

**ARTICLE 1 ARCHITECT'S SERVICES**

*(Here list those services to be provided by the Architect under the Terms and Conditions of this Agreement. Note under each service listed the method and means of compensation to be used, if applicable, as provided in Article 8.)*

**Service to be provided**

**Method and means of compensation**

See "Exhibit A" proposal dated 3/26/2012  
See Exhibit "A" RCCSD District-Wide Facilities  
Condition Evaluation – Scope & Report Clarification

Stipulated Lump Sum

**ARTICLE 2 OWNER'S RESPONSIBILITIES**

§ 2.1 The Owner shall provide full information regarding requirements for the Project. The Owner shall furnish required information as expeditiously as necessary for the orderly progress of the Work, and the Architect shall be entitled to rely on the accuracy and completeness thereof.

§ 2.2 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

**ARTICLE 3 USE OF ARCHITECT'S DOCUMENTS**

§ 3.1 The documents prepared by the Architect for this Project are instruments of the Architect's service for use solely with respect to this Project and, unless otherwise provided, the Architect shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of the Architect's documents for the Owner's information, reference and use in connection with the Project. The Architect's documents shall not be used by the Owner or others on other projects. The Owner retains the authority to turn over the Architect's documents to a successor architect solely for the purpose of completing the project. At that point the successor architect will accept sole liability for the content and accuracy of the documents.

**ARTICLE 4 ARBITRATION**

§ 4.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise. It is mutually agreed that prior to issuing a demand for arbitration the parties will engage in informal negotiations for a period not to exceed Thirty (30) days.

§ 4.2 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

§ 4.3 No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the Owner, Architect and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 4.4 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**ARTICLE 5 TERMINATION OR SUSPENSION**

§ 5.1 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party

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initiating the termination. Additionally, the Owner retains the right to terminate the Architect at any time, without cause.

§ 5.2 If the Owner fails to make payment when due the Architect for services and expenses, the Architect may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

§ 5.3 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination based on the percentage completion of items listed in the attached "Exhibit B - Schedule of Values"

*(Paragraphs deleted)*

#### **ARTICLE 6 MISCELLANEOUS PROVISIONS**

§ 6.1 Unless otherwise provided, this Agreement shall be governed by the law of the principal place of business of the Architect.

§ 6.2 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date payment is due the Architect pursuant to Section 8.4.

§ 6.3 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Architect shall assign this Agreement without the written consent of the other.

§ 6.4 This Agreement represents the entire and integrated agreement between the Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 6.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 6.6 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances, unless the actions of the Architect exacerbate the environmental condition.

#### **ARTICLE 7 PAYMENTS TO THE ARCHITECT**

##### **§ 7.1 HOURLY BILLING RATES**

§ 7.1.1 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth in the attached "Exhibit C - 2012 Hourly Billing Rates".

##### **§ 7.2 REIMBURSABLE EXPENSES**

§ 7.2.1 Reimbursable Expenses are in addition to the Architect's compensation and include expenses incurred by the Architect and Architect's employees and consultants in the interest of the Project for:

- .1 fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 reproductions;
- .5 postage and handling of documents;
- .7 renderings and models requested by the Owner;
- .8 expense of additional coverage or limits, including professional liability insurance, requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants; and

**§ 7.3 PAYMENTS ON ACCOUNT OF THE ARCHITECT'S SERVICES**

**§ 7.3.1** Payments on account of the Architect's services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or as otherwise provided in this Agreement.

**§ 7.3.2** An initial payment as set forth in Section 8.1 is the minimum payment under this Agreement.

**§ 7.4 ARCHITECT'S ACCOUNTING RECORDS**

**§ 7.4.1** Records of Reimbursable Expenses and additional hourly rates billed pertaining to services performed shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

**ARTICLE 8 BASIS OF COMPENSATION**

The Owner shall compensate the Architect as follows:

**§ 8.1** AN INITIAL PAYMENT OF Zero (\$ 0 ) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

**§ 8.2** COMPENSATION FOR THE ARCHITECT'S SERVICES, as described in Article 1, Architect's Services, shall be computed as follows:

*(Insert basis of compensation, including stipulated sums multiples or percentages, and identify the services to which particular methods of compensation apply, if necessary.)*

Two Hundred Twelve Thousand Five Hundred Dollars and zero cents.....\$212,500.00

A detailed Schedule of Values is included in Exhibit "B."

**§ 8.3** FOR REIMBURSABLE EXPENSES, as described in Article 7, and any other items included in Article 9 as Reimbursable Expenses, a multiple of Zero ( 00% ) times the expenses incurred by the Architect, the Architect's employees and consultants in the interest of the Project. Approved reimbursable expenses will be billed at cost.

**§ 8.4** Payments are due and payable thirty ( 30 ) days from presentment of the Architect's invoice. Amounts unpaid thirty ( 30 ) days after presentment of the invoices shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the principal place of business of the Architect.

*(Insert rate of interest agreed upon.)*

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding other requirements such as written disclosures or waivers.)*

**§ 8.5** IF THE SCOPE of the Project or of the Architect's services is changed materially, the amounts of compensation shall be equitably adjusted.

**ARTICLE 9 OTHER CONDITIONS**

a. The Architect will not complete any additional services related to this Contract without prior written approval from the Red Clay Consolidated School District.

b. Architect shall begin work on or before April 4, 2012 and shall complete work provided in Exhibit A on or before October 30, 2012.

c. Other document:

- 1. Exhibit A – Proposal dated March 26, 2012
- 2. Exhibit B - Schedule of Values
- 3. Exhibit C – StudioJAED 2012 Hourly Billing Rates

This Agreement entered into as of the day and year first written above.

**OWNER**

**ARCHITECT**

*(Signature)*

Jill M. Floore, CFO

*(Printed name and title)*

*(Signature)*

Edward R. Lupinek, C.P.E., Vice President

*(Printed name and title)*

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§ 4.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise. It is mutually agreed that prior to issuing a demand for arbitration the parties will engage in informal negotiations for a period not to exceed Thirty (30) days.

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§ 5.1 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. Additionally, the Owner retains the right to terminate the Architect at any time, without cause.

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§ 5.3 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, ~~together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 5.4.~~ termination based on the percentage completion of items listed in the attached "Exhibit B – Schedule of Values"

§ 5.4 ~~Termination Expenses shall be computed as a percentage of the compensation earned to the time of termination, as follows:~~

- ~~.1 — For services provided on the basis of a multiple of Direct Personnel Expense, 20 percent of the total Direct Personnel Expense incurred to the time of termination; and~~
- ~~.2 — For services provided on the basis of a stipulated sum, 10 percent of the stipulated sum earned to the time of termination.~~

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§ 6.6 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic ~~substances.~~ substances, unless the actions of the Architect exacerbate the environmental condition.

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### § 7.1 ~~DIRECT PERSONNEL EXPENSE~~ HOURLY BILLING RATES

§ 7.1.1 ~~Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar contributions and benefits. The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth in the attached "Exhibit C – 2012 Hourly Billing Rates".~~

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- ~~.1 expense of transportation and living expenses in connection with out-of-town travel authorized by the Owner;~~
- ~~.2 long distance communications;~~
- ~~.3 fees paid for securing approval of authorities having jurisdiction over the Project;~~

...

~~.6 — expense of overtime work requiring higher than regular rates, if authorized by the Owner;~~

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~~.9 Expense of computer-aided design and drafting equipment time when used in connection with the Project.~~

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~~§ 7.4.1 Records of Reimbursable Expenses and expenses pertaining to services performed on the basis of a multiple of Direct Personnel Expense additional hourly rates billed pertaining to services performed shall be available to the Owner or the Owner's authorized representative at mutually convenient times.~~

...

~~§ 8.1 AN INITIAL PAYMENT OF Zero (\$ 0) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.~~

...

Two Hundred Twelve Thousand Five Hundred Dollars and zero cents.....\$212,500.00

A detailed Schedule of Values is included in Exhibit "B."

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Marcin Michalski Manager of Facilities & Maintenance

Edward R. Lupinek, C.P.E., Vice President

## Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Edward R. Lupinek, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:54:43 on 04/19/2012 under Order No. 9247880833\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B727™ – 1988, Standard Form of Agreement Between Owner and Architect for Special Services, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

VICE PRESIDENT

\_\_\_\_\_  
(Dated)

4/19/12