

## **CONTRACT BETWEEN OWNER AND ARCHITECT**

**AGREEMENT** made this 30th day of January in the year 2024 in Yuba City, California.

**BETWEEN the Architect:**

Synthesis Partners, LLC (SPLLC)  
PO Box 1900  
Yuba City, CA 95992  
O: 530.298.7298  
C: 916.539.9800  
E: [gary@spinc-arch.com](mailto:gary@spinc-arch.com)  
Gary M. Underhill, President

**and the Owner:**

Sutter Union High School District  
2665 Acacia Street  
Sutter, CA 95982  
O: (530) 822-5161  
F: (530) 822-5168  
E: [rrobison@sutterhigh.k12.ca.us](mailto:rrobison@sutterhigh.k12.ca.us)  
Mr. Ryan Robison, Superintendent

**For the following Project:** (SPLLC Project No. 23-S01-02)

**Modernization of Buildings A & B and HVAC Replacement – BUILDINGS A, B, C, AND D**  
**Sutter High School, 2665 Acacia St, Sutter, California**

The project scope will include:

- ☐ Modernization of Building A & partial modernization of Building B
- ☐ Replacement of 33 existing roof top mounted HVAC units on Buildings A, B, C, D.
- ☐ Addition of CO2 sensors to existing HVAC units
- ☐ Addition of thermostats to Building D HVAC units

The scope of professional design services Synthesis Partners, LLC will be to:

- ☐ Update construction documents prepared in 2018 for the HVAC replacement (exempt from DSA approval)
- ☐ Update construction documents prepared in 2020, DSA #02-118237 (expires 5/26/24) for modernization of Bldgs A & B
- ☐ Administer the bidding process for procuring a general contractor to perform the construction
- ☐ Administer the construction administration services required during the construction
- ☐ Complete the closeout documentation and file with the DSA
- ☐ Provide construction management services during the bidding and construction phases

**Professional Design and Engineering Team:**

- ☐ Architect – Synthesis Partners, LLC
- ☐ Mechanical Engineering – Weston and Associates, Inc
- ☐ Electrical Engineering – M Neils Engineering, Inc

**Summary of Services:**

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

**Phase I – Pre-Design (PD)**

- ☐ PD Administration & Team Meetings
  - Meeting(s) with Owner to develop project goals, needs, and priorities
- ☐ PD Documentation

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### **Sutter Union High School District**

Sutter High School – Modernization of Buildings A&B and HVAC Replacement Bldgs A,B,C and D

Project Number – 23-S01-02

- Prepare initial project scope, and schedule
- Visit site and document existing conditions at HVAC replacement locations
- Prepare written project scope statement and identify design considerations

### **Phase II – Site Analysis**

- No work

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

- No work (completed under a prior contract)

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

- No work (completed under a prior contract)

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

- CD Administration & Team Meetings
  - Client Meeting
  - Site Visit to verify final design
- CD Documentation – update previously prepared construction documents
  - Remove HVAC units from the scope of work which have already been installed by the district (identified at a site visit on 12/19/23)
  - Add HVAC equipment not previously in the scope of work (identified at a site visit on 12/19/23)
  - Add any minor modernization scope of work identified by the district to the current DSA approved modernization plans
  - Update the project manual, including the technical specifications and the bidding documents (front end)

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

- AR Submit project to DSA for review and approval – by the architect, and engineers as needed
  - Work with DSA plan reviewers to address plan check comments - by the architect and by the engineers as needed
  - Attend a scheduled over the counter (OTC) back check appointment. Obtain DSA approval of the plans and specifications – by the architect and by the engineers as needed
  - Distribute DSA approved plans and specifications to the owner – by the architect

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

- BP – Develop Bidding Documentation
- BP – Assist district with bid advertising
- BP – Conduct Pre-bid Conference
- BP – Receive Bids
- BP – Assist district in evaluating and determining the lowest responsive bidder
- BP - Assist district in preparing district/contract agreement

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

- CA Administration
  - Attendance of project meetings bi-weekly
- CA Documentation
  - Progress Reports, Submittal Logs, RFI's & AIB's
- CA Review submittals
- CA Prepare punch list

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- Site visit to prepare punch list
- Sign off punch list

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

- PC Administration & Documentation
  - Prepare closeout documentation
  - Upload closeout documentation to DSA Box

**Summary of Owner's Responsibilities:**

- Directly pay for all local and state agency fees associated with this project.
- A reference copy of the existing campus and building plans – both hardcopy and CAD files.

**Estimated Project Schedule:**

- See separate project schedule

**Fee Calculations:**

Professional fees are based on construction costs, if construction costs increase the professional fees will increase accordingly. The fees are based on an estimated construction cost of \$1,979,184.00 utilizing the fee tables below.

Table 1 calculates a professional fee based on a full fee, a complete project including all phases of design and construction. Table 2 calculates a professional fee based on the scope of work remaining to complete this project (bidding, construction administration, and closeout) and the additional design work required to update the plans to the current scope of work. See the "Partial Fee" column. No DSA reapproval is included in this fee calculation. If a new DSA review and approval is required additional fees will be charged.

**TABLE 1**

<b>AE FEE CALCULATIONS</b>		<b>MODERNIZATION</b>
Construction Cost Estimate		\$ 1,979,184.90
<b>AE Fees</b>		
First \$500,000 at 12% (\$60,000 Max)		\$ 60,000.00
Next \$500,000 at 11.5% (\$57,500 Max)		\$ 57,500.00
Next \$1,000,000 at 8.0% (\$80,000 Max)		\$ 78,334.80
Next \$4,000,000 at 7.5% (\$280,000 Max)		\$ -
Next \$4,000,000 at 6% (\$240,000 Max)		\$ -
Excess of \$10,000,000 at 5%		\$ -
<b>TOTAL AE FEE</b>		<b>\$ 195,834.80</b>

**TABLE 2**

<b>AE Fees by Phase</b>	<b>Contract %</b>	<b>Full Fee (if starting from scratch)</b>	<b>Partial Fee (this contract)</b>	<b>Notes</b>
Phase I and III - Predesign & SDs	8%	\$ 15,666.78	\$ 2,563.00	added services
Phase IV - DDs	10%	\$ 19,583.48	\$ 10,700.00	added services
Phase V - CDs	43%	\$ 84,208.96	\$ 47,102.00	added services
Phase V - Agency Review	5%	\$ 9,791.74		
Phase VI - Bidding	2%	\$ 3,916.70	\$ 3,917.00	base fee
Phase VII - Const Admin	30%	\$ 58,750.44	\$ 58,750.00	base fee
Phase VIII - Closeout	2%	\$ 3,916.70	\$ 3,917.00	base fee
<b>TOTAL AE FEE</b>	<b>100.00%</b>	<b>\$ 195,834.80</b>	<b>\$ 126,949.00</b>	

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**The total contract amount under this contract will be \$126,949.00 (One Hundred Twenty-Six Thousand Nine Hundred Forty Nine Dollars).** The payment schedule will follow the fees calculated in Table 2 by phase and will be invoiced monthly for the services completed the prior month.

**Additional Services:**

The following services are not included in the Scope of Work and shall be provided as Additional Services when authorized in writing by the Owner. A stipulated fee based on a defined scope of work will be provided as part of the Supplemental Services Agreement.

**Additional Scope:**

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

Principal Architect:	\$250.00/Hr	Project Engineer:	\$175.00/Hr
Project Architect:	\$175.00/Hr	Project Manager:	\$150.00/Hr
Interior Designer:	\$125.00/Hr	Project Coordinator:	\$100.00/Hr
Graphics Presentations:	\$175.00/Hr	Drafter:	\$110.00/Hr
Office Manager:	\$ 80.00/Hr	Accounting:	\$ 60.00/Hr
Clerical:	\$ 80.00/Hr	Public Hearings:	\$300.00/Hr

These rates will be applicable through June 30, 2024, and are subject to change at that time without notice.

**Synthesis Partners, LLC**



By: Gary M. Underhill, President

Date: January 30, 2024

**Sutter Union High School District**

By: Mr. Ryan Robison, Superintendent

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

**Exhibit A – Contract Terms**

CLIENT and ARCHITECT agree that the following provisions shall be part of their agreement:

1. Invoices: Shall be presented to CLIENT for the above work monthly and are due and payable upon presentation and delinquent twenty (20) days thereafter. CLIENT hereby agrees to pay finance charges of 1.5 percent per month for delinquent accounts.
2. Deliverables: Additional project expenses incurred by SPLLC will be invoiced separately. An administration fee of 15% will be added to all project-related expenses paid for by SPLLC and then invoiced to the CLIENT. All printing, plotting, reprographic, CAD file translation, shipping and additional ARCHITECT fees not listed in this scope of work is the responsibility of the CLIENT.
3. Changes in Project Scope: If the scope of the project or of the Architect's services is changed materially, the amount of compensation shall be equitably adjusted. All adjustments to scope and compensation shall be described in writing and mutually agreed upon prior to the commencement of any Additional Services.

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4. Change Orders & Substitutions: If SPLLC prepares drawings, specifications and other documentation and supporting data, for the processing and approval of Change Orders & Substitutions that are not the result of direct or indirect negligence, errors or omissions on the part of SPLLC, SPLLC shall be given additional compensation for these services.
5. Non-Responsibility: Synthesis Partners, LLC shall not be responsible for damages and shall not be held in default by reason of events or circumstances beyond SPLLC's reasonable control; or for delays caused by failure of CLIENT or CLIENT's agents to furnish information or to approve or disapprove SPLLC's work promptly, or due to late or slow or faulty performance by CLIENT, CLIENT's ARCHITECTs, contractors, or governmental agencies, in the performance of acts which are precedent to or concurrent with the performance of SPLLC's services.
6. Site Control: Synthesis Partners, LLC and its personnel shall have no authority or responsibility to exercise control over any construction contractor or other entity in connection with their work or any health or safety precautions associated with the project. CLIENT agrees that its contractor shall be solely responsible for job safety, means and methods, and warrants that this intent shall be made evident in CLIENT's agreement with its contractor. CLIENT also agrees that CLIENT, Synthesis Partners, INC., and Synthesis Partners, Inc.' ARCHITECTs shall be indemnified and shall be added as additionally insured entities under the Contractor's General Liability Insurance and Builder's Risk policies.
7. Cost Estimates: In providing opinions of probable construction costs, CLIENT understands that Synthesis Partners, INC. has no control over costs or the price of labor, equipment, materials, or over any contractor's method of pricing, and the opinions of probable construction costs provided by SPLLC are to be made based on SPLLC's qualifications and experience.
8. Instruments of Service: The drawings, specifications, and other documents, including those in electronic form, produced by SPLLC under this agreement are for use solely with respect to the Project. SPLLC shall be deemed to CLIENT of these documents and shall retain all common law, statutory and other reserved rights, including copyright. SPLLC grants the CLIENT a nonexclusive license to reproduce such SPLLC documents for the purpose of constructing, maintaining, or using the Project. Any unauthorized use of SPLLC documents shall be at the CLIENT's sole risk without liability to SPLLC.
9. Commence of Work: Actual work will commence upon receipt of this executed document and initial payment, if required.
10. Agreement: Shall be considered void if not executed within thirty (30) days from the date of this document.
11. This agreement shall be binding upon heirs, executors, administrators, successors and assigns of CLIENT and ARCHITECT.
12. This agreement shall not be assigned by either CLIENT or ARCHITECT without the prior written consent of the other.
13. This agreement contains the entire agreement between CLIENT and ARCHITECT relating to the project and the provision of services to the project. Any prior agreements, promises, negotiations or representations not expressly set forth in this agreement are of no force or effect. Subsequent modifications to this agreement shall be in writing and signed by both CLIENT and ARCHITECT.
14. ARCHITECT's waiver of any term, condition, or covenant, or breach of any term, condition, or covenant, shall not constitute the waiver of any other term, condition, or covenant, or the breach of any other term, condition, or covenant.
15. If any term, condition, or covenant of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this agreement shall be valid and binding on CLIENT and ARCHITECT.
16. This agreement shall be governed by and construed in accordance with the laws of the State of California.
17. ARCHITECT shall only act as an advisor in all government relations.
18. All original papers, documents, drawings and other work product of ARCHITECT, and copies thereof, produced by ARCHITECT pursuant to this agreement shall remain the property of ARCHITECT and may be used by CLIENT without the consent of ARCHITECT. Upon request and payment of the costs involved, the CLIENT is entitled to a copy of all papers, documents and drawings provided CLIENT's account is paid current.
19. CLIENT acknowledges that its right to utilize the services and work product provided pursuant to this agreement will continue only so long as CLIENT is not in default pursuant to the terms and conditions of this agreement and CLIENT has performed all obligations under this agreement. CLIENT further acknowledges that ARCHITECT has the unrestricted right to use the services provided pursuant to this agreement as well as all work product provided pursuant to this agreement.
20. CLIENT and ARCHITECT agree to cooperate with each other in every way on the project.
21. Upon request, CLIENT shall execute and deliver, or cause to be executed and delivered, such additional instruments, documents, governmental fees and charges which are necessary to perform the terms of this agreement.
22. ARCHITECT makes no representations concerning soil conditions unless specifically included in writing in this agreement, and he is not responsible for any liability that may arise out of the making or failure to make soil surveys, or sub-surface soil tests, or general soil testing.
23. CLIENT agrees not to use or permit any person to use plans, drawings, or other work product prepared by ARCHITECT, which plans, drawings, or other work product are not final and which are not signed, stamped or sealed by ARCHITECT. CLIENT agrees to be liable and responsible for any such use of non-final plans, drawings, or other work product not signed and stamped or sealed by ARCHITECT and waives liability against ARCHITECT for their use. CLIENT further agrees that final plans, drawings or other work product are for the exclusive use of CLIENT and may be used by CLIENT only for the project described on the face hereof. Such final plans, drawings or other work product may not be changed nor used on a different project without the written authorization or approval by ARCHITECT. If ARCHITECT's work product exists in electronic or computerized format, or is transferred in electronic or computerized format, the stamp, seal and signature shall be original and may not be a computer-generated copy, photocopy, or facsimile transmission of the original.

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24. ARCHITECT has a right to complete all services agreed to be rendered pursuant to this contract. In the event this agreement is terminated before the completion of all services, unless ARCHITECT is responsible for such early termination, CLIENT agrees to release ARCHITECT from all liability for services performed. In the event all or any portion of the services or work product prepared or partially prepared by ARCHITECT be suspended, abandoned, or terminated, CLIENT shall pay ARCHITECT for all fees, charges, and services provided for the project, not to exceed any contract limit specified herein. CLIENT acknowledges if the project services are suspended and restarted, there will be additional charges due to suspension of the services which shall be paid for by CLIENT as extra services.
25. This agreement shall not be construed to alter, affect or waive any lien or stop notice right which ARCHITECT may have for the performance of services pursuant to this agreement. CLIENT agrees to separately provide to ARCHITECT the present name and address of the record CLIENT of the property on which the project is to be located. CLIENT also agrees to separately provide ARCHITECT with the name and address of any and all lenders who would loan money on the project and who are entitled to receive a preliminary notice.
26. If payment for ARCHITECT's services is to be made on behalf of a CLIENT by a third-party lender, CLIENT agrees that ARCHITECT shall not be required to indemnify the third party lender, in the form of an endorsement or otherwise, a condition of receiving payment for services.
27. CLIENT agrees that the periodic billings from ARCHITECT to CLIENT are correct, conclusive, and binding on CLIENT unless CLIENT, within five (5) days from the date of receipt of such billing, notifies ARCHITECT in writing of alleged inaccuracies, discrepancies, or errors in billing.
28. Termination – Suspension: Failure by CLIENT to pay any invoice before it becomes delinquent shall constitute a material breach of this Agreement and shall entitle Synthesis Partners, Inc. to suspend performance of services until such delinquency is cured, so long as such delinquency persists. SPLLC may terminate the agreement upon five days written notice without liability. If the A&E team's scope of work and/or project is suspended more than 60 days, a fee for re-initialization of the project may be charged. This Agreement may be terminated by Synthesis Partners, LLC or CLIENT by giving written notice at least thirty (30) days prior to the date of termination. In the event of such termination, CLIENT shall pay Synthesis Partners, LLC for services and Reimbursable Expenses performed or incurred prior to the termination date plus all costs and expenses directly attributable to such termination for which Synthesis Partners, Inc. is not otherwise compensated.
29. If ARCHITECT, pursuant to this agreement, produces plans, specifications, or other documents and/or performs field services, and such plans, specifications, and other documents and/or field services are required by one or more government agency, and one or more such government agency changes its ordinances, policies, procedures or requirements after the date of this agreement, any additional office or field services thereby required shall be paid for by CLIENT as extra services.
30. CLIENT acknowledges that the design services performed pursuant to this agreement are based upon field and other conditions existing at the time these services were performed. CLIENT further acknowledges that field and other conditions may change by the time project construction occurs and clarification, adjustments, modifications, and other changes may be necessary to reflect changed field or other conditions. If the scope of services pursuant to this agreement does not include construction staking services by ARCHITECT for this project, or if subsequent to this agreement CLIENT retains other persons or entities to provide such staking services, CLIENT acknowledges that such staking services will be performed by others and that CLIENT will defend, indemnify, and hold ARCHITECT harmless from any and all claims arising from or resulting from the performance of such staking services by other persons or entities except claims caused by the sole negligence or willful misconduct of ARCHITECT; and from any and all claims arising from or resulting in clarifications, adjustments, modifications or other changes which may be necessary to reflect changed field or other conditions except claims caused by the sole negligence or willful misconduct of ARCHITECT.
31. CLIENT shall pay the costs of checking and inspection fees, zoning and annexation application fees, assessment fees, soils engineering fees, soils testing fees, and all other fees, permits, bond premiums, title company charges, and all other charges not specifically covered by the terms of this agreement.
32. ARCHITECT is not responsible for delay caused by activities or factors beyond ARCHITECT's reasonable control, including but not limited to, delays by reason of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of CLIENT to furnish timely information or approve or disapprove of ARCHITECT's services or work product promptly, faulty performance by CLIENT or other contractors or government agencies. When such delays beyond ARCHITECT's reasonable control occur, CLIENT agrees ARCHITECT is not responsible in damages nor shall be deemed to be in default of this agreement.
33. ARCHITECT shall not be liable for damages resulting from the actions or inactions of governmental agencies including. But not limited to, permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, project or plan approvals, and building permits. The CLIENT agrees that it is the responsibility of the CLIENT to maintain in good standing all governmental approvals and permits and to apply for any extensions thereof.
34. In the event that CLIENT institutes a suit against ARCHITECT, either directly by complaint or by way of cross-complaint, including a cross-complaint for indemnity, for alleged negligence, error, omission, or other failure to perform, and it CLIENT fails to obtain a judgment in CLIENT's favor, the lawsuit is dismissed, or if judgment is rendered for ARCHITECT, CLIENT agrees to pay ARCHITECT all costs of defense, including attorney's fees, expert witness fees, court costs, and any and all



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other expenses of defense. CLIENT agrees such payments shall be made immediately following dismissal of the case or upon entry of judgment.

35. If any action at law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this agreement, the prevailing party shall be entitled to reasonable attorney's fees, which fees may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which he may be entitled.
36. CLIENT agrees that in the event CLIENT institutes litigation to enforce or interpret the provisions of this agreement, such litigation is to be brought and adjudicated in the appropriate court in the county in which ARCHITECT's principal place of business is located, and CLIENT waives the right to bring, try and remove such litigation to any other county or judicial district.
37. ARCHITECT makes no representation concerning the estimated quantities and probable costs made in connection with maps, plans, specifications, reports or drawings other than that all such costs are estimates only and actual costs will vary. It is the responsibility of the CLIENT to verify costs.
38. CLIENT acknowledges that ARCHITECT is not responsible for the performance of work by third parties including, but not limited to, the construction contractor and its subcontractors.
39. ARCHITECT makes no warranty, either expressed or implied, as to his findings, recommendations, plans, specifications, or professional advice except that the services or work product were performed pursuant to generally accepted standards of practice in effect at the time of performance.
40. Estimates of land areas provided under this agreement are not to be considered precise unless ARCHITECT specifically agrees to provide the precise determination of such areas.
41. In the event the CLIENT agrees to, permits, authorizes, constructs or permits construction of changes in the plans, specifications, and documents or does not follow recommendations or reports prepared by ARCHITECT pursuant to this agreement, which changes are not consented in writing by ARCHITECT, CLIENT acknowledges that the changes and their effects are not the responsibility of ARCHITECT and CLIENT agrees to release ARCHITECT from all liability arising from the use of such changes and further agrees to defend, indemnify and hold harmless ARCHITECT, its officers, directors, principles, agents and employees from and against all claims, demands, damages or costs arising from the changes and their effects.
42. CLIENT acknowledges that the design services performed pursuant to this agreement are based upon field and other conditions existing at the time of preparation of ARCHITECT's services. CLIENT further acknowledges that field and other conditions may change by the time project construction occurs and clarification, adjustments, modifications, discrepancies or other changes may be necessary to reflect changed field or other conditions. If the scope of services pursuant to this agreement does not include on-site construction review, construction management, supervision of construction of engineering structures, or other construction supervision for this project, or if subsequent to this agreement CLIENT retains other persons or entities to provide such services, CLIENT acknowledges that such services will be performed by others and CLIENT will defend, indemnify and hold ARCHITECT harmless from any and all claims arising from or resulting from the performance of such services by other persons or entities except claims caused by the sole negligence or willful misconduct of ARCHITECT; and from any and all claims arising from or resulting from clarifications, adjustments, modifications, discrepancies or other changes necessary to reflect changed field or other conditions, except claims caused by the sole negligence or willful misconduct of ARCHITECT. CLIENT agrees that in accordance with generally accepted construction practices, construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property; that this requirement shall be made to apply continuously and not be limited to normal working hours, and CLIENT further agrees to defend, indemnify and hold ARCHITECT harmless from any and all liability, real or alleged, in connection with the performance of services on this project, excepting liability arising from the sole negligence or willful misconduct of ARCHITECT.
43. In the event CLIENT discovers or becomes aware of changed field or other conditions which necessitate clarification, adjustments, modifications or other changes during the construction phase of the project, CLIENT agrees to notify ARCHITECT and engage ARCHITECT to prepare the necessary clarifications, adjustments, modifications or other changes to ARCHITECT's service or work product before construction activities commence or further activity proceeds. Further, CLIENT agrees to have provision in its construction contracts for the project which requires contractor to notify CLIENT of any changed field or other conditions so that CLIENT may in turn notify ARCHITECT pursuant to the provisions of this paragraph.
44. CLIENT agrees to limit the liability of ARCHITECT, its principals and employees, to CLIENT and to all contractors and subcontractors on the project, for any claim or action arising in tort or contract, to the sum ARCHITECT's fee.
45. CLIENT agrees to purchase and maintain, during the course of construction, builder's risk "all risk" insurance which will name ARCHITECT as an additional insured as their interest may appear.
46. ARCHITECT hereby states and CLIENT hereby acknowledges that ARCHITECT has no professional liability insurance for claims arising out of the performance or failure to perform professional services, including, but not limited to the preparation of reports, designs, drawings and specifications, related to the investigation, detection, abatement, replacement, use or specification, or removal of products, materials or processes containing asbestos, asbestos cement pipe, and/or hazardous waste materials. Accordingly, the CLIENT hereby agrees to bring no claim for negligence, breach of contract, indemnity or otherwise against the ARCHITECT, its principals, employees, and agents if such claim, in any way, would involve the ARCHITECT's services for the investigation, detection, abatement, replacement, use or specification, or removal of products,

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materials or processes containing asbestos, asbestos cement pipe, and/or hazardous waste materials. CLIENT further agrees to defend, indemnify and hold harmless ARCHITECT, its officers, directors, principals, employees and agents from any asbestos and/or hazardous waste material related claims that may be brought by third parties as a result of the services provided by ARCHITECT pursuant to this agreement except claims caused by the sole negligence or willful misconduct of the ARCHITECT.

47. CLIENT acknowledges that ARCHITECT's scope of services for this project does not include any services related in any way to asbestos and/or hazardous waste. Should ARCHITECT or any other party encounter such materials on the job site, or should in any other way become known that such materials are present or may be present on the job site or any adjacent or nearby areas which may affect ARCHITECT's services, ARCHITECT may, as its option, terminate work on the project until such time as CLIENT retains a specialist contractor to abate and/or remove the asbestos and or hazardous waste materials and warrant that the job site is free from any hazard which may result from the existence of such materials.
48. Notwithstanding any other provision of this Agreement and except for the provisions of [b] and [c], if a dispute arises regarding ARCHITECT's fee pursuant to this contract, and if the fee dispute cannot be settled by discussions between CLIENT and ARCHITECT, both CLIENT and ARCHITECT agree to attempt to settle the fee dispute by mediation through the American Arbitration Association [or other mediation service] before recourse to arbitration. If mediation does not resolve the fee dispute, such dispute shall be settled by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) maybe entered in any court having jurisdiction thereof. [b] Subdivision [a] does not preclude or limit ARCHITECT's right to elect to file an action for collection of fees if the amount in dispute is within the jurisdiction of the small claims court. [c] Subdivision [a] does not preclude or limit the ARCHITECT's right to elect to perfect of enforce applicable mechanics lien remedies.