

## CONTRACT NAME: AGREEMENT BETWEEN HMC ARCHITECTS AND DAVIS JOINT UNIFIED SCHOOL DISTRICT

BRIEF DESCRIPTION OF CONTRACT: Proposal/Agreement for the Patwin Elementary School HVAC Project

Provide architectural and engineering design services related for the complete replacement of the existing HVAC systems in all permanent buildings, revisions to the existing noncompliant fire alarm system within high volume classrooms, the addition of a new carbon monoxide (CO) monitoring systems, restroom renovations for ADA compliance, and all necessary accessible path of travel improvements to the scope of work.

FISCAL IMPACT: The \$240,750 cost of these services will be covered in the Building Fund from Measure M bond revenue.

December 11, 2018

David Burke, AICP LEED-AP  
 Director, Facilities, Management & Operations  
 Davis Joint Unified School District  
 1919 5th Street  
 Davis CA 95616

Re: Proposal / Agreement for Architectural / Engineering Services  
 DJUSD Patwin ES HVAC  
 HMC #3447020-000

Dear David,

HMC Group is pleased to submit the following Proposal / Agreement to provide Architectural / Engineering Services for the above-mentioned Project.

**A. Scope of Work:**

The Patwin Elementary School HVAC replacement / modernization Project includes the complete replacement of the existing HVAC system in all permanent buildings, revisions to the existing non-compliant fire alarm system within high volume classrooms, the addition of a new carbon monoxide (CO) monitoring systems, restroom renovations for ADA compliance, and all necessary accessible path of travel improvements to the scope of work.

**B. Exclusions:**

1. Specialty Consultants not listed in the scope of work above.
2. Programming.
3. Special studies.
4. Surveying of existing conditions.
5. Topographical Surveys.
6. Geotechnical investigations.
7. Test and Inspections.
8. Renderings.
9. Permit/Agency Fees

**C. Compensation:**

Construction Cost preliminarily estimated at Two Million One Hundred Thirty-Two Thousand Five Hundred Dollars (\$2,132,500). HMC Group will provide the services listed in the scope of work above for a fixed fee of **Two Hundred Forty Thousand Seven Hundred Fifty Dollars (\$240,750)**, equal to the OPSC sliding scale as follows:

**Fee Summary:**

|                             |     |                  |
|-----------------------------|-----|------------------|
| Construction Documents      | 60% | \$144,450        |
| DSA Back Check              | 5%  | \$ 12,038        |
| Bidding                     | 2%  | \$ 4,815         |
| Construction Administration | 23% | \$ 55,372        |
| Closeout                    | 10% | \$ 24,075        |
| <b>Total</b>                |     | <b>\$240,750</b> |

**D. Additional Services:**

If Additional Services are required beyond the original Scope of Work, such services described in Attachment "A", HMC will bill on an hourly basis per Attachment "B", HMC Rate Schedule attached in the Proposal / Agreement.

**E. Reimbursable Expenses:**

Reimbursable expenses are in addition to compensation for Basic and Owner approved Additional Services, including printing, plotting (including 3D plotting), delivery and other expenses related to Agency review, the submittal of electronic files, Bidding, Construction or other Owner requested costs. The Architect's compensation shall be computed based on one hundredths (1.0) times the amounts invoiced to the Architect. Expenses of transportation in connection with authorized out-of-town travel, including mileage and related per diem charges shall be billed at cost in addition to the compensation for Basic and Owner approved Additional Services.

**F. Other Terms and Conditions of This Proposal / Agreement:**

Reference Attachment "C" of this Proposal / Agreement.

**G. Authorization/Agreement to Proceed:**

HMC Group is hereby requested and authorized by Davis Joint Unified School District to provide Architectural / Engineering Services as described above. All the foregoing is agreed to and authorized by:

\_\_\_\_\_  
Bruce Colby  
Chief Business Officer

\_\_\_\_\_  
Date

Please review this Proposal / Agreement and if it meets with your approval, please sign and return one (1) original to my attention.

Sincerely,

**HMC Group**



Brian Meyers, LEED AP  
Principal in Charge

Encis: Attachment "A" – Additional Service List  
Attachment "B" – HMC Hourly Rate Schedule  
Attachment "C" – Other Terms and Conditions  
Sarah Jimenez, File-CN-AOA

cc: T:\Projects\3447 DJUSD\020-000\_Patwin ES HVAC\02 Contracts Information\03 AOA\05  
PROPOSALS\Sample Owner Architect Letter Agreement.docx

## ATTACHMENT "A"

### ADDITIONAL SERVICES

The Additional Services described in this Attachment are not included in Basic Services and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services, Additional Services may only be provided if authorized or confirmed in writing by the Owner and Architect.

#### Project Representation Beyond Basic Services:

1. **Revisions:** Making revisions in Drawings, Specifications, Project Manual or other documents when such revisions are:
  - a. Inconsistent with approvals or instructions previously given by the Owner;
  - b. Required by the enactment, revised interpretation, jurisdictional differences in interpretation, or revision of codes, laws or regulations subsequent to the preparation of such documents, or additional costs caused by delays resulting from such.
2. **Project Changes:** Providing services required because of changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction.
3. **Change Orders:** Preparing Drawings, Specifications and other documentation, analysis and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and directives.
4. **Default:** Providing services made necessary by the default or termination of the Contractor, by defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner, Contractor or others performing services or providing work on the Project.
5. **Contractor's Submittals:** Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect.
6. **Contractor's RFI:** Responding to the Contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.
7. **Claims:** Providing services in connection with claims submitted by Contractor or others.
8. **Hearings, Proceedings:** Providing services in connection with the preparation for, or attendance at, public hearings or other meetings, or legal proceedings, except where the Architect is a party thereto.

#### Contingent Additional Services

1. **Existing or Other Facilities:** Providing services to investigate facilities or existing conditions or to make measured drawings thereof.
2. **Detailed Estimates:** Providing detailed estimates of Construction Cost.
3. **Providing Other Consultants:** Providing services of consultants, if any other than those specified as Basic Services under this Agreement.
4. **Post Completion/Extended Construction:** Providing services after the original completion date not due to the fault of the Architect/Engineer or after issuance to the Owner of the final Certificate for Payment, or thirty (30) days after the date of Substantial Completion of the Work, whichever is earlier.
5. **Project Hold/Resumption:** If the Project is placed on hold by the Owner for more than 90 days due to circumstances beyond the direct control of the Architect, the schedule shall be adjusted and the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services.
6. **Other Additional Services:** Providing any other services not otherwise included in this Agreement.

**ATTACHMENT "B"**

**HMC Rate Schedule**  
**Standard Hourly Rate by Professional Category**  
 (Not all categories need apply to this contract)

| <b>Description</b>   | <b>Rates</b> |
|--|--------------|
| Principal in Charge  | \$ 235       |
| Sr Project Manager/Sr Project Architect/Sr Technical Manager | \$ 205       |
| Project Manager/Project Architect/Technical Manager          | \$ 185       |
| Project Leader/Technical Leader                              | \$ 165       |
| Project Coordinator  | \$ 135       |
| Sr Construction Administrator                                | \$ 205       |
| Construction Administrator                                   | \$ 155       |
| Construction Administration Support                          | \$ 100       |
| Design Director  | \$ 235       |
| Senior Project Designer                                      | \$ 205       |
| Project Designer   | \$ 185       |
| Design Leader  | \$ 165       |
| Designer II  | \$ 120       |
| Designer   | \$ 100       |
| Senior Interior Designer                                     | \$ 205       |
| Senior Interior Project Designer                             | \$ 205       |
| Sr. Estimator  | \$ 205       |
| Sustainable Design   | \$ 205       |
| Sr. Specifications Writer                                    | \$ 205       |
| Specifications Technician                                    | \$ 190       |
| Visualization Arts   | \$ 170       |
| Agency Compliance  | \$ 130       |
| Senior Education Facilities Planner                          | \$ 195       |
| Education Facilities Planner                                 | \$ 160       |

These are the current hourly rates effective July 1, 2018 through June 30, 2019 and are subject to change one time annually effective July 1st

## ATTACHMENT "C"

### OTHER TERMS AND CONDITIONS

#### Retainer

An initial payment of zero (-0-) shall be made upon execution of this Agreement and credited to the fee earned at final payment.

#### Invoicing

The Architect shall invoice its time and reimbursable expenses monthly, and invoices are due and payable upon receipt. Amounts unpaid thirty (30) days after the receipt of the invoice will be subject to a service charge of eighteen percent (18%) per annum, pursuant to Civil Code §3320. Should the Owner fail to pay current invoices for more than sixty (60) days, the Architect may stop work on the Project until payment is received or terminate this Agreement with the Owner. The Architect shall not be held liable for any damages or losses that may result from such suspension or termination of services according to the provisions set forth in this proposal.

The Owner agrees to return disputed invoices within fifteen (15) days of that invoice with a clear description of the nature of the dispute.

#### Project Suspension/Resumption

If the Project is suspended by the Owner for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services. If the project is suspended by the Owner for more than ninety (90) consecutive days, the Architect may terminate the Agreement, by giving not less than seven (7) days written notice.

#### Project Scope Changes

When compensation is based on 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 services are performed on those portions, in accordance with the progress payment schedule as set forth in this Agreement, based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received and/or awarded, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project. If the scope of the Project or of the Architect's services is increased, the Architect's fees shall be increased accordingly. If the scope of the Project and the Architect's services is reduced, the Architect's fee shall be reduced only as applicable to the portions of the Architect's services that were not performed as of the date of such changes, and that would be reduced by such change in scope.

#### Termination

Either the Owner or Architect may, for any reason, terminate this Agreement upon not less than seven (7) days written notice to the other party. In the event of termination, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due. Termination Expenses are in addition to compensation for Basic and Additional Services and shall be computed as five percent (5%) of the Basic Services and Additional Service Fees.

#### Owner's Responsibility

The Owner shall provide full information, including a program which sets forth the Owner's objectives, schedule, constraints, and budget, with reasonable contingencies and criteria. The Owner shall also furnish any reports, tests, surveys, permits, inspection or other documentation of information or consultants reasonably requested by the Architect. All of foregoing shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

### **Architect of Record**

Should the Project proceed beyond the phases of services in this Agreement, the Owner shall designate HMC as the Architect of Record for the Project and will enter into a mutually agreeable Owner/Architect Contract for the remaining phases of services to complete the Project.

### **Ownership of Documents**

The Owner acknowledges that the Architect's Drawings, Specifications, Other Documents, Three Dimensional Computer Models and other design models are instruments of professional services. Nevertheless, the Drawings, Specifications, Other Documents, Three Dimensional Computer Models or other design models prepared under this Agreement shall become the property of the Owner upon completion of this Project and upon payment of all amounts due the Architect. The Architect, however, shall be deemed the author of these documents and shall retain all common law, statutory, and other reserved rights, including the copyright. Should the Owner or any other person, firm or legal entity use, reuse or modify the Architects' Drawings, Specifications, Other Documents, Three Dimensional Computer Models or other design models prepared under this Agreement, for other than the Owner's use and occupancy of the completed Project, the Owner agrees to indemnify, defend, and hold the Architect harmless from and against any and all claims, liabilities, suits, demands, losses, costs, and expenses, including reasonable attorneys' fees and all legal expenses and fees incurred on appeal, and all interest thereon, accruing or resulting to any and all persons, firms or any other legal entity, arising out of such use, reuse or modification of the Architect's Drawings, Specifications, Other Documents, Three Dimensional Computer Models or other design models, except where the Architect is found to be solely liable for such damages or losses by a court or forum of competent jurisdiction.

### **Electronic Files**

When requested by Owner, the Architect may transfer documents in electronic file formats to the Owner. The creation of the computer files shall be considered an additional service and the Architect shall be compensated on an hourly basis. By accepting these files/disks and the above stipulations, the Owner agrees to indemnify the Architect, its agents and all consultants against all claims, resulting from the use of these files and the information they contain, by the Owner or their own Consultants, Contractor, Subcontractors, suppliers and all others who receive these files or data. In no event shall the Architect be liable for any loss or profit or any consequential damages as a result of the Clients use or reuse of the electronic files. Owner understands and agrees the Architect relies on various forms of data transmission by an uninterrupted delivery of electrical and telephone service as a means of conducting Architect's business, including the Internet, and that the Internet may be used for intentional and malicious purposes, including transmission of electronic applications commonly referred to as computer "viruses" or "worms". While the Architect endeavors to eliminate the propagation of such applications through its systems and network, the Architect has no control over the actions of third party internet service providers or users of the Internet or similar systems. Consequently, the Owner agrees to waive all claims against the Architect for the propagation of virus applications that may cause damage of any kind to the Owner unless the Architect was the creator of the virus.

### **Software and Data Exchange Protocols**

The Owner and Architect shall, at the earliest practical moment, meet and delineate the types of software to be used on the Project and establish protocols, standards and tolerances as may be required for the proper execution of the Work. If applicable, the Owner and Architect shall work together to establish the permitted uses for all digital information, including the Model, to be exchanged on the Project. Such determination shall be set forth in the BIM Addendum, or other similar document, that shall be incorporated by reference into all agreements for services or construction of the Project.

### **Limitation of Liability**

In recognition of the relative risks and benefits of the project to both the Owner and the Architect, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of

the Architect and his or her subconsultants to the Owner and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of the Architect and his or her subconsultants to all those named shall not exceed the Architect's total fee paid for services rendered on this project. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty. Further, no officer, director, shareholder, or employee of Architect shall bear any personal liability to Owner for any and all injuries, claims, demands, losses or damages of any nature.

### **Insurance**

During the term of this Agreement, the Architect agrees to provide evidence of insurance coverage of five million dollars (\$5M) Professional Liability (Errors and Omissions). In addition, the Architect agrees to attempt to maintain continuous professional liability coverage for the period of design and construction of this project if such coverage is reasonably available at commercially affordable premiums. The Architect further agrees that the applicable subconsultants will be required to maintain a minimum of one million dollars (\$1,000,000) Professional Liability (Errors and Omissions) coverage. For the purposes of this Agreement "reasonably available" and commercially affordable" shall mean that more than half the Architect's practicing in this state in this discipline are able to obtain such coverage. Nothing contained in the Agreement or otherwise is intended to create a fiduciary relationship between the parties.

### **Mediation**

In an effort to resolve any conflicts that arise during the design or construction of the Project or following the completion of the Project, the Owner and the Architect agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

The Owner and the Architect further agree to include a similar mediation provision in all agreements with independent contractors and consultant retained for the Project and require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

If the parties do not resolve a dispute through mediation, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction. Architect shall make no claim against Owner without first providing Owner with a written notice of damages and providing Owner thirty (30) days to cure before an action is commenced. The Owner shall make no claim either directly or in a third party claim, against Architect unless the Owner has first provided Architect with a written certification executed by an independent architect currently practicing in California. This certification shall a) contain the name and license number of the certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of an architect performing architectural services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to Architect not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any judicial proceeding.

### **Assignment**

Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.

### **Hazardous Materials**

It is acknowledged by both parties that the Architect's scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event the Architect or any other party encounters asbestos or hazardous or toxic materials or toxic mold at the jobsite, or should it become known in any way that such materials at the jobsite, or any adjacent areas that may affect the

performance of the Architect's services, the Architect may, at the Architect's option and without liability for consequential or any other damages, suspend performance of services on the project until the Owner retains appropriate specialist consultant(s) or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials, and warrant the jobsite is in full compliance with the applicable laws and regulations.

### **Consequential Damages**

The Architect and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination.

### **Third Party Contracts**

The Owner shall, upon request of the Architect, supply a copy of the executed Agreement with the Owner's Construction Manager or Project Management Firm, relating to services provided under this Agreement. The Owner shall require that the Contractor and Construction Manager or Project Management Firm (if any) defend, indemnify and hold harmless the Architect for any claims or damages arising from their respective work on the project.

### **LEED Certification**

If required within the attached scope of work, the Architect shall make every professional effort, within it's reasonable control consistent with industry standards, to obtain LEED Certification. In recognition of the fact the LEED Certification depends on other parties that the Architect cannot control, the Owner agrees that the Architect cannot warrant, represent or guarantee that LEED Certification will be subsequently awarded. In addition, any building simulation analysis performed as part of the services provided reflects the Architect's best judgment as a design professional familiar with the industry, but cannot be assumed to be an accurate portrayal of, and may vary from, actual building performance.