

## **CONTRACT BETWEEN OWNER AND ARCHITECT**

**AGREEMENT** made this 12th day of October in the year 2016 in Yuba City, California.

**BETWEEN the Architect:**

Synthesis Partners, Inc. (SPINC)  
PO Box 1900  
Yuba City, CA 95992  
T: 916.539.9800  
E: [gary@spinc-arch.com](mailto:gary@spinc-arch.com)  
Gary M. Underhill, AIA | Partner

**and the Owner:**

Davis Joint Unified School District  
526 B Street  
Davis, CA 95616  
T: 530.757.5700  
E: [bcolby@djUSD.net](mailto:bcolby@djUSD.net)  
Bruce Colby,  
Associate Superintendent of Business Services

**For the following Project: (SPINC Project No. 15-D03-02)**

**Davis JUSD Corporation Yard & Davis HS – New Warehouse Buildings**

Davis, CA 95618

The project will consist of:

1. Installation of two pre-engineered metal warehouse buildings at the district corporation yard. Project scope will include:
  - a. Prepare site for installation of new pre-engineered metal warehouse buildings
  - b. Installation of site utilities; connection of electrical service and connection of facility Data/Telecomm to new warehouse buildings
  - c. Install new concrete slab and footings for new metal buildings
  - d. Install 2 new pre-engineered metal buildings; one 40'x 30' and one 60'x 40'
  - e. Installation of paved areas at perimeter of new buildings
2. Installation of two pre-engineered metal warehouse buildings at the Davis High School; one near the football field and one near the baseball field. Project scope will include:
  - a. Prepare site for installation of new pre-engineered metal warehouse buildings
  - b. Installation of site utilities; connection of electrical service and connection of facility Data/Telecomm to new warehouse buildings
  - c. Install new concrete slab and footings for new metal buildings
  - d. Install 2 new pre-engineered metal buildings; size to be determined
  - e. Installation of paved areas at perimeter of new buildings
  - f. Alteration of fencing and gates as desired by district

The scope of professional design services Synthesis Partners, Inc. will be providing consist of:

- Preparation of schematic and design development documents
- Preparation of Construction documents including drawings and written specifications (on drawings only)
  - Includes grading plans for buildings at Davis High School only by WCE
- Administering the agency approval process
- Assisting with bidding and bid analysis
- Limited Construction Administration services as needed – 8 week construction schedule

## CONTRACT BETWEEN OWNER AND ARCHITECT

Davis Joint Unified School District

Davis JUSD Corporation Yard & Davis High School – New Warehouse Buildings

Project Number – 15-D03-02

- 3 site visits included in base scope – limited to 20 hours of Project Architect's (PA's) time and 12 hours of the Principal-in-Charge's time\*
- Review and processing of Submittals, RFI's, and CCD's will be billed hourly – limited to 8 hours of PA's time, 4 hours of the Principal-in-Charge's time, and 4 hours of a Drafter's time.\*

\*Any additional required time will be billed as authorized by the district under a supplemental service agreement

- Post construction services, project closeout

### Summary of Project Statistics:

Site	District corporation yard
Type of Construction	Type V – non-rated, no fire sprinklers
On-Site Improvements	limited to grading and drainage at new buildings
Off-Site/Encroachment Improvements	none
Utilities	connection to existing services
Applicable Codes	2013 California Building Code edition
Anticipated Occupancy	August 2017
Preliminary Estimated Project Budget	TBD

### Professional Design and Engineering Team:

- Architect – Synthesis Partners, Inc.
- Civil – Warren Consulting Engineers, Inc.
- Electrical – PACE Engineering, Inc.

### Summary of Services:

The design and engineering team shall provide professional design and documentation services to include the following:

#### Phase I – Pre-Design (PD)

- PD Administration & Team Meetings
  - Meeting with Owner to develop project goals, needs, and priorities
- PD Documentation
  - Prepare initial project scope, and schedule
  - Measure site at new building and accessibility features (path of travel) and document existing conditions
  - Prepare written project scope statement and identify design considerations
  - Generate base drawings for site to identify existing conditions and define areas of work

#### Phase II – Site Analysis

- No work

#### Phase III – Schematic Design (SD)

- SD Administration & Team Meetings
  - Meeting with Owner to review/refine site plan alternatives
- SD Documentation
  - Perform a building code analysis and summary
  - Prepare site plan design alternative sketches for consideration and approval by owner

## **CONTRACT BETWEEN OWNER AND ARCHITECT**

Davis Joint Unified School District

Davis JUSD Corporation Yard & Davis High School – New Warehouse Buildings

Project Number – 15-D03-02

### **Phase IV – Design Development (DD)**

- ☐ A part of the construction document phase

### **Phase V – Construction Documents (CD)**

- ☐ CD Administration & Team Meetings
  - Client Meeting
  - Site Visit to verify final design
  - Coordination with pre-engineered building manufacturer
- ☐ CD Documentation
  - Overall Site Plan – Identify POT, accessible restroom locations, accessible parking – prepare documentation for alterations required to meet current accessibility code requirements
  - Enlarged/Partial Architectural Site Plan at new warehouse buildings
  - Enlarged/Partial Grading Plan at new warehouse buildings
  - Enlarged/Partial Electrical Site Plan at new warehouse buildings
  - Architectural Details & Specifications
  - Technical Specifications Project Manual (bidding documents to be provided by district)

### **Phase V – Agency Review/Approval (AR)**

- ☐ AR None required

### **Phase VI – Bidding Process (BP)**

- ☐ BP Bid Administration
- ☐ BP Bid Assistance
- ☐ BP Bid Evaluation

### **Phase VII – Construction Administration (CA)**

- ☐ CA Administration
  - Attendance of 3 site visits
- ☐ CA Documentation
  - Progress Reports, Submittal Logs, RFI's & AIB's
- ☐ CA Review submittals
- ☐ CA Prepare punch list
  - Site visit to prepare punch list
  - Sign off punch list

### **Phase VIII – Post Construction (PC)**

- ☐ PC Administration & Documentation
  - Collection and delivery of as-built documents to district

## **Summary of Work Not Included in This Agreement**

- Metal building drawings and specifications – by building manufacturer, contracted directly with district
- Building foundation; slab and footing design, plans and specifications - by structural engineer
- Building lighting and power outlets (power to each building panel only)

## **Summary of Owner's Responsibilities:**

- Directly pay for all agency fees associated with this project.
- Directly pay for the services of a testing lab for any specific tests required for this project.

**CONTRACT BETWEEN OWNER AND ARCHITECT**

Davis Joint Unified School District

Davis JUSD Corporation Yard &amp; Davis High School – New Warehouse Buildings

Project Number – 15-D03-02

- Hire an underground locator service to identify the location of all underground utilities within the area of work and at the point of connection to existing systems.
- A reference copy of the existing site development plans – both hardcopy and CAD files (if exists).
- Soils and Geological reports.
- Intrusion Alarm System, if desired by owner

<b>Fees for AE Services</b>	
<b>Basic services, a stipulated sum of Thirty Four Thousand Seven Hundred Dollars</b>	<b>\$ 41,200</b>
▪ Architectural Design and Construction Documentation	<b>\$ 40,200</b>
▪ Deliverables – Printing, Plotting, Reprographics, and Deliveries Includes all plan sets through DSA approval, none included for bidding or CA)	<b>\$ 1,000</b>

<b>Payment Schedule</b>	
Synthesis Partners, Inc. will invoice Owner on a monthly basis by the project phases as follows (Hourly CA services will be billed separately) :	<b>\$ 41,200</b>
▪ Phase I – Predesign (10%)	<b>\$ 4,100</b>
▪ Phase III – Schematic Design (15%)	<b>\$ 6,200</b>
▪ Phase IV – Design Development (15%)	<b>\$ 6,200</b>
▪ Phase V – Construction Documents (30%)	<b>\$ 12,300</b>
▪ Phase VI – Bidding (10%)	<b>\$ 4,100</b>
▪ Phase VII – Construction Administration (19%)	<b>\$ 7,800</b>
▪ Phase VIII – Closeout (1%)	<b>\$ 500</b>

**Additional Scope:**

If, at the written request of the Owner, Synthesis Partners, Inc. is authorized to complete other additional work beyond the scope listed above, that work will be completed on a time and materials basis, invoiced monthly as time is expended, at the following hourly rates;

Principal Architect:	\$200.00/Hr	Project Engineer:	\$175.00/Hr
Project Architect:	\$175.00/Hr	Project Manager:	\$150.00/Hr
Interior Designer:	\$125.00/Hr	Project Coordinator:	\$100.00/Hr
Graphics Presentations:	\$100.00/Hr	Drafter:	\$ 80.00/Hr
Office Manager:	\$ 75.00/Hr	Accounting:	\$ 60.00/Hr
Clerical:	\$ 50.00/Hr	Public Hearings:	\$250.00/Hr

These rates will be applicable through December 31, 2016, and are subject to change at that time without notice.

**Synthesis Partners, Inc.****Davis Joint Unified School District**

**By: Gary M. Underhill, Partner****By: Bruce Colby, Associate Superintendent for Business**

Date: October 12, 2016

Date: \_\_\_\_\_

**Exhibit A – Contract Terms**

Client and consultant agree that the following provisions shall be part of their agreement:

## CONTRACT BETWEEN OWNER AND ARCHITECT

Davis Joint Unified School District

Davis JUSD Corporation Yard & Davis High School – New Warehouse Buildings

Project Number – 15-D03-02

1. Invoices: Shall be presented to Client for the above work monthly and are due and payable upon presentation and delinquent twenty (20) days thereafter. Client hereby agrees to pay finance charges of 1.5 percent per month for delinquent accounts.
2. Deliverables: Additional project expenses incurred by SPINC will be invoiced separately. An administration fee of 15% will be added to all project related expenses paid for by SPINC and then invoiced to the Client. All printing, plotting, reprographic, CAD file translation, shipping and additional consultant fees not listed in this scope of work is the responsibility of the Client.
3. Changes in Project Scope: If the scope of the project or of the Architect's services is changed materially, the amount of compensation shall be equitably adjusted. All adjustments to scope and compensation shall be described in writing and mutually agreed upon prior to the commencement of any Additional Services.
4. Change Orders & Substitutions: If SPINC prepares drawings, specifications and other documentation and supporting data, for the processing and approval of Change Orders & Substitutions that are not the result of direct or indirect negligence, errors or omissions on the part of SPINC, SPINC shall be given additional compensation for these services.
5. Non-Responsibility: Synthesis Partners, INC. shall not be responsible for damages and shall not be held in default by reason of events or circumstances beyond SPINC's reasonable control; or for delays caused by failure of Client or Client's agents to furnish information or to approve or disapprove SPINC's work promptly, or due to late or slow or faulty performance by Client, Client's consultants, contractors, or governmental agencies, in the performance of acts which are precedent to or concurrent with the performance of SPINC's services.
6. Site Control: Synthesis Partners, INC. and its personnel shall have no authority or responsibility to exercise control over any construction contractor or other entity in connection with their work or any health or safety precautions associated with the project. Client agrees that its contractor shall be solely responsible for job safety, means and methods, and warrants that this intent shall be made evident in Client's agreement with its contractor. Client also agrees that Client, Synthesis Partners, INC., and Synthesis Partners, INC.' consultants shall be indemnified and shall be added as additionally insured entities under the Contractor's General Liability Insurance and Builder's Risk policies.
7. Cost Estimates: In providing opinions of probable construction costs, Client understands that Synthesis Partners, INC. has no control over costs or the price of labor, equipment, materials, or over any contractor's method of pricing, and the opinions of probable construction costs provided by SPINC are to be made on the basis of SPINC's qualifications and experience.
8. Instruments of Service: The drawings, specifications, and other documents, including those in electronic form, produced by SPINC under this agreement are for use solely with respect to the Project. SPINC shall be deemed to Client of these documents and shall retain all common law, statutory and other reserved rights, including copyright. SPINC grants to the Client a nonexclusive license to reproduce such SPINC documents for the purpose of constructing, maintaining or using the Project. Any unauthorized use of SPINC documents shall be at Client's sole risk without liability to SPINC.
9. Commence of Work: Actual work will commence upon receipt of this executed document and initial payment, if required.
10. Agreement: Shall be considered void if not executed within thirty (30) days from the date of this document.
11. This agreement shall be binding upon heirs, executors, administrators, successors and assigns of client and consultant.
12. This agreement shall not be assigned by either client or consultant without the prior written consent of the other.
13. This agreement contains the entire agreement between client and consultant relating to the project and the provision of services to the project. Any prior agreements, promises, negotiations or representations not expressly set forth in this agreement are of no force or effect. Subsequent modifications to this agreement shall be in writing and signed by both client and consultant.
14. Consultant's waiver of any term, condition, or covenant, or breach of any term, condition, or covenant, shall not constitute the waiver of any other term, condition, or covenant, or the breach of any other term, condition, or covenant.
15. If any term, condition, or covenant of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this agreement shall be valid and binding on client and consultant.
16. This agreement shall be governed by and construed in accordance with the laws of the State of California.
17. Consultant shall only act as an advisor in all government relations.
18. All original papers, documents, drawings and other work product of consultant, and copies thereof, produced by consultant pursuant to this agreement shall remain the property of consultant and may be used by consultant without the consent of client. Upon request and payment of the costs involved, client is entitled to a copy of all papers, documents and drawings provided client's account is paid current.
19. Client acknowledges that its right to utilize the services and work product provided pursuant to this agreement will continue only so long as client is not in default pursuant to the terms and conditions of this agreement and client has performed all obligations under this agreement. Client further acknowledges that consultant has the unrestricted right to use the services provided pursuant to this agreement as well as all work product provided pursuant to this agreement.
20. Client and consultant agree to cooperate with each other in every way on the project.
21. Upon request, client shall execute and deliver, or cause to be executed and delivered, such additional instruments, documents, governmental fees and charges which are necessary to perform the terms of this agreement.
22. Consultant makes no representations concerning soil conditions unless specifically included in writing in this agreement, and he is not responsible for any liability that may arise out of the making or failure to make soil surveys, or sub-surface soil tests, or general soil testing.

## CONTRACT BETWEEN OWNER AND ARCHITECT

Davis Joint Unified School District

Davis JUSD Corporation Yard & Davis High School – New Warehouse Buildings

Project Number – 15-D03-02

23. Client agrees not to use or permit any person to use plans, drawings, or other work product prepared by consultant, which plans, drawings, or other work product are not final and which are not signed, stamped or sealed by consultant. Client agrees to be liable and responsible for any such use of non-final plans, drawings, or other work product not signed and stamped or sealed by consultant and waives liability against consultant for their use. Client further agrees that final plans, drawings or other work product are for the exclusive use of client and may be used by client only for the project described on the face hereof. Such final plans, drawings or other work product may not be changed nor used on a different project without the written authorization or approval by consultant. If consultant's work product exists in electronic or computerized format, or is transferred in electronic or computerized format, the stamp, seal and signature shall be original and may not be a computer-generated copy, photocopy, or facsimile transmission of the original.
24. Consultant has a right to complete all services agreed to be rendered pursuant to this contract. In the event this agreement is terminated before the completion of all services, unless consultant is responsible for such early termination, client agrees to release consultant from all liability for services performed. In the event all or any portion of the services or work product prepared or partially prepared by consultant be suspended, abandoned, or terminated, client shall pay consultant for all fees, charges, and services provided for the project, not to exceed any contract limit specified herein. Client acknowledges if the project services are suspended and restarted, there will be additional charges due to suspension of the services which shall be paid for by client as extra services.
25. Consultant shall be entitled to immediately, and without notice, suspend the performance of any and all of its obligations pursuant to this agreement if client files a voluntary petition seeking relief under the United States Bankruptcy Code or if there's an involuntary bankruptcy petition filed against client in the United States Bankruptcy Court, and that petition is not dismissed within fifteen (15) days of its filing. Any suspension of services made pursuant to the provisions of this paragraph shall continue until such time as this agreement has been fully and properly assumed in accordance with the applicable provisions of the United States Bankruptcy Code and in compliance with the final order of judgment issued by the Bankruptcy Court.
26. This agreement shall not be construed to alter, affect or waive any lien or stop notice right which consultant may have for the performance of services pursuant to this agreement. Client agrees to separately provide to consultant the present name and address of the record Client of the property on which the project is to be located. Client also agrees to separately provide consultant with the name and address of any and all lenders who would loan money on the project and who are entitled to receive a preliminary notice.
27. If payment for consultant's services is to be made on behalf of a client by a third-party lender, client agrees that consultant shall not be required to indemnify the third party lender, in the form of an endorsement or otherwise, a condition of receiving payment for services.
28. It is understood that consultant will be paid approximately 10 days after they receive payment from their client. If consultant has not been paid within 30-days after this payment from the district, then client agrees to pay a monthly late payment charge, which will be the lesser of, one and one-half percent (1 ½%) per month or a monthly charge not to exceed the maximum legal rate.
29. Client agrees that the periodic billings from consultant to client are correct, conclusive, and binding on client unless client, within ten (10) days from the date of receipt of such billing, notifies consultant in writing of alleged inaccuracies, discrepancies, or errors in billing.
30. Termination – Suspension: Failure by Client to pay any invoice before it becomes delinquent shall constitute a material breach of this Agreement and shall entitle Synthesis Partners, INC. to suspend performance of services until such delinquency is cured, so long as such delinquency persists, SPINC may terminate the agreement upon five days written notice without liability. If the A&E team's scope of work and/or project is suspended more than 60 days, a fee for re-initialization of the project may be charged. This Agreement may be terminated by Synthesis Partners, INC. or Client by giving written notice at least thirty (30) days prior to the date of termination. In the event of such termination, Client shall pay Synthesis Partners, INC. for services and Reimbursable Expenses performed or incurred prior to the termination date plus all costs and expenses directly attributable to such termination for which Synthesis Partners, INC. is not otherwise compensated.
31. If consultant, pursuant to this agreement, produces plans, specifications, or other documents and/or performs field services, and such plans, specifications, and other documents and/or field services are required by one or more government agency, and one or more such government agency changes its ordinances, policies, procedures or requirements after the date of this agreement, any additional office or field services thereby required shall be paid for by client as extra services.
32. Client acknowledges that the design services performed pursuant to this agreement are based upon field and other conditions existing at the time these services were performed. Client further acknowledges that field and other conditions may change by the time project construction occurs and clarification, adjustments, modifications, and other changes may be necessary to reflect changed field or other conditions. If the scope of services pursuant to this agreement does not include construction staking services by consultant for this project, or if subsequent to this agreement client retains other persons or entities to provide such staking services, client acknowledges that such staking services will be performed by others and that client will defend, indemnify, and hold consultant harmless from any and all claims arising from or resulting from the performance of such staking services by other persons or entities except claims cause by the sole negligence or willful misconduct of



## CONTRACT BETWEEN OWNER AND ARCHITECT

Davis Joint Unified School District

Davis JUSD Corporation Yard & Davis High School – New Warehouse Buildings

Project Number – 15-D03-02

consultant; and from any and all claims arising from or resulting in clarifications, adjustments, modifications or other changes which may be necessary to reflect changed field or other conditions except claims caused by the sole negligence or willful misconduct of consultant.

33. Client shall pay the costs of checking and inspection fees, zoning and annexation application fees, assessment fees, soils engineering fees, soils testing fees, and all other fees, permits, bond premiums, title company charges, and all other charges not specifically covered by the terms of this agreement.
34. Consultant is not responsible for delay caused by activities or factors beyond consultant's reasonable control, including but not limited to, delays by reason of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of client to furnish timely information or approve or disapprove of consultant's services or work product promptly, faulty performance by client or other contractors or government agencies. When such delays beyond consultant's reasonable control occur, client agrees consultant is not responsible in damages nor shall be deemed to be in default of this agreement.
35. Consultant shall not be liable for damages resulting from the actions or inactions of governmental agencies including. But not limited to, permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, project or plan approvals, and building permits. The client agrees that it is the responsibility of the client to maintain in good standing all governmental approvals and permits and to apply for any extensions thereof.
36. In the event that client institutes a suit against consultant, either directly by complaint or by way of cross-complaint, including a cross-complaint for indemnity, for alleged negligence, error, omission, or other failure to perform, and it client fails to obtain a judgment in client's favor, the lawsuit is dismissed, or if judgment is rendered for consultant, client agrees to pay consultant all costs of defense, including attorney's fees, expert witness fees, court costs, and any and all other expenses of defense. Client agrees such payments shall be made immediately following dismissal of the case or upon entry of judgment.
37. If any action at law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this agreement, the prevailing party shall be entitled to reasonable attorney's fees, which fees may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which he may be entitled.
38. Client agrees that in the event client institutes litigation to enforce or interpret the provisions of this agreement, such litigation is to be brought and adjudicated in the appropriate court in the county in which consultant's principle place of business is located, and client waives the right to bring, try and remove such litigation to any other county or judicial district.
39. Consultant makes no representation concerning the estimated quantities and probable costs made in connection with maps, plans, specifications, reports or drawings other than that all such costs are estimates only and actual costs will vary. It is the responsibility of the client to verify costs.
40. Client acknowledges that consultant is not responsible for the performance of work by third parties including, but not limited to, the construction contractor and its subcontractors.
41. Consultant makes no warranty, either expressed or implied, as to his findings, recommendations, plans, specifications, or professional advice except that the services or work product were performed pursuant to generally accepted standards of practice in effect at the time of performance.
42. Estimates of land areas provided under this agreement are not to be considered precise unless consultant specifically agrees to provide the precise determination of such areas.
43. In the event the client agrees to, permits, authorizes, constructs or permits construction of changes in the plans, specifications, and documents or does not follow recommendations or reports prepared by consultant pursuant to this agreement, which changes are not consented in writing by consultant, client acknowledges that the changes and their effects are not the responsibility of consultant and client agrees to release consultant from all liability arising from the use of such changes and further agrees to defend, indemnify and hold harmless consultant, it's officers, directors, principles, agents and employees from and against all claims, demands, damages or costs arising from the changes and their effects.
44. Client acknowledges that the design services performed pursuant to this agreement are based upon field and other conditions existing at the time of preparation of consultant's services. Client further acknowledges that field and other conditions may change by the time project construction occurs and clarification, adjustments, modifications, discrepancies or other changes may be necessary to reflect changed field or other conditions. If the scope of services pursuant to this agreement does not include on-site construction review, construction management, supervision of construction of engineering structures, or other construction supervision for this project, or if subsequent to this agreement client retains other persons or entities to provide such services, client acknowledges that such services will be performed by others and client will defend, indemnify and hold consultant harmless from any and all claims arising from or resulting from the performance of such services by other persons or entities except claims caused by the sole negligence or willful misconduct of consultant; and from any and all claims arising from or resulting from clarifications, adjustments, modifications, discrepancies or other changes necessary to reflect changed field or other conditions, except claims caused by the sole negligence or willful misconduct of consultant. Client agrees that in accordance with generally accepted construction practices, construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property; that this requirement shall be made to apply continuously and not be limited to normal working hours, and client further agrees to defend, indemnify and hold consultant harmless from any and all liability, real or alleged, in connection

## CONTRACT BETWEEN OWNER AND ARCHITECT

Davis Joint Unified School District

Davis JUSD Corporation Yard & Davis High School – New Warehouse Buildings

Project Number – 15-D03-02

with the performance of services on this project, excepting liability arising from the sole negligence or willful misconduct of consultant.

45. In the event client discovers or becomes aware of changed field or other conditions which necessitate clarification, adjustments, modifications or other changes during the construction phase of the project, client agrees to notify consultant and engage consultant to prepare the necessary clarifications, adjustments, modifications or other changes to consultant's service or work product before construction activities commence or further activity proceeds. Further, client agrees to have provision in its construction contracts for the project which requires contractor to notify client of any changed field or other conditions so that client may in turn notify consultant pursuant to the provisions of this paragraph.
46. Client agrees to limit the liability of consultant, its principals and employees, to client and to all contractors and subcontractors on the project, for any claim or action arising in tort or contract, to the sum consultant's fee.
47. Client agrees to purchase and maintain, during the course of construction, builder's risk "all risk" insurance which will name consultant as an additional insured as their interest may appear.
48. Consultant hereby states and client hereby acknowledges that consultant has no professional liability insurance for claims arising out of the performance or failure to perform professional services, including, but not limited to the preparation of reports, designs, drawings and specifications, related to the investigation, detection, abatement, replacement, use or specification, or removal of products, materials or processes containing asbestos, asbestos cement pipe, and/or hazardous waste materials. Accordingly, the client hereby agrees to bring no claim for negligence, breach of contract, indemnity or otherwise against the consultant, its principals, employees, and agents if such claim, in any way, would involve the consultant's services for the investigation, detection, abatement, replacement, use or specification, or removal of products, materials or processes containing asbestos, asbestos cement pipe, and/or hazardous waste materials. Client further agrees to defend, indemnify and hold harmless consultant, its officers, directors, principals, employees and agents from any asbestos and/or hazardous waste material related claims that may be brought by third parties as a result of the services provided by consultant pursuant to this agreement except claims caused by the sole negligence or willful misconduct of the consultant.
49. Client acknowledges that consultant's scope of services for this project does not include any services related in any way to asbestos and/or hazardous waste. Should consultant or any other party encounter such materials on the job site, or should in any other way become known that such materials are present or may be present on the job site or any adjacent or nearby areas which may affect consultant's services, consultant may, as its option, terminate work on the project until such time as client retains a specialist contractor to abate and/or remove the asbestos and or hazardous waste materials and warrant that the job site is free from any hazard which may result from the existence of such materials.
50. Notwithstanding any other provision of this Agreement, if a dispute arises regarding consultant's fee pursuant to this contract, and if the fee dispute cannot be settled by discussions between client and consultant, both client and consultant agree to attempt to settle the fee dispute by mediation through the American Arbitration Association [or other mediation service] before recourse to arbitration. If mediation does not resolve the fee dispute, such dispute shall be settled by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment claims court nor does not preclude or limit the consultant's right to elect to perfect or enforce applicable mechanics lien remedies upon the award rendered by the Arbitrator(s) maybe entered in any court having jurisdiction thereof. This provision does not preclude or limit consultant's right to elect to file an action for collection of fees if the amount in dispute is within the jurisdiction of the small.