

## CONTRACT FOR ARCHITECTURAL SERVICES

**THIS AGREEMENT** is entered into this 2<sup>nd</sup> day of March, 2017, between the Bakersfield City School District of Kern County, California, hereinafter "Owner," and Integrated Designs by SOMAM, Inc., hereinafter "Architect."

Owner intends to construct the project ("Project") described as follows: New Elementary School K-6 for approximately 900 students (785 general education and 115 special education) on 16-17 acres.

Architect represents that it is fully licensed, qualified, and willing to perform the services required by this Agreement (with the understanding that if Architect is a corporation or other organization, the Project Architect specified, and not Architect itself, is fully licensed as an architect in the state of California).

Accordingly, the parties agree as follows:

### **ARTICLE 1. EMPLOYMENT OF ARCHITECT.**

Owner contracts Architect pursuant to California Government Code Sections 4525-4529.5 and 53060 to perform the necessary professional services, including but not limited to those hereinafter set forth in connection with the Project. The term "Project Architect" as used in this document shall be referred to as the Architect in General Responsible Charge as defined under Title 24, Section 4-316 of the California Code of Regulations. Subject to Owner's approval, Architect shall name a specific person fully licensed to practice as an architect in the state of California to be the Project Architect. The Project Architect shall maintain personal oversight of the Project and act as principal contact with Owner, the contractor, Architect's consultants and engineers, and all inspectors on the Project. Any change in the Project Architect shall be subject to Owner's approval. The Project Architect is Curtis Flynn, license number C-28966.

### **ARTICLE 2. ARCHITECT'S SERVICES.**

#### **2.1 Employment of Architect.**

Architect accepts Contract and agrees to perform all the necessary professional architectural, engineering, and construction administration services in a professional manner, consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in the same or similar locality under similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Architect understands the exact scope of services may be changed should Owner elect to utilize the Multi-Prime Construction Management or Lease-Leaseback project delivery methods. In that event, the Services Matrix for Construction Projects Utilizing Multi-Prime Construction Management or Lease-Leaseback Project Deliver Methods attached to this Agreement shall further clarify the scope of services and shall govern in instances of inconsistencies with language herein. Appropriate fee adjustments, in terms of credits and/or additional fees, may be made as a result of an election by Owner to utilize Multi-Prime Construction Management or Lease-Leaseback delivery methods for the Project. Architect shall provide the services referenced in this Agreement and additional services as agreed.

##### **2.1.1 Communication with Owner.**

Architect shall participate in consultations and conferences with Owner's authorized representatives and/or other local, regional, or state agencies concerned with the Project necessary for development of the drawings, specifications, and documents in accordance with the applicable standards and requirements of law and Owner. Such consultations and conferences shall continue through planning January 2014

and construction of the Project and contractors' warranty periods. Architect shall only take direction from staff specifically designated by Owner (the "Owner's Representative"). Owner's Representative for the Project shall be Marcos Rodriguez. Owner hereby certifies that the Owner's Representative has been duly authorized by Owner's governing board or other governing body to represent Owner on the Project.

Owner may designate new and/or different individuals to act as Owner's Representative from time to time.

## **2.1.2 Hiring Consultants and Personnel.**

**2.1.2.1** Architect shall provide any and all required consultants, including without limitation, architects, engineers, and all other persons qualified and licensed to render services in connection with the basic services of planning and/or administration of the Project, typically limited to architects and structural, electrical, plumbing, mechanical engineers and utility engineers. Other consultants may be provided by express written agreement at additional cost to Owner. Architect may provide such services and personnel "in-house" or, with the written consent of Owner, employ outside consultants. The cost of any and all such consultants shall be borne by Architect. Architect may delegate to such consultants those duties which Architect is permitted by law to delegate without relieving Architect from administrative or other responsibility under law or this Agreement. Architect shall be responsible for the coordination and cooperation of Architect's consultants. Architect shall notify Owner of all consultants prior to commencement of their work.

**2.1.2.2** All engineers, experts, and consultants retained by Architect in performance of this Agreement shall be licensed or certified, as the case may be, to practice in their respective professions, where required by law.

**2.1.2.3** Structural, mechanical, civil, and electrical engineers and consultants hired by Architect shall show evidence of a policy of professional liability and/or project insurance, if available, meeting the requirements set forth in this Agreement.

**2.1.2.4** Architect shall promptly obtain Owner's written approval of assignment and/or reassignment or replacement of engineers or consultants or other staff changes of key personnel working on the Project. Any changes in Architect's consultants and staff shall be subject to approval by Owner.

**2.1.2.5** Professionals, technical and other clerical personnel shall be retained by Architect at Architect's sole expense.

## **2.1.3 Initial Planning Phase of Project.**

**2.1.3.1** Architect shall assist Owner in preparation of educational programming for the Project to define scope, size, cost, space relationship, and site development. Assistance to Owner is understood to mean the review of Owner's prepared program, as it relates to determination of space and translation into physical area and corresponding cost (not actual development of the Owner's program).

**2.1.3.2** Architect shall advise and assist Owner in determining the feasibility of the Project, analysis of the types and quality of materials and construction to be selected, the site location, and other initial planning matters.

**2.1.3.3** Architect shall notify Owner in writing of potential complications, cost overruns, unusual conditions, and general needs that could significantly affect the Project budget and time line.

**2.1.3.4** Architect shall advise Owner in securing easements, encroachment permits,

rights-of-way, dedications, infrastructures, and road improvements, coordinating with utilities and adjacent property owners.

**2.1.3.5** If Owner elects the Lease-Leaseback Project delivery method, Architect shall provide those services designated in the Services Matrix for Construction Projects necessary to assist the Owner in establishing the Owner's educational or facility program/s, the financial feasibility, time requirements and limitations for the project prior to beginning design. Compensation for these services shall be enumerated in Exhibit A, incorporated herein by reference.

**2.1.3.6** The Architect shall be responsible to investigate existing conditions or facilities and confirm such conditions or facilities as relates to work under this Project. The Architect or its consultant will conduct the research that is in its professional opinion necessary for the Project, and will incorporate such conditions that relate to work of this Project within the drawings for construction. Such services of the Architect or its consultants will be performed in a manner consistent with the ordinary standard of care.

#### **2.1.4 Schematic Plan Phase of Project.**

**2.1.4.1** Architect shall provide a site plan and other Project-related information necessary and required for Owner's application for funds to finance the Project to any federal, state, regional, or local agency.

**2.1.4.2** In cooperation with Owner's planners and educational committees, Architect shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project and the plot plan development at the site and the proposed architectural concept of the buildings, incorporating Owner's educational or facility program and functional requirements. Such drawings and plans (referred to collectively as the Schematic Plans) shall meet the requirements of the California Department of Education (CDE), regulations (California Code of Regulations, Title 5, Section 14000 et seq.), and guidelines and shall be prepared in a form suitable for submission to the CDE for approval, if applicable. The Schematic Plans shall show all rooms incorporated in each building in the Project in single-line drawings, and shall include all revisions required by Owner or by any federal, state, regional, or local agency having jurisdiction over the Project. All architectural representation drawings for the Project shall be in a form suitable for reproduction.

**2.1.4.3** Architect shall establish a preliminary Project cost estimate in the format required by Owner or, if applicable, by the school construction funding agency identified by Owner. The purpose of the cost estimate is to show probable cost in relation to Owner's budget. If Architect perceives site considerations which impact the cost of the Project, Architect shall immediately disclose those conditions to Owner in writing. Architect shall provide a preliminary written time schedule for performance of the work on the Project. Preliminary construction budget or allowance shall represent the Architect's best judgment as a professional familiar with the construction industry. This analysis may be based upon current area, volume or similar conceptual estimating techniques. The Architect shall not be required to make exhaustive or detailed estimates of project cost.

**2.1.4.4** At its own expense, Architect shall provide a complete set of the Schematic Plans for Owner's review and approval. Additionally, as a reimbursable expense, Architect shall provide copies of the Schematic Plans as required by any federal, state, regional, or local agencies concerned with the Project, including but not limited to the CDE, the California Department of General Services, the Division of State Architect (DSA), and any other appropriate federal, state, regional, or local regulatory bodies. Any additional copies required shall be provided at cost to Owner.

## **2.1.5 Design Development Phase of Project.**

**2.1.5.1** On Owner's specific written approval of the Schematic Plans, Architect shall prepare site and floor plans, elevations, and any other drawings and documents sufficient to fix and describe the size and character of the Project's structural, mechanical, and electrical systems, and site improvements as applicable (on and off-site) to the extent required to provide the successful completion of the Project), types and makeup of materials, and outline specifications (Design Development Documents) for presentation to Owner's governing board or other governing body for approval.

**2.1.5.2** Architect shall provide a complete set of the Design Development Documents for Owner's review and approval. Additionally, at Owner's expense, Architect shall provide copies of the Design Development Documents as required by any federal, state, regional, or local agencies concerned with the Project, including but not limited to the CDE, the California Department of General Services, the DSA, and any other appropriate federal, state, local, or regional regulatory bodies. Any additional copies required shall be provided at cost to Owner.

**2.1.5.3** Architect shall provide Owner with an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents and a breakdown based on types of materials and specifications identified in the Design Development Documents. However, if a Lease-Leaseback or Construction Manager Project delivery method is selected, the Architect will only be responsible to review and provide comments regarding the estimate provided by others. Architect's estimate of probable construction cost will be furnished upon conventional means of analysis using model costing, square-foot or systems/assembly analysis.

**2.1.5.4** Architect shall provide Owner with a timetable for completion of the Project.

**2.1.5.5** Architect shall assist Owner in applying for and obtaining required approvals from DSA, or other governing authority having jurisdiction over the Project, as the case may be, and shall furnish and process all architectural and engineering information required to prepare and process applications to applicable utilities for securing priorities, materials, as an aid in construction of the Project, and in obtaining final Project approval and acceptance by DSA as required.

**2.1.5.6** Architect shall provide a color schedule of all materials and selections of textures, finishes, and other items requiring an aesthetic decision at this phase of the Project for Owner's review and approval.

## **2.1.6 Building Permits and Conformity to Legal Requirements.**

**2.1.6.1** Architect shall cause drawings and specifications to conform to and adequately address applicable requirements of federal, state, regional, and local law, DSA requirements (structural safety, fire/life safety, and access compliance sections), and requirements of the CDE, which must approve the drawings and specifications, and shall cause the necessary copies of such drawings and specifications to be filed with those agencies for approval.

**2.1.6.2** Architect will use its best professional efforts to interpret applicable access requirements, including those of the Americans with Disabilities Act and California law, and inform Owner of any inconsistencies between federal and state accessibility regulations and requirements which are subject to conflicting interpretations of the law.

## **2.1.7 Working Drawings and Specifications.**

**2.1.7.1** Upon Owner's specific written approval of the Design Development Documents,

Architect shall prepare such complete working drawings and specifications as are necessary to obtain complete bids and efficient and thorough execution of work. Such working drawings shall be developed from the preliminary drawings approved by Owner. The completed working drawings and specifications shall set forth in detail the work to be done, materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems and utility service connection equipment and site work. It shall be Owner's responsibility to supply Architect with the necessary information to determine the proper location of all improvements on existing sites, including record drawings ("as-built drawings") in Owner's possession. Using a thorough interior and exterior visual survey of site conditions, Architect will make a good-faith effort to verify the accuracy of such information and as-built drawings. Owner shall also make a good-faith effort to verify the accuracy of the as-built drawings and provide Architect with any supplemental information which may be discovered but not shown on the as-built drawings.

The completed working drawings and specifications must be sufficient to enable Architect and Owner to secure the required permits and approvals from DSA and for Owner to obtain a responsible, responsive or bona fide bid or bids. The working drawings shall be clear and legible, so that uniform copies can be made on standard architectural size paper, properly indexed and numbered, and sufficient to be clearly copied and assembled in a professional manner by Architect.

**2.1.7.2** Owner shall review, study, and check the completed working drawings and specifications presented to it by Architect and make any necessary revisions or obtain approval of the final plans by Owner's governing board or other governing body, subject to DSA approval. Architect shall make all Owner-requested changes, additions, deletions, and corrections in the completed working drawings and specifications so long as the changes are not in conflict with the requirements of those public agencies having jurisdiction or prior approval, or are inconsistent with earlier Owner direction or Architect's professional judgment. Architect shall bring any such conflicts and/or inconsistencies to Owner's attention. The parties agree that, while the construction contractor will be responsible for construction methods and means, it is Architect who, as between Architect and Owner, possesses the requisite expertise to determine the constructability of the completed working drawings and specifications. Architect warrants that the plans are sufficiently detailed and accurate to enable a competent contractor to perform the work.

**2.1.7.3** Architect understands that should working drawings and specifications be ordered by Owner, Owner shall specify the sum of money set aside to cover the total cost of construction of the work exclusive of Architect's fees. Should it become evident that the total construction cost will exceed the specified sum, Architect shall at once present a written statement to Owner's Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based. In the event that bids received by Owner indicate the work cannot be constructed for the specified sum in accordance with the working drawings and specifications furnished by Architect, Architect shall, if requested by Owner and without extra compensation, revise the working drawings and specifications so construction can be completed for a total cost which does not exceed the specified sum or so that certain portions of the Project can be omitted, deferred, or separately bid. The cost of revising the plans and specifications shall be borne by Owner only where Architect has given written notice in advance of bidding that the total construction cost will exceed Owner's specified sum and where Owner has not reasonably addressed any such written notice provided by Architect. Architect will not be required to make revisions without compensation when estimate has been provided by Lease-Leaseback Contractor or Construction Manager selected by Owner.

**2.1.7.4** Architect shall provide a full set of the completed working drawings and specifications for Owner's review and approval. Additionally, as a reimbursable expense, Architect shall provide copies of any documents required by federal, state, regional, or local agencies concerned with the Project, including CDE and DSA. Any additional copies required shall be

provided at cost to Owner.

**2.1.7.5** Unless otherwise agreed, Architect shall provide at no additional expense one original two dimensional rendering of the Project suitable for public presentation, three 30"x40" color prints, 12 14"x17" color prints, and 15 8"x10" color prints of the rendering.

### **2.1.8 Construction Contract Documents.**

If so required by Owner, Architect shall assist Owner in the completion of construction documents, including but not limited to advertisement for bids, information for bidders, bid forms (including alternate bids as requested by Owner), bonds, general conditions, special conditions, agreement, DVBE preferences, and/or affirmative action documents, if required, and any other documents reasonably required in order to obtain bids responsive to the specifications. All such documents shall be subject to the approval of Owner and Owner's counsel. At the time the construction documents, which shall include the final working drawings and specifications (collectively, the "Construction Documents"), are delivered, Architect shall provide Owner with its final estimate of probable construction cost ("Final Estimate") consistent with previous design development documents.

**2.1.8.1** Architect's Statement of Probable Cost at the completion of final drawings and specifications shall be in sufficient elemental breakdown as to isolate and analyze general components of the project for budget and construction cost evaluation purposes.

**2.1.8.2** In accordance with Title 24 of the California Code of Regulations, any amendments to, addenda or change orders that materially alter the approved drawings and specifications for construction shall be prepared by the Architect or Engineer in general responsible charge for the Project (ref. §4-338 Park 1, Title 24 C.C.R.). Any amendments, modifications or changes to bidding documents, forms or procedures, and administrative contractual concerns or clarifications may be prepared by Owner's representative or delegated authority, which do not materially alter the approved drawings and specifications.

### **2.1.9 Bid Phase.**

**2.1.9.1** Following Owner's approval of the Construction Documents and Final Estimate, Architect shall provide to Owner one set of reproducible construction documents.

**2.1.9.2** If the lowest responsive bid on the Project exceeds the Final Estimate by 10 percent after adjustment for change in the Construction Cost Index adopted by the State Allocation Board, Owner may request that Architect amend the final drawings and specifications to rebid the Project so that bids are within 10 percent of the Final Estimate. At Owner's request, Architect shall provide specifications which include alternate bids as deemed advisable by Owner.

### **2.1.10 Observation of Project.**

Observation of the work executed from the final working drawings and specifications shall be in person by Project Architect provided that Owner may, in its discretion, consent to such observation by another competent representative of Architect.

### **2.1.11 Construction of Project.**

Architect shall provide general administration of the Construction Documents, including but not limited to the following:

**2.1.11.1** Participate with Owner in a pre-construction meeting with all interested parties.

**2.1.11.2** Conduct site visits, as often as necessary and appropriate to the stage of

construction but at least biweekly, to observe contractor's work for general conformance with the plans and specifications and to confirm that work is progressing in accordance with the Construction Documents and contractor's schedule.

**2.1.11.3** Conduct site visits to communicate and observe the activities of the Project Inspector of Record, mutually acceptable to Architect and Owner and employed by Owner. Architect shall provide general direction of the work of the Inspector and coordinate in the preparation of record drawings by Inspector and/or Contractor indicating dimensions and location of all "as-built" conditions including but not limited to underground utility lines.

**2.1.11.4** Cause engineers and other consultants as may be hired by Architect to observe the work completed under their engineering disciplines as required, and approve and review all test results for general conformance with the original approved documents for their portion of the Project. Construction emergency shall mean any condition that potentially could have immediate adverse effects on the health, safety and welfare of current building occupants or nearby persons.

**2.1.11.5** Make regular reports as may be required by applicable federal, state, regional, or local agencies.

**2.1.11.6** Attend all appropriate construction management meetings and provide written reports to Owner after each construction meeting to keep Owner informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the work, but no less than biweekly.

**2.1.11.7** Make written reports to Owner as necessary to inform Owner of problems arising during construction, changes contemplated as a result of each such problem, and progress of work.

**2.1.11.8** Keep records of construction progress and time schedules and advise contractor and Owner of any substantial deviations from the time schedule which could delay timely completion of the Project.

**2.1.11.9** In a timely manner, check and process all required material and test reports and report to the DSA and other governing agency having jurisdiction over the Project, as the case may be, the contractor, and Owner any deficiencies in material as reflected by those reports, with recommendations for correction of any deficiencies.

**2.1.11.10** In a timely manner, review and respond to all requested schedules, submittals, shop drawings, samples, other information requests, and other submissions of the contractor, or the subcontractors through the contractor, for compliance with design and specifications and to facilitate timely and uninterrupted progress of the work.

**2.1.11.11** As discussed with Owner, promptly reject work or materials which do not conform to the Construction Documents and notify Owner of any rejection.

**2.1.11.12** In a timely manner, consult with Owner with regard to substitution of materials, equipment, and laboratory reports thereon prior to Owner's final, written approval of any substitutions.

**2.1.11.13** Prepare all documents and/or drawings made necessary by errors and omissions in the originally approved drawings or specifications and any modifications as may be necessary to meet unanticipated conditions encountered during construction, that would have been detected by reasonable investigation as outlined in Article 2.1.7.1, at no additional expense to Owner. Architect's responsibility to bear the cost of necessary modifications arising from unanticipated conditions applies only to those

conditions that should have been anticipated by a reasonable architect or its subcontractors, consultants, or employees in the performance of its duties under this Agreement. However, any documents and/or drawings required due to unforeseeable changed conditions, contractor error or Owner changes shall be subject to additional fees.

**2.1.11.14** In a timely manner, evaluate and notify Owner in writing of any change requests, material change or changes, requested or necessary, in the plans and specifications of the Project (written notification may be accomplished by providing a copy of any request). Architect shall not order contractors to make any changes affecting contract price without Owner's written approval of a change order pursuant to the terms of the Construction Documents. On its own responsibility and pending approval of Owner's governing board or other governing body, Architect may order changes necessary at the time to meet construction emergencies if written approval by Owner's Representative is first secured.

**2.1.11.15** Examine, verify, and approve contractor's applications for payment and issue certificates for payment for work and materials approved by the inspector which reflect Architect's recommendation as to any amount which should be retained or deducted from those payments under the terms of the Construction Documents or for some other reason.

**2.1.11.16** Coordinate final color and product selection with Owner's original design concept.

**2.1.11.17** Determine date of completion.

**2.1.11.18** After being notified the Project is nearing completion, Architect shall inspect the Project and review the punch-list prepared by the contractor, including minor items ("punch-list items"). Architect shall notify contractor in writing that all deficiencies and punch-list items must be corrected prior to acceptance of the Project and final payment. Owner shall be notified of all deficiencies and punch-list items.

**2.1.11.19** Review materials assembled by the contractor and assemble for and provide to Owner written warranties, guarantees, owner's manuals, instruction books, diagrams, record drawings ("Final Working Drawings"), and any other materials required from the contractors and subcontractors in accordance with the Construction Documents.

**2.1.11.20** Make any further observations of the Project reasonably necessary to confirm completion of punch-list items and to issue Architect's Certificate of Completion and final certificate for payment.

**2.1.11.21** Cause engineers and other consultants as may be hired by Architect to file required documentation necessary to close out the Project with governmental authorities.

**2.1.11.22 Record Set of Final Working Drawings.**

**2.1.11.22.1** On projects utilizing a Construction Manager or Lease-Leaseback Contractor, not later than 120 days after Architect's receipt of marked-up working drawings from the Construction Manager or Lease-Leaseback Contractor, Architect shall review and forward the record set of Final Working Drawings and specifications to Owner. The record set of Final Working Drawings shall indicate all changes made on the Project, by change order or otherwise, and all information called for in the specifications, producing a record set of drawings which show, among other things, the location of all concealed pipe, buried conduit runs, and other similar elements within the completed Project based upon the information supplied to Architect by the Construction Manager or Lease-Leaseback Contractor and Inspector. Architect shall review the record set of Final Working Drawings to ensure that they are a correct representation of the information supplied to Architect by the Construction Manager or Lease-Leaseback



Contractor.

**2.1.11.22.2** On projects not utilizing a Construction Manager, not later than 30 days after Architect's receipt of marked-up working drawings from the contractor, Architect shall review and forward the record set of Final Working Drawings and specifications to Owner. The record set of Final Working Drawings shall indicate all changes made on the Project, by change order or otherwise, and all information called for in the specifications, producing a record set of drawings which show, among other things, the location of all concealed pipe, buried conduit runs, and other similar elements within the completed Project based upon the information supplied to Architect by contractor and Inspector. Architect shall review to ensure that the record set of Final Working Drawings is a correct representation of the information supplied to Architect by the Inspector and the contractor and shall request the certificates of the Inspector and the contractor that the record set of Final Working Drawings is correct.

**2.1.11.22.3** Upon approval of the completed as-built drawings by Owner's Representative, Architect shall forward to Owner a complete set of reproducible duplicates of the original drawings corrected to "as-built" condition. The duplicates shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

**2.1.11.22.4** In addition to the set of reproducible duplicates referred to above, Architect shall provide Owner with two copies of the "as-built" drawings electronically in a format designated by Owner.

**2.1.11.22.5** Prior to receipt of final payment, Architect shall forward to Owner one clear and legible set of reproductions of the computations, the original copy of the specifications, the as-built drawings, the final verified progress report pursuant to Title 21 of the California Code of Regulations, and Architect's Certificate of Completion.

**2.1.11.23** Architect shall provide advice to Owner on apparent deficiencies in construction during the one-year warranty period following acceptance of work.

**2.1.11.23.1** Architect and Architect's consultants shall provide assistance to the Owner in preparing a six-month written evaluation of the Project's finish hardware and HVAC systems.

**2.1.11.23.2** Architect and Architect's consultants shall provide assistance to Owner in preparing an 11-month written evaluation of items of repair, replacement, etc., for warranty items.

## **2.2 Additional Services of Architect.**

At Owner's request, Architect may be asked to perform services not otherwise included in this Agreement and/or services not customarily furnished in accordance with generally accepted architectural practice. Owner may agree to pay Architect for such services if those services cause Architect additional expense through no fault or neglect on the part of Architect. No additional compensation shall be paid to Architect for performing such services unless Owner and Architect agree in writing as to the amount of compensation for such services prior to the services being rendered.

**2.2.1** Plan preparation and/or administration of work on portions of the Project separately bid (not applicable to projects utilizing Multi-Prime Construction Management).

**2.2.2** Assistance to Owner in selection of moveable furniture, equipment, or items which are not included in Construction Documents.

**2.2.3** Services caused by contractor's late submission of substitution requests, by the delinquency, default, or insolvency of contractor, or by major defects in contractor's work in performance of the construction contract.

**2.2.4** Substantial subsequent revisions in drawings, specifications, or other project documents when required as a result of:

**2.2.4.1** Changes requested by Owner;

**2.2.4.2** Revisions being inconsistent with prior written approvals or instructions due to causes beyond Architect's control;

**2.2.4.3** An approved contractor substitution request.

**2.2.5** Serving as an expert witness on Owner's behalf.

**2.2.6** Observation of repair of damages to the Project.

**2.2.7** Additional work required for environmental conditions, i.e., asbestos, unforeseen site conditions.

**2.2.8** Additional site reviews or other work required solely as a result of the fault of Owner more than 60 calendar days past the scheduled date of project completion.

### **ARTICLE 3. OWNER'S RESPONSIBILITIES.**

Owner's responsibilities shall include the following:

**3.1** Make available to Architect all necessary data and information concerning the purpose and requirements of the Project, including realistic scheduling and budget limitations.

**3.2** Depending upon the scope of the Project, furnish Architect with, or direct Architect to procure at Owner's expense, a survey of the Project site prepared by a registered surveyor or civil engineer and any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other pertinent information. Owner shall also provide a soils investigation report and a geological report if required by law.

**3.3** Upon mutual agreement with Architect, appoint and pay an Inspector of Record as provided by state law. The Inspector shall be qualified and approved by Architect and by the DSA, with its work under the general direction of Architect. The Inspector shall be responsible to Owner and act in accordance with Owner's policies. The project administration by Architect and its engineers shall be in addition to the continuous personal supervision by the Inspector.

**3.4** Assist Architect in distributing plans to bidders and conducting the opening of bids on the Project, if applicable.

**3.5** Conduct chemical, mechanical, or other tests required for proper design of the Project; furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known for proper development of the required drawings and specifications and determine soil condition.

**3.6** Retain a testing service for materials testing and inspection as required by Title 21 of the California Code of Regulations.

- 3.7 Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency.
- 3.8 Designate a representative authorized to act as liaison between Architect and Owner in administration of this Agreement and the Construction Documents. Owner's authorized representative shall assist Architect in conducting inspections and preparing the list of deficiencies and shall accompany Architect and contractor on the final inspection.
- 3.9 Review all documents submitted by Architect, including change orders and other items requiring Owner's approval; advise Architect of decisions pertaining to those documents within a reasonable time after submission.
- 3.10 Notify Architect if any deficiencies in material or workmanship become apparent during contractor's warranty period.

#### **ARTICLE 4. ARCHITECT'S FEE.**

4.1 For performance of all services rendered, Owner shall pay to Architect the amount specified in Exhibits A and "C" incorporated herein by reference, which constitutes complete payment for Architect's services under this Agreement.

4.1.1 Unless otherwise agreed in writing, Architect's compensation is not contingent on Owner obtaining funding for the Project.

4.1.2 Unless otherwise agreed, the construction cost for Multi-Prime Construction Management projects shall include the construction management fee and general conditions costs of the Construction Manager, and be calculated on the total collective cost of all Multi-Prime contracts.

4.1.3 When Architect's compensation is based on a percentage of construction cost and any portion of the Project is deleted or otherwise not constructed, compensation for that portion of the Project shall be payable to the extent services are performed on that portion based on the lowest bona fide bid or estimate.

4.2 **Payment for Additional Services.** Architect shall be paid for additional services not originally contemplated by the parties to this Agreement as follows, provided the additional services have received advance written approval by Owner's governing board or other governing body:

4.2.1 For services in addition to Architect's basic services, the required written approval shall specify the fee for those services, which may be a flat amount or Architect's standard hourly rates.

4.2.2 With the required prior approval, special consultants may be paid at a multiple of times the amount billed to Architect by the special consultants.

4.2.3 Hourly rates as indicated on the attached Standard Hourly Rate Schedule, including annual adjustments, plus reimbursable expenses for services beyond those required in 2.1.3.1.

4.2.3 Hourly rates as indicated on the attached Standard Hourly Rate Schedule, including annual adjustments, plus reimbursable expenses for services not included in 2.1.3.2.

#### **4.3 Reimbursable Expenses.**

Reimbursable expenses are in addition to compensation for basic and additional services and include expenses incurred by Architect and Architect's employees and consultants in the interest of the Project, identified as:

**4.3.1** Expenses of preauthorized transportation, excluding ordinary mileage normally incurred, in connection with the Project.

**4.3.2** Expenses in connection with preauthorized out-of-town travel. Pre-authorized transportation shall include travel outside the Bakersfield Metropolitan Service Area (75 miles round trip), including trips/flights to public agencies (e.g., to State agency/s remotely located – DSA, OPSC, CDE, etc.). Expenses include municipal/private charges associated with destination fees – and not considered a parking violation.

**4.3.3** Fees required to be paid in order to secure approval of authorities having jurisdiction over the Project.

**4.3.4** Expenses of reproductions of drawings and specifications, as authorized and/or required herein including, without limitation, reproduction of documents provided by the Owner or generated by the Architect and its consultants for the Owner.

**4.3.5** Other costs/expenses preauthorized by Owner.

**4.3.6** Unless otherwise agreed, Architect shall provide at no additional expense one original rendering of the Project, three 30"x40" color prints, 12 14"x17" color prints, and 15 8"x10" color prints of the rendering. Any other presentation graphics, renderings, charts, graphs, or similar visual communication requested by Owner shall be reimbursed at Architect's cost.

## **ARTICLE 5. PAYMENTS TO ARCHITECT.**

**5.1** Architect's compensation shall be paid by Owner to Architect monthly, incrementally based upon the percentage of work completed as reflected in Exhibit A.

**5.2** In order to receive payment, Architect shall present Owner with a claim for payment for approval by Owner's Representative which shall designate services performed, percentage of work completed, method of computation of amount payable, and amount to be paid.

**5.3** Payments made for extra work or special services shall be made in installments, not more often than monthly, proportionate to the degree of completion of those services or in such other manner as the parties shall specify when those services are agreed upon.

## **ARTICLE 6. INSTRUCTIONS TO PROCEED.**

Architect is not to proceed with performance of any services under this Agreement without first securing authorization from Owner to do so.

## **ARTICLE 7. TIME SCHEDULE.**

**7.1** Architect shall perform all services under this Agreement as expeditiously as is consistent with professional skill and care and the orderly progress of the work. Upon Owner's request, Architect shall prepare an estimated time schedule for the performance of Architect's services, to be adjusted as the Project proceeds, including allowances for periods of time required for Owner's review and approval of submissions and for approvals by authorities having jurisdiction over project approval and funding.

The schedule shall not be exceeded by Architect without Owner's prior written approval.

**7.2** Any delays in Architect's work because of the actions of Owner or its employees, those in direct contractual relationship with Owner, a governmental agency having jurisdiction over the Project, or an act of God or other unforeseen occurrence, not due to any fault or negligence on Architect's part, shall be added to the time for completion of any obligations of Architect.

**7.3** Should Architect apply for an extension of time, Architect shall submit evidence that any required insurance policies remain in effect during the requested additional time.

## **ARTICLE 8. SUSPENSION, ABANDONMENT, TERMINATION.**

**8.1** Owner hereby reserves the right to suspend or abandon at any time all or any of the construction work on the Project or to terminate this Agreement at any time. In the event of any suspension, abandonment, or termination, Architect shall be paid pursuant to any applicable schedule of payments for services rendered up to the date of any suspension, abandonment, or termination, less any damages suffered by Owner as a result of Architect's default, if any. Architect hereby expressly waives any and all claims for damages or balance of compensation arising under this Agreement, except as set forth herein, in the event of any suspension, abandonment, or termination.

**8.2** If Architect's services are suspended by Owner, Owner may require Architect to resume services by giving written notice to Architect within 90 consecutive calendar days after the effective date of the suspension.

**8.3** Where more than 90 days beyond the effective date of suspension or abandonment by Owner, Architect may terminate this Agreement by giving Owner 10 days' written notice.

**8.4** Upon suspension, abandonment, or termination, Architect shall, if requested by Owner, turn over to Owner all preliminary studies, sketches, working drawings, specifications, computations, and all other items to which Owner would have been entitled at the completion of Architect's services. Upon payment of the amount required to be paid following termination of this Agreement, Owner shall have the right to use any completed contract documents or other work product prepared by Architect under this Agreement. Architect shall make such documents available to Owner upon request, without additional compensation, and in any format specified by Owner.

## **ARTICLE 9. OWNERSHIP AND USE OF DOCUMENTS.**

**9.1** Pursuant to California Education Code Section 17316, all plans, specifications, estimates, and other documents, including any and all electronic data magnetically or otherwise recorded electronically prepared by Architect pursuant to this Agreement, shall be and remain the property of Owner. Any documents supplied pursuant to this Agreement shall be the property of Owner whether or not the work for which they were made is executed. Architect and its consultants shall be deemed the authors and shall retain all common law, statutory, and other reserved rights, including copyrights.

**9.2** Architect grants to Owner the right to reuse all or part of the aforementioned documents, at its sole discretion, for the construction of all or part of this Project or another project contracted for Owner. Owner is not bound by this Agreement to employ the services of Architect in the event such documents are reused. Owner's reuse of documents prepared under this Agreement, without employing the services of Architect, shall be at Owner's own risk. Owner shall indemnify, hold harmless, and defend Architect and its officers, directors, consultants, agents, and employees from all claims of any kind arising out of such use, reuse, or modification of any documents prepared by Architect. Architect makes no warranty or representation that such documents are suitable for use on any subsequent project or for other purposes in time or geographical location.

**9.3** This Agreement creates a nonexclusive and perpetual license for Owner to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property authored or held by Architect or its subconsultants embodied in plans, specifications, studies, drawings, estimates, and other documents, or any other works of authorship by Architect or its subconsultants fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by Architect pursuant to this Agreement. Architect shall require any and all subcontractors and

consultants to agree in writing that Owner is granted a nonexclusive and perpetual license for any work performed pursuant to this Agreement.

**9.4** Architect represents and warrants that it has the legal right to license any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, or other documents that Architect prepares or causes to be prepared pursuant to this Agreement. Architect shall hold harmless and indemnify Owner for any breach of this Article. Architect makes no such representation or warranty with regard to previously prepared designs, plans, specifications, studies, drawings, estimates, or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, prepared by design professionals other than Architect or Architect's subcontractors or consultants and provided to Architect by Owner. Owner recognizes that Architect does not hold title or rights to the use of other "product" publications in the preparation of project documents (such as software, code and specification subscription services, details and specifications of manufacturers, etc.) and therefore cannot grant transitory rights to Owner, nor can Architect represent or warrant rights to license these types of intellectual property.

#### **ARTICLE 10. INDEMNITY.**

**10.1** Architect shall hold harmless, assume the defense of, and indemnify Owner, Owner's governing board or other governing body, each member of the governing board or other governing body, and Owner's officers and employees from any and all claims of any kind that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Architect in the performance of this Agreement.

**10.2** By way of written agreements, Architect shall require each and every one of its subcontractors and consultants engaged in work related to this Agreement to indemnify and defend Owner, Owner's governing board or other governing body, each member of the governing board or other governing body, and Owner's officers and employees from any and all claims of any kind that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the subcontractor or consultant in the performance of work related to this Agreement. Architect agrees that any failure to provide any such subcontractor or consultant agreement for indemnity and defense shall be deemed an act or omission arising out of, pertaining to, and relating to the negligence, recklessness, or willful misconduct of Architect in the performance of this Agreement.

**10.3** Owner shall hold harmless, assume the defense of, and indemnify Architect, its officers, and employees from any and all claims of any kind arising out of the intentional or negligent acts, errors, or omissions of Owner, its officers, or employees in the performance of this Agreement.

#### **ARTICLE 11. ERRORS AND OMISSIONS.**

Architect shall be liable for any damages and costs incurred by, and any claims against, Owner that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Architect. Additionally, Architect shall not be entitled to any fee for additional services or reimbursement of costs for work required due to Architect's negligence, recklessness, or willful misconduct, or that of Architect's subcontractors, consultants, and/or employees in the performance of services under this Agreement.

#### **ARTICLE 12. INSURANCE.**

From the time this Agreement is entered into until the date of Owner's acceptance of the work, Architect shall maintain insurance in full force and effect, as set forth in this Agreement, at its sole cost and expense. All insurance shall be with a carrier satisfactory to Owner. Prior to commencement of work, Architect shall furnish to Owner a certificate of insurance evidencing the required coverages.

Owner shall not be obligated to make any payment to Architect until after its receipt and acceptance of that certificate.

**12.1** Workers' compensation insurance, as required by applicable laws, and employer's liability insurance with a limit not less than \$1,000,000.

**12.2** Comprehensive general liability insurance for bodily injury and property damage with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Comprehensive general liability policies obtained and maintained by Architect shall contain endorsements naming Owner and other interested parties who have insurable interests and are designated by Owner as additional insureds and shall include products' completed coverage and operations coverage, as well as contractual liability coverage for liability assumed by Architect under this Agreement.

**12.3** Professional liability insurance coverage of \$1,000,000.

**12.4** Automobile liability insurance coverage of \$1,000,000.

**12.5** In addition to other insurance requirements of this Agreement, Owner may require Architect to obtain a non-cancelable policy of project insurance for a duration of three years after completion of the Project. If Owner requires Architect to obtain project insurance, that insurance shall begin when construction begins, at which time Architect shall provide Owner with evidence of its existence. The cost of project insurance shall be borne by Owner.

#### **ARTICLE 13. RECORDS.**

Architect shall maintain records of direct personnel and reimbursable expenses pertaining to extra and special services on the Project that are compensable by other than a flat rate. Architect shall maintain all records of accounts between Owner and Architect on a generally recognized accounting basis. Those records shall be available to Owner or its authorized representative for inspection or audit at any reasonable time. Architect shall maintain all records concerning the Project for a period of three years after its completion.

#### **ARTICLE 14. STANDARDIZED MANUFACTURED ITEMS.**

Architect shall cooperate and consult with Owner in use and selection of manufactured items on the Project, including but not limited to paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials, and floor coverings. All such manufactured items shall be standardized to Owner's criteria to the extent the criteria do not interfere with project design or legal bid requirements.

#### **ARTICLE 15. LIMITATION OF AGREEMENT.**

This Agreement is limited to and includes only the work included in the Project described above and as determined at the time the Design Development Documents are approved, unless this Agreement is amended by the parties to include additional work as part of the Project. Any subsequent construction by Owner at the site of the Project, or at any other site, will be covered by and the subject of a separate agreement for architectural services between Owner and the architect chosen by Owner.

#### **ARTICLE 16. MEDIATION.**

If the parties mutually agree, disputes arising from this Agreement may be submitted to mediation. The parties shall select a disinterested third-person mediator, mutually agreed to by the parties, within a reasonable period of time. The mediation shall be commenced within 30 days of the selection of the mediator. If the parties elect to mediate but fail to select a mediator within a 15-day period, any party may petition the Superior Court of the county in which Owner's administrative offices are located to appoint the mediator.

**ARTICLE 17. COMPLIANCE WITH THE LAW.**

Architect shall use reasonable professional judgment and care to comply with and meet applicable requirements of federal, state, regional, or local law, including but not limited to the California Building Code, the Education Code, Title 19 and Title 24 of the California Code of Regulations, and all requirements prescribed by the California Department of General Services.

**ARTICLE 18. INDEPENDENT CONTRACTOR.**

For all purposes arising out of this Agreement, Architect is an independent contractor and neither Architect nor its subcontractors, consultants, or employees shall be deemed employees of Owner for any purpose. It is expressly understood and agreed that Architect shall in no event be entitled to any benefits to which Owner's employees are entitled, including but not limited to overtime, vacation, insurance and retirement benefits, workers' compensation benefits, injury or sick leave, or other benefits.

**ARTICLE 19. SUCCESSORS IN INTEREST AND ASSIGNS.**

This Agreement is binding upon and inures to the benefit of the successors in interest, executors, administrators, and assigns of each party to this Agreement, provided however that Architect shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties, or obligations without prior written consent of Owner's governing board or other governing body. Any attempted assignment without such consent shall be invalid.

**ARTICLE 20. ASBESTOS CERTIFICATION.**

Pursuant to 40 Code of Federal Regulations, Section 763.99(a)(7), Architect shall certify to its best information that no asbestos-containing material was specified as a building material in any construction document for the Project and will reasonably endeavor to compel contractors to provide Owner with certification that all materials used in the construction of any school building are free from any asbestos-containing building materials ("ACBMs"). This certification shall be part of the final project submittal. Architect shall include statements in specifications that materials containing asbestos are not to be included.

**ARTICLE 21. RESERVED.**

**ARTICLE 22. NO RIGHTS IN THIRD PARTIES.**

This Agreement shall not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

**ARTICLE 23. MISCELLANEOUS.**

The following terms and conditions shall be applied to this Agreement:

**23.1 Governing Law.**

This Agreement shall be construed in accordance with and governed by the laws of the state of California.

**23.2 Entire Agreement.**

This Agreement, including any exhibits to which it refers, supersedes any and all other prior or contemporaneous oral or written agreements between the parties. Each party acknowledges that no representation, inducement, promise, or agreement has been made by any person which is not



incorporated herein and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing and signed by all parties to this Agreement.

**23.3 Severability.**

Should any provision in this Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

**23.4 Non-Waiver.**

None of the provisions of this Agreement shall be considered waived by either party unless such waiver is specified in writing.

**23.5 Supplemental Conditions.**

Any supplemental conditions shall be attached to this Agreement and incorporated herein by reference. [SEE ATTACHED]

**IN WITNESS WHEREOF**, the parties have caused this instrument to be duly executed this 2<sup>nd</sup> day of March, 2017.

**ARCHITECT**

**OWNER**

Name: Integrated Designs by SOMAM, Inc.

Name: Bakersfield City School District



By: Curtis Flynn  
Title: Architect/Vice President

By: Steve McClain  
Title: Assistant Superintendent, Business Services



By: Sharon Ashid  
Title: President

**RFQ-EXHIBIT A**

**FEE  
ALLOCATION/PHASE  
BILLING RATES**

**FEES:** Fees for services may be computed on the basis of a percentage of construction cost using OPSC or other standard fee schedules, or as a fixed fee or stipulated sum, or on an hourly basis, all as the parties may have agreed. Such fees shall be entered below.

Fees: Based upon OPSC's SAB Architect Fee Schedule (SAB 533).

First \$500,000	9%
Next \$500,000	8 ½%
Next \$1,000,000	8%
Next \$4,000,000	7%
Next \$4,000,000	6%
Excess of \$10,000,000	5%

Fee based on Supplemental Grants i.e. site development: The A/E fee is based on an 8% of eligible service site, off site and utility development costs as approved by the OPSC's Plan Review Team and the SAB.

Estimated Construction Cost      \$22,000,000

Should Owner elect to utilize the Multi-Prime Construction Management or Lease-Leaseback project delivery methods, the fees shall be adjusted as follows:

Fees: No additional costs.

Applicable hourly rates for services under this Agreement are:

Hourly Rates/ Time and Material Basis

Principal	\$180.00/hour
Professional	\$150.00/hour
Sub-Professional	\$ 90.00/hour
Clerical	\$ 60.00/hour

Reimbursable Expenses

Automobile Travel	At rates allowed by IRS
Reproduction Costs	SOMAM, Inc. cost
In-House Reproduction Costs:	
Prints	\$1.00 per sheet
Photocopies	\$.08 per copy
Color Photocopies	\$2.50 per copy

**PROGRESS PAYMENTS:** Where compensation is based on a percentage of construction cost or stipulated sum, progress payments for Architect's services in each phase shall not exceed the following percentages of the total compensation payable:

Schematic Design Phase:	Ten percent	(10%)
Design Development Phase:	Twenty percent	(20%)
Construction Documents Phase:	Forty-two percent	(42%)
Agency Plan Check Phase:	Three percent	(3%)
Bidding Phase:	Five percent	(5%)
Construction Phase:	Twenty percent	(20%)
Total Compensation:	One Hundred Percent	(100%)