

AGREEMENT BETWEEN ARCHITECT AND OWNER

By this AGREEMENT, effective this ____ day of _____, 201__, by and between Vail Unified School District No. 20 ("Owner"), an Arizona unified school district organized and operating in Pima County, Arizona, and _____, whose principal place of business is located at _____, _____, Arizona _____ ("Architect"), the Owner and the Architect enter into the following contractual arrangement:

1. Purpose

The Owner and the Architect agree that the Owner intends to construct the following Project and that by this Agreement Architect agrees to perform professional services for the Owner's development of the Project:

1.1 _____, the scope of which is defined on Appendix A hereto. The Project is located at _____.

2. Basis of Compensation

2.1 The Owner shall compensate the Architect for the professional services provided hereunder in accordance with Paragraph 15, "Payment to the Architect," and other terms and conditions of this Agreement, as follows:

2.1.1 FOR BASIC SERVICES, as described in Paragraphs 6 through 10, and any other services included herein as part of Basic Services, the Architect's Fee shall be _____ percent (___%).

2.1.2 Payment of the Architect's Fee for Basic Services shall be made as provided in Paragraph 15 and for each Phase shall equal the following percentages of the total Fee payable for each Phase of the Project:

Schematic Design Phase	fifteen percent (15%)
Design Development Phase	twenty percent (20%)
Construction Documents Phase	thirty-five percent (35%)
Bidding	five percent (5%)
Construction Administration Phase	twenty-five percent (25%)

2.1.3 FOR ADDITIONAL SERVICES OF THE ARCHITECT, as described in Paragraph 12, but excluding Additional Services of consultants, compensation shall be computed as follows:

Project Principal
Project Architect
Programmer/Planner
Project Architect
Drafters

Clerical

2.1.4 FOR ADDITIONAL SERVICES OF CONSULTANTS, including landscape, civil, structural, mechanical, electrical or other consulting engineering services and those provided under Paragraph 12 as part of Additional Services, 1.10 times the amounts billed to the Architect for such services.

2.1.5 The Owner's written approval of any Additional Services shall contain a full description of the scope of such services, the maximum fee approved, the signatures of the Architect and the Owner, and the date of execution.

2.1.6 FOR REIMBURSABLE EXPENSES, as described in Paragraph 11 "Reimbursable Expenses," 1.10 times the amounts expended by the Architect, the Architect's employees and consultants for the benefit of the Project, or at the rates specified in Paragraph 11.

2.1.7 Compensation for Change Orders prepared during construction administration shall be six percent (6%) of the increase in the cost of construction, except as provided pursuant to Paragraph 12.1.9 hereof, and except no compensation will be allowed for Change Orders resulting from the errors or omissions of the Architect.

3. Agreement to Comply with A.R.S. § 34-104

3.1 The parties agree, as a matter of contract, that they will both be bound by the provisions of Arizona Revised Statutes § 34-104, as amended, except the limitations on fees, which is made a part of this Agreement by this reference, and shall take precedence over any parts hereof that are inconsistent with § 34-104.

4. Allocated Amount for Construction of Project

4.1 _____ Dollars (\$_____) has been allocated by the Owner for the construction of this Project ("Allocated Amount"). This Allocated Amount does not include the Owner's contingency fund.

4.2 The Architect agrees to develop the Project to meet the Allocated Amount or less, if reasonably possible. The Architect shall not be a guarantor that the Project can be developed for the Allocated Amount. If the Architect determines at any time during the development of the Project that the Allocated Amount cannot be met, he shall cease work immediately and notify the Owner of that determination. The Owner's written approval must be obtained before the Architect may proceed further with his work on the Project.

5. The Architect's Professional Services

5.1 The Architect's professional services shall consist of the five (5) phases set forth below in Paragraphs 6 through 10, inclusive, "Basic Services," and shall include architectural, cost estimating, landscape, on-site civil engineering, structural engineering, mechanical

engineering, electrical engineering, and such other consulting services as are reasonably necessary for design and construction administration of the Project. The names of each consultant are indicated on Appendix C hereto, which consultants may not be changed without the written approval of the Owner.

5.1.1 All work shall be performed by or under the direct supervision of persons then licensed in the State of Arizona to perform these services. The seal of such individual shall be listed on the Plans, Specifications and elsewhere as required. The Architect shall be responsible for the work performed by and under the supervision of these persons.

5.1.2 The Architect will be present, after reasonable notice, as the Owner may request, for public meetings of the Governing Board of the Owner held for the purpose of discussing the schematics, drawings, specifications, cost estimates or construction of the Project.

5.1.3 This Agreement is not intended by the parties hereto to create, nor shall it be construed to create, any contractual relationship between the Architect and any third parties, including the Contractors, Subcontractors or Owner's Consultants.

5.1.4 The Architect agrees throughout in the rendering of services hereunder in accordance with professional standards prevailing in the metropolitan areas of Arizona.

5.1.5 Within thirty (30) days after the payments provided herein have been made to the Architect, the Architect shall state in writing to the Owner that all fees due engineers and/or other consultants have been paid.

6. Basic Services - Schematic Design Phase

6.1 The Architect shall consult with the Owner to obtain the Owner's requirements for the Project and shall review his understanding of such requirements with the Owner or its designated representatives. The Basic Scope of the Project is set forth in Appendix A attached hereto and by this reference made a part hereof. The projected Architectural Schedule for completing the design and construction of the Project is attached as Appendix B hereto and by this reference made a part hereof. The Architect shall advise the Owner of any facts of which he may reasonably be aware and that reasonably may result in significant changes in the Architectural Schedule.

6.2 The Architect shall prepare Schematic Design Studies consisting of Drawings, including individual floor plans, mechanical concepts, appropriate elevations and sections, and other documents, including a list of materials, illustrating the scale and relationship of Project components for approval by the Owner.

6.3 The Architect shall submit to the Owner a "Statement of Probable Construction Costs" based on current area, volume or other unit costs that take into account the site conditions, building layout and construction materials contemplated for this Project in such detail as to enable the Owner to ascertain the estimated cost of the Project.

6.4 The Architect will consult with members of the Owner's staff and other resource persons, as designated by the Owner and as the Owner deems necessary, for the purpose of discussing the physical requirements of the Project necessary to fulfill Owner's educational objectives.

6.5 For the Architect's Basic Services associated with the Schematic Design Phase, the Owner shall pay the Architect the fee set forth in Paragraph 2.

7. Basic Services - Design Development Phase

7.1 The Architect shall prepare from the approved Schematic Design Studies, for approval by the Owner, the Design Development Documents consisting of Drawings, Preliminary Specifications and other documents to fix and describe the size and character of the entire Project as to architectural, landscape, civil, structural, mechanical and electrical elements of the Project, materials and such other essential elements as may be appropriate. The Design Development Phase will graphically show the appearance of the Project by means of plans, elevations, sections and specifications as needed to depict adequately the Project. These will show and describe finished architectural treatments and materials and will depict the elements in the Project with sizes, square feet and heights. Schematic structural information will be included.

7.2 The Architect shall advise the Owner of any adjustments to the previous Statement of Probable Construction Costs based on changes in current area volume or other unit costs that take into account the site conditions, building layout and construction materials contemplated for this Project.

7.3 For the Architect's Basic Services associated with the Design Development Phase, the Owner shall pay to the Architect the fee set forth in Paragraph 2. The documents required to be produced by the Architect during the Design Development Phase shall be submitted to the Owner for approval by its Governing Board on or before the date stated in Appendix B.

7.4 Approval of the Schematic Design Studies, Design Development Documents, other Plans, Specifications and Contract Documents by the Owner for this paragraph of this Agreement, and every other paragraph where the Owner is required to approve plans, unless stated differently by the Owner in writing, is for conformance with the educational design concept of the Project. This approval does not constitute nor does it imply approval of or attest to the accuracy, suitability or completeness of the architectural design, drawings, dimensions, details, proper selection of materials or compliance with applicable codes or ordinances. The Architect agrees that such accuracy, suitability and completeness are his sole responsibility; however, he shall not be responsible for the acts or omissions of approving authorities or errors in standards, references or information provided by the Owner on which the Architect is reasonably entitled to rely.

7.5 In designing the Project and preparing the plans, drawings and specifications, the Architect will comply with all requirements of Chapter 4, Title 34 A.R.S. relating to structure of buildings, as well as the Americans with Disabilities Act of 1990 (42 U.S.C. 12101, *et seq.*), the Arizonans with Disabilities Act (A.R.S. § 41-1492, *et seq.*) and the standards, regulations and guidelines adopted thereunder.

7.6 Architect shall not, to the best of his knowledge, specify or cause to be incorporated into the design of the Project any asbestos-containing building material, including surfacing asbestos-containing materials, thermal system installation asbestos-containing materials or miscellaneous asbestos-containing materials found in or on interior structural members or other parts of the building. Asbestos-containing materials as used herein shall mean any material or product which contains more than zero percent (0%) asbestos. Without limiting the generality of the foregoing, the Architect shall not be responsible for hazardous waste or materials that exist on the Project site or that may be found or deposited on the site in the future so long as the existence of such waste or materials is not due to the fault of the Architect.

7.7 The Architect shall specifically prohibit the use of lead in the Project, including, without limitation, the potable water system water piping, solder, valves, fittings and plumbing fixtures. The Architect shall specify the use of lead-free solder. The completed system shall meet all U.S. Environmental Protection Agency and Arizona Department of Environmental Quality standards and regulations for drinking water quality.

8. Basic Services - Construction Documents Phase

8.1 The Architect shall prepare from the approved Design Development Documents, for approval by the Owner, Construction Drawings and Specifications setting forth in detail the requirements for the construction of the entire Project, including the architectural, landscape, civil, structural, mechanical and electrical phases of the Project, and including the necessary bidding information. These documents are the "Construction Documents." When requested by the Owner, the Architect shall complete the bidding forms by inserting all information concerning this Project into documents provided by the Owner to the Architect. The Architect shall not publish any bidding document without first obtaining the Owner's approval of it. All such documents, except for addenda issued during the bidding period, shall be delivered to the Owner for review not less than ten (10) days in advance of the publication deadline so that the Owner has a meaningful opportunity to review such documents. All addenda shall be submitted to and approved by the Owner prior to the time of opening bids. The Architect shall be responsible for assembly and distribution of all of the bidding forms, including the proposed form of agreement between the Owner and the Contractor.

8.2 The Architect shall advise the Owner of any adjustments to previous Statements of Probable Construction Costs resulting from changes in requirements, general market conditions or any other factors at any time during this or any other phase.

8.3 From the Architectural Schedule, the Architect shall estimate the time for construction of the Project. In making this estimate, the Architect shall use his best professional

judgment to evaluate all aspects of the Project, including Project location, site conditions and types of materials and equipment that are contemplated for incorporation into the Project. The Architect shall advise the Owner of any changes to the Architectural Schedule resulting from changes in requirements, general conditions or any other factors. The Architect shall provide in the Specifications that the Contractor is to develop and submit a Material Delivery Schedule as part of the Construction Progress Schedule described in Paragraph 10.4 of this Agreement.

8.4 The Architect shall assist the Owner in filing for the approval of governmental authorities having jurisdiction over the Project, including, without limitation, the local fire department, Arizona Department of Environmental Quality, Arizona Commission of Agriculture and Horticulture and the Arizona State Fire Marshal. Owner is not required to obtain building permits or pay permit fees for this Project pursuant to A.R.S. § 34-461(D).

8.5 The Architect shall incorporate in his design solutions for the Project all utility connections and on-site facilities that are required to supply the Project with utilities and means of ingress and egress and shall ascertain and comply with applicable rules and requirements of the utilities serving the Project.

8.6 The Architect agrees to use the following special rules in preparing the Specifications unless the Owner gives its written permission to the Architect to deviate from them:

8.6.1 The Architect shall not use bidding, contracting or purchasing specifications proprietary to one supplier, distributor, manufacturer or contractor unless the specification includes all of the following:

8.6.1.1 A statement of the reason or reasons why no other specification is practicable,

8.6.1.2 A description of the essential characteristics of the specified product, and

8.6.1.3 A statement indicating the intent to consider an alternative product which has the desired essential characteristics if such an alternative product is identified.

8.6.2 In the preparation of the Specifications, the Architect shall prepare "other than proprietary specifications" and "proprietary specifications" in a manner substantially similar to the following examples:

8.6.2.1 An example of an "other than proprietary specification" is as follows:

The products of the ABC Corporation have been considered in the development of the Drawings and Specifications. Other manufacturers offering

products which comply with the requirements contained herein shall include, but not be limited to, the following:

XYZ Corporation
ZZZ Manufacturing Co.
Ajax Steel Building Co.

8.6.2.2 An example of a "proprietary specification" is as follows:

Substitutions:

Approved Manufacturers:

Butts - _____, _____, _____ Locks - * _____ (no substitute)

Panic Devices - _____, _____, _____ Closures - * _____ (no substitute)

Push/Pulls/Stops - _____, _____ Weatherstrip - _____,

*Items listed as "no substitute" have been requested by the Owner for the reason: The specified product is thought to be the only product compatible with existing systems (or such other reason or reasons given by the Owner or the Architect). The essential characteristic(s) of the product(s) listed as "no substitute" is (are):

The Owner will consider any alternative product which has the desired essential characteristics of an item listed as "no substitute" if such an alternative product is identified in the manner prescribed in the Instructions to Bidders.

8.6.3 If any alternative product is identified and approval for its use is requested, the Architect shall determine whether the proposed alternative product is acceptable. If an alternative product acceptable to the Architect is identified at least ten (10) days before the deadline for receiving bids on the Project has passed, the Owner, with the Architect's assistance, shall cause to be published a notice of the modification of the bidding documents in the same manner as the publication of the original notice inviting bids on the Project. The Owner shall allow six (6) days from the date of the last publication of the modification of the bidding documents for bidding in competition with the originally specified product.

8.7 The Construction Documents shall conform with the State Fire Code adopted by the State Fire Marshal and the applicable building, plumbing, electrical, fire prevention and mechanical codes of Pima County, Arizona, or the local authority having jurisdiction over the Project or any portion thereof. If any of the codes described in this subparagraph are revised during the term of this Agreement, the Architect shall revise, without additional charge to the Owner, the Construction Documents to conform to those revisions if preparation of the construction drawings for the building system or component affected by such revision has not

commenced. Any revision resulting from such code changes occurring after preparation of the construction drawings shall be an Additional Service.

9. Basic Services – CM Selection and/or Bidding Phase

9.1 The Owner may employ either the lump sum bidding or construction manager at risk (CM@Risk) procurement process to select a contractor for the Project. The Architect shall cooperate with and assist the Owner in the selection of the Contractor. If the Owner chooses the CM@Risk process, the Architect shall cooperate with Owner and Contractor during the pre-construction period to obtain a Guaranteed Maximum Price within the Allocated Amount. If the Guaranteed Maximum Price exceeds the Allocated Amount, the Owner may elect to obtain lump sum bids for the Project.

9.2 The Architect shall consult with attorneys for the Owner and together they will submit the Notice Inviting Sealed Bids, Notice of Request for Qualifications, Request for Qualifications, Instructions to Bidders, Proposal, List of Subcontractors and Material Vendors, Bid Bond, Performance Bond, Payment Bond, Notice of Award/Notice to Proceed and Receipt of Notice, and Contract and General Conditions to the Owner for approval prior to distribution of these documents for bidding. The Architect agrees to use the forms of the documents listed above that are in use by the Owner at the time the Project is bid, as approved by the Owner's counsel, or as may be required by law.

9.3 For the Architect's Basic Services associated with the Bidding Phase, the Owner shall pay to the Architect the fee set forth in Paragraph 2.

10. Basic Services - Construction Administration Phase

10.1 Wherever the term "Contract" or "Contract and General Conditions" is used in this Agreement, it shall mean the Contract and General Conditions between the Owner and the Contractor (lump sum or guaranteed maximum price, as determined by Owner) and all of the Contract Documents incorporated therein. The term "Contractor" as used herein shall mean the party entering into the Contract with the Owner for the construction of the Project. The term "Work" used herein shall have the same meaning as used in the Contract and includes the furnishing by the Contractor of all labor necessary to produce the construction required by the Contract Documents and the furnishing and installing of all materials and equipment incorporated, or to be incorporated, into the Project.

10.2 The Construction Administration Phase will commence with the award of the Contract and will terminate when final payment is made by the Owner to the Contractor, except that in addition, the Architect shall perform the obligations provided for herein and in the Contract that pertain to the two-year warranty period.

10.3 The Architect shall deliver to the Contractor the Owner's Notice to Proceed on a form to be provided by the Owner and completed by the Architect, after consultation with the Owner's counsel, directing Contractor to commence work on the Project. The date of

commencement contained in the notice shall be the official starting date upon which the completion time shall be based.

10.4 Within five (5) working days after the award of the Contract, the Architect will request from the Contractor a Construction Progress Schedule as required by the Contract which shall contain the Material Delivery Schedule. The Contractor's Material Delivery Schedule shall include identification of all material critical to the scheduling of the Project or for which long lead time in procurement is anticipated, and projected dates for submittal, order and delivery of such material. If the Contractor fails to provide such schedules prior to the first application for progress payment, the Architect shall report in writing such failure to the Owner within five (5) additional days. The Architect shall review these schedules using his best professional judgment as an Architect and shall notify the Owner and the Contractor promptly in writing of any anticipated delays in construction or material deliveries evident from the schedules submitted by the Contractor or any other unrealistic situations disclosed thereon that may affect timely completion of the Project. Control of and responsibility for the construction schedule shall remain the responsibility of the Contractor.

10.5 The Architect shall perform those duties expressly required of him as set forth herein and in the Contract and General Conditions. It is recognized by the Architect and the Owner that the provisions of the Contract may change from time to time and that the parties agree to use the Contract Document that is in use by the Owner at the time the construction contract is awarded, so long as the Architect is given the opportunity to review and approve any proposed changes. The Architect's approval shall not unreasonably be withheld. Once the Contract is fully executed by the Owner and the Contractor, the extent of the Architect's duties and responsibilities and the limitations of his authority as assigned thereunder shall not be modified without his written consent and that of the Owner.

10.6 The Architect shall furnish all required Contract Documents for bidding and furnish to the Contractor copies of the Contract Documents reasonably adequate for construction of the Project, the cost of printing of which shall be a reimbursable expense pursuant to paragraph 11.1 hereof.

10.7 The Architect shall be a representative of the Owner during the Construction Administration Phase, shall advise and consult with the Owner and shall attempt to obtain performance of the terms of the Contract on behalf of the Owner. The Architect shall be a representative of the Owner during the Construction Administration Phase, shall advise and consult with the Owner and shall attempt to obtain performance of the Contract by the Contractor on behalf of the Owner. If the Contractor fails or refuses to comply with the terms of the Contract or the Architect's instructions, the Architect shall promptly notify the Owner of such failure or refusal and shall cooperate with the Owner to obtain compliance with the Contract. The Owner's instructions to the Contractor shall be issued through the Architect, except where the Owner deems it necessary to communicate directly with the Contractor. The Architect shall be promptly advised of or provided copies of all such direct communication. The Architect shall have authority to act on behalf of the Owner to the extent provided in the Contract.

10.8 The Architect shall at all times have access to the Work wherever it is in preparation or progress. The Architect shall hold weekly meetings during construction of the Project with the Contractor and appropriate Subcontractors. The Owner shall be notified in advance of the time and location of each meeting. A summary of each meeting shall be incorporated into the reports required by subparagraph 10.10.

10.9 The Architect shall observe the construction of the Project and perform all inspections required by the 2012 International Building Code ("IBC"). The Architect shall make periodic visits to the site to observe the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. These visits shall be of the frequency necessary for the Architect and the appropriate civil, mechanical, electrical, structural and other engineers or consultants to perform required IBC inspections, observe the progress of the Work and observe any testing or inspection required to determine whether the Work is in compliance with the Contract, but in no event shall there be less than one visit per week by the Architect and visits by the Architect's consultants of the frequency necessary to observe the Work during the construction phase. The Architect shall promptly report any and all defects or deficiencies in the Work or other variations from the requirements of the Contract Documents observed by the Architect to the Contractor and to the Owner. The Architect shall direct the Contractor to remedy all such defects, deficiencies or other variations from the Contract Documents. The Architect shall not be responsible for the Contractor's ways, methods, techniques, procedures, or the enforcement of safety requirements. Neither observation by the Architect nor tests, observations or approvals by others shall relieve the Contractor from its obligation to perform the Work in accordance with the Contract Documents. The Architect shall not be responsible for the acts or omissions of the Contractor, its subcontractors or their agents or employees.

10.10 The Architect will provide the Owner with written Field Inspection Reports with detailed information covering the same categories covered in the Construction Progress Schedule. These reports shall be prepared by the Architect each week while construction is in progress and transmitted to the Owner within twenty-four (24) hours of preparation. These reports shall contain a statement by the Architect to the Owner that the Architect has observed the Work, and that to the best of the Architect's knowledge, information and belief, the Work has been performed in a workmanlike manner in accordance with the Drawings and Specifications, except for those items of the Work specifically listed on the report as not having been performed in said manner.

10.11 Based on his observations at the site and on the Contractor's Application for Payment, the Architect shall determine the amount owing to the Contractor and shall issue a Certificate for Payment in such amount. The issuance of a Certificate for Payment shall constitute a representation by the Architect to the Owner that, based on the Architect's observations at the site as provided for above and on the data comprising the Application for Payment, (a) the Work has progressed to the point indicated in the Application for Payment; (b) to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents; and (c) the Contractor is entitled to payment in the amount certified. When the Contractor has made proper application therefor, the Architect shall issue a

Certificate of Payment to the Owner within five (5) days, or state in writing his reasons for withholding the Certificate. By issuing a Certificate for Payment, the Architect shall not thereby be deemed to represent that he has made an inquiry to ascertain how or for what purpose the Contractor has used any payment previously made by the Owner. The provisions of this subparagraph are not intended to benefit the Contractor.

10.12 The Architect may decline to approve an Application for Payment and may withhold his Certificate for Payment in whole or in part if, in his opinion, he is unable to make representations to the Owner as provided in this Agreement. The Architect may decline to approve an Application for Payment or, because of subsequently discovered evidence or subsequent observations of the Work, nullify the whole or any part of any Certificate for Payment previously issued and unpaid, to such extent as may be necessary, in his opinion, to protect the Owner from loss because of:

- 10.12.1 Defective Work not remedied, or
- 10.12.2 Claims filed or reasonable evidence indicating probable filing of claims, or
- 10.12.3 Failure of the Contractor to make payments to Subcontractors for labor, materials or equipment, or
- 10.12.4 Reasonable doubt that the Work can be completed for the unpaid balance of the Contract Sum, or
- 10.12.5 Damage to a Subcontractor or to another contractor, or
- 10.12.6 Reasonable indication that the Work will not be completed within the Contract Time, or
- 10.12.7 Unsatisfactory prosecution of the Work by the Contractor.

When these grounds for non-certification are eliminated to the satisfaction of the Owner and the Architect (or in the case of 10.12.4, when the Owner is satisfied that the Contractor will complete the Project at the agreed-upon price), payment shall be made for amounts withheld. The Architect may, at his discretion, furnish to any Subcontractor information regarding percentages of completion certified to the Owner on account of Work done by such Subcontractor.

10.13 If the Contract Documents or the Specifications or the laws, ordinances or regulations of any public authority require any Work to be specially tested or approved, or if the Architect deems such testing or approval necessary, he shall make inspections and order or advise the Owner of the need for tests of the Work and materials after notice to the Contractor of his readiness to inspect and test. Inspection and observation by the Architect of testing shall be made promptly and, where practicable, at the source of supply. The Architect shall have the

authority to require special inspection or testing of the Work whenever in the Architect's opinion it is necessary or advisable to achieve the intent of the Contract Documents. The Owner shall pay all costs of testing not required to be paid by the Contractor.

10.14 The Architect shall have authority to reject Work which does not conform to the provisions of the Contract. The Architect shall promptly notify the Owner whenever in the Architect's opinion it is advisable to stop the Work in order to achieve proper performance of the Contract.

10.15 The Architect shall review and approve or take other appropriate action upon shop drawings, product data, samples and other submissions of the Contractor for conformance with the design concept of the Project and with the requirements of the Contract Documents. Action on all such submissions shall be taken so as not to delay the progress of the Work, but in any event such action shall occur within fourteen (14) calendar days after the Architect's receipt of the submission. The Architect shall, upon written request of the Owner, submit to the Owner copies of shop drawings, product data, samples and other submissions for the Owner's review and approval.

10.16 The Architect shall furnish to the Contractor in writing, by means of drawings or otherwise, all additional instructions necessary for the proper execution of the Work. All such instructions or drawings shall be consistent with the requirements of the Contract Documents and shall be issued so as not to delay the progress of the Work, but in any event such instructions shall be given within seven (7) days after receipt by the Architect of the Contractor's inquiry, except where the nature of the inquiry reasonably requires additional time for response.

10.17 The Architect may make minor changes in the Work not involving extra cost, delay or claim of any kind against the Owner or the Contractor or both, and not inconsistent with the Contract Documents. Each such minor change shall be ordered by the issuance of a Field Order to the Contractor, a copy of which must be delivered to the Owner within seventy-two (72) hours after issuance of the Field Order. As to other than minor changes, except in an emergency endangering life or property, the Architect shall prepare and process no extra Work or change in the Work except by written Change Order signed by the Owner or its authorized representative in accordance with the provisions of the Contract. Any additional cost claimed by the Contractor or credit claimed by the Owner for additional Work approved or Work deleted by the Architect in a manner not specified in this Agreement or the Contract shall be borne by the Architect, unless the Owner excuses the Architect therefrom for good cause as determined by the Owner. The Owner shall designate, in writing, an Owner's representative, who shall be authorized to approve extra Work or changes in the Project.

10.18 The Architect shall determine the dates of issuance of the Certificates of Occupancy, Substantial Completion and Final Completion, shall receive written guarantees, waivers of liens and related documents assembled by the Contractor, and shall issue a final Certificate for Payment. Three (3) weeks before the expiration of the two-year warranty period, as calculated from the date of the Final Certificate for Payment or, if later, the Final Completion Date, the Architect, in the company of the Contractor and the Owner, shall make an inspection of

the Project and certify that to the best of the Architect's knowledge and belief based upon the inspections required herein, all defects in material and workmanship that have occurred during the warranty period have been satisfactorily corrected.

10.19 Upon completion of construction, the Architect shall provide to the Owner a complete set of "Record" Drawings prepared by the Contractor, which shall include all architectural, structural, mechanical, civil and electrical changes and shall be made on "Mylar" transparencies for reproduction by the Owner.

10.20 The Architect shall prepare Change Orders for the Owner's approval and execution in accordance with the Contract. No Change Order for either change in the Contract Amount or change in the Contract Time shall be effective without the express written approval of the Owner.

10.21 On completion of construction, the Architect shall furnish to the Owner a statement that no asbestos-containing building material was specified as a building material in any construction document for the building or that to the best of the Architect's knowledge, no asbestos-containing material was used in the building as a building material.

10.22 For the Architect's Basic Services associated with the Construction Administration Phase, the Owner shall pay to the Architect the fees specified in Paragraph 2.

10.23 If a conflict exists between the terms hereof and the terms of the Contract and General Conditions Between Owner and Contractor ultimately executed for the construction of this Project, the terms hereof shall have precedence with respect to the obligations of the Architect and Owner hereunder.

11. Reimbursable Expenses

11.1 For reimbursable expenses approved in advance in writing by the Owner, the Owner shall pay to the Architect the actual amount expended by the Architect or the Architect's Consultants upon presentation of an itemized bill satisfactory to the Owner. The following reimbursable expenses are approved by the Owner:

(a) Expense of reproduction, including printing, photocopies and full-size plotting, of Drawings, Specifications and other documents, up to a maximum of \$_____.

(b) Fees paid for securing approval of authorities having jurisdiction over the Project.

(c) Expenses of long distance telephone calls, facsimile transmissions, postage and shipping.

(d) All expenses not specifically allowed in this paragraph 11 are included in the fee established in subparagraph 2.1.1 hereof.

11.2 Perspective renderings, photographs or models, when requested in writing by the Owner for the Owner's use beyond the Drawings included in Basic Services.

12. Additional Services

12.1 If any of the following Additional Services are authorized by the Owner, in writing, they shall be paid for by the Owner:

12.1.1 Providing professional services occasioned by the need to replace or repair Work damaged by fire, vandalism or act of God, provided that such damage was not the fault of or occasioned by the act or neglect of the Architect.

12.1.2 Providing professional services made necessary by the substantial failure of performance by or the termination of Owner's consultant, as defined in Paragraph 13.11, or the Contractor; or by the substantial failure of performance of the Owner unless the services are required due, in whole or in part, to negligence or substantial breach of this Agreement by the Architect in providing services required by this Agreement.

12.1.3 Preparing to serve or serving as an expert witness for the Owner in connection with any litigation or arbitration unless the services are required due to the negligence of the Architect in providing services required by this Agreement.

12.1.4 Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase.

12.1.5 Making revisions in Drawings, Specifications or other documents when such revisions: 1) are inconsistent with written approvals or instructions previously given by the Owner; 2) are due to causes beyond the control and without the fault and negligence of the Architect or his consultants or agents; 3) represent a change in the scope of program requirements; or 4) are occasioned by changes in applicable building codes during the course of design or construction as allowed by paragraph 8.7 hereof.

12.1.6 Providing services after issuance to the Owner of the Final Certificate for Payment, except for services required during the warranty period as provided herein.

12.1.7 Providing design and other similar services relating to the selection, procurement or installation of furniture, furnishings and related equipment.

12.1.8 Providing services to verify the accuracy of drawings or other information furnished by the Owner in the event such information is not adequate or not available from the Owner.

12.1.9 Preparing supporting data and other services in connection with a change order if the change in the basic compensation resulting from the adjusted Contract Sum is not commensurate with the services required of the Architect.

12.1.10 Providing any other services not otherwise included in this Agreement.

12.1.11 Providing professional services associated with offsite facilities and hydrology studies.

12.1.12 In accordance with the provisions of this Agreement, or if the Owner directs the Architect to perform Additional Services for which an hourly basis of compensation is applicable, charges shall be at the rates set forth in subparagraphs 2.1.3 and 2.1.4 herein.

13. The Owner's Responsibilities

13.1 The Owner shall provide full information regarding its requirements for the Project.

13.2 The Owner shall designate an Owner's representative authorized to act on its behalf with respect to the Project. The Owner or its representative shall examine documents submitted by the Architect and shall make decisions pertaining thereto promptly to avoid unreasonable delay in the progress of the Architect's Work.

13.3 The Owner shall furnish a certified land survey of the site, indicating as applicable: grades and lines of streets and alleys; contours of the site; boundaries; rights-of-way; easements; encroachments; deed restrictions; locations, dimensions and complete data of existing buildings, other improvements and trees; and full information concerning available public and private service and utility lines; and such other information as may be deemed necessary as determined by the Architect.

13.4 The Owner shall furnish the services of a soils engineer when such services are deemed necessary by the Architect, including reports, test borings, test pits, soil bearing values and other necessary operations for determining subsoil conditions as determined by the Architect.

13.5 The Owner shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents unless otherwise provided herein.

13.6 The services, information, surveys and reports required shall be furnished at the Owner's expense. The Architect shall be entitled to rely upon the accuracy and completeness thereof; but nothing contained herein shall excuse the Architect's failure to report to the Owner any deficiency that is discovered or should have been discovered through the Architect's ordinary diligence in using such information, services, reports and surveys.

13.7 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary for the Project.

13.8 If the Owner observes or otherwise becomes aware of any faults or defects in the Project in non-conformance with the Contract Documents, it shall give prompt written notice thereof to the Architect. The Owner is under no express duty to observe the Work for the purpose of discovery of faults or defects.

13.9 The Owner shall furnish information and render decisions required of it without undue delay.

13.10 The Owner shall pay any fees required by any jurisdictional authority, city, town or county in which any building comprising any aspect of the Project is located, in conjunction with any applicable building, plumbing, electrical, fire prevention and mechanical code adopted by the county, city or town in which the Project is located, with the exception of fees charged by authorities for services provided as a convenience to the Contractor.

13.11 The Owner, at its sole discretion, may employ the services of experts, specialty consultants, or a construction manager ("Owner Consultants") to review Construction Documents, submittals and samples, to make periodic site visits and to report to the Owner any defects or deficiencies in the design or construction of the Project. The Architect agrees to review any information provided by the Owner or Owner's Consultants and to respond promptly to such information. Said Owner's Consultants may be designated as the Owner's representatives. Employment of said Owner's Consultants shall not relieve the Architect from any responsibilities or obligations under this Agreement. The Architect shall not be responsible for the acts or omissions of the Owner's Consultant(s).

13.12 Except as otherwise required by this Agreement, Architect shall not be required to furnish any services required to discover, test or remove asbestos, pollutants or other potentially hazardous materials during the course of the Project. If the Architect discovers or is made aware of the existence of such materials, he shall notify promptly the Owner.

14. Construction Cost

14.1 The term "Construction Cost" shall be determined as follows:

14.1.1 For Work for which bids are not received: the Construction Cost shall be the detailed Cost Estimate, provided it is within the Allocated Amount for Construction specified above. If the Cost Estimate is not within the Allocated Amount, then that amount shall be used.

14.1.2 For Work for which bids are received but the work is not performed: the Construction Cost shall be the lowest bona fide bid for base bid and Owner-approved alternates received from a qualified bidder for any or all such work, provided it is within the limits of the Allocated Amount.

14.1.3 For completed construction: the Construction Cost shall be the amount of the successful construction bid, after adding or subtracting, as the case may be, the amount of any Change Order or Orders approved in writing by the Owner.

14.2 Construction Cost does not include the fees of the Architect and the consultants, the cost of the land, rights-of-way, furnishings or equipment purchased by the Owner, or other costs as provided above which are the responsibility of the Owner.

14.3 The Architect, after consultation and in cooperation with the Owner, shall determine what materials, equipment, component systems and types of construction are to be included in the Contract, and shall make reasonable adjustments in the scope of the Project to bring its cost within the Allocated Amount. Any reduction in quality or craftsmanship resulting from any adjustment so made shall be communicated in writing to the Owner with a statement of the cost benefit to the Owner to be derived therefrom and an explanation of the reduced quality or craftsmanship. The Architect may also include in the Contract an alternate or alternates for the purpose of adjusting the Construction Cost to the Allocated Amount.

14.4 If the lowest bona fide bid, the Detailed Cost Estimate or the Statement of Probable Construction Cost exceeds the Allocated Amount (including any bidding contingency) established as a condition of this Agreement, the Owner shall:

- (a) Give written approval of an increase in such fixed limit, or
- (b) Authorize the rebidding of the Project within a reasonable time, or
- (c) Cooperate in revising the Project scope as required to reduce the Probable Construction Cost, or
- (d) Abandon the Project with no further obligation to the Architect under this Agreement, except to pay compensation for services rendered to the time of abandonment.

14.5 The Architect, without additional charge, shall, if the Owner desires, modify the Drawings and Specifications as necessary to bring the Construction Cost within the Allocated Amount. Providing of this service and rebidding of the Project shall be the limit of the Architect's responsibility in this regard and, having done so, the Architect shall be entitled to his fee based on the rebid or rebids, as required, in accordance with this Agreement.

14.6 Statements of Probable Construction Cost and Detail Cost Estimates prepared by the Architect represent his best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has any control over the cost of labor, materials or equipment, the Contractor's methods of determining bid prices, or competitive bidding or market conditions. Accordingly, the Architect cannot and does not guarantee that bids will not vary from any Statement of Probable Construction Cost or other cost estimates prepared by him.

15. Payment to the Architect

15.1 Subject to the other provisions of this Agreement concerning payment to the Architect, payments to the Architect on account of his fee shall be made as follows:

15.1.1 For the Architect's Basic Services associated with the Schematic Design, Design Development, Construction Documents, Bidding and Construction Phases, payments will be made in the amounts stated in paragraph 2 hereof. These phases shall include, architectural, cost estimating, landscape, structural, mechanical, civil and electrical systems.

15.1.2 Payment for the Architect's Basic Services as defined herein shall be made monthly by the Owner in proportion to the service performed.

15.1.3 If a satisfactory proposal is not received for construction of the Project (completely finished in accordance with the accepted Plans and Specifications) then, at no extra cost to the Owner, the Architect and the Owner shall, if the Owner desires, revise the scope of the Project as necessary to obtain a satisfactory proposal, as provided in paragraph 14.5 herein.

15.2 If the proposed Project is abandoned or suspended, in whole or in part, for a period of more than one hundred eighty (180) days through no fault of the Architect, the Architect shall be paid the amount provided for in this Agreement for services performed before receipt of written notice from the Owner of such suspension or abandonment, together with reimbursable expenses then due that have been previously approved by the Owner, but in no event shall said compensation exceed the limits established by Title 34 of the Arizona Revised Statutes except for reimbursable expenses and additional service fees, which limit the parties hereto agree to as a matter of contract.

15.3 Payments for approved Additional Services and Reimbursable Expenses shall be made monthly upon presentation of the Architect's Statement of Services Rendered. All payments due hereunder shall be considered delinquent if not made within thirty (30) days after presentation. Delinquent payments shall bear interest at the then effective legal rate on judgments in Arizona.

15.4 Upon final payment of the Architect's Fee, the Owner shall be in receipt of a certificate from the Architect that all fees due engineers and other consultants have been paid or will be paid within thirty (30) days.

16. Architect's Insurance

16.1 The Architect agrees to obtain and maintain errors and omissions liability insurance providing coverage for the Architect's malpractice, if any, in his performance of the Agreement, including the warranty period, in an amount not less than One Million Dollars (\$1,000,000.00) for each occurrence. The Architect agrees to provide the Owner with a Certificate of Insurance from his insurance carrier which evidences maintenance of that insurance within ten (10) days of the date he executes this Agreement. The Certificate of

Insurance furnished to the Owner shall provide that the Owner will be notified by the insurance company, regardless of whether the Architect does so or not, not less than thirty (30) days prior to any cancellation or reduction in coverage of the policy that occurs during the performance of this Agreement.

16.2 The Architect will purchase and maintain workers' compensation and employer's liability insurance in conformity with state law. In addition, he will purchase comprehensive general liability insurance with bodily injury limits of \$1,000,000 per occurrence, property damage limits of \$500,000 per occurrence, including completed operations, personal injury (as protection against claims arising out of, but not limited to, libel, slander, false arrest and defamation of character), and contractual coverages. Certificates of Insurance evidencing such coverage will be supplied to the Owner and will have a clause providing that fifteen (15) days written notice of the proposed action will be given to the Owner by the insurance company before cancellation, reduction, restriction or limitation of coverage, which notice shall be evidenced by a return receipt of a registered or certified letter.

17. Indemnification

17.1 The Architect shall indemnify and save harmless the Owner from and against all claims, suits, actions, liability, loss, damage and expense caused by the negligence, recklessness or intentional wrongful conduct of the Architect or any subcontractor of the Architect under this Agreement or any of their respective agents or employees in connection with the provision of services pursuant to this Agreement.

18. The Architect's Accounting Records

18.1 Records of the Architect and its consultants pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the Owner or its authorized representative during normal business hours. Such records shall be maintained for at least three (3) years after final payment to the Architect is made.

19. Termination of Agreement

19.1 This Agreement may be terminated by either party upon seven (7) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the other. Such notice shall identify the event or circumstance of non-performance and the party receiving such notice shall have seven (7) days to cure. This provision shall not be construed to prevent the non-defaulting party from recovering damages occasioned by said default or pursuing any other remedy available to it at law or in equity.

19.2 This Agreement may be terminated by the Owner upon seven (7) days written notice should funds not be available to continue the Project or should the Owner determine, in the exercise of its sole discretion, such termination to be in the best interest of the Owner. In the event of such termination, the Architect shall be entitled to payment for his services rendered as of the date of termination as his sole remedy against the Owner.

20. Ownership of Documents

20.1 The Owner and the Architect agree that all notes, designs, Drawings, Specifications and other technical data produced in the performance of this Agreement are the property of the Architect as instruments of professional service and shall remain in the physical possession and control of the Architect. The Owner and the Architect agree that neither party shall make any use of said work product without the written permission of the other party. Nothing in this subparagraph shall be construed to prevent either party from withholding its consent to further use of the work product until reasonable compensation has been agreed upon. Nothing herein shall obligate the Owner to pay compensation to the Architect for use of said work product in connection with the repair, reconstruction or construction of additions to the Project so long as Owner releases Architect from all liability for such reuse.

20.2 The Architect agrees that duly authorized representatives of the Owner shall have access, at reasonable times, to inspect and make copies of all designs, Drawings, Specifications, Shop Drawings and other submittals by the Contractor or other technical data pertaining to the Work to be performed under this Agreement.

20.3 The Architect agrees that the Owner may retain and use maintenance manuals, Record Drawings, copies of Shop Drawings and other technical data as provided in the Contract.

21. Successors and Assigns

21.1 The Owner and the Architect each binds himself, his partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of each party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign, sublet or transfer his interest in this Agreement without the prior written consent of the other.

22. Extent of Agreement

22.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations and agreements, both written and oral. This Agreement may be amended only by written instrument signed by both the Owner and the Architect and executed with the same formality as this Agreement.

23. Applicable Law

23.1 Unless otherwise specified, this Agreement shall be governed by the laws of the State of Arizona and the county and municipality, if any, in which the Project is located.

24. Claims

24.1 Any claims of whatever nature made in connection with this Agreement shall be made to the District Representative, pursuant to the School District Procurement Rules, Rules R7-2-1155 *et seq.*, Arizona Administrative Code.

25. Attorneys' Fees

25.1 In the event any of the parties to this Agreement take legal action or other steps to enforce the terms of the Agreement, the prevailing party or parties shall be entitled to recover their expenditures, including but not limited to reasonable attorneys' fees, costs of tests, inspections and reports by experts, costs of exhibit preparation, expert witness fees and court costs, from the party or parties at fault.

26. Compliance with Immigration Laws and Regulations

1. Architect shall comply with applicable State of Arizona and federal immigration laws and regulations.

1.1 Architect shall warrant compliance with all federal immigration laws and regulations that relate to their employees and that they have verified employment eligibility of each employee through the E-Verify Program pursuant to the provisions of A.R.S. § 23-214.

1.2 Architect further acknowledges that the Owner shall have the right to inspect the papers of Architect and any consultants and subconsultants who work on the Project to ensure compliance with this paragraph by the Architect and its subconsultants of every tier.

1.3 Architect shall facilitate enforcement of this paragraph by providing notice to his employees and supervisors and by requiring that each subconsultant of every tier provide notice of this provision to their employees.

2. Architect acknowledges that a breach of this warranty shall be deemed a material breach of the Agreement and subject Architect to penalties up to and including termination of the Agreement.

27. Compliance with Fingerprinting Requirements

1. Architect shall comply with the requirements of A.R.S. §§ 15-512(H) regarding the fingerprinting of employees of Architect, consultants of every tier and vendors who are likely to have unsupervised contact with pupils as determined by the Owner, in its sole discretion. Architect shall be responsible for payment of all costs associated with compliance with A.R.S. §§15- 512(H).

28. Cancellation

1. This Agreement is subject to cancellation by the Owner for violation of the provisions of A.R.S. § 38-511.

29. Israel Boycott

1. The Architect hereby certifies that it is not currently engaged in, and agrees for the duration of the Agreement, not to engage in, a boycott of Israel.

THE OWNER AND THE ARCHITECT hereby agree to the full performance of the covenants contained herein.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement at a legally convened meeting of the Governing Board of Vail Unified School District No. 20.

OWNER:

VAIL UNIFIED SCHOOL DISTRICT NO. 20

By _____
Its _____

ARCHITECT:

By _____
Its _____

APPROVED AS TO FORM:
DeCONCINI McDONALD YETWIN & LACY, P.C.

By _____
Spencer A. Smith

APPENDIX A
SCOPE OF WORK

APPENDIX B

PROJECT SCHEDULE

Schematic Design Documents Complete	_____
Design Development Documents Complete	_____
Construction Documents Complete	_____
Bidding	_____
Construction Complete	_____

APPENDIX C

Key Personnel and Consultant List

A. Architect's Key Personnel

Job Title:	Name:
Project Manager	_____
Project Designer	_____
Project Architect	_____
Design Architect	_____
Project Architect	_____

B. Consultant's List

Local Architect	_____
Civil Engineer	_____
Cost Estimating	_____
Mechanical Engineer	_____
Structural Engineer	_____
Electrical Engineer	_____
Landscape Architect	_____
Kitchen Consultant	_____
Other Consultants	_____

