

**CONTRACT NAME: AGREEMENT BETWEEN HMC GROUP AND DAVIS  
JOINT UNIFIED SCHOOL DISTRICT**

**BRIEF DESCRIPTION OF CONTRACT:** This agreement provides architectural and electrical design services for the Emerson Junior High School CTE project to upgrade the metal and wood shop classrooms.

**FISCAL IMPACT:** The \$18,275 cost for these services is funded by the CTE grant.

**DAVIS JOINT UNIFIED SCHOOL DISTRICT**  
**PROFESSIONAL SERVICES AGREEMENT**

**THIS PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made and entered into as of November 15, 2018 (the “Effective Date”) by and between the Davis Joint Unified School District, a public school district of the State of California (the “District”), and HMC Group (“Provider”). The District and the Provider are collectively referred to in this Agreement individually as “Party” and collectively as the “Parties.” This Agreement is made with reference to the following facts:

**WHEREAS**, the District requires services and/or advice of a specialized and technical nature in connection with certain financial, economic, accounting, consulting and/or administrative matters and such services and advice are not available within the District and cannot be performed satisfactorily by District employees; and

**WHEREAS**, Provider possesses the necessary knowledge, experience, and ability to perform services not available through District personnel, and Provider is experienced and competent to provide to the District certain specialized services and/or advice in one or more of the foregoing areas; and

**WHEREAS**, the District desires to engage Provider pursuant to Government Code Section 53060 because of Provider’s experience and competence, and Provider desires to be engaged by the District; and

**WHEREAS**, the District and Provider desire to reduce to writing the terms and conditions of the District’s engagement of Provider; and

**NOW, THEREFORE**, in consideration of the mutual covenants set forth below, the Parties hereby agree as follows:

**ARTICLE 1.**  
**SERVICES TO BE PERFORMED BY PROVIDER**

**Section 1.1 Performance Of Services.**

Provider agrees to perform services for the District as described in Appendix A to this Agreement (the “Services”) and shall provide other services as may be requested by the District from time to time.

**Section 1.2 Method Of Performance And General Supervision.**

Provider will determine the methods, details, and means of performing the Services required by this Agreement. Subject to the foregoing, the District retains the right to inspect, to stop work, to prescribe alterations and generally to monitor Provider’s work to ensure its conformity with the terms of this Agreement.

**Section 1.3 Employment Of Assistants.**

Provider may, at Provider's own expense, employ such assistants as Provider deems necessary to perform the services required of Provider by this Agreement. District may not control, direct, or supervise Provider's assistants or Providers in the performance of those services.

#### **Section 1.4 Provider's Certifications, Representations and Warranties**

Provider makes the following certifications and representations for the benefit of the District. Provider acknowledges and agrees that the District, in deciding to engage Provider pursuant to this Agreement, is relying upon the truth and validity of the following certifications and representation and their effectiveness throughout the term of this Agreement and the course of Provider's engagement hereunder.

(a) Provider is qualified in all respects to provide to the District all of the services contemplated by this Agreement and, to the extent required by any applicable law, Provider has all such licenses and/or governmental approvals as would be required to carry out and perform for the benefit of the District, such services as are called for hereunder.

(b) Provider, in providing the services and in otherwise carrying out its obligations to the District under this Agreement, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including workers' compensation and equal protection and non-discrimination laws.

(c) Provider will perform their services hereunder in a professional manner, using the degree of care and skill ordinarily exercised by, and consistent with, the current professional practices and standards of a professional practicing in California. The Provider will furnish, at their expense, those services that are set forth in this Agreement and represents that such services are within the technical and professional areas of competence of the Provider or any sub-Provider the Provider has engaged or will engage to perform the service(s).

### **ARTICLE 2. TERM AND TERMINATION**

#### **Section 2.1 Term.**

(a) This Agreement shall become effective on the Effective Date and shall continue through November 30, 2019 (the "Term"), unless the Agreement is earlier terminated by either Party in accordance with Section 2.2, below. Pursuant to Education Code Section 17596, the Agreement Term including all renewals shall not exceed five (5) years.

#### **Section 2.2 Termination.**

(a) This Agreement may be terminated by either Party upon fourteen (14) days written notice to the other Party in the event of a substantial failure of performance by such other Party, including insolvency of Provider or if the District should decide to abandon or indefinitely postpone the Project.

(b) In the event of a termination based upon abandonment or postponement by District, the District shall pay the Provider 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 to the Provider 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 the District or in the possession of the Provider. In the event termination is for a substantial failure of performance, all damages and costs associated with the termination, as determined by a forum of competent jurisdiction, including increased Provider and replacement Provider costs, shall be deducted from payments to the Provider.

(c) In the event a termination for cause is determined to have been made wrongfully, or without cause, then the termination shall be treated as a termination for convenience in accordance with Section 2.2 (d) below, and Provider shall have no greater rights than they would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Provider.

(d) This Agreement may be terminated for convenience by District without cause, upon twenty (20) days written notice to the Provider. In the event of a termination without cause, the District shall pay to the Provider 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 Provider 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 other documents, whether delivered to the District or in the possession of the Provider.

(e) 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 in good faith. Pending resolution of this dispute, Provider agrees to continue the work diligently to completion and the District agrees to make progress payments in accordance with this Agreement, except that the District may withhold only those funds that are in dispute. In no event shall the District withhold more than ten (10%) of the Provider's total fee. If the withheld amount is greater than the maximum limit set forth above, the Provider shall be entitled to a reasonable meet and confer period with the District in an attempt to resolve the dispute in good faith prior to any decision to suspend services pending the formal resolution of the dispute. The Parties may agree in writing to submit any dispute between the Parties to arbitration. The District agrees to pay the Provider the undisputed amounts due under this Agreement.

The Parties understand and agree that this Termination Article shall govern all termination rights and procedures between the Parties. Any termination provision that is attached to this Agreement as an Exhibit shall be void and unenforceable between the Parties.

### **ARTICLE 3. COMPENSATION**

#### **Section 3.1 Terms Of Payment.**

**[Section 3.1 and 3.3 to be modified by the District as needed to address specific payment terms.]**

In consideration for all Services to be performed by Provider, the District agrees to pay

Provider **Eighteen Thousand Seven Hundred Twenty-Five Dollars (\$18,725)** for the services described in Appendix A, Proposal/Agreement for Architectural/Engineering Services dated October 8, 2018. Provider shall submit to the District a statement of services rendered with an invoice. The District agrees to pay the amount due to Provider for the Services within 30 days after the Services are performed.

**Section 3.2 No Payroll or Employment Taxes.**

No payroll or employment taxes of any kind shall be withheld or paid with respect to payments to Provider. The payroll or employment taxes that are the subject of this Section include, but are not limited to, FICA, FUTA, federal personal income tax, state personal income tax, state disability insurance tax, and state unemployment insurance tax.

**Section 3.3 Expenses.**

Provider shall be reimbursed for the reasonable and actual out-of-pocket expenses incurred by Provider in the performance of Provider's duties and responsibilities under this Agreement, as provided for in Appendix A, provided that Provider shall first furnish proper vouchers and expense accounts setting forth the information required by the Internal Revenue Service for deductible business expenses.

**Section 3.4 Accounting Records of The Provider.**

Records of the Provider's direct personnel and authorized reimbursable expenses and records of accounts between the District and Provider shall be kept on a generally recognized accounting basis, and shall be available for inspection by the District at mutually convenient times.

**ARTICLE 4.  
OTHER OBLIGATIONS OF PROVIDER**

**Section 4.1 Nonexclusive Services.**

Provider may represent, perform services for, and/or be employed by such additional companies, persons, or clients as Provider, in Provider's sole discretion, chooses.

**Section 4.2 Workers Compensation and Unemployment Insurance And Licenses.**

Provider shall be responsible for providing, at Provider's own expense, disability, unemployment and other insurance, workers' compensation, training, permits and licenses for Provider and for Provider's employees, agents and independent Providers, as may be required by law.

**Section 4.3 Materials and Equipment.**

Provider shall supply all materials and equipment required to perform the Services under this Agreement, except as may be otherwise specified in Appendix A.

**Section 4.4 Licenses, Permits, Fees and Assessments.**

Provider shall obtain at Provider's sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the Services required by this

Agreement. Provider shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Provider's performance of the Services required by this Agreement.

#### **Section 4.5 Fingerprinting.**

For any work performed by Provider at District facilities, if and when requested by the District, Provider's employees are required to submit fingerprints to the Department of Justice where an employee may come into contact with students at any District site pursuant to Education Code section 45125.1. The Department of Justice will ascertain whether the employee has a pending criminal proceeding for a violent or serious felony, or has been convicted of a violent or serious felony as those terms are defined in Penal Code sections 667.5(c) and 1192.7(c), respectively. Provider shall not permit an employee to come into contact with students until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Education Code section 45125.1. Provider shall provide District with a list of names of employees who may come into contact with students and must certify in writing to the District that none of its employees who may come into contact with students have been convicted of a felony as defined in Education Code section 45125.1. District may request the removal of an employee from a District site at any time. Failure to comply with any of the provisions of this Section may result in termination of this Agreement.

#### **Section 4.6 Confidentiality.**

Provider acknowledges that, during the term of this Agreement, Provider may have access to privileged and confidential materials and information in the custody of clients of the District. Provider covenants and agrees to keep such information confidential and not to disclose such information directly or indirectly during, or subsequent to, the term of this Agreement except when such information is or becomes in the public domain, was known to the Provider prior to receipt from the District, is authorized for disclosure by the written approval of the District, or is lawfully derived by the Provider from a source other than the District without restriction as to the use or disclosure of the information. Provider further acknowledges that, during the term of this Agreement, Provider may obtain and have access to certain proprietary or confidential information, knowledge, technology, data, methods, files, records, and client lists relating to the District's business (collectively, the "Confidential Information"), which the District and Provider agree are proprietary or confidential in nature.

Provider acknowledges that:

- (a) The Confidential Information will be developed and acquired by the District at great expense, is of great significance and value to the District, and constitutes trade secrets;
- (b) The Confidential Information will be made known to the Provider in full reliance on this Agreement;
- (c) The Confidential Information is material and critically important to the effective and successful conduct of the District's business operations and activities; and
- (d) Any use of the Confidential Information by Provider other than for the District's benefit in connection with the business relationship between Provider and the District established by this Agreement will constitute a wrongful usurpation of the Confidential

Information by Provider. The Provider hereby agrees to forever hold the Confidential Information in strict confidence and secret; provided, however, that Provider may disclose any or all of the Confidential Information to any corporation, partnership, trust, firm or other business entity not affiliated with the District if prior written consent of the District is obtained by Provider.

**Section 4.7 [Reserved]**

**Section 4.8 Insurance.**

Provider 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 will protect Provider and District from claims which may arise out of or result from Provider's actions or inactions relating to the Agreement, whether such actions or inactions be by themselves 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) Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California.

(b) Comprehensive general and auto liability insurance with limits of not less than ONE MILLION DOLLAR (\$1,000,000) combined single limit, bodily injury and property damage liability per occurrence, including:

- (i) owned, non-owned and hired vehicles;
- (ii) blanket contractual;
- (iii) broad form property damage;
- (iv) products/completed operations; and
- (v) personal injury.

**Section 4.9 Indemnification.**

Pursuant to Civil Code 2782.8, and to the fullest extent permitted by law, Provider shall indemnify and hold harmless the District, its employees, agents and independent Providers from claims, demands, causes of actions and liabilities of every kind and nature whatsoever, excluding consequential damages, arising out of or in connection with Provider's services performed under this Agreement to the extent caused by the provider's actual or proximate negligence. This indemnification shall extend to claims occurring after this Agreement is terminated as well as while it is in force.

**Section 4.10 Return of District Property.**

On the termination of this Agreement or whenever requested by the District, Provider shall immediately deliver to the District all property in Provider's possession or under Provider's control belonging to the District in good condition, ordinary wear and tear and damage by any cause beyond the reasonable control of Provider excepted.

**ARTICLE 5.  
PROVIDER'S WORK PRODUCT**

**Section 5.1 Ownership of Provider's Work Product.**

(a) Provider agrees that any and all Project Documents, including, but not limited to, all plans, drawings, specifications, record drawings, models, mock-ups, renderings, and other documents developed, written, or contributed by Provider, either individually or in collaboration with others, pursuant to this Agreement, shall belong to and be the sole property of District. The Provider's copyright over the documents, including all common law, statutory and other reserved rights, are not waived.

(b) Provider agrees to assign a non-exclusive perpetual license for the District to copy, use, modify or reuse the Project Documents for the purposes of repair, maintenance, renovation, modernization, or other purposes as they relate to the project site. In the event of such reuse or modification of the Project Documents, the District agrees to indemnify, defend, and hold the Provider harmless from and against any and all claims, liabilities, suits, demands, losses, costs, and expenses, including, but not limited to, reasonable attorneys' fees accruing to, or resulting from, any and all persons, firms, or any other legal entity, on account of any damage or loss to property or persons including, but not limited to, death arising out of such use, reuse or modification of the Project Documents. The District further agrees to remove the names and seals of the Provider and the Provider's consultants, if any, from the title block and signature pages.

(c) The provisions of this Section shall not apply to any of Provider's rights in any invention for which no equipment, supplies, facilities, or trade secret information of District was used, which was developed entirely on Provider's own time, and which:

(i) Does not relate, at the time of conception or reduction to practice of the invention, to District's business or to District's actual or demonstrably anticipated research or development; or

(ii) Does not result from any work performed by Provider for District.

**Section 5.2 Use of Copyrighted Materials.**

Provider warrants that any materials provided by Provider for use by District pursuant to this Agreement shall not contain any material that is protected under the Copyright Act or any other similar law, except to the extent of "fair use," as that concept is defined in the Copyright Act, and except to the extent that Provider has obtained permission to use such work from the copyright holder. Provider shall be solely responsible for ensuring that any materials provided by Provider for use by District pursuant to this Agreement satisfy this requirement. Provider agrees to hold District harmless from all liability or loss, including debt or exercise for attorneys' fees to which District is exposed on account of Provider's failure to perform this duty.

**ARTICLE 6.  
GENERAL PROVISIONS**

**Section 6.1 Disputes Resolution.**

In the event of any disputes or disagreement between the District and Provider with respect to the interpretation of any provision of this Agreement, or to the performance of the Parties under this Agreement, each Party shall appoint a designated representative to meet in good faith, to resolve the dispute or to negotiate an adjustment to any provision of this Agreement. Such negotiations shall be conducted in a timely manner to avoid undue delay in resolving the dispute. No formal proceeding for judicial resolution of any dispute or disagreement shall be commenced until a Party concludes in good faith and provides written notice to the other Party that an amicable resolution of the matter at issue through continued negotiation does not appear likely.

### **Section 6.2 Default.**

A Party will be considered in default of its obligations under this Agreement if such Party should fail to observe, to comply with, or to perform any term, condition, or covenant contained in this Agreement and such failure continues for ten (10) days after the non-defaulting Party gives the defaulting Party written notice thereof. In the event of default, the non-defaulting Party, upon written notice to the defaulting Party, may terminate this Agreement as of the date specified in the notice, and may seek such other and further relief as may be provided by law.

### **Section 6.3 Amendments.**

This Agreement may not be altered or modified, except by a writing signed by the Parties.

### **Section 6.4 Status of Provider.**

Provider enters into this Agreement, and will remain throughout the term of the Agreement, an independent Provider. Neither Provider nor its employees, agents or independent Providers shall become an employee, joint venturer, partner, agent or principal of the District while this Agreement is in effect. Provider's employees, agents and independent Providers shall not be entitled to the rights or benefits afforded to the District's employees, including disability or unemployment insurance, workers' compensation, medical insurance, sick leave or any other employment benefit.

### **Section 6.5 Governing Law.**

This Agreement shall be governed by and construed according to the laws of the State of California that would apply if all Parties were residents of California and the Agreement was made and performed in California.

### **Section 6.6 Notices.**

All notices and demands between the Parties hereto shall be in writing and shall be served either personally or by registered or certified mail. Such notices or demands shall be deemed given when personally delivered or seventy-two (72) hours after the deposit thereof in the United States mail, postage prepaid, addressed to the Party to whom such notice or demand is to be given or made. Such notices and demands may also be sent by telex, telegraph, telecopier or other similar electronic transmission device providing for a permanent record of the notice or demand, and, if so served, such notice or demand shall be deemed given and made at the time the device confirms to the sender delivery thereof to the addressee.

All notices and demands shall be given as follows:

**To the District:**

Attn: Bruce Colby,  
Chief Business & Operations Officer

Davis Joint Unified School District  
526 B Street  
Davis, CA 95616-3811

**To the Provider:**

Attn: Mitch Carp  
Sr. Vice President Studio Operations

HMC Group  
3546 Concours Street  
Ontario, CA 91764-5584

Each Party may designate in writing such other place or places that notices and demands may be given.

**Section 6.7 Assignment.**

This Agreement shall not be assigned by either Party without the prior written consent of the other Party.

**Section 6.8 Order of Precedence.**

In the event of any conflict or inconsistency in the interpretation of this Agreement (including Attachments), such conflict or inconsistency shall be resolved by giving precedence to the body of this Agreement, then to the Attachments.

**Section 6.9 Agreement Interpretation.**

This Agreement is the result of arm's length negotiations between the Parties, and shall be construed as drafted by all Parties such that any ambiguities shall not be construed against either Party.

**Section 6.10 Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the Parties as of the Effective Date at such time as all signatories hereto have signed a counterpart of this Agreement.

**Section 6.11 Entire Agreement.**

This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement and it supersedes all other prior and contemporary agreements, understanding, and commitments between the Parties with respect to the subject matter of the Agreement.

**Section 6.12 Severability.**

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid,

void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**Section 6.13 Effect of Recitals.**

The Recitals and Exhibits herein are deemed true and correct, are hereby incorporated into this Agreement as though fully set forth herein, and the Parties acknowledge and agree that they are bound by the same.

**Section 6.14 Force Majeure.**

Notwithstanding any other terms and conditions hereof, in the event that a Party is materially unable to perform any of its obligations hereunder because of severe weather, natural disasters, riots, wars, acts of terrorism, governmental action or other events of force majeure beyond the Party's control, then such Party shall, upon written notice to the other Party hereof, be relieved from its performance of such obligations to the extent, and for the duration, that such performance is prevented by such events; provided that such Party shall at all times use its best efforts to resume such performance.

**IN WITNESS WHEREOF**, the Parties hereto have entered into this Agreement as of the Effective Date of this Agreement.

**DISTRICT:**

**DAVIS JOINT UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_

Name and Title: Bruce E. Colby, Chief Business Officer

**PROVIDER:**

HMC Group

By: \_\_\_\_\_

Name and Title: Arturo Levenfield, Managing Principal

# APPENDIX A

## SCOPE OF SERVICES

HMC Architects

October 8, 2018

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

Re: Proposal / Agreement for Architectural / Engineering Services  
Emerson Junior High School CTE Project  
HMC #3447017-000

Dear David,

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

### A. Scope of Work:

HMC Group will provide design services to facilitate the scope defined below:

- Provide new power panel. Extend feeder from existing main building panel.
- Provide dedicated 120v power for (3) Electric Welding station (Miller Multimatic 215) and (3) 120v Extractors at the interior of the Wood Shop.
- Provide dedicated 120v power for (3) Electric Welding stations (Miller Multimatic 215) w/o extractors at the exterior of the Wood Shop.
- Provide dedicated 220v power for (1) Plasma Cutter for Dust Collection system at the exterior of the Wood Shop.
- Provide roofing over units between existing beamed trellis structure, at exterior welding stations and plasma cutter.
- Provide carbon monoxide (CO) detection.
- Provide limited ADA improvements (up to 20% of the project value) to area(s) of work.

HMC will assist the District in bidding of the work by means of preparing the necessary drawings and specification information.

HMC will provide Construction Administration services limited to 8 site visits.

The design will utilize the District provided as-built documents and drawings, District provided cut sheets for CTE equipment, and site observations made by HMC Group and the District during site visit(s).

Due to the small size and value of the Project, it will be difficult to accurately estimate the Construction Cost. No detailed estimating services are included by HMC Group; however, a Rough Order of Magnitude (ROM) estimated value will be provided by HMC Group.

2495 Natomas Park Drive, Studio 100, Sacramento, CA 95833 / [www.hmcarchitects.com](http://www.hmcarchitects.com)



**B. Exclusions:**

- Engineering and specialty consultants not included as part of the services above
- Site surveys and topographic information (to be provided by District if required)
- Test and Inspections
- Permit/Agency Fees
- Submittal to Division of the State Architect (DSA)

**C. Assumptions:**

- Design assumes building panel has adequate capacity to support electrical loads for new CTE equipment
- Design assumes existing fire alarm panel can accommodate CO detection

**D. Compensation:**

HMC Group will provide the services outlined in the Scope of Work above for a fixed fee of Eighteen Thousand Seven Hundred Twenty-Five Dollars (\$18,725), as follows:

**Fee Summary:**

|                             |     |                 |
|-----------------------------|-----|-----------------|
| Schematic Design            | 25% | \$ 4,681        |
| Construction Documents      | 50% | \$ 9,363        |
| Bidding                     | 5%  | \$ 936          |
| Construction Administration | 20% | \$ 3,745        |
| <b>Total Fee</b>            |     | <b>\$18,725</b> |

**E. Additional Services:**

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

**F. Reimbursable Expenses:**

Reimbursable expenses are in addition to compensation for Basic and District approved Additional Services, including printing, plotting, delivery and other expenses related to Bidding, Construction, Project Closeout or other District requested costs. Expense of transportation (including mileage) relating to the Project; Expenses in connection with authorized out-of-town travel, including travel time; and fees paid for securing approval of authorities having jurisdiction over the Project. The Architect's compensation shall be computed based on (1.0) times the amounts invoiced to the Architect.

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

Reference Attachment "C" of this Proposal / Agreement.

**H. 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:

|  |      |
|--|------|
|  |      |
| David Burke, AICP LEED-AP<br>Director, Facilities, Management & Operations | Date |

Please review this Proposal / Agreement and if it meets with your approval, please sign and return one (1) original to my attention. If you have any questions, please contact me at (916) 325-1100.

Sincerely,

**HMC Group**

  
Brian Meyers  
Principal in Charge

Encls: Attachment "A" – Additional Service List  
Attachment "B" – HMC Hourly Rate Schedule  
Attachment "C" – Other Terms and Conditions

cc: Sarah Jimenez, File-CN-AOA  
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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.

K:\finance\contracts\Standard HMC Rate Schedules, Contracts, Language & Attachments\HMC Letter Proposal\_Agreement Templates\_Attachments\Attach A\_Additional Services List.docx

**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

Pre-K12 Hourly Rate Schedule

## 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.

Attachment "C"

### **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.