school district imposing the fee and is not capped at a specific amount. However, the calculation method and input variables are defined in state law, giving a uniform process for all schools and builders while allowing the costs and resulting fee to reflect different conditions around the state.

Level 3 fees may become effective when the state runs out of money for its 50% match, requiring developers to advance the cost with future reimbursement, but is not expected to ever be in effect.

At this time the MPUSD collects only Level 1 fees. In the future, with extensive new development activity, it should be able to collect Level 2 fees.

The gap between what Level 1 fees currently provide and the cost of needed new facilities is about \$1.50 per square foot or \$3,000 per new dwelling.

SB 50 limits the ability of school districts and cities/counties to impose fees on new housing projects. It does not preclude use of Mello-Roos districts or other agreements to finance new schools but prohibits cities or counties imposing any requirement greater than Level 2 as a condition of project approval.

MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT

TO: Board of Education

DATE: February 6, 2006

ITEM: **INFORMATION:** ARCHITECTURAL MASTER CONTRACT

INTRODUCTION:

The District has now completed Phase 1 of modernization projects at 24 school sites totaling approximately \$53 million. This funding was less than the total pupil grant eligibility that the District qualified for. We have since reapplied for the additional pupil grants to restore these lost funds. These funds are now assured and a complete report to the governing board is forthcoming. Time is of the essence on several of these projects because of state deadlines to complete work.

Additionally, the district has several "high" priority facility projects that will include the addition of a relocatable classroom at Marshall, redesign and reconfiguration of King, and conversion of Central Coast High School should the board approve the Marina Starter High School proposal. There is need to quickly move forward to assure that students are properly housed. All of these projects will come to the governing board for consideration however it is essential to get an architect retained on the high priority, time sensitive projects.

BACKGROUND:


The Phase 1 modernization projects required the services of three (3) architectural firms. RDS Architects was one these firms and was responsible for the development of plans and specifications for eight (8) of the District sites. These projects were completed with the least amount of change orders and delays.

RDS has a vast amount of experience in school modernization projects and the construction of new school facilities. The district has been pleased with the quality of RDS's work product.

RECOMMENDATION:

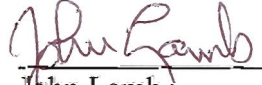
That the governing board review and consider the attached Master Contract with RDS. Legal Counsel has reviewed and approved the Contract. Individual projects will be brought to the Board as an addendum to the Master Contract. Fees for each project(s) will be brought to the Board for approval prior to commencement of any significant work.

PREPARED BY:



Tom Woodruff
Chief Business Officer

APPROVED BY:



John Lamb
District Superintendent

ARCHITECTURAL SERVICES AGREEMENT

BETWEEN

MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT

AND

RDS ARCHITECTS

FOR

PERFORMANCE OF ARCHITECTURAL SERVICES

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Attachment "A" (to be provided to the Board of Education as Addendum to Master Contract for each project)

Attachment "B"

ARCHITECTURAL SERVICES AGREEMENT

This AGREEMENT is made and entered into this _____ day of _____, in the year 2006, Between MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT, hereinafter referred to as “DISTRICT”, and RDS ARCHITECTS, hereinafter referred to as “ARCHITECT”; this AGREEMENT shall include all terms and conditions set forth herein.

WHEREAS, DISTRICT intends to construct a series of PROJECTS during the next five (5) years; and

WHEREAS, ARCHITECT is fully licensed to provide architectural services in conformity with the laws of the State of California.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1- ARCHITECT’S SERVICES AND RESPONSIBILITIES

1. This AGREEMENT shall contain the general duties and responsibilities of the parties. The ARCHITECT shall be assigned such tasks as may be assigned to it by DISTRICT for a period of five years from the date of this AGREEMENT.
2. The AGREEMENT shall be supplemented by attachments for each PROJECT. The attachments will, among other things, state the following:
 - a. An identification of the particular PROJECT;
 - b. The amount of the ARCHITECT’S fee;
 - c. A schedule for the performance of the ARCHITECT’S duties;
 - d. In the event there is a conflict between the attachment and the AGREEMENT, the attachment will prevail;
 - e. Each PROJECT attachment will require Board approval.

3. The ARCHITECT'S basic services shall consist of those services performed by the ARCHITECT, ARCHITECT'S employees and ARCHITECT'S consultants as enumerated in Articles II/III of this AGREEMENT.

4. The ARCHITECT'S services shall be performed in a manner, which is consistent with professional skill and care and the orderly progress of the work. The ARCHITECT represents that he/she will follow the standards of his/her profession in performing all services under this AGREEMENT. Upon request of DISTRICT, the ARCHITECT shall submit for DISTRICT'S approval a schedule for the performance of the ARCHITECT'S services. The schedule may be adjusted as the PROJECT proceeds by mutual written agreement of the parties and shall include allowances for time required for DISTRICT'S review and for approval by authorities having jurisdiction over the PROJECT. The ARCHITECT shall not, except for reasonable cause, exceed the time limits established by this schedule.

5. The schematic design, design development and construction document services covered by this AGREEMENT shall be completed by a date certain and for each project shall be shown on the corresponding attachment.

6. The ARCHITECT shall cooperate and consult with DISTRICT in 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 DISTRICT'S criteria to the extent such criteria do not interfere with PROJECT design and are in compliance with the requirements of Public Contract Code section 3400.

7. The ARCHITECT, in accordance with 40 Code of Regulations 763.99(a)(7), shall not specify any asbestos-containing materials in its drawings and specifications and shall further state in said documents that no asbestos-containing materials shall be used by the contractor.

ARTICLE II - SCOPE OF ARCHITECT'S SERVICES

1. The ARCHITECT'S basic services include those described in this Article, and include structural, mechanical, electrical engineering, landscape architecture and on-site civil engineering services to produce a complete and accurate set of Construction Documents defined as including but not limited to the following: The agreement between DISTRICT and Contractor awarded the PROJECT ("Contractor"), general and supplementary conditions of the Contract between DISTRICT and Contractor, drawings, specifications, addenda and other documents listed in the Agreement, and modifications issued after execution of the DISTRICT and Contractor Contract. The ARCHITECT shall make revisions in Drawings, Specifications, the Project Manual or other documents when such revisions are consistent with approvals or instructions previously given by DISTRICT, including as an additional service, revisions to previously approved construction documents made necessary by adjustments in DISTRICT'S program or Project Budget.

The ARCHITECT shall be responsible for determining the capacity of existing utilities, or for any design or documentation required to make points of connection to existing utility services required for the project.

The ARCHITECT will, consistent with standards of due care, make reasonable professional efforts to exclude hazardous materials from new construction. In the event the DISTRICT or ARCHITECT is or becomes aware of the presence of, or exposure of persons to, asbestos, polychlorinated biphenyl (PCB) or any other toxic or hazardous contaminants, materials, air pollutants or water pollutants at the PROJECT site, or the substantial risk thereof, each shall have a duty to immediately notify the other in writing.

2.1 SCHEMATIC DESIGN PHASE

2.1.1 Review of Project Requirements

The ARCHITECT shall review the program, schedule and construction budget furnished by DISTRICT to ascertain the requirements of the PROJECT and shall arrive at a mutual understanding of such requirements with DISTRICT. The ARCHITECT shall adhere to agreed upon timelines for delivery of documents pursuant to commencement of PROJECT. Time of the essence on all projects.

2.1.2 Methods of Project Delivery

The ARCHITECT shall review with DISTRICT proposed site use and improvements; selection of materials; and methods of PROJECT delivery.

2.1.3 Alternative Design and Construction

The ARCHITECT shall review with DISTRICT alternative approaches to design and construction of the PROJECT.

2.1.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the ARCHITECT shall prepare, for approval by DISTRICT, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

2.1.5 Updating Schematic Documents

At intervals appropriate to the progress of the Schematic Design Phase and mutually agreeable to DISTRICT and ARCHITECT, the ARCHITECT shall provide schematic design studies for DISTRICT'S review and information.

2.1.6 Provide Drawings

Upon completion of the Schematic Design Phase, the ARCHITECT shall provide drawings and other documents for DISTRICT'S approval.

2.1.7 Budget Requirements

The ARCHITECT shall provide Schematic Design Services to keep the PROJECT within all budget and scope constraints set by DISTRICT, unless otherwise modified by written authorization by DISTRICT.

2.1.8 Site Conditions and Project Requirements

The ARCHITECT shall be entitled to rely on the accuracy and completeness of the information, surveys and reports issued by the DISTRICT or the DISTRICT'S consultants.

2.2 DESIGN DEVELOPMENT PHASE

2.2.1 Design Development Documents

Based on the approved Schematic Design Documents and any adjustments authorized by the DISTRICT in the program, schedule or construction budget, the ARCHITECT shall prepare Design Development Documents for DISTRICT'S approval. Such documents shall consist of site and floor plans, elevations, cross-sections, and other documents necessary to depict the Design of the PROJECT, and shall outline specifications to fix and illustrate the size, character and quality of the entire PROJECT as to the Program requirements, landscapes, civil, structural, mechanical and electrical systems, materials and such other essentials as may be appropriate.

2.2.2 Updating Drawings

At intervals mutually agreeable to DISTRICT and ARCHITECT, the ARCHITECT shall provide drawings and other documents which depict the current status of design development for DISTRICT'S review.

2.2.3 Revising Documents

The ARCHITECT shall revise all drawings and specifications at no cost to DISTRICT, when said revisions are the result of errors or omissions in the drawings.

2.2.4 DISTRICT Approval

Upon completion of the Design Development Phase, the ARCHITECT shall provide drawings, outline specifications and other documents for DISTRICT'S approval. The ARCHITECT shall review with DISTRICT the selection of building systems and equipment.

2.3 CONSTRUCTION DOCUMENTS PHASE

2.3.1 CAD Drawings

The ARCHITECT shall prepare, from the Design Development Documents approved by DISTRICT, Construction Documents consisting of drawings (in AutoCAD R-14 format) and specifications setting forth, in detail, the requirements for the construction of the entire PROJECT in conformity with all applicable governmental and code requirements and requirements of DSA.

When portions of the documents may not be computer generated, that portion of the PROJECT employing existing drawings need not be reduced to CAD. The Construction Documents shall show all the work to be done, the materials, workmanship and finishes required for the PROJECT.

2.3.2 Drawings to DISTRICT

Upon completion of the Construction Documents Phase, the ARCHITECT shall provide Construction Documents for DISTRICT'S approval. After approval by DISTRICT, the ARCHITECT shall reproduce five (5) sets of contract documents and all progress prints for DISTRICT'S and Consultant's use at the ARCHITECT'S expense.

2.3.3 Ownership Of Documents

- a. The plans, specifications, and estimates for the PROJECT shall be and remain the property of DISTRICT, pursuant to Section 39119 of the Education Code.
- b. In the event the DISTRICT completes, modifies, or uses the plans, specifications, studies, drawings, estimates, other documents or any other works of authorship prepared by the ARCHITECT following conclusion of this PROJECT or at such other time or circumstance where the ARCHITECT is not directly supervising the completion, modification, utilization and/or application of the aforementioned documents and/or work, the DISTRICT acknowledges that such use shall be at the DISTRICT'S sole risk and without liability to the ARCHITECT, its employees, and its consultants. The DISTRICT agrees to indemnify, defend, and hold harmless the ARCHITECT, its employees and consultants, from and against any and all damage, liability or cost, included but not limited to attorney's fees, litigation costs, suits or any other costs associated with such use.

2.3.4 Re-Use of Documents

- 2.3.4.1 In the event DISTRICT ever desires, and it is mutually considered feasible, to erect all or part of another project which would be essentially identical to the PROJECT which is subject of the AGREEMENT, the ARCHITECT agrees to:

- a. Re-use as a separate project its design and the corresponding contract documents:
- b. Prepare with appropriate compensation such modifications as may be dictated by current codes, topography, soils conditions, utility services, existing construction and similar conditions:
- c. Perform with appropriate compensation as far as applicable all of the services provided by this AGREEMENT;
- d. In the event the DISTRICT re-uses drawings, the ARCHITECT'S fees will take into account that no royalty will be paid for the re-used documents.

2.3.4.2 The ARCHITECT will retain the right to use the design, plans, drawings and specifications prepared or provided by the ARCHITECT, its consultant, or sub-consultants for re-use on other projects for other DISTRICTS or Owners. Such re-use shall not entitle the DISTRICT to any notification, payment of any royalty, license fee, or other consideration.

2.3.5 Project Cost Estimates

The ARCHITECT shall establish an estimated PROJECT construction cost.

2.3.5.1 "Project Construction Cost" shall mean the estimate of construction cost to the DISTRICT as designed or specified by the ARCHITECT and accepted by the DISTRICT until such time as bids have been received, whereupon it shall be the accepted Construction Contract amount including alternates designed when accepted, increased by the dollar amounts of all approved additive contract change order items, but excluding the following: any payments to ARCHITECT or consultants for costs of inspections, surveys, tests and other work not included in the PROJECT. The ARCHITECT shall perform Design Development Services to keep the PROJECT within all budget and scope constraints set by DISTRICT, unless otherwise modified by written authorization by DISTRICT.

2.3.5.2 When labor or material is furnished by DISTRICT below its market cost, the Construction Cost shall be based upon current market cost of labor and new material.

2.3.5.3 Any APPROVED BUDGET or fixed limit of construction cost shall be adjusted if the bidding has not commenced with ninety (90) days after the ARCHITECT submits the Construction Documents to DISTRICT, to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to DISTRICT and the date on which bids are sought for the PROJECT.

2.3.6 Survey Work

All survey work will be provided by DISTRICT

2.3.7 Maintenance Cost

The ARCHITECT shall consider operating or maintenance costs when selecting systems for DISTRICT. The ARCHITECT shall utilize grants and outside funding services and work with District to utilize and consider funding from grants and alternative funding sources.

2.4 BIDDING PHASE

2.4.1 The ARCHITECT shall assist DISTRICT in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contracts, and forms of AGREEMENT between DISTRICT and the Contractors. The ARCHITECT shall assist DISTRICT in issuing bidding documents to bidders and conducting pre-bid conferences with prospective bidders. The ARCHITECT shall respond to questions from bidders, and shall issue addenda where necessary.

2.4.2 Assistance in Filing Required Documents

The ARCHITECT shall prepare and file all construction documents required for and obtain the approvals of all governmental agencies having jurisdiction over the PROJECT, including OPSC, DSA, County Health Department, and others which have jurisdiction over the PROJECT. DISTRICT shall pay all fees required by such governmental authority. ARCHITECT shall, whenever feasible, establish beforehand the exact costs due to governmental agencies and submit this cost information to DISTRICT so that payments may be prepaid.

2.4.3 List Of Qualified Engineers

ARCHITECT shall submit a list of qualified engineers for the PROJECT for DISTRICT'S approval. In case DISTRICT chooses to re-use construction documents prepared for another project, this re-use choice includes pre-approval of those consultants involved in preparation of those construction documents. ARCHITECT shall ensure that each engineer places his or her name, seal and signature on all drawings and specifications prepared by said engineer.

2.4.4 Bids Exceeding Costs

If the estimate for the cost of construction is exceeded by the lowest bona fide bid by more than 5 percent, DISTRICT may require the ARCHITECT, without additional compensation, to modify the documents for which the ARCHITECT is responsible under

this AGREEMENT as necessary to bring new bids within 5 percent of such estimate. Alternatively, DISTRICT may require the ARCHITECT to perform one or more of the following tasks at no additional cost to DISTRICT: (1) Prepare, at no additional cost, deductive change packages which bring the PROJECT; within 5 percent of the estimate; or (2) cooperate in revising the PROJECT scope and quality as required to reduce the construction costs to within 5 percent of the estimate. These efforts shall constitute the ARCHITECT'S sole responsibility with respect to its cost estimate.

2.5 CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.5.1 The ARCHITECT'S responsibility to provide Basic Services for the Construction Phase under this AGREEMENT commences with the award of the Contract for construction and terminates at the earlier of the issuance to DISTRICT of the final Project Certificate for Payment or sixty (60) days after the date of Substantial Completion of the Work.

2.5.2 Administration of Contract

The ARCHITECT shall provide administration of the Contract for construction as set forth below and in conformance with General Conditions of the Contract for Construction.

2.5.3 Modification of Duties

Duties, responsibilities and limitations of authority of the ARCHITECT shall not be restricted, modified or extended without written agreement of DISTRICT and ARCHITECT.

2.5.4 Technical Assistance to Project Inspector

The ARCHITECT shall provide technical direction to a full time project inspector employed by and responsible to the DISTRICT as required by applicable law. The ARCHITECT shall advise the inspector and/or Contractor in the preparation of a marked set of prints to be prepared by the contractor in indicating location of buried utility lines (record drawings) which shall be forwarded to DISTRICT upon completion of the PROJECT.

2.5.5 Site Visits

The ARCHITECT shall visit the site at intervals appropriate to the stage of construction or as otherwise agreed by DISTRICT and ARCHITECT in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Contract Documents. In no event shall the site visits be less than once a week unless agreed to by the DISTRICT. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to

check the quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect shall keep DISTRICT informed of the progress and quality of the Work, and shall endeavor to guard the DISTRICT against defects and deficiencies in the Work, including Work on the punch-list. The ARCHITECT will issue deficient work notices where appropriate. (More extensive site representation may be agreed to as an Additional Service, as described in Article III, Section 2.)

2.5.6 Not Responsible for Means of Construction

The ARCHITECT shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are the Contractors' responsibility under the Contracts for Construction. The ARCHITECT shall not be responsible for the Contractors' schedules or failure to carry out the Work in accordance with the Contract Documents. The ARCHITECT shall not have control over or charge of acts or omissions of the Contractors, Subcontractors, or their agents or employees, or of any other persons performing services or portions of the Work.

2.5.7 Access to Work

The ARCHITECT shall at all times have access to the Work wherever it is in preparation or progress. ARCHITECT shall require the Contractor to prepare and submit any notifications regarding excavation in areas which are known or suspected to contain subsurface installations pursuant to Government Code section 4216, *et seq.* and provide a copy of all such notifications to the DISTRICT and Project Inspector.

2.5.8 Coordination Meeting

The ARCHITECT shall attend regular PROJECT coordination meetings between the ARCHITECT, its Consultants, DISTRICT'S representative(s), and other Consultants of DISTRICT. The weekly construction meetings may serve as coordination meetings.

2.5.9 Review and Certification of Applications for Payment

2.5.9.1 Based on the ARCHITECT'S observations and evaluations of each Contractor's Application for Payment, the ARCHITECT shall review and certify the amounts due the respective Contractors. The ARCHITECT'S certification for payment shall constitute a representation to DISTRICT, based on the ARCHITECT'S observations at the site, and on the data comprising the Contractor's Applications for Payment, that, to the best of the ARCHITECT'S knowledge, information and belief, the work has progressed to the point indicated and the quality of the work is in accordance with the Contract Documents.

2.5.9.2 The foregoing representations are subject to an evaluation of the work for conformance with the Contract Documents upon substantial completion, to

results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the ARCHITECT. The issuance of Certificate of Payment shall further constitute a representation that the contractor is entitled to payment in the amount certified. However, the issuance of a Certificate of Payment shall not be a representation that the ARCHITECT has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from sub-contractors and materials suppliers and other data requested by the owner to substantiate the contractor's right to payment, or (4) ascertained how or for what purpose the contractor has used money previously paid on account of the contract sum.

2.5.10 Rejection of Work

The ARCHITECT shall have authority to reject work which does not conform to the Contract Documents. Whenever the ARCHITECT considers it necessary or advisable for implementation of the intent of Contract Documents, the ARCHITECT will have authority, upon written authorization from DISTRICT, to require additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work is fabricated, installed or completed. However, neither this authority of the ARCHITECT nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the ARCHITECT to the Contractors, sub-contractors, material and equipment suppliers, their agents or employees or other persons performing portions of the work. The ARCHITECT shall provide written evaluation of the performance of the Contractor under the requirements of the Construction Documents when requested in writing by DISTRICT.

2.5.11 Submittals

The ARCHITECT shall review and approve or take other appropriate action upon contractor's submittals, such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the contract documents. The ARCHITECT'S action shall be taken with such reasonable promptness as to cause no delay in the contractor's work or in construction by DISTRICT'S own forces, while allowing sufficient time in the ARCHITECT'S professional judgment to permit adequate review.

Review of such submittals is not conducted for the purpose of on-site safety or for construction means, methods, techniques, sequences or procedures nor will ARCHITECT check for proper numbers or dimensions of the submittal. When professional certification of performance characteristics of materials or equipment is required by the Contract Documents, the ARCHITECT shall be entitled to rely upon such certification to establish that the materials, systems or equipment is required by the Contract Documents. Further, review of such submittals is not conducted for substantiating instructions for installation or performance of equipment or systems designed by the contractor. The ARCHITECT shall

be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

2.5.12 Change Order Review

The ARCHITECT shall prepare and sign or take other appropriate action on Change Orders, Change Order Request, and Construction Change Directives prepared for DISTRICT'S approval and execution in accordance with the Contract Documents. When the parties have agreed to the Change Order, the ARCHITECT will sign said Change Order. The ARCHITECT shall maintain a Change Order log which shall identify the Change Order by number, the date the request was received and the date the response was given. ARCHITECT shall cause the contractor to prepare a set of reproducible record drawings showing significant changes in the work made during construction based on marked-up prints, drawings, and other data. The cost of revising the drawings or specifications, or for the act of preparing change orders resulting from errors or omissions in the drawings, shall not be charged to DISTRICT.

2.5.13 Review of Record Documents

ARCHITECT shall, at ARCHITECT'S expense, review the record drawings showing significant changes in the work made during construction.

2.5.14 Request for Information Processing

The ARCHITECT shall review and respond to all Requests for Information ("RFI") in a timely manner, including the preparation of drawings or revisions to drawings as necessary to respond to said requests. The ARCHITECT shall maintain an RFI log, which shall identify the RFI by number, the date the request was received, and the date the response was given

2.5.15 Claim Review

The ARCHITECT shall evaluate and render written recommendations, within a reasonable time on all claims, disputes or other matters at issue between the DISTRICT and Contractor relating to the execution or progress of the work as provided in the construction contract. Under no circumstances should this evaluation take longer than 20 calendar days from the date the claim is received by ARCHITECT.

2.5.16 Punch-list

ARCHITECT shall prepare the punch-list and consistent with Paragraph 2.5.5 site visits, determine that the punch-list work performed is in accordance with the contract requirements. The ARCHITECT will further review the punch-list for completion.

2.5.17 Review of Substitutions

The ARCHITECT shall evaluate substitutions proposed by the Contractor .In the event that the Contractor presents submittals for review after the end of the submittal period and these submittals constitute substantial additional work for the ARCHITECT, the ARCHITECT may bill the DISTRICT for review of submittals as additional services under Article III.

2.5.18 Substantial Completion and Final Certificate of Payment

The ARCHITECT shall observe the project site to determine the date or dates of Substantial Completion and the date of final completion. The ARCHITECT shall receive and forward to the DISTRICT warranties and similar submittals provided by the Contractor required by the Contract Documents. The ARCHITECT shall review the Contractor's final Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

2.5.19 Testing of Equipment

The ARCHITECT shall require the Contractor to provide assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance and consultation during operation.

2.5.20 Project Schedule

The ARCHITECT shall require the contractor to provide it with a critical path schedule within thirty (30) days of the commencement of work on the PROJECT. The ARCHITECT shall further require the contractor to update the schedule every thirty (30) days.

2.5.21 Interpreting the Agreement

The ARCHITECT shall interpret and decide matters concerning performance of DISTRICT and Contractor under the requirements of the Contract Documents on written request of either DISTRICT or Contractor. The ARCHITECT'S response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

2.5.22 Interpretations and decisions of the ARCHITECT shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both DISTRICT and Contractors, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

2.5.23 The ARCHITECT'S decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

2.5.24 The ARCHITECT shall render written decisions within a reasonable time on all claims, disputes or other matters in question between the DISTRICT and Contractors relating to the execution or progress of the Work as provided in the Contract Documents.

2.5.25 Project Closeout

The ARCHITECT shall be responsible for gathering information and assisting DISTRICT in processing forms required by applicable governing authorities, such as OPSC and DSA, in a timely manner and to ensure proper project closeout.

2.5.26 Delivery of Final Documents

Upon completion of the PROJECT, the ARCHITECT shall receive and deliver to the DISTRICT a complete set of documents consisting of all written guarantees, instruction books, record diagrams and specifications required of Contractor and deliver to the DISTRICT with one set of reproducible drawings showing the Project record upon issuance of the ARCHITECT'S certificate of completion with the location of underground sewer water and all utility connections and services specially noted.

ARTICLE III - ADDITIONAL ARCHITECT'S SERVICES

1. Duty to Notify DISTRICT of Additional Services

ARCHITECT shall notify DISTRICT in writing of the need for additional services required. ARCHITECT shall obtain written authorization from DISTRICT before rendering such services. Compensation for such services shall be subject to DISTRICT approval. Additional services shall be compensated at the hourly rate shown on Attachment "B." Such services shall include:

- a. Making material revisions in drawings, specifications or other documents when such revisions are required by the enactment or revision of laws, rules or regulations, subsequent to the preparation and completion of such documents.
- b. Preparing drawings, specifications and other documentation and supporting data, and providing other services in connection with Change Orders required by causes beyond control of the ARCHITECT which are not the result of the negligent acts or omissions on the part of ARCHITECT.
- c. Making revisions in drawings, specifications or other documents when such revisions are inconsistent with approvals or instructions previously given by the owner, including revisions made necessary by adjustments in the owner's program and project budget; or

due to changes required as a result of the owner's failure to render decisions in a timely manner.

d. Providing consultation concerning replacement of work damaged by fire and furnishing services required in connection with the replacement of such work.

e. Providing services made necessary by the default of the Contractor, which does not arise directly from negligent acts, errors or omissions of ARCHITECT or by major defect or deficiencies in the work of the contractor or by significant failure of performance by the contract.

f. If DISTRICT requests the PROJECT be let on a segregated basis after the completion of schematics where segregation does not arise from ARCHITECT'S exceeding the estimated budget constraint, then plan preparation and/or contract administration work to prepare the segregated plans is an extra service subject to prior negotiation, DISTRICT approval.

g. Providing contract administration services after the construction contract time has been exceeded through no fault of the ARCHITECT. The ARCHITECT'S compensation is expressly conditions on the lack of fault of the ARCHITECT.

h. Providing any other services not otherwise included in this AGREEMENT or not customarily furnished in accordance with generally accepted architectural practice.

i. Pre-Design Services: Providing services required prior to final selection of site and project scope such as site evaluation, special studies, comparative studies of prospective sites and/or buildings and budget analysis of various project scoops.

j. In the event the DISTRICT elects to re-use designs, plans, specifications, estimates or other documents prepared for another district, the services in connection with making significant revisions or changes to aforementioned materials to suit DISTRICT.

k. Providing services in evaluating an excessive number of proposals, claims, unspecified submittals or request for proposals submitted by the Contractor or others in connection with the work.

l. Providing services in connection with a public hearing, submittals to City Design Review (CDR), local department of Public Works or other entities not normally having jurisdiction over the PROJECT.

m. Preparing drawings and specifications associated with bid alternates, where the bid alternates are of an unusual number or amount, given the size of the PROJECT.

n. Providing services relative to future facilities, systems and equipment.

- o. Providing interior design or providing services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment not included in the contract for construction.
- p. Providing services of consultants for other than architectural, structural, mechanical, electrical, engineering, landscape architecture and on-site engineering.

2. Provision of Project Representatives, Etc.

If authorized in writing by DISTRICT, ARCHITECT shall, as an additional service, provide one or more Project Representative to assist in carrying out more extensive representation at the site than is described in Article II. The Project Representative(s) shall be selected, employed and directed by ARCHITECT, and the ARCHITECT shall be compensated therefore as agreed by the DISTRICT and ARCHITECT. Through the observations of such Project Representative(s), the ARCHITECT shall endeavor to provide further protection for the DISTRICT against defects and deficiencies in the work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the ARCHITECT as described elsewhere in the AGREEMENT. Such services shall be compensated as follows: negotiated fee not to exceed State fee guidelines and subject to prior approval by DISTRICT. The State fee guidelines for each PROJECT is attached hereto as Exhibit "A".

ARTICLE IV - DISTRICT RESPONSIBILITIES

1. DISTRICT shall provide to the ARCHITECT information regarding requirements for the PROJECT, including information regarding DISTRICT'S site, program, educational program, realistic budget limitations and scheduling, including reasonable contingencies related to budget and schedule.
2. DISTRICT shall notify the ARCHITECT of administrative procedures required and name a representative authorized to act on its behalf. DISTRICT shall promptly render decisions pertaining thereto to avoid unreasonable delay in the progress of the PROJECT. DISTRICT shall observe the procedure of issuing any orders to Contractors only through the ARCHITECT.
3. DISTRICT shall furnish all inspection services.
4. DISTRICT shall furnish all legal advice and services required for the PROJECT.
5. DISTRICT shall give prompt written notice to the ARCHITECT if DISTRICT becomes aware of any fault or defect in the PROJECT or nonconformance with the Construction Documents. However, DISTRICT'S failure or omission to do so shall not relieve the ARCHITECT of ARCHITECT'S responsibilities under Title 21, Title 24, and

the Field Act hereunder. DISTRICT shall have no duty to observe, inspect or investigate the PROJECT.

6. The proposed language of certifications requested of the ARCHITECT or ARCHITECT'S consultants shall be submitted to the ARCHITECT for review and approval at least fourteen (14) days prior to execution. The ARCHITECT shall not be required to make certifications that would require knowledge or service beyond the scope of this agreement.

7. DISTRICT shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the PROJECT, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; location, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a project benchmark

8. The DISTRICT shall furnish the services of geo-technical engineers when services are requested by ARCHITECT. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations. These services shall be performed under the direction and control of the ARCHITECT, even though paid for by the DISTRICT, to avoid conflicts or omissions in the work.

9. The DISTRICT shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law of the Contract Documents.

10. Any auditing services the DISTRICT may require to verify the Contractor's application for payment or to ascertain how or for what purposes the contractor has used the money paid by or on behalf of the DISTRICT.

11. The services, information, surveys and reports required by Paragraphs IV.7. through IV.10 shall be furnished at the DISTRICT'S expense, and the ARCHITECT shall be entitled to rely upon the accuracy and completeness thereof.

ARTICLE -V – TERMINATION

1. A Written Notice of Termination

This AGREEMENT may be terminated by either party upon fourteen (14) days written notice to the other party in the event of a material failure to of performance by such other party, including insolvency of ARCHITECT; or if the DISTRICT should decide to abandon or indefinitely postpone the PROJECT.

2. Abandonment of Work by DISTRICT

In the event of a termination based upon abandonment or postponement by DISTRICT, DISTRICT shall pay to the ARCHITECT for all services performed and all expenses incurred under this agreement supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement plus any sums due the ARCHITECT for Board approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this agreement, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents whether delivered to DISTRICT or in the possession of the ARCHITECT.

In the event termination is for a substantial failure of performance, all damages and costs associated with the termination, including increased consultant and replacement architect costs shall be deducted from payments to the ARCHITECT.

3. Terminate Without Cause During Work on a Particular Project

This AGREEMENT may be terminated without cause by DISTRICT during work on a particular project upon fourteen (14) days written notice to the ARCHITECT. In the event of a termination without cause, DISTRICT shall pay to the ARCHITECT for all services performed and all expenses incurred under this agreement supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination plus any sums due the ARCHITECT for Board approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this agreement, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents whether delivered to DISTRICT or in the possession of the ARCHITECT. In addition, ARCHITECT will be reimbursed for reasonable termination costs through the payment of 3% beyond the sum due the ARCHITECT under this paragraph as termination cost. This 3% payment is agreed to compensate the ARCHITECT for the actual level of completion reached on the date of termination and is consideration for entry into this termination for convenience clause.

4. Terminate Without Cause For Future Projects

DISTRICT may terminate this AGREEMENT as to future projects, where no work has been performed, upon thirty (30) days written notice. In the event of such termination, the ARCHITECT shall not be entitled to compensation in addition to that provided for in other sections of this AGREEMENT.

5. Work During Dispute

In the event of a dispute between the parties as to performance of the work or the interpretation of this AGREEMENT, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute and as to payment shall make every reasonable effort to resolve the dispute expeditiously. Payment disputes shall be subject to mediation and the mediation shall be held no later than sixty (60) days after the funds are withheld by the DISTRICT, unless both parties agree otherwise. Pending resolution of this dispute, ARCHITECT agrees to continue the work diligently to completion. If the dispute is not resolved, ARCHITECT agrees it will neither rescind the AGREEMENT nor stop the progress of the work, but ARCHITECT'S sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the PROJECT has been completed, and not before.

6. Deliverables Following Termination

Following the termination of this AGREEMENT for any reason, ARCHITECT shall immediately deliver all work to the DISTRICT without additional compensation other than reasonable duplication costs. ARCHITECT may not refuse to provide such writings or materials for any reason whatsoever, including but not limited to a possessory interest lien for any claim ARCHITECT may have against the DISTRICT or a claim by ARCHITECT to an ownership interest in the intellectual property embodied in the documents or materials.

ARTICLE VI - MEDIATION

1. DISTRICT AND ARCHITECT shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, all disputes regarding performance or interpretation of this AGREEMENT, whatever the value, shall be resolved utilizing the procedures set forth in Public Contract Code section 20104, *et seq.* Request for mediation shall be filed in writing with the other party to this AGREEMENT. The request may be made concurrently with the filing 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 sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

2. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in a place where the PROJECT is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court have jurisdiction thereof.

ARTICLE VII – ARBITRATION

1. Questions in dispute under this AGREEMENT may be submitted to arbitration at the election of both parties. Such arbitration shall be conducted in accordance with the rules set forth in Public Contract Code section 20104, *et seq.*

2. If either party petitions to confirm, correct, or vacate the award as provided by Chapter 4 of Title 9 of the Code of Civil Procedure, the prevailing party shall be entitled as part of its costs to a reasonable attorney's fees to be fixed by the court.

ARTICLE VIII – ACCOUNTING RECORDS OF THE ARCHITECT

1. Records of the ARCHITECT'S direct personnel and reimbursable expense pertaining to the extra services of this PROJECT and records of accounts between DISTRICT and Contractor shall be kept on a generally recognized accounting basis and shall be available to DISTRICT or its authorized representative at mutually convenient times.

ARTICLE IX – COMPENSATION TO THE ARCHITECT

DISTRICT shall compensate the ARCHITECT as follows:

1. There will be no change in compensation for additive or deductive Change Orders unless negotiated prior to commencing change order work.

2. Payment to the ARCHITECT will be based upon the last statement of probable costs, not to exceed the amount indicated on Attachment A, which shall include travel and other expenses. Payment to the ARCHITECT will be as follows:

Schematic Design: 15% of the ARCHITECT Fee as calculated from Attachment "A"

Design Development: 20% of the ARCHITECT Fee as calculated from Attachment "A"

Construction Documents: 40% of the ARCHITECT Fee as calculated from Attachment "A"

Bidding Phase: 5% of the ARCHITECT Fee as calculated from Attachment "A"

Construction Admin: 20% of the ARCHITECT Fee as calculated from Attachment "A"

Balance of actual ARCHITECT fee, to be paid monthly based on actual level of completion, not to exceed State guidelines, based on last statement of probable costs. The balance of the construction administrator's fee shall not be paid, if prior to the construction, the DISTRICT elects not proceed with the PROJECT. In such event, Article V shall apply.

3. When ARCHITECT'S Fee is based on a percentage of construction cost and any portions of the PROJECT are deleted or otherwise not constructed, compensation for those portions of the PROJECT shall be payable to the extent actual services are performed.
4. To the extent that the time initially established for the completion of ARCHITECT'S services is exceeded or extended through no fault of the ARCHITECT, compensation for any services rendered during the additional period of time shall be computed as follows: negotiated and not to exceed State fee guidelines prior to approval by DISTRICT Board.
5. Prior to the time the Notice to Proceed is issued to the Contractor, the ARCHITECT shall prepare a budget for the ARCHITECT'S anticipated expenses for the PROJECT. The parties recognize that this figure may be subject to adjustment as work proceeds. In the event the ARCHITECT exceeds this budget, the ARCHITECT shall notify DISTRICT and both parties will agree upon a reasonable adjustment.

ARTICLE X – REIMBURSABLE EXPENSES

1. Reimbursable expenses are in addition to compensation for basic and additional services, and shall be paid to the ARCHITECT at one and one-fifteenth (1.15) times the expenses incurred by the ARCHITECT, the ARCHITECT'S employees and consultants for:
 - a. Approved reproduction of drawings and specifications in excess of the copies provided by this AGREEMENT.
 - b. Fees advanced for securing approval of authorities having jurisdiction over the PROJECT.
 - c. Items authorized in advance by DISTRICT, such as the expense of models, renderings, photographs, etc.
 - d. Travel shall be reimbursed when necessary for services not covered under this AGREEMENT, at the rate in effect at time of travel.
2. Reimbursable expenses for each PROJECT will be estimated and shown on the PROJECT attachment, and this amount shall not be exceeded without the prior written approval of DISTRICT.
3. Reimbursement for fees and other expenses, shall be made to the ARCHITECT as incurred.
4. Reimbursable expenses shall not include:
 - a. Check prints;
 - b. Prints of plans or specification made for ARCHITECT'S consultants and two copies of progress prints supplied to DISTRICT;
 - c. Preliminary plans and specifications;

- d. Meetings with State planning officials, local or State fire departments, the DSA, or other public agencies having jurisdiction over project;
- e. Phone bills, office equipment or overnight accommodations.

ARTICLE XI – EMPLOYEES AND CONSULTANTS

1. The ARCHITECT as part of the basic professional services, shall furnish at his expense the services of landscape architects, structural, mechanical, and electrical and on-site civil engineers.

2. The ARCHITECT shall submit, for written approval by DISTRICT, the names of the consultant firms proposed for the PROJECT. Nothing in this AGREEMENT shall create any contractual relation between DISTRICT and any Consultants employed by the ARCHITECT under the terms of this AGREEMENT.

3. ARCHITECT consultants shall be licensed to practice in the State of California and have relevant experience with California school design and construction during the last five years. If any employee or consultant of the ARCHITECT is not acceptable to DISTRICT, then that individual shall be replaced with an acceptable competent person at DISTRICT’S request.

4. The construction administrator or field representative assigned to this PROJECT by ARCHITECT shall be able to make critical project decisions in a timely manner and shall be readily available and provide by phone, facsimile and through correspondence, design direction and decisions.

ARTICLE X11 – MISCELLANEOUS

1. Indemnification

ARCHITECT agrees to indemnify, defend and hold DISTRICT entirely harmless from all liability arising out of:

- a. Any and all claims under workers’ compensation acts and other employee benefit acts with respect to ARCHITECT’S employees or ARCHITECT’S subcontractor’s employees arising out of ARCHITECTS work under this AGREEMENT; and
- b. ARCHITECT shall indemnify, defend and hold harmless the DISTRICT and its officers, agents and employees from and against the following: All damages and losses whatsoever (together with any expenses related thereto including, but not limited to, damages, court costs and reasonable attorneys’ fees) occurring or resulting to any person, firm or corporation or damage, injury or death arising from the negligent acts, errors or omissions of the ARCHITECT, its officers, employees, agents or consultants in the performance of professional services under this AGREEMENT to the extent

that the ARCHITECT is responsible for such damages and losses on a comparative basis of fault and responsibility between the ARCHITECT and the DISTRICT. ARCHITECT is not obligated to defend or indemnify the DISTRICT for the DISTRICT'S own negligence.

- c. ARCHITECT shall not assign or transfer any or all of its rights, burdens, duties or obligation under this AGREEMENT without the prior written consent of the DISTRICT.

2. State Allocation Board

ARCHITECT shall assist DISTRICT and its consultants to apply for funding for the PROJECT from the State Allocation Board, however, ARCHITECT shall not be responsible for preparation, form, submittal, monitoring or tracking of funding applications prepared by the DISTRICT. ARCHITECT shall be responsible for submittals required of the ARCHITECT by the Division of the State Architect, OPSC and California Department of Education in connection therewith.

3. Maintenance of Insurance

ARCHITECT shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to DISTRICT (which acceptance will not be unreasonably withheld) 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. The ARCHITECT shall carry Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California.

- b. Commercial general and auto liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit, bodily injury and property damage liability, aggregate, including:

1. owned, if any, non-owned and hired vehicles;
2. blanket contractual;
3. broad form property damage;
4. products/completed operations; and
5. personal injury.

c. Professional Liability Insurance

Professional liability insurance, including contractual liability, with limits of \$1,000,000 aggregate per incident. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least ten years thereafter and/or at rates consistent with the rates current at the time of execution of this AGREEMENT adjusted for inflation.

d. DISTRICT As Additional Insured

Each policy of insurance required in (b) above shall name DISTRICT and its officers, agents and employees 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. Each policy of insurance required in (a) and (b) above shall state that not less than ten (10) days' written notice shall be given to DISTRICT prior to cancellation; 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, 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 DISTRICT shall deduct said amount from ARCHITECTS compensation.

e. Insurance for Subcontractors

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 Article XII, 3, a, b, c, d in amounts which are appropriate with respect to that subcontractor's part of work which shall in no event be less than \$500,000 aggregate.

f. Lack of Insurance is Material Breach

Failure to maintain professional liability insurance is a material breach of this AGREEMENT and grounds for immediate termination.

4. Architect is Independent Contractor

ARCHITECT, in the performance of this AGREEMENT, shall be and act as an independent contractor. ARCHITECT understands and agrees that ARCHITECT and all of ARCHITECT'S 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 full responsibility for the acts and/or omissions of ARCHITECT'S employees, consultants 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.

5. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of any third party against either DISTRICT or ARCHITECT.

6. DISTRICT and ARCHITECT, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to this AGREEMENT with respect to the terms of this AGREEMENT. ARCHITECT shall not assign this AGREEMENT.

7. This AGREEMENT shall be governed by the laws of the State of California.

8. This AGREEMENT represents the entire AGREEMENT between DISTRICT and ARCHITECT and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended or modified only by an agreement in writing signed by both DISTRICT and the ARCHITECT. This AGREEMENT may be executed in counterpart and with facsimile signatures.

This AGREEMENT entered into as of the day and year first written above.

“DISTRICT”

“ARCHITECT”

MONTEREY PENINSULA UNIFIED
SCHOOL DISTRICT

RDS ARCHITECTS

By _____
Superintendent

By _____
R. Don Spencer, AIA

ATTACHMENT "A"

- A. For new construction projects the Architect agrees to perform basic services provided by this Agreement and the Client agrees to pay the Architect for such services compensation in the cumulative amount of:

9.0% of \$0.00 to \$500,000.00 of PROJECT construction cost plus
8.5% of \$500,001.00 to \$1,000,000.00 of PROJECT construction cost plus
8.0% of \$1,000,001.00 to \$2,000,000.00 of PROJECT construction cost plus
7.0% of \$2,000,001.00 to \$6,000,000.00 of PROJECT construction cost plus
6.0% of \$6,000,001.00 to \$10,000,000.00 of PROJECT construction cost plus
5.0% of \$10,000,000.00 and excess

and other payments and reimbursements as hereafter provided, and the said compensation applies to work let under single construction contract.

- B. For modernization projects the Architect agrees to perform basic services provided by this Agreement and the Client agrees to pay the Architect for such services compensation in the cumulative amount of

12.0% of \$0.00 to \$500,000.00 of PROJECT construction cost plus
11.5% of \$500,001.00 to \$1,000,000.00 of PROJECT construction cost plus
11.0% of \$1,000,001.00 to \$2,000,000.00 of PROJECT construction cost plus
10.0% of \$2,000,001.00 to \$6,000,000.00 of PROJECT construction cost plus
9.0% of \$6,000,001.00 to \$10,000,000.00 of PROJECT construction cost plus
8.0% of \$10,000,000.00 upwards

and other payments and reimbursements, is hereinafter provided, and the said compensation applies to work let under single construction contract. Computed cost: the total award from the single construction contract(s) plus the cost of all approved additive construction change orders with the exception of items resulting from errors and omissions on the part of the Architect.



RDS Architects Hourly Rates

Principal	\$175.00
Senior Project Architect / Project Designer	\$141.00
Architect	\$130.00
Construction Administrator	\$137.00
Designer / CAD Drafter	\$101.00
Interiors	\$105.00
Admin I	\$113.00
Admin II	\$92.00

Attachment B

MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT

TO: Board of Education

DATE: February 6, 2006

ITEM: **INFORMATION:** Consider Formation of a District Advisory Committee for Surplus Properties ("7-11" Committee)

INTRODUCTION:

On January 23, 2006, the Board received a report from the Facilities Task Force. One of the recommended actions for immediate Board consideration was to create a "7-11" Committee to begin the process to review all Districtwide property. This committee would also make recommendations on the possible disposal of current and future surplus property.

BACKGROUND:

In the 1999-2000 school year, the District established a "7-11" Committee to begin the process of determining short-term and long-term disposition on alternate uses for various educational sites throughout the District. The goal of that committee was to define the amount of surplus District property and make a series of recommendations to the Board.

OBJECTIVE:

To have the Board review the attached criteria for a Districtwide Advisory Committee and, in doing so, meet the requirements of Education Code section 39296 and 39297. The Board shall make recommendations to the Superintendent for the members of this committee. The names should be given to the Superintendent by March 1, 2006. It is suggested that this committee be given a term of six months to complete their work. The committee should begin work by April 1, 2006, and complete their report by October 1, 2006.

COST/FUNDING SOURCE/FISCAL IMPACT:

Not applicable.

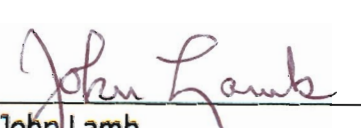
RECOMMENDATION(S):

That the Board consider the formation of the "7-11" Committee and give suggested names to the Superintendent by March 1, 2006. This item will return as an Action item on March 6, 2006.

PREPARED BY


Jeanie Fernandez
Administrative Assistant

APPROVED FOR SUBMISSION TO THE BOARD OF EDUCATION


John Lamb
Superintendent

MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT

DISTRICT ADVISORY COMMITTEE CRITERIA

MISSION, COMPOSITION AND REPORTS

In accordance with Education Code relating to Advisory Committees, the following purposes and procedures will apply to the function of this committee:

Mission Statement

The Districtwide Advisory Committee shall provide the Board of Education of the Monterey Peninsula Unified School District with recommendations for short-term and long-term disposition or alternate use of various educational sites throughout the District.

Duties

The Districtwide Advisory Committee shall do all of the following:

- (a) Review the projected school enrollment and other data as provided by the District to determine the amount of surplus space and real property.
- (b) Establish a priority list of use of surplus space and real property that will be acceptable to the community.
- (c) Cause to have circulated throughout the attendance area a priority list of surplus space and real property and provide for hearings of community input to the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to Education Code.
- (d) Make a final determination of limits of tolerance of use of space and real property.
- (e) Forward to the District Governing Board a report recommending uses of surplus space and property.

Membership

A Districtwide Advisory Committee appointed pursuant to Education Code shall consist of not less than seven (7) or more than eleven (11) members and shall be representative of each of the following:

- (a) The ethnic, age group, and socioeconomic composition of the District
- (b) The business community, such as store owners, managers, or supervisors
- (c) Landowners or renters, with preference to be given to representatives of neighborhood associations
- (d) Teachers
- (e) Administrators
- (f) Parents of students
- (g) Persons with expertise in environmental impact, legal contracts, building codes, and land use planning including, but not limited to, knowledge of the zoning and other land use restrictions of the cities or cities and counties in which surplus space and real property is located.

Selection of Membership

Each Board member should submit one name of possible members which meet the Membership representation points (a), (b), (c), (f), and (g). The Monterey Bay Teachers Association (MBTA) should suggest one name and the Monterey Bay School Administrators Association (MBSAA) should suggest one name.

The Superintendent will recommend a District staff person to facilitate this committee and will provide clerical assistance and support.