

MT. DIABLO UNIFIED SCHOOL DISTRICT
1936 Carlotta Drive
Concord, CA 94519

AGREEMENT BETWEEN
MT. DIABLO UNIFIED SCHOOL DISTRICT
AND INDEPENDENT CONTRACTOR

THIS AGREEMENT is made this _____ day of _____, by and between the Mt. Diablo Unified School District (hereinafter "District") and _____ (hereinafter "Contractor").

District hereby engages Contractor to render services under the terms and conditions of this Agreement.

1. Performance of Services

- (a) Contractor agrees to perform the services described on Exhibit "A" (hereinafter "Services") on page 5 of this Agreement as an independent contractor. Contractor will determine the means, manner, method, and details of performing the Services. Contractor shall be responsible for providing the materials, tools and transportation necessary for the performance of the services. Contractor may, at Contractor's own expense, use non-District employees to perform the Services under this Agreement. Subcontractors may be used only with the written approval of the District.
- (b) Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of the District. Contractor shall be solely responsible for the professional performance of the services, and shall receive no assistance, direction, or control from District. Contractor shall have sole discretion and control of Contractor's services and the manner in which they are performed.

2. Compensation. District agrees to compensate Contractor for the performance of the services on the following basis:

Not to exceed \$ _____ for Services.

The basis of the fee for Services shall be as follows:

- a. \$ _____ per hour, b. \$ _____ per day, or c. \$ _____ per engagement.

_____ - _____ - _____ - _____ - _____ - _____ - _____ - _____ - _____ - _____ \$ _____

_____ - _____ - _____ - _____ - _____ - _____ - _____ - _____ - _____ - _____ \$ _____

_____ - _____ - _____ - _____ - _____ - _____ - _____ - _____ - _____ - _____ \$ _____

BUDGET CODE(S)

Check One:

- Partial Payments: Contractor shall invoice District on a monthly basis or as agreed to for all hours worked pursuant to this Agreement.
- Partial Payments: District shall make a payment per schedule detailed in Exhibit A. District Administrator will verify invoice indicating that all required services have been performed by each timeline.
- Payment in Full: Contractor shall invoice District on completion of services. District Administrator will verify invoice indicating that all required services have been performed.

Contractor shall be responsible for all expenses incurred in association with the performance of the Services.

3. Term and Termination. This Agreement will become effective on _____. This Agreement will terminate upon the completion of the Services or when terminated as set forth below.

Either party may terminate this Agreement at any time by giving thirty (30) days written notice to the other party. Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notice to the breaching

party. Termination shall be effective immediately on receipt of said notice. Upon termination of this Agreement, District will compensate Contractor only for services satisfactorily rendered to the date of termination.

4. Relationship of the Parties. Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Contractor be considered an employee of District within the meaning of any federal, state, or local law or regulation including, but not limited to, laws or regulations governing unemployment insurance, old age benefits, workers' compensation, industrial illness or accident coverage, taxes, or labor and employment in general. Under no circumstances shall Contractor look to District as his/her employer, or as a partner, agent, or principal. Contractor shall not be entitled to any benefits accorded to District's employees, including, without limitation, workers' compensation, disability insurance, vacation, or sick pay. Contractor shall be responsible for providing, at Contractor's expense, and in the Contractor's name, disability, workers' compensation or other insurance, as well as licenses and permits usual or necessary for conducting the Services hereunder.

Contractor shall pay, when and as due, any and all local, state and federal income or other taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide District with proof of said payments upon demand.

5. Fingerprinting and Criminal Records Check of Contractor's Employees. Contractor shall comply with the provisions of California Education Code §45125.1 regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of the contractor and/or its employees. To the extent Education Code §45125.1 is applicable, Contractor shall not permit any employee to have any contact with District pupils until such time as Contractor has verified in writing to the governing board of the District that such employee has not been convicted of a felony, as defined in Education Code §45125.1. Contractor shall provide the certification document attached hereto as **Exhibit ____** prior to commencing work under this Agreement.

6. Rules and Regulations. All rules, policies, and regulations of the Mt. Diablo Unified School District Board of Education and all federal, state, and local laws, ordinances and regulations are to be observed strictly by Contractor pursuant to this Agreement.

7. Indemnification. Contractor shall hold harmless, defend and indemnify District and its officers, elected and appointed officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in this agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the District.

8. Insurance. Contractor shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit (with aggregate limit no less than **\$4,000,000**). **EXCEPTION:** Contracts of less than \$7,500 need only provide general liability insurance of \$1,000,000 per occurrence.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with a limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Other Coverages When Applicable:**

- a. **Professional Liability/Errors & Omissions Liability:** \$1,000,000/occurrence, \$2,000,000/aggregate.
- b. **Sexual Abuse and Molestation Coverage:**
- c. **Cyber Insurance:**
- d. **Other:**

If the contractor maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the contractor.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The District, its officers, officials, employees, and volunteers are to be named as additional insured by endorsement to the Commercial General Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations.

Primary Coverage

For any claims related to this contract, the Contractor’s insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the District.

INSURANCE REQUIREMENTS

No waiver will be granted to eliminate the insurance requirements outlined in this contract. However, in special circumstances, certain insurance requirements may be modified or waived. The following items in Insurance, Section 8, are hereby waived or modified as follows (note, a waiver for one type of insurance does not constitute waiver for all):

Limits: _____

Other: _____

The initials of the Superintendent, or his/her designee, and the General Counsel, are **required** to waive or modify any Insurance requirements in this Agreement:

Superintendent or
his designee

General Counsel

- 9. Ownership of Designs and Plans. Contractor agrees that all designs, plans, reports, specifications, drawings, schematics, prototypes, models, inventions and all other information and items made during the course of this Agreement and arising from the Services shall be owned by and assigned to District as its sole and exclusive property.
- 10. Limitation of District Liability. Other than as provided in this Agreement, District’s financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
- 11. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and either personally delivered or deposited in the United States mail,

registered or certified mail, postage prepaid, return receipt required, or sent by telegram, overnight delivery service, or facsimile transmission, addressed as follows:

DISTRICT

CONTRACTOR

Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, CA 94519-1397
Attn: Superintendent

Bus. Name: _____
Attn: _____
Address: _____

Phone: _____
Fax: _____
Email _____
Tax ID #: _____

Any notice personally given or sent by telegram or facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the next business day following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 12. Entire Agreement of Parties. This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both parties.
- 13. California Law. This Agreement shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Contra Costa County, California.
- 14. Attorneys' Fees. If either party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover its costs of suit as awarded by a court of competent jurisdiction, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to its costs or attorneys' fees.
- 15. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 16. Equal Employment Opportunity. It is the policy of the District that, in connection with all work performed under District agreements, there shall be no discrimination against any employee or applicant for employment because of race, color, religious creed, national origin, ancestry, marital status, sex, sexual orientation, age, disability or medical condition and therefore the Contractor agrees to comply with applicable federal and state laws. In addition, the Contractor agrees to require like compliance by all subcontractors employed on the work.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

MT. DIABLO UNIFIED SCHOOL DISTRICT

Name of Company/Organization or Independent Contractor/Consultant

By: _____
Signature of Principal/Budget Administrator Date

By: _____
Signature of Contractor/Consultant Date

Title: _____
Print Name and Title

Title: _____
Print Name and Title

Purchase Requisition # _____

Authorized and Approved by:

Superintendent/Designee

Date

Prior to commencement of service, sign and forward completed original contract packet to Purchasing.

Originator's Signature

Date

Site/Department Originating this Contract

Print Name of Originator and Title

Billing Address if reimbursed by outside agency—i.e. ASB, PTA, PFC

<p><i>Distribution</i> <i>original: Purchasing with Purchase Order</i> <i>copy: Contractor</i> <i>copy: Accounts Payable/Fiscal</i> <i>copy: Originator/Budget Administrator</i></p>
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EXHIBIT “A”

LIST OF SERVICES, INCLUDING DATE(S), TO BE PERFORMED BY CONTRACTOR

**IF PARTIAL PAYMENTS ARE TO BE MADE TO CONTRACTOR ON A SCHEDULE
AS INDICATED ON PAGE 1, PLEASE LIST PAYMENT SCHEDULE HERE
(NOTE THAT ALL PAYMENTS ARE GENERATED FROM AN INVOICE).**

EXHIBIT "B"

Contractor REQUIRED to Complete

FINGERPRINTING AND CRIMINAL BACKGROUND CHECK CERTIFICATION

Name of Contractor:		
Services to be performed under the Agreement:		
School(s) and Specific Location(s) where services will be performed:		
Term of Agreement:		
<i>Check the applicable box(es) and fill in any blanks.</i>		
1	<input type="checkbox"/>	The Contractor hereby certifies that it has completed the criminal background check requirements of Education Code (EC) section 45125.1 and that none of its employees that may come into contact with District students have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c). The following employees have successfully completed fingerprinting and criminal check clearance in accordance to law: (attach and sign additional pages, as needed)
2	<input type="checkbox"/>	The Contractor hereby certifies that its employees/subcontractors will have NO CONTACT with pupils. (No school-site services will be provided.)
3	<input type="checkbox"/>	The Contractor hereby certifies it qualifies for a waiver of the Department of Justice (DOJ) fingerprint and criminal background investigation for the following reason: Contractor and its employees/subcontractors will have LIMITED CONTACT with pupils. (Attach and sign additional page(s) with information about length of time on school grounds, proximity of work area to pupil areas; whether Contractor/its employees will be working by themselves or with others, whether Contractor will be under continued monitoring/surveillance by a District employee (provide name and title of District employee) and any other factors that substantiate limited contact.) [EC 45125.1 (c)]

Certification by Contractor

"I certify under penalty of perjury that the information provided herein is true and accurate. I further acknowledge that during the term of my Agreement with the District, if I learn of additional information which differs from the responses provided above, I promise to forward this additional information to the District immediately."

Authorized Contractor Signature

Print Name

Date

PROPOSAL FOR CONSULTANT SERVICES AND AGREEMENT**1.0 INTRODUCTION**

- 1.1 **ARCH♦PAC, INC.**, - herein referred to as "CONSULTANT," proposes to provide architectural design services to **MOUNT DIABLO UNIFIED SCHOOL DISTRICT**, from now on referred to as "DISTRICT" for the following Project:

Replace the existing 25yd by 25m pool plaster, and tile has a shallow end (3' -6" deep) and a deep end of 12'-6" deep with steps in the shallow end. The Work generally consists of removing the existing pool plaster and the waterproofing inside the continuous gutter and surge tank. In the process of plaster removal, the floor inlets, main drain covers, and cyclac steps will require replacement. The rim-flow style gutter grate should also be ready to replace.

The replacement pool will be 25 meters by 25 yards: 6,152sf, a perimeter of 314 lf., with shallow end steps. The shallow end is 3' -6" to 4' -6" deep. The greater part of the pool is 7' -0" deep (2 meters for water polo), except within the diving well, which will be 12'-6" deep. The approximate volume of the pool is 368,136 Gallons, and the proposed turnover rate will remain the same at 1,022 gallons per minute. The pool has a continuous deep "rim-flow" style gutter with floor inlets. The pool after main drain grate replacement will satisfy the Virginia Graeme Baker Act requirements and the DOJ requirements for ADA and access. The pool will accommodate a 25meter water polo course with floating goals and competitive use and practice. The shallow end is for learning to swim programs and teaching immediately adjacent to the steps.

The expansion joint sealant around the pool between the bond beam and pool deck will need new sealant, as will all the expansion joints in the deck work.

2.0 SCOPE OF WORK

- 2.1 CONSULTANT shall provide architectural design and engineering services as from now on described for the following design program elements:
- 2.1.1 **25M x 25YD** competition pool with shallow end steps replaster
 - 2.1.2 Pool recirculation floor inlets, cyclac steps, and main drain covers
 - 2.1.3 Pool Rim-Flow Gutter Grate
 - 2.1.4 Pool Deck Sealant replacement
 - 2.1.5 Pool Tile – Lane Lines, targets, waterline tile with coping
 - 2.1.6 Pool Tile warning & depth markers
 - 2.1.7 Drain Pool and refill to cure plaster
 - 2.1.8 Water polo course markers
 - 2.1.9 Waterproofing gutter and surge tank
 - 2.1.10 Pool underwater lights – replace with LED fixtures
 - 2.1.11 Cure and clean plaster
 - 2.1.12 Replace any missing rope anchors.

3.0 SCOPE OF SERVICES is based on the following assumptions. The CONSULTANT's services, schedule, and compensations shall be adjusted accordingly if any ultimate facts or events differ from the following assumptions.

- 3.1 Design Development Phase:
- 3.1.1 Based upon the DISTRICT review of the Preliminary Design and any authorized adjustments, proceed with Design Development consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, materials, and such other elements as may be appropriate for review by DISTRICT. Design Development deliverables shall include the following:
 - a) Pool layout plan views in scale
 - b) Pool Longitudinal and Latitudinal cross-sections/elevations
 - c) Typical details – germane to design
 - d) Outline specification in CSI format – catalog cuts if needed

COLLEGE PARK HIGH SCHOOL REPLASTER PLEASANT HILL, CA

- 3.2 Construction Documents Phase:
- 3.2.1 Based upon the review of Design Development Documents and any adjustments in the scope, quality, construction budget, or authorized changes by DISTRICT, the CONSULTANT shall prepare, for permitting and approval, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for construction of the Project. Deliverables shall include the following:
- a) Architectural Drawings:
 - A0-1 Cover Sheet
 - A1-1 Campus Plan
 - SP1-2 Pool Area Site Plan
 - SP2-1 Pool Plan
 - SP3-1 Pool Section Elevations
 - SP9-1-2 Pool Details
 - b) Electrical Drawings:
 - Underground conduit/wiring layout.
 - Electrical underwater lighting details
 - Bonding & Grounding
 - c) Miscellaneous:
 - Technical specifications in CSI format.
- 3.2.2 CONSULTANT shall assist the DISTRICT in preparing the necessary bidding information, bidding forms, the Conditions of the Contract, and the Agreement between the District and the Contractor related to the design program elements.
- 3.2.3 CONSULTANT shall assist the DISTRICT in connection with the DISTRICT'S responsibility for filing documents required to approve by governmental authorities having jurisdiction.
- a) County Health Department
 - b) Department of the State Architect
- 3.3 Bidding Phase:
- 3.3.1 CONSULTANT, following DISTRICT'S approval of the Construction Documents, shall assist the DISTRICT in obtaining bids or negotiated proposals and assist in awarding and preparing construction contracts. Services provided by CONSULTANT during this phase:
- a) Assist the DISTRICT in preparation of addenda.
 - b) Assist DISTRICT in responding to Contractor requests for clarification of the Construction Documents.
 - c) Assist DISTRICT in the review of bids and proposals to determine the lowest responsive bidder.
 - d) Make approved DSA and County Health Documents available for reproduction during the bidding process as PDF files.
- 3.4 Construction Administration Phase:
- 3.4.1 CONSULTANT shall be a representative of and shall advise and consult with the DISTRICT during construction until the final payment to the Contractor is due, or DISTRICT assumes the use of the Project. CONSULTANT shall have the authority to act on behalf of the DISTRICT only to the extent provided herein. CONSULTANT shall provide the following construction support services:
- a) Provide clarification, as required, of construction documents and respond to contractor requests for information.
 - b) Review and approve sample and material submittals specified in Contract Documents dealing specifically with design program elements.
 - c) Assistance with the issuance and negotiation of change orders.

d) Review of "as-built" documents created by the Contractor's notated fieldset of contract documents.

3.4.2 CONSULTANT shall visit the site to become observe and be familiar with the Work's progress and quality and determine if the Work is being performed in a manner indicating that the Work, when completed, will be by the Contract Documents. CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the Work's quality or quantity. CONSULTANT shall inform the DISTRICT about the Work's progress and quality and shall endeavor to guard DISTRICT against defects and deficiencies in the Work.

a) CONSULTANT shall visit the offices of the DISTRICT and the Project Site during the Construction Phase - Three (3) site visits included in the base fee (except reimbursable expenses). Additional visits upon request as an additional service see Section 5.3, Personal visits to DSA or County Health will count towards this obligation.

b) Submittal of DSA closeout documentation.

4.0 EXCLUSIONS TO SCOPE OF SERVICES

4.1 DISTRICT shall set forth design objectives, constraints, and criteria, including space requirements and relationships, flexibility and expandability, special equipment, systems, and site requirements. Additional information that the CONSULTANT may require may include:

4.1.1 Civil/Site Work:

a) As-built drawings of existing pool and campus plan with DSA numbers & routes of travel.

b) Geotechnical & Soils testing/engineering, including the finalized geotechnical investigation report with CGS certification.

c) Utility design from off-site (outside pool area) to pool mechanical equipment room points of connection, including (assumes utilities are on-site and readily available)

4.1.2 Building Design:

a) ADA and path of travel (egress & access) to portions of the Project in adjacent buildings, parking areas, elsewhere on campus. Outside pool enclosure.

b) ADA modifications to adjacent bathroom facilities and drinking fountains, toilets, sinks, and showers.

4.1.3 Landscape Design:

a) Hardscape plan, including retaining walls, walkways, fencing, etc.

b) Planting plan.

c) Irrigation plan.

4.1.4 Miscellaneous:

a) Plan check and permit fees required by local regulatory agencies.

b) The expense of renderings, models, and mock-ups as may be requested by DISTRICT.

c) Cost to re-format specifications into a format other than Arch-Pac's standard CSI format. We will submit specifications as PDF files for reproduction as may be required.

d) Cost of Local taxes and licenses.

e) Fire sprinkler system in the mechanical building if required

f) Site utilities beyond the pool area

g) LEED Certification on any level or alternative design methods after completion of Design Development Documents.

h) Transfer of documents from one plan check entity to another shall be the DISTRICTS' responsibility.

5.0 COMPENSATION

- 5.1 DISTRICT shall compensate CONSULTANT for services rendered as follows:
- 5.1.1 Basic Services: The Scope of Services described above shall be compensated for by a lump sum, a fixed fee (see attached plan and budget), of **Thirty-Three Thousand & no/100's (\$33,000.00)**.
- 5.1.2 Additional Services: If requested, additional services will be billed hourly, in conformance with the rates outlined in Article 5.3 below.
- 5.1.3 Reimbursable Expenses:
- a) Reimbursable expenses will be billed at CONSULTANT'S cost plus 10%, and shall include the following:
- Reproduction expense of Drawings, Specifications, and other documents beyond the single set of hard copies submitted for DISTRICT approval upon completion of each phase.
 - Special delivery and handling of documents and correspondence.
 - Travel expense associated with the Project for site visits and meetings with the DISTRICT or others on the DISTRICT's behalf, on-site at DISTRICT's office or other project-related entities such as DSA or County Health Department. (See 5.3.5 below)
- 5.2 Terms of Payment:
- 5.2.1 Payments for Basic Services shall be made based upon a percentage of completion in not less than monthly installments, in conformance with the following schedule of values:
- | | |
|--|------|
| a) Design Development Phase - | 25% |
| b) Construction Documents Phase - | 50% |
| c) DSA Approval - | 5% |
| d) Bidding - | 5% |
| e) Construction Administration Phase - | 15%* |
| Due before last field visit | 100% |
- 5.3 Hourly Rates: (should hourly rates for additional services be required)
- 5.3.1 Principal Architect &/or Engineer \$ 200.00 per hour
- 5.3.2 Associate \$ 175.00 per hour
- 5.3.3 CAD Technician \$ 150.00 per hour
- 5.3.4 Clerical \$ 100.00 per hour
- 5.3.5 Site Visits or meetings beyond the three included within 3.4.2. Are available on a fixed fee basis, including per diem hourly rates, and includes expenses without affecting the limitation in 5.1.3. On an as-requested basis at \$2,000.00 each or per day.

6.0 SCHEDULE

- 6.1 CONSULTANT shall prosecute design work in conformance with the following schedule, contingent upon receipt of all required information (program, base sheets, soils data, etc.) from DISTRICT or DISTRICT'S designated representative:
- 6.1.1 Design Development Phase: Complete within (30) days calendar days of review and approval of Preliminary Design Documents and authorization to proceed with Construction Documents.
- 6.1.2 Construction Documents Phase: Complete within forty-five (45) calendar days of review and authorization to proceed with Construction Documents.
- 6.1.3 Bidding & Award: Complete within Forty-Five (45) calendar days of approval of Construction Documents.
- 6.1.4 Construction Observation: Complete approximately three months of the award to the Contractor.

7.0 MISCELLANEOUS PROVISIONS

- 7.1 **COPYRIGHTS:** Drawings, Specifications, and other documents prepared by the CONSULTANT are an article of service and for use solely concerning this Project. The CONSULTANT shall be deemed the author of these documents and shall retain all Copyrights. The DISTRICT may retain copies, including reproducible drawings, connected with the Project's use and occupancy. Submittal of documents to meet regulatory requirements and bidding is not to be construed as "publication." Permission for reuse must be sought and conferred in writing upon request to the Copyright holder if granted.
- 7.2 **SUSPENSION OR WORK OR TERMINATION:** Termination, suspension, or abandonment. The DISTRICT may terminate this Agreement without cause upon not less than seven (7) day's written notice. If the Project is suspended for more than 30 consecutive days, the CONSULTANT shall be compensated for services performed before the suspension. The Agreement may be terminated for cause by the CONSULTANT. Failure of DISTRICT to make payment when due is grounds for suspension of services and with notice termination of the contract. The CONSULTANT shall have no liability to the DISTRICT for delay or damage caused by the suspension of services or termination or abandonment if done for the cause.
- 7.3 **JURISDICTION:** This Agreement shall be governed by the State law California – venue shall be that of the CONSULTANT.
- 7.4 **ASSIGNMENT;** this Agreement and any rights or deliverables hereunder may not be assigned or transferred without the express written consent of both the DISTRICT & CONSULTANT. This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the DISTRICT & CONSULTANT.
- 7.5 **INTEGRATION;** This Agreement represents the entire and integrated Agreement between the DISTRICT & CONSULTANT and supersedes all prior negotiations, written or oral representations, and may be amended only in writing and signed by both parties.
- 7.6 **THIRD PARTIES;** nothing in this Agreement creates a contractual relationship or cause of action with any third party.
- 7.7 **HAZARDOUS MATERIALS;** the CONSULTANT has no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials that may exist on the project site, including (asbestos, PCB's, lead, or other toxic substances).
- 7.8 **COST ESTIMATES;** the CONSULTANT will make every attempt to ensure that the bidding process renders a project within budget. However, it is understood that the CONSULTANT has no real control over the marketplace and is therefore not responsible for any lack of competition or failure to predict the marketplace's nature during the bid process.
- 7.9 **COLLECTION:** Should attorney's fees be required to collect any amounts agreed, the DISTRICT shall bear the cost of fee collection in addition to amounts owed. Amounts due over 30 days shall compound interest at 12% annually.
- 7.10 **DISPUTED INVOICES:** If DISTRICT objects to any portion of an invoice, the CONSULTANT shall be so notified within ten (10) working days of the receipt of the invoice. The objection's specific cause shall be identified, and the remainder of the invoice not in dispute shall be paid when due. Disputed amounts resolved in the CONSULTANTS favor shall be compensated per Section 7.10
- 7.12 **ELECTRONIC FILES;** Communication and information transfer are conducted for this Project in electronic form, including e-mail and PDF protocol transfers. CADD and Word processing files are not the basis for file transfer. Adobe Acrobat's latest edition is assumed to be owned by both parties. Transfer of files to the District is in no way deemed a sale or transfer to the DISTRICT, and CONSULTANT makes no warranties, either express or implied. CONSULTANT shall not be liable for indirect or consequential damages resulting from the DISTRICT'S use or reuse of electronic files.
- 7.13 **REFERENCES:** Reference is herein given to AIA Standard Documents B101 & A201, from which terms and conditions are defined.

- 7.14 **UNENFORCEABLE CLAUSES:** Should any of the provisions or terms of this Agreement be unenforceable, they may be deleted so that the remainder of the contract survives and remains enforceable.
- 7.15 **STANDARD OF CARE;** services shall be performed in a manner consistent with professional skill and care and the Work's orderly progress. CONSULTANT represents that its employees, agents, and subcontractors will follow their profession's standards in performing all services under this Agreement and shall endeavor to comply with all Codes and Rules. CONSULTANT's services shall be provided consistent with and limited to the standard of care applicable to such services. The CONSULTANT shall provide its services consistent with the professional skill and care ordinarily provided by CONSULTANTS practicing in the same or similar locality under the same or similar circumstances.
- 7.16 **INDEPENDENT CONTRACTOR;** CONSULTANT is an independent contractor and not an employee of the DISTRICT.
- 7.17 **INSURANCE:** CONSULTANT shall provide the following:
- a) Workers Compensation & Employers Liability Insurance \$1,000,000.00
 - b) Commercial General and Auto Liability Insurance \$1,000,000.00
 - c) Professional Liability Insurance \$2,000,000.00
 - d) General Liability Policy \$1,000,000.00 (listing District as additional insured)
- 7.18 **CORPORATE PROTECTION:** The parties intend in this Agreement that the CONSULTANT'S services connected with the Project shall not subject the CONSULTANT'S employees, officers directors to any personal legal exposure for the associated risks with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the DISTRICT agrees that as the DISTRICT'S sole and exclusive remedy, any claim, demand, or suit shall be directed and/or asserted only against the CONSULTANT, a California corporation, and not against any of the CONSULTANT'S employees, officers or directors.
- 7.19 **LIMITED SCOPE:** The CONSULTANT shall not be responsible for the acts or omissions of the DISTRICT, District, Contractors, other CONSULTANTS, their respective agents, or employees, or any other persons or entities performing Work on the Project. The CONSULTANT will be entitled to rely on the adequacy and accuracy of information provided by the DISTRICT or DISTRICT'S CONSULTANTS and representatives. They are not under the direct control or authority of the CONSULTANT.
- 7.20 **CONSULTANT SERVICES** shall be limited to those expressly set forth above. The CONSULTANT shall have no other obligations or responsibilities for the Project or the DISTRICT except as agreed to in writing or provided in this Agreement. All of the CONSULTANT's services in any way related to the Project or DISTRICT shall be subject to the terms of this Agreement.
- 7.21 **ADDITIONAL – EXCLUDED SERVICES AND ASSUMPTIONS.** Additional Services will be subject to review and pre-authorization by both Parties. Where the CONSULTANT believes additional services are appropriate, sit shall notify the DISTRICT. The DISTRICT shall respond within three (3) business days to such notification. Suppose the DISTRICT does not respond within such a period, at its option and based on its professional judgment. In that case, the CONSULTANT may proceed with such services on a time-and-material basis to be paid by the DISTRICT or decline to proceed with such services based on a lack of authorization.
- 7.22 **WARRANTY;** none expressed nor implied, CONSULTANT's services and deliverables are not a warranty or guarantee, and CONSULTANT shall have no such obligation. DISTRICT shall provide appropriate contingencies for schedule and costs.
- 7.23 **INTENDED BENEFICIARIES AND USES:** CONSULTANT's services are intended for the DISTRICT's sole use and benefit and solely for the DISTRICT's use on the Project and shall not create any third-party rights. Except as agreed to in writing, CONSULTANT's services and work product shall not be used or relied on by any other person or entity or for any purpose following substantial completion of the Project.

7.24 **USE OF WORK PRODUCT:** DISTRICT acknowledges that its right to utilize the services and work product provided under this Agreement will continue so long as the DISTRICT is not in default under the terms and conditions of this Agreement. The DISTRICT further acknowledges that the CONSULTANT has the unrestricted right to use the services provided under this Agreement and all work product provided under this Agreement.

8.0 AUTHORIZED SIGNATURES

8.1 This proposal is valid for sixty (60) calendar days from **12AUG2021**, is submitted for and on behalf of CONSULTANT by:

ARCH ♦ PAC, AQUATICS



Kenneth Paul Moeller, AIA, ASLA, CSI, LEED AP
Architect & Landscape Architect
kenmoeller@archpac.com (760) 809-1360

8.2 DISTRICT'S acceptance by duly authorized representative sign:

Chief Business Officer

MOUNT DIABLO UNIFIED SCHOOL DISTRICT

COLLEGE PARK CONSTRUCTION COST ESTIMATE

25 YARD x 25 METER SWIMMING POOL

N.F.S.H.S./N.C.A.A. STANDARD SWIMMING/WATER POLO

DESIGN CRITERIA

Surface Area (square feet):	6,152.00
Perimeter (linear feet):	314
Depths (feet):	3.5 - 12.5
Volume (gallons):	368,136.00
Turnover (gallons per minute):	1,022.00



DESCRIPTION	QUANTITY	UNIT	UNIT COST	EXTENSION
ROUGH ELECTRICAL				
Light Niches	14.00	EA	\$1,800.00	to remain
Underwater lights (LED) repull	14.00	LF	\$800.00	\$11,200.00
Bonding	600.00	LF	\$3.00	existing
SUBTOTAL- ROUGH ELECTRICAL				\$11,200.00
CERAMIC TILE				
Waterline Tile	314.00	SF	\$70.00	\$21,980.00
Step nosing	72.00	LF	\$15.00	\$1,080.00
Lane Lines (Tile) & Targets	8.00	EA	\$2,600.00	\$20,800.00
Water polo marks	28.00	EA	\$100.00	\$2,800.00
Depth Markers	26.00	EA	\$100.00	\$2,600.00
Warning Markings	18.00	EA	\$100.00	\$1,800.00
SUBTOTAL- CERAMIC TILE				\$51,060.00
DECK EQUIPMENT				
Recessed Steps, Set of 3	4.00	SET	\$80.00	\$320.00
Lane Line Anchors	20.00	EA	\$90.00	to remain
SUBTOTAL- DECK EQUIPMENT				\$320.00
POOL FITTINGS				
Main Drains	2.00	EA	\$2,000.00	\$4,000.00
Gutter Grating & Drains	314.00	EA	\$25.00	\$7,850.00
Floor Inlet Fittings	40.00	EA	\$100.00	\$4,000.00
SUBTOTAL- POOL FITTINGS				\$15,850.00
WATERPROOFING				
Pool Plaster	7500.00	SF	\$16.00	\$120,000.00
Perimeter Gutter	1100.00	SF	\$10.00	\$11,000.00
Surge Pit	600.00	SF	\$10.00	\$6,000.00
SUBTOTAL- WATERPROOFING				\$131,000.00

DESCRIPTION	QUANTITY	UNIT	UNIT COST	EXTENSION
MISCELLANEOUS				
Clean-up	1.00	LS	\$5,000.00	\$5,000.00
Sealant	1200.00	LF	\$10.00	\$12,000.00
Start-up & Water	1.00	LS	\$3,000.00	\$3,000.00
Start-up Chemicals	1.00	LS	\$2,000.00	\$2,000.00
Maintenance Equipment	1.00	LS	\$5,000.00	\$5,000.00
SUBTOTAL- MISCELLANEOUS				\$27,000.00

SUMMARY OF COSTS:

ROUGH ELECTRICAL		\$11,200.00
CERAMIC TILE		\$51,060.00
DECK EQUIPMENT		\$320.00
POOL FITTINGS		\$15,850.00
WATERPROOFING		\$131,000.00
MISCELLANEOUS		\$27,000.00

TOTAL HARD COSTS**\$236,430.00**

CONTINGENCY	15.00%	\$35,464.50
CONTRACTOR OVERHEAD	12.00%	\$32,627.34
CONTRACTOR PROFIT	10.00%	\$30,452.18
BONDS & INSURANCE	2.75%	\$9,211.79
GRAND TOTAL		\$344,185.81

A&E Fee

9.00%

\$30,976.72