

**AGREEMENT FOR MASTER PLANNING SERVICES  
BETWEEN  
MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT  
AND  
ARTIK ART & ARCHITECTURE**

**NORTH BAYSHORE PRECISE PLAN SCHOOL SITE(S)**

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This Agreement for Master Planning Services (“Agreement”) is made as of **June 15, 2018**, between **Mountain View Whisman School District** (“District”) and **Bill Gould Architectural Corporation, dba Artik Art & Architecture** (“Consultant”) (collectively, the “Parties”), related to the planning and construction of additions to existing school sites, modernization / reconstruction / renovation of existing schools and district facilities and new school construction (“Program”).

The Program may include multiple components. Any one of the components or combination thereof may be changed, including terminated, in the same manner as the Program, as indicated herein, without changing in any way the remaining component(s). The provisions of this Agreement shall apply to each component without regard to the status of the remaining component(s). Consultant shall invoice for each component separately and District shall compensate Consultant for each component separately on a proportionate basis based on the level and scope of work completed for each component.

That for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

**Article 1. DEFINITIONS**

- 1.1. In addition to the definitions above, the following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:
  - 1.1.1. **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
  - 1.1.2. **Consultant:** The entity listed in the first paragraph of this Agreement, including all Consultant(s) to the Consultant.
  - 1.1.3. **Subconsultant(s):** Any and all consultant(s), subconsultant(s), subcontractor(s), or agent(s) to the Consultant.
  - 1.1.4. **Design Team:** The architect(s), engineer(s), and other designer(s) that the District designates as designing all or a portion of a project, including all consultants to the architect(s), engineer(s) or other designer(s), who have a responsibility to the District to design all or a portion of that project either directly or as a subconsultant, subcontractor, or agent.
  - 1.1.5. **Extra Services:** Extra Services are defined herein under the Article entitled “Payment for Extra Services.”
  - 1.1.6. **Fee:** The Consultant’s Fee is defined herein, payable as set forth herein and in **Exhibit B**.
  - 1.1.7. **Service(s):** All labor, materials, supervision, services, tasks, and work that the Consultant is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Program.

**Article 2. SCOPE, RESPONSIBILITIES AND SERVICES OF CONSULTANT**

- 2.1. **Scope:** Consultant shall provide the Services described herein and under **Exhibit A** for the Program.
- 2.2. **Coordination:** In the performance of Consultant’s Services under this Agreement, Consultant agrees that it will maintain such coordination with District personnel and/or its designated representatives as may be requested and desirable. This shall include, without limitation, coordination with all members of the District’s Design Team, construction managers, or other

similar consultants.

- 2.3. Consultant's Services: Consultant shall act as the District's agent to render the Services and furnish the work as described in **Exhibit A**, which will commence upon the receipt of a Notice to Proceed signed by the District representative. Consultant's services will be completed in accordance with the schedule attached as **Exhibit "C."**

**Article 3. CONSULTANT STAFF**

- 3.1. The Consultant has been selected to perform the Services herein because of the skills and expertise of key individuals.
- 3.2. The Consultant agrees that the following key people in Consultant's firm and Subconsultant(s) shall be associated with the Services in the following capacities:

<u>Job Title</u>	<u>Name</u>
Principal In Charge	Bill Gould
Planning Director/Program Manager	Sherry Sajadpour
Project Manager	Maria Madrigal

  

Planning Subconsultant(s) (Fielding Nair International)	Randall Fielding
Planning Subconsultant(s) (Fielding Nair International)	Brian Cho

- 3.3. The Consultant shall not change any of the key personnel listed above without prior written approval by District, unless said personnel cease to be employed by Consultant. In either case, District shall be allowed to interview and approve replacement personnel.
- 3.4. If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice the Consultant shall immediately remove that person from the Program and provide a temporary replacement. Consultant shall within seven (7) days provide a permanent replacement person acceptable to the District. All lead or key personnel for any Consultant must also be designated by the consultant and are subject to all conditions previously stated in this paragraph.
- 3.5. Consultant represents that the Consultant has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of services required under this Agreement and that no person having any such interest shall be employed by Consultant.

**Article 4. SCHEDULE OF SERVICES**

The Consultant shall commence Services under this Agreement upon receipt of a Notice to Proceed, and shall prosecute the Services diligently as described in **Exhibit A** in accordance with the schedule attached as **Exhibit C**. Time is of the essence and failure of Consultant to perform Services on time as specified in this Agreement is a material breach of this Agreement.

**Article 5. TERM**

Unless terminated or otherwise cancelled as permitted herein, the term of this Agreement shall be from . August 23, 2018- May 1, 2020.

**Article 6. FEE AND METHOD OF PAYMENT**

- 6.1. District shall pay Consultant on an hourly basis and/or a per unit basis, as indicated in **Exhibit B**

(Prices for Services). District agrees to pay the Consultant for Services satisfactorily rendered pursuant to this Agreement a total fee not to exceed **Three Hundred Ninety Six Thousand Dollars (\$396,000)** for all services contracted for under this Agreement and based on the provisions and Fee Schedule attached to **Exhibit B**.

- 6.2. The Consultant's Fee set forth in this Agreement shall be full compensation for all of Consultant's Services incurred in the performance hereof as indicated in **Exhibit B**.

**Article 7. PAYMENT FOR EXTRA SERVICES**

- 7.1. District-authorized Services outside of the scope in **Exhibit A** or District-authorized reimbursables not included in Consultant's Fee are "Extra Services." Any charges for Extra Services shall be paid by the District as described in **Exhibit B** only upon certification that the claimed Extra Services were authorized in writing in advance by the District and that the Extra Services have been satisfactorily completed.
- 7.2. A written proposal describing the proposed scope of services and listing the personnel, labor duration, rates, and cost shall be submitted by the Consultant to the District for written approval before proceeding with any Extra Services.

**Article 8. OWNERSHIP OF DATA**

After completion of the Services or after termination of this Agreement, Consultant shall deliver to District a complete set of the planning records, including without limitation all documents generated by Consultant and copies of all documents exchanged with or copied to or from all other planning participants. All records shall be indexed and appropriately organized for easy use by District personnel. All records are property of the District, whether or not those records are in the Consultant's possession.

**Article 9. TERMINATION OF AGREEMENT**

- 9.1. If Consultant fails to perform Consultant's duties to the satisfaction of the District, or if Consultant fails to fulfill in a timely and professional manner Consultant's material obligations under this Agreement, or if Consultant violates any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement effective immediately upon the District giving written notice thereof to the Consultant. In the event of a termination pursuant to this subdivision, Consultant may invoice District for all Services performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Consultant's actions, errors, or omissions that caused the District to terminate the Consultant.
- 9.2. District shall have the right in its sole discretion to terminate the Agreement, all of the Services, or a portion of the Services, for its own convenience. The Consultant, upon written notice from the District of such termination, shall immediately cease performing the Services as indicated in that notice. In the event of a termination for convenience, Consultant may invoice District and District shall pay all undisputed invoice(s) for Services performed until the notice of termination. This shall be the only amount(s) potentially owing to Consultant if there is a termination for convenience.
- 9.3. The Consultant has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement and fails to cure such material default within sixty (60) days, or if the default cannot be cured within sixty (60) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from Consultant. Such termination shall be effective after receipt of written notice

from Consultant to the District.

- 9.4. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.

**Article 10. INDEMNITY**

- 10.1. To the furthest extent permitted by California law and in accordance with California Civil Code section 2782.8, Consultant shall indemnify, protect, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, members, and volunteers (“Indemnified Parties”) from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney’s and consultants’ fees and causes of action, including personal injury and/or death (“Claim(s)”), to the extent that the Claim(s) arises out of, pertains to, or relates to the negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), errors or omissions, or willful misconduct of Consultant, its directors, officials, officers, employees, contractors, subcontractors, consultants, Subconsultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Program, or this Agreement. This indemnity excludes Consultant’s liability as to the active or sole negligence or willful misconduct of the District.
- 10.2. To the furthest extent permitted by California law and in accordance with California Civil Code section 2782.8, Consultant shall defend and pay all costs, expenses and fees to defend the Indemnified Parties, from any and all Claim(s), to the extent that the Claim(s) arises out of, pertains to, or relates to the alleged negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), errors or omissions, or willful misconduct of Consultant, its directors, officials, officers, employees, contractors, subcontractors, consultants, Subconsultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Program, or this Agreement. District shall have the right to accept or reject any legal representation that Consultant proposes to defend the Indemnified Parties.
- 10.3. Consultant’s duty to indemnify and defend under this Agreement is not limited in any way by the amount or type of damages or compensation payable to Consultant or its Subconsultants under applicable policies of insurance, workers’ compensation acts, disability benefits acts, or other employee benefits acts. Consultant’s duty to indemnify and defend under this Agreement shall apply during the term of this Agreement and shall survive any expiration or termination of this Agreement until any such Claim(s) are barred by the applicable statute of limitations and is in addition to any other rights or remedies that the District may have under the law or under this Agreement.

**Article 11. FINGERPRINTING AND BEHAVIOR**

- 11.1. Unless the District has determined pursuant to Education Code section 45125.2 that on the basis of scope of Services in this Agreement that Consultant and its Subconsultants and employees will have only limited contact with pupils, the Consultant shall comply with the provisions of Education Code section 45125.01 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Consultant shall not permit Subconsultants or any employee to have any contact with District pupils until such time as the Consultant has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Consultant’s responsibility shall extend to all employees, agents, and employees or agents of its Subconsultants regardless of whether those individuals

are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant. Verification of compliance with this section and the Criminal Background Investigation Certification (**Exhibit E**) shall be provided in writing to the District prior to each individual's commencement of employment or participation on the Program and prior to permitting contact with any student.

- 11.2. No drugs, alcohol and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, or contractors are to use drugs on these sites.
- 11.3. Unacceptable and/or loud language will not be tolerated. Derogatory language toward students, staff, visitors or the public will not be allowed.

**Article 12. RESPONSIBILITIES OF THE DISTRICT**

- 12.1. The District shall examine the documents submitted by the Consultant and shall render decisions so as to avoid unreasonable delay in the process of the Consultant's services.
- 12.2. The District shall provide to the Consultant complete information regarding the District's requirements for the Program.
- 12.3. The District shall designate an officer, employee and/or other authorized representatives to act on the District's behalf with respect to the Program. The District's representative for the Program shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

**Article 13. LIABILITY OF DISTRICT**

- 13.1. Other than as provided in this Agreement, District's 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.
- 13.2. Any and all costs incurred by District, or for which District may become liable, to the extent caused by negligent delays of Consultant in its performance hereunder, shall be paid to District by Consultant as provided for herein and/or under California law.
- 13.3. District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Consultant, or by its employees, even though such equipment be furnished or loaned to Consultant by District.
- 13.4. The Consultant hereby waives any and all claim(s) for recovery from the District under this Agreement, which loss or damage is covered by valid and collectible insurance policies. Consultant agrees to have its required insurance policies endorsed to prevent the invalidation of insurance coverage by reason of this waiver. This waiver shall extend to claims paid, or expenses incurred, by Consultant's insurance company on behalf of the District.

**Article 14. INSURANCE**

- 14.1. Consultant shall procure prior to commencement of the Services of this Agreement 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 Services hereunder

by the Consultant, their agents, representatives, employees and Subconsultant(s).

- 14.2. **Minimum Scope and limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits:
- 14.2.1. **Commercial General Liability.** Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
  - 14.2.2. **Commercial Automobile Liability, Any Auto.** Two million dollars (\$2,000,000) per accident for bodily injury and property damage.
  - 14.2.3. **Workers' Compensation.** Statutory limits required by the State of California.
  - 14.2.4. **Employer's Liability.** Two million dollars (\$2,000,000) per accident for bodily injury or disease.
  - 14.2.5. **Professional Liability.** This insurance shall cover the Consultant and his/her Subconsultant(s) for two million dollars (\$2,000,000) aggregate limit subject to no more than twenty-five thousand dollars (\$25,000) per claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.
- 14.3. The District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.
- 14.4. **Deductibles and Self-Insured Retention:** Any deductibles or self-insured retention exceeding \$25,000 must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 14.5. **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
- 14.5.1. All policies except for the professional insurance policy shall be written on an occurrence form.
  - 14.5.2. The District, the Consultant, their representatives, consultants, Subconsultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Consultant; instruments of service and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.
  - 14.5.3. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance

maintained by the Additional Insureds shall be in excess of the Consultant's insurance and shall not contribute with it.

14.5.4. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

14.5.5. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

14.5.6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

14.6. **Acceptability of Insurers:** Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A:VII.

14.7. **Verification of Coverage:** Consultant shall furnish the District with:

14.7.1. Certificates of insurance showing maintenance of the required insurance coverage;

14.7.2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before work commences.

**Article 15. NONDISCRIMINATION**

Consultant agrees that no discrimination shall be made in the employment of persons under this Agreement because of the race, national origin, ancestry, religion, age, physical disability, sex, or sexual orientation of such person. Consultant shall comply with any and all regulations and laws governing nondiscrimination in employment.

**Article 16. COVENANT AGAINST CONTINGENT FEES**

Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage fee, gift, or contingency.

**Article 17. ENTIRE AGREEMENT/MODIFICATION**

This Agreement, including the Exhibits hereto, supersedes all previous contracts and constitutes the entire understanding of the parties hereto. Consultant shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both Parties. Consultant specifically acknowledges that in entering this Agreement, Consultant relies solely upon the provisions contained in this Agreement and no others.

**Article 18. NON-ASSIGNMENT OF AGREEMENT**

In as much as this Agreement is intended to secure the specialized services of the Consultant, Consultant may not assign, transfer, delegate or sublet any interest therein without the prior



written consent of District and any such assignment, transfer, delegation or sublease without the District's prior written consent shall be considered null and void. Likewise, District may not assign, transfer, delegate or sublet any interest therein without the prior written consent of Consultant and any such assignment, transfer, delegation or sublease without Consultant's prior written consent shall be considered null and void.

**Article 19. LAW, VENUE**

- 19.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.
- 19.2. The county in which the District administration office is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

**Article 20. ALTERNATIVE DISPUTE RESOLUTION**

All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. If this method proves unsuccessful, then all claims, disputes or controversies as stated above may be decided through arbitration, if agreed to by all Parties.

**Article 21. SEVERABILITY**

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**Article 22. EMPLOYMENT STATUS**

- 22.1. Consultant shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the Consultant performs the services which are the subject matter of this Agreement; provided always, however, that the services to be provided by Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such services.
- 22.2. Consultant understands and agrees that the Consultant's personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee.
- 22.3. Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Consultant is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Consultant which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 22.4. Should a relevant taxing authority determine a liability for past services performed by Consultant for District, upon notification of such fact by District, Consultant shall promptly remit such

amount due or arrange with District to have the amount due withheld from future payments to Consultant under this Agreement (and offsetting any amounts already paid by Consultant which can be applied as a credit against such liability).

- 22.5. A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Consultant shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Consultant is an employee for any other purpose, then Consultant agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Consultant was not an employee.
- 22.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

**Article 23. WARRANTY OF CONSULTANT**

- 23.1. Consultant warrants that the Consultant is properly licensed and/or certified under the laws and regulations of the State of California to provide all the services that it has herein agreed to perform.
- 23.2. Consultant certifies that it is aware of the provisions of the Labor Code of the State of California, that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with those provisions before commencing the performance of the Services of this Agreement.
- 23.3. Consultant certifies that it is aware of the provisions of California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since the Consultant is performing work as part of an applicable "public works" or "maintenance" project, and since the total compensation is One Thousand Dollars (\$1,000) or more, the Consultant agrees to fully comply with and to require its Subconsultant(s) to fully comply with all applicable prevailing wage requirements of the California Labor Code.

**Article 24. COST DISCLOSURE - DOCUMENTS AND WRITTEN REPORTS**

Consultant shall be responsible for compliance with California Government Code section 7550, if the total cost of the Agreement is over Five Thousand Dollars (\$5,000).

**Article 25. COMMUNICATIONS / NOTICE**

Communications between the Parties to this Agreement may be sent to the following addresses:

<b>District</b>	<b>Consultant</b>
Mountain View Whisman School District 750 A San Pierre Way Mountain View, CA 94043 Attn: Robert Clark, Chief Business Officer, Business Services	Artik Art & Architecture 394-A Umberger Road, San Jose, CA 95111 ATTN: Bill Gould

The Parties, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

**Article 26. DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION**

Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises (DVBEs) of at least three percent (3%), per year, of funds expended each year by the District on projects or programs that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the Act). This Program may use funds allocated under the Act. Therefore, to the extent feasible, the Consultant shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBEs in conjunction with the contract, and documentation demonstrating the Consultant’s good faith efforts to meet these goals.

**Article 27. OTHER PROVISIONS**

- 27.1. Neither the District’s review, approval of, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Consultant shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Consultant’s failure to perform any of the services furnished under this Agreement to the standard of care of the Consultant for its Services, which shall be, at a minimum, the standard of care of construction program planning consultant performing similar work for California school districts at or around the same time and in or around the same geographic area of the District.
- 27.2. Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date(s) indicated below.

Dated: \_\_\_\_\_, 2018

Dated: \_\_\_\_\_, 2018

**Mountain View Whisman School District**

**Bill Gould Architectural Corporation, dba Artik Art & Architecture**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

## EXHIBIT A

### RESPONSIBILITIES AND SERVICES OF MASTER PLANNING CONSULTANT

Consultant shall provide all professional services necessary for completing the following:

#### 1. BASIC SERVICES

Consultant agrees to provide the Services described below.

- 1.1. Be responsible for the professional quality and technical accuracy of all studies, reports, projections, master plans, specifications and other services furnished by Consultant under the Agreement as well as coordination with all master plans, studies, reports, designs, drawings and other information provided by District. Consultant shall, without additional compensation, correct or revise any errors or omissions in its studies, reports, projections, master plans, specifications and other services.
- 1.2. Coordinate Services with the District, the District's other consultants and Subconsultants.
- 1.3. Prepare written communication for distribution by District.
- 1.4. Coordinate the development of a master plan website.
- 1.5. **Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the Services provided under this Agreement, upon the District's request, the Consultant, its Subconsultants, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Consultant's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation ("Mandatory Assistance"). The District will compensate the Consultant for fees incurred for providing Mandatory Assistance as Extra Services. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the Consultant, its Subconsultants, its agents, officers, and employees, the Consultant shall reimburse the District. The District is then entitled to reimbursement of all fees paid to the Consultant, its Subconsultants, its agents, officers, and employees for Mandatory Assistance.
- 1.6. **District and Site Information.** Thoroughly review and analyze all information and documentation provided by the District which shall include, if available:
  - 1.6.1. Physical characteristics of District sites to be considered in planning;
  - 1.6.2. Previous reports, studies, master planning documents and program documents;
  - 1.6.3. Legal limitations and utility locations for the project site(s);
  - 1.6.4. Written legal description(s) of the project site(s);
  - 1.6.5. Grades and lines of streets, alleys, pavements, and adjoining property and structures;
  - 1.6.6. Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the project site(s);

- 1.6.7. Locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and
- 1.6.8. Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths.
- 1.6.9. Surveys, reports, as-built drawings; and
- 1.6.10. Educational master plan(s).
- 1.6.11. Grade level configurations (K-5; 6-8; 9-12 or Schools of Choice).
- 1.7. **Additional Information.** If Consultant determines that the information or documentation the District provides is insufficient for purposes of planning or if the Consultant requires other information that the District has not provided, the Consultant shall request that the District acquire that information at the soonest possible time after Consultant becomes aware that this additional information is needed. If the Parties mutually agree, this additional information and service shall be procured through the Consultant, who may invoice the District for those services as Extra Services.

## 2. **PLANNING PROCESS & MEETINGS**

- 2.1. Develop a job description including tasks and time commitment to form a Steering Committee
- 2.2. Review and analyze all information and documentation provided by the District
- 2.3. Coordinate and conduct **bi-weekly** Design meetings with steering committee; create meeting minutes and distribute to all parties
- 2.4. **Governing Board Meetings.** Consultant acknowledges that the District's governing board must approve all final planning and program documents. Consultant shall, at the District's direction, attend District governing board meeting(s) and present the Consultant's planning and program documents to the District's governing board for review, consideration and approval, which shall be at least a Board meeting presentation every **six (6) months** to review and keep board members informed of the progress, and to present the following deliverables as further indicated herein.
  - 2.4.1. Initial Draft
  - 2.4.2. Final Draft
  - 2.4.3. Revised Final Draft
- 2.5. Community Meetings and Presentations
  - 2.5.1. Informational meeting to receive input
  - 2.5.2. Presentations at **Two (2)** Meetings
- 2.6. Develop documentation and graphics as necessary at each phase to the District's media consultant for community distribution.

- 2.7. Create work plan and timeline for the Master Plan process.
- 2.8. Meetings with the City of Mountain View to identify possibilities of joint use or partnership opportunities following future City developments in North Bayshore- Total of **five (5)** Meetings.
- 2.9. **Deliverables: Meeting Minutes, Presentation Graphics, Schedules**

**3. BENCHMARKING**

- 3.1. Identify and develop a common understanding of District guiding principles, defined based on District’s educational philosophy and core values; translate existing principles to urban school model.
- 3.2. Study and present current research and best practices on effective schools.
- 3.3. Workshops with key stakeholders including understanding “Theory of Learning” and “Design Patterns”.
- 3.4. Learning Ecosystem development including principles about learning, outcomes, methods, systems and the environment that are specific to urban schools in Mountain View.
- 3.5. Facilitate school tours with steering committee: 4 schools- transportation and accommodations to be covered by District.
- 3.6. **Deliverables: Benchmark Report**

**4. EDUCATIONAL STANDARDS FOR URBAN MODEL**

- 4.1. Interviews with District educational leadership groups to determine the types of learning environments that will best support the District vision.
- 4.2. Provide capacity and size of instructional space recommendations by California Department of Education (CDE), Title 5 requirements, DSA regulations & OPSC guidelines.
- 4.3. Identify sustainability design parameters and extent of design.
- 4.4. Identify teaching methodologies, enrichment programs in-room versus pullout programs, related technologies, and other program criteria.
- 4.5. Develop educational program recommendations for capacity at each school and grade configuration.
- 4.6. Create Educational Facility standards for design of new facilities including space features, adjacencies, and square footages of indoor and outdoor areas.
- 4.7. Interviews with external stake holders including parents & board members.
- 4.8. Meeting with local corporations and small businesses planned for North Bayshore to identify particular needs & perspectives, and potential partnership opportunities.
- 4.9. Identify Community-based activities and Joint-use possibilities.
- 4.10. **Deliverables: Urban Model Standards**

**5. SITE ANALYSIS**

- 5.1. Review and analyze the District provided Demographic report to determine feasible site locations and grade configuration based on enrollment projections.
- 5.2. Review future land uses based on City precise and general plans to identify practical school site locations.
- 5.3. Create graphics mapping of potential vicinity/neighborhoods for new campuses.
- 5.4. Classify site selection criteria based on local jurisdictions and CDE developed screening and ranking procedures to be utilized by District in evaluating and ranking potential sites including the following:
  - 5.4.1. Safety
  - 5.4.2. Location: proximity to transportation, future expansions, existing facilities
  - 5.4.3. Environment
  - 5.4.4. Soils
  - 5.4.5. Topography
  - 5.4.6. Size and Shape
  - 5.4.7. Accessibility
  - 5.4.8. Public services
- 5.5. **Deliverables: Map of potential site locations and evaluations**

**6. SCHOOL MODEL DEVELOPMENT**

- 6.1. Develop school models: size, enrollment capacity, grade configuration
- 6.2. Identify pros and cons of developed models
- 6.3. Study feeder pattern scenarios:
  - 6.3.1. Addition of new elementary schools feeding existing middle school(s).
  - 6.3.2. Addition of K-8 schools
  - 6.3.3. Addition of K-5 and 6-8 schools
- 6.4. **Deliverables:**
  - 6.4.1. **Statistical data sheet for school models including:**
    - 6.4.1.1. Number of classrooms & capacities by grade
    - 6.4.1.2. Area and capacity of science, art, music and other academic spaces
    - 6.4.1.3. Area and capacity of gyms, multipurpose rooms and other assembly spaces

- 6.4.1.4. Area of administration and teacher support spaces
- 6.4.1.5. Number of administrative and teaching staff

6.4.2. **2. Conceptual building diagrams**

6.4.3. **Conceptual site diagrams for selected scenario:**

- 6.4.3.1. Building footprint
- 6.4.3.2. Play areas, parking and other open spaces
- 6.4.3.3. Car circulation and drop off areas
- 6.4.3.4. Pedestrian routes to and from school
- 6.4.3.5. Potential future expansion

**7. MASTER PLAN REPORT**

- 7.1. Consolidate data into Draft report.
- 7.2. **Initial Draft.** Consultant shall provide to the District two (2) hard copies and one (1) copy in electronic format of a draft of all of the documents required above, including the following:
  - 7.2.1. A draft master plan (Include narrative explaining each portion);
  - 7.2.2. **Presentation.** Consultant along with any involved Subconsultant(s) shall present and review with District staff and, if directed, with the District's governing board, the draft planning documents.
- 7.3. Respond to District comments.
- 7.4. **Final Draft.** Based on all information and recommendations received in response to the initial draft, Consultant shall provide to the District two (2) hard copies and one (1) copy in electronic format of a final version of all of the documents required above, including the following:
  - 7.4.1. A final master plan (Include narrative explaining each portion);
  - 7.4.2. **Presentation.** Consultant along with any involved Subconsultant(s) shall present and review with District staff and with the District's governing board, the final planning documents.
- 7.5. **Revised Final Draft.** Based on all information and recommendations received in response to the final draft, Consultant shall provide to the District two (2) hard copies and one (1) copy in electronic format of a revised final version of all of the documents required above, including the following:
  - 7.5.1. A revised final master plan (Include narrative explaining each portion);
  - 7.5.2. A revised final Construction Budget, prepared with input from and in coordination with the District selected construction manager;
  - 7.5.3. A revised final Construction Cost Budget, prepared with input from and in coordination with the District selected construction manager;
  - 7.5.4. **Presentation.** Consultant along with any involved Subconsultant(s) shall present and review with District staff and with the District's governing board, the revised final planning documents.



- 7.6. **Deliverables: Initial Draft, Final Draft and Revised Final Draft of Master Plan Report including:**
  - 7.6.1. Process and Methodology
  - 7.6.2. Conceptual building diagrams for selected model
  - 7.6.3. Conceptual site diagrams for selected scenario
  - 7.6.4. Cost estimate by District selected construction manager
  - 7.6.5. Prioritization and development of a tiered plan with associated cost
  - 7.6.6. Implementation plan
  
- 7.7. **Meetings and Site Visits**
  - 7.7.1. **Initial Site Visit(s).** Take initial site visit with District staff of all District sites to be considered in planning. Consultant shall take an initial visual inventory and document the existing conditions.
  
  - 7.7.2. **Team Meetings.** Organize, conduct, and take minutes of meetings with District's current architects, construction managers, and staff to discuss goals, process, parameters, phasing of planning process, and coordinating discussions at all District sites to be considered in planning. Currently estimated to be three to five meetings of two to three hours each.
  
  - 7.7.3. **Site Meetings/Public Input.** Organize, conduct, and take minutes of meetings with site personnel and District staff at each District site to be considered in planning. Currently estimated to be two meetings of two to three hours each at each District site to be considered in planning. These meetings will be to discuss site personnel's goals, experiences at the site, and other information.
    - 7.7.3.1. At least one of these site meetings will be a public community informational meeting to receive input from the community regarding its wishes and expectations regarding the program and the site.
  
  - 7.7.4. **Responses to Inquiries.** Consultant shall always be prepared to answer questions and issues from District staff, architects, construction managers, and site staff, as applicable.
  
  - 7.7.5. **Meeting Logs and Minutes.** Consultant shall maintain a log and take detailed minutes of all meetings, site visits or site observations held in conjunction with the program development, with documentation of major discussion points, observations, decisions, questions or comments. These shall be furnished to the District and/or its representative.
  
  - 7.7.6. **Documentation.** As required, Consultant shall provide at no additional cost to the District copies of all documents or other information needed for each meeting, site visit, or workshop.
  
  - 7.7.7. **Attendance.** The Consultant and its appropriate Subconsultant(s) shall attend these meetings.
  
  - 7.7.8. **Scope of Meetings.** During each of these meetings, the Consultant shall:

- 7.7.8.1. Identify and review pertinent information and/or documentation necessary from the District for the completion of the planning for the component of the program related to that specific site and project(s).
- 7.7.8.2. At the meetings at each site, review and explain the overall program goals, general approach, tasks, work plan and procedures and deliverable products of the program related to that specific site and project(s).

**EXHIBIT B**

**PAYMENT PROVISIONS  
AND  
CRITERIA AND BILLING FOR EXTRA SERVICES**

**Compensation**

1. The Consultant’s fee set forth in this Agreement shall be full compensation for all of Consultant’s Services incurred in its performance, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the District Office, offices, per diem expenses, printing, providing, or shipping of deliverables in the quantities set forth in **Exhibit A**.
2. The Fee shall not exceed the amount set forth in the Agreement, including all billed expenses, without advance written approval of the District. The Fee shall be paid as indicated below (“Fee Schedule”).

<b>Year</b>	<b>Month</b>	<b>Fee</b>
2018	September	\$9,700
	October	\$20,000
	November	\$24,700
	December	\$24,700
	January	\$24,700
	February	\$28,300
2019	March	\$28,300
	April	\$28,300
	May	\$28,300
	June	\$19,200
	July	\$19,200
	August	\$19,200
	September	\$23,000
	October	\$23,000
	November	\$12,600
	December	\$12,600
	January	\$12,600
	February	\$12,600
2020	March	\$12,600
	April	\$12,400
	<b>Total</b>	<b>\$396,000</b>

**Method of Payment**

1. Consultant shall submit monthly invoices on a form and in the format approved by the District. Consultant shall submit these invoices in duplicate to the District via the District’s authorized representative.
2. Consultant shall submit to District on a monthly basis documentation showing proof that payments were made to his/her sub-consultants.

3. Upon receipt and approval of Consultant’s invoices, the District agrees to make payments on all undisputed amounts within sixty (60) days of receipt of the invoice.

**Payment for Extra Services**

The following Extra Services to the Agreement shall be performed by Consultant if needed and if authorized or requested by the District:

1. Providing deliverables or other items in excess of the number indicated in **Exhibit “A.”** Before preparing, providing, sending, or invoicing for extra deliverables, Consultant shall inform the District that expected deliverables may be in excess of the number indicated in **Exhibit “A,”** so that District can procure the additional deliverables itself or direct Consultant to procure the deliverables at District’s expense or on District’s account at a specific vendor.
2. Providing services as directed by the District that are not part of the Services of this Agreement.
3. Providing services as an expert and/or witness for the District in any mediation, arbitration, and/or trial in which the Consultant is (1) not a party, and (2) did not in any way cause the dispute that is being adjudicated.
4. The following rates, which include overhead, administrative cost and profit, shall be utilized in arriving at the fee for Extra Services and shall not be changed for the term of the Agreement.

<b>Job Title</b>	<b>Hourly Rate</b>
Principal	\$180.00
Associate	\$165.00
Senior Project Manager	\$150.00
Senior Technician Lead	\$150.00
Project Manager	\$140.00
Job Captain	\$130.00
Senior Drafter	\$120.00
Intermediate Drafter	\$110.00
Junior Drafter	\$100.00
Administrative / Clerk	\$80.00
Intern	\$80.00

The mark-up on any approved item of Extra Services shall not exceed **five percent (5%)**.

## EXHIBIT C

### SCHEDULE OF SERVICES OF MASTER PLANNING CONSULTANT

START DATE September, 2018

1. Consultant shall complete all work and services required per the Schedule of Services after written authorization from the District to proceed during a twenty-month period, September 2018 – April 2020.
2. The durations stated in the Schedule of Services shall include the review periods required by the District.
3. All times to complete tasks set forth are of the essence, as per the Agreement. If delays in the Schedule of Services are imposed by the District's inability to comply with requested meeting schedules, Consultant shall maintain the right to request an adjustment in the Schedule of Services if deemed necessary to meet the deadlines set forth in this Exhibit. If approved, such extensions shall be authorized in writing by the District.

**EXHIBIT D- CERTIFICATIONS**

**FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Independent Consultant Agreement for Professional Services ("Agreement"):

**[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]** Consultant's employees and Subconsultants will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Consultant's employees and Subconsultants so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c))

Date: \_\_\_\_\_  
District Representative's Name and Title: \_\_\_\_\_  
Signature: \_\_\_\_\_

The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant's services under this Agreement and Consultant certifies its compliance with these provisions as follows: *"Consultant certifies that the Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant's employees, Subconsultants, subcontractors, agents, and Subconsultants' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto."*

Consultant's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

\_\_\_\_\_ The installation of a physical barrier at the worksite to limit contact with pupils.  
\_\_\_\_\_ Continual supervision and monitoring of all Consultant's on-site employees of Consultant by an employee of Consultant, \_\_\_\_\_, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.  
\_\_\_\_\_ Surveillance of Employees by District personnel. **[TO BE COMPLETED BY DISTRICT]**  
Date: \_\_\_\_\_  
District Representative's Name and Title: \_\_\_\_\_  
Signature: \_\_\_\_\_

**[TO BE COMPLETED BY CONSULTANT]** I am a representative of the Consultant entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant.

Date: \_\_\_\_\_  
Name of Consultant or Company: **Bill Gould Architectural Corporation, dba Artik Art & Architecture**  
Signature: \_\_\_\_\_  
Print Name and Title: \_\_\_\_\_

**ROOFING CONTRACT FINANCIAL INTEREST CERTIFICATION**  
**(Public Contract Code section 3006)**

Contract between **Mountain View Whisman School District** ("District" or "Owner") and **Bill Gould Architectural Corporation, dba Artik Art & Architecture** ("Consultant") ("Contract" or "Project").

I \_\_\_\_\_, \_\_\_\_\_  
Name Name of Consultant

certify that I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the roof project contracts on this program. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Furthermore, I \_\_\_\_\_, \_\_\_\_\_  
Name Name of Consultant

certify that I do not have, and throughout the duration of the contract, I will not have, any financial relationship in connection with the performance of this contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I \_\_\_\_\_, \_\_\_\_\_  
Name Name of Consultant

Have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract:

Name of firm ("Firm"): \_\_\_\_\_

Mailing address: \_\_\_\_\_

Addresses of branch office used for this project: \_\_\_\_\_

If subsidiary, name and address of parent company: \_\_\_\_\_

I certify that to the best of my knowledge, the contents of this disclosure are true, or are believed to be true.

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

Proper Name of Consultant: **Bill Gould Architectural Corporation, dba Artik Art & Architecture**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_