

CLIENT/ARCHITECT AGREEMENT (New Construction)

THIS AGREEMENT made in two copies on the 13th day of September in the year Two Thousand twenty-two, by and between the Silver Valley Unified School District, San Bernardino County, California, hereinafter called the Client, and Frick, Frick & Jetté Architects, Inc., hereinafter called the Architect.

Whereas, the Client, in accordance with applicable law, intends to construct:

Project Name & Address: New Multi-Purpose Building
 Yermo Middle School
 38280 Gleason Street
 Yermo, CA 92398

FFJ Project #SVU22-01

Now therefore, the Client and Architect agree as follows:

ARTICLE I. PROJECT BUDGET

- A. The project budget is established as follows: Unit cost analysis.

- B. The size of the project and the type and quality of construction are dependent upon the funds available for the project. The Architect will exercise his best judgment in determining the balance between the size and the project, the type of construction, and the quality of construction to achieve a satisfactory solution within budget limitations.

ARTICLE II. BASIC SERVICES OF THE ARCHITECT

- A. Schematic Design Phase
 - 1. The Architect shall review the program furnished by the Client to ascertain the requirements of the project and shall review the understanding of such requirements with the Client.

 - 2. The Architect shall prepare schematic design studies and site utilization plans leading to a recommended solution together with a general description of the project for approval by the Client.

 - 3. The Architect shall review the budgeted amount of the project with the Client and establish an opinion of probable construction cost subject to later revision.

B. Design Development Phase (Preliminary Plans)

1. Upon approval by the Client of the services set forth in Paragraph A, the Architect shall prepare floor plans, elevations, and other drawings, and shall outline specifications to fix and illustrate the size and character of the entire project in its essentials as to kinds of materials, quantities, categories of proposed work, type of structure, and such other work as may be required.
2. The Architect shall establish an opinion of probable project construction cost subject to revision at the construction document phase.
3. The Architect shall assist the Client in applying for and obtaining required approvals from applicable governmental agencies having jurisdiction.

C. Construction Document Phase (Final Plans)

1. The Architect shall prepare, from the approved design development documents, working drawings and specifications setting forth in detail and prescribing the work to be done, and the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical service-connected equipment. The Architect shall also prepare necessary bidding information, general conditions of the contract and supplementary general conditions of the contract and shall assist the Client's legal advisor in the drafting of proposal and contract terms.
2. The Architect shall assist the Client in applying for and obtaining required approvals from applicable state agencies having jurisdiction.

D. Construction Phase

1. The Architect shall reproduce the contract documents in the required number, the expense being borne by the Client and shall assist the Client in obtaining bids from contractors and in awarding the construction contracts.
2. The Architect shall provide technical direction to a full-time project inspector employed by and responsible to the Client as required by applicable law. The Architect shall advise the inspector and/or contractor in the preparation of a marked set of plans indicating dimensioned location of buried utility lines (record drawings) which shall be forwarded to the Client upon completion of the project.
3. The Architect will endeavor to secure compliance by contractors with the contract requirements, but he does not guarantee the performance of their contracts.

4. The Architect's Responsibilities:
 - a. Provide general administration of the construction contracts, including periodic visits at the site as he deems necessary to render architectural observation that is distinguished from the continuous personal inspection by the project inspector.
 - b. Make regular reports as may be required by the applicable state agencies.
 - c. Keep the Client informed of the progress of construction.
 - d. Review schedules and shop drawings for compliance with design.
 - e. Approve substitution of materials, equipment, and the laboratory reports thereof.
 - f. Maintain construction accounts and prepare change orders for written approval of the Client.
 - g. Examine contractor's applications for payment.
 - h. Issue certificates for payment in amounts approved by the Architect.
 - i. Provide a color schedule of all materials in the project for Client's review and approval.
 - j. Assess date of substantial completion.
 - k. Make final architectural observation of the project.
 - l. Review written guarantees, instruction books, diagrams and charts required of the contractors.
 - m. Review and sign final certificate for payment.

ARTICLE III. EMPLOYEES AND CONSULTANTS

The Architect, as part of his basic professional services, shall furnish at his expense, the services of civil (grading only), structural, mechanical, and electrical engineers, properly skilled in the various aspects of the design and construction of facilities required.

ARTICLE IV. ADDITIONAL SERVICES OF THE ARCHITECT

- A. Additional services shall be provided by the Architect if authorized in writing by the Client. No additional compensation shall be paid to the Architect for performing these additional services unless the Client and the Architect agree in writing as to the amount of compensation for such services prior to such services being rendered. Such compensation shall be computed as set forth in Articles VIII.B. and IX.C.
- B. The following services are not included in the basic services of the Architect to be performed under this Agreement, and they will be performed only in accordance with Article IV.A.:
1. Geotechnical (soils), WQMP, SWPPP, percolation tests and topographic survey.
 2. Contract documentation for asbestos or PCB's abatement or removal.
 3. Plan preparation and/or construction contract administration work on that portion of a project let on a segregated bid basis.
 4. Contract administration of the repair of damage to the project.
 5. The selection by the Architect, at the Client's request, of movable furniture, equipment or articles that are not included in the construction contract.
 6. The additional services caused by the delinquency or insolvency of the contractor.
 7. Providing contract administration services after the construction contract time has been exceeded through no fault of the Architect, where it is determined that the fault is that of the contractor, and liquidated damages are collected, therefore.
 8. If directed by the Client, the employment of special consultants, the preparation of special delineations, computer-generated models or hand-built models, and overtime work by the Architect's employees.
 9. Making revisions in drawings, specifications, or other documents when such revisions are inconsistent with written approvals or instruction previously given or are required by the enactment or revision of codes, laws, or regulations after the Client's approval of construction documents or are due to other causes not within the control of the Architect.
 10. Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding, other than

when resulting from Architect's or Architect's consultants proven errors or omissions.

11. Providing any other services not otherwise included in this Agreement and not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE V. THE CLIENT'S RESPONSIBILITIES

- A. The Client shall provide full information as to the requirements and educational program of the project, including realistic budget limitations and scheduling.
- B. The Client shall furnish, or direct the Architect to procure, at Client's expense:
 1. Certified survey of the site if required, including grades and lines of streets, pavements, and adjoining properties; right-of-way, restrictions, easements, boundaries, and contours of the building site; locations, dimensions and floor elevations of existing buildings, concrete walkway elevations and cross slope, other improvements, and trees; and full information as to available service and utility lines, both public and private.
 2. Water quality management plan (WQMP).
 3. Erosion control plan / storm water prevention plan (SWPPP) if required.
- C. The Client shall furnish, or direct the Architect to procure, at Client's expense, chemical, mechanical, or other tests required for proper design, and borings or test pits necessary for determining subsoil conditions.
- D. The Client shall furnish all inspection services.
- E. The Client shall furnish all legal advice and services required for the project.
- F. The Client shall notify the Architect of administrative procedures required and name a representative authorized to act in its behalf. The Client shall promptly render decisions pertaining thereto to avoid unreasonable delay in the progress of the project. The Client shall observe the procedure of issuing any orders to contractors only through the Architect.
- G. During the contractor's one-year guarantee period, the Client shall notify the Architect in writing of apparent deficiencies in materials or workmanship.

ARTICLE VI. PROJECT CONSTRUCTION COST

- A. Project construction cost as used in this Agreement means the total cost to the Client of all work designed or specified by the Architect, including work covered by approved additive change orders and/or alternates, construction management

fees, lease lease-back entity construction related costs, and general conditions, but excluding the following: any payments to the Architect or consultants for costs of inspections, surveys, tests, sites and landscaping not included in the project.

- B. When labor and material is furnished by the Client below its market cost, the project construction cost shall be based upon current market cost of labor and new material.
- C. The project construction cost shall be acceptable opinions of probable construction costs to the Client as submitted by the Architect until such time as bids have been received, whereupon it shall be the initial construction contract amount.

ARTICLE VII. ESTIMATE OF PROJECT CONSTRUCTION COSTS

- A. Opinion of probable construction cost referred to in Article II, shall be prepared on a square foot/unit basis or more detailed computation if deemed necessary by the Architect, considering prevailing construction costs, and including all work for which bids will be received. It is understood that the project construction cost is affected by the labor and/or material market as well as other conditions beyond the control of the Architect or Client.
- B. If a project budget is set forth in Article I or thereafter accepted by the Client, the Architect shall review the estimate at each phase of his services. If such estimates are more than the project budget, the Architect shall revise the type or quality of construction to come within the budgeted limit.

ARTICLE VIII. ARCHITECT'S COMPENSATION

- A. The Architect agrees to perform professional services provided by this Agreement and the Client agrees to pay the Architect for such services compensation as follows:

9.5% of computed cost

Computed Cost – The total award from the initial construction contract(s), plus construction management costs, lease lease-back entity construction related costs, general conditions, and the cost of all approved additive change orders except for items resulting from errors and omissions on the part of the Architect.

Mileage, travel time, phone calls, meetings, and progress printing are not chargeable to the Client unless otherwise noted.

Any reduction of Architectural fees for design re-use will be adjusted upon receipt of acceptable bids.

- B. No additional services shall be rendered by the Architect unless authorized in advance by the Client, compensation for which shall be computed on an hourly basis of \$135.00 / hour for such services.
- C. Reimbursement at cost plus 20% shall be paid to the Architect for:
 - 1. Approved reproduction of drawings and specifications in excess of copies provided by this Agreement.
 - 2. Fees advanced for securing approval of authorities having jurisdiction over the project.
 - 3. Consulting engineers and studies not outlined in Article II above.

ARTICLE IX. PAYMENT TO THE ARCHITECT

- A. Payments on account of the agreed compensation in Article VIII shall be:
 - 1. Schematic Design Phase – ten percent of total compensation based upon the tentative probable project construction cost. Billings shall be monthly or lump sum in arrears up to ten percent of the total compensation based upon work completed.
 - 2. Design Development Phase – fee increases to 25 percent of total compensation based upon preliminary probable project construction cost.
 - 3. Construction Documents Phase –
 - a. Construction Documents 50% complete – fee increases to 50 percent of the total compensation based upon the probable project construction cost. Billings shall be lump sum in arrears up to 50 percent of total compensation based upon work completed.
 - b. Construction Documents 100% complete, ready for review by applicable public agencies – fee increases to 70 percent of the total compensation based upon the probable project construction cost.

Progress billings shall be monthly, in arrears up to 70 percent of total compensation based upon work completed.
 - c. Construction documents approved by the Division of the State Architect – fee increases to 75 percent of the total compensation based upon the probable project construction cost.
 - 4. Construction Phase –

- a. On all or that portion of the project for which documents have been reproduced and bids received, fee increases to 80 percent of the total compensation adjusted to the accepted bid price.
 - b. Subsequent billings shall be submitted monthly in arrears in proportion to the amount of work certified complete.
 - c. Construction complete and accepted by the Client – fee increases to 100 percent of the total compensation based upon the contract price, notwithstanding the Architect's services during the guarantee period as provided by Article II.D.5.
- B. Payments in the event of the following circumstance shall be:
1. Delayed Completion of Liquidated Damages – The Architect's compensation shall be paid at the time and in the amount noted, notwithstanding a delay in completion of the project or the reduction in the final construction cost by reason of penalties, liquidated damages or other amounts withheld from the construction contractor.
- C. Payments for extra services provided under Article IV shall be upon the basis of one of the following:
1. Percentage of the cost: In the same manner provided by this Agreement for work let under a single construction contract.
 2. Direct personnel expense: Monthly in arrears as services are rendered and expenses incurred.
- D. Reimbursement for agency fees and other expenses shall be made to the Architect as incurred.

ARTICLE X. TERMINATION OF AGREEMENT

- A. This Agreement may be terminated by either party upon not less than seven days written notice to the other party in the event of a substantial failure of performance by such other party; or if the Client should decide to abandon or indefinitely postpone the project.
- B. In the event of such termination, the Client shall pay to the Architect, as full payment for all services performed and all expenses incurred under this Agreement, an amount the sum total of which bears the same ratio to the total fee otherwise payable under this Agreement as the services actually rendered hereunder by the Architect bear to the total services necessary for the full performance of this Agreement, plus any sums due the Architect for extra services described under Article VIII.B. and C. herein. In ascertaining the services rendered hereunder, up to the date of termination of this Agreement, consideration

shall be given to both completed work and work in progress of completion and to complete and incomplete drawings and other documents whether delivered to the Client or in the possession of the Architect. Notwithstanding any termination of this Agreement or notice thereof, questions in dispute may be submitted to arbitration as provided in Article XVII.

- C. If, upon payment of the amount required to be paid under this Article following the termination of the Agreement, the Client thereafter should determine to complete the original project or substantially the same project, the Client for such purpose shall have the right of utilizing any completed contract documents prepared under this Agreement by the Architect, who shall make them available to the Client upon request without additional compensation.
- D. If the project is suspended for more than one year, the Architect reserves the right to renegotiate the fee.

ARTICLE XI. TIME SCHEDULE

Upon request, the Architect will prepare for the Client an estimated time schedule necessary to complete the contract documents and construction plans barring delays caused by conditions beyond the control of the Architect.

ARTICLE XII. ACCOUNTING RECORDS OF THE ARCHITECT

Records of the Architect's direct personnel and reimbursable expense pertaining to the extra services of this project, and records of accounts between the Client and contractor shall be kept on a generally recognized accounting basis and shall be available to the Client or his authorized representative at mutually convenient times.

ARTICLE XIII. INSURANCE TO BE CARRIED BY ARCHITECT

The Architect shall carry insurance to protect himself from claims under Workers Compensation Acts and for the period covered by this Agreement, Errors and Omissions Insurance in the amount of \$1,000,000.00

ARTICLE XIV. REPRODUCTION OF DOCUMENTS

- A. The Architect shall provide, at no expense to the Client and in the number required, the preliminary plans and construction documents for the review and approval of the Client and applicable state agencies.
- B. The Architect shall provide copies of the construction documents for bidding and construction purposes; the expense of copies shall be borne by the Client.

ARTICLE XV. OWNERSHIP OF DOCUMENTS

The plans, specifications and estimates shall be and remain the property of the Client.

ARTICLE XVI. RE-USE OF DOCUMENTS

- A. In the event of any use, reuse or modification of the Architect's drawings, specifications, or other documents by any person, firm or legal entity, the names and seals of the Architect and Architect's consultants, if any, shall be removed from the documents. Client shall hold Architect harmless from any and all claims resulting from any and all persons, firms or other legal entity using, reusing or modifying the Architect's documents

ARTICLE XVII. ARBITRATION

- A. Questions in dispute under this Agreement may be submitted to arbitration at the election of both parties. Such arbitration shall be conducted in accordance with the rules of the American Arbitration Association insofar as the same is not in conflict with the laws of the State of California.
- B. If either party petitions to confirm, correct, or vacate the award, as provided by Chapter 4 of Title 9 of the Code of Civil Procedure (commencing with Section 1285), the prevailing party shall be entitled, as part of his or its costs, to a reasonable attorney's fee to be fixed by the court.
- C. Prior to invoking the arbitration provisions, both parties agree that claims, disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by mediation unless both sides agree to forego mediation and go to arbitration.

ARTICLE XVIII. SUCCESSORS AND ASSIGNS

It is mutually understood and agreed that this Agreement shall be binding upon the Client and its successors and upon the Architect, his partners, successors, executors, and administrators.

Neither this Agreement, nor any monies due or to become due thereunder, may be assigned by the Architect without the consent and approval of the Client.

ARTICLE XIX. ADDITIONAL PROVISIONS

The following amendments and/or additions are made a part of this Agreement and shall be given effect notwithstanding any other provisions contained herein:

- A. The Architect shall, at no additional cost to the Client, make any changes in approved plans and specifications necessary to obtain a construction bid which is acceptable to and within the cost standards established by the Client.

- B. The Architect shall not perform or receive any payment for extra cost services, as delineated in Articles IV and VIII.B. of this Agreement, without specific prior written approval of the Client.
- C. Environmental Impact Reports, ground boring and/or similar studies are not included in this Agreement.
- D. Client to furnish documents showing areas of work are clear of hazardous material(s).
- E. No reduction in the fee shall be made because of change orders that provide for a decrease in the construction price.
- F. The furnishing of current as-built drawings of the existing structures is the responsibility of the Client.

ARTICLE XX. LIMITATION OF LIABILITY

In recognition of the relative risks and benefits of the Project to both the Client and the Architect, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Architect and Architect's officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorney's fees and costs and related fees and costs, so that the total aggregate liability shall not exceed \$50,000.00, or the Architect's total fee for services rendered on this Project, whichever is greater. This limitation shall apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

The Client and Architect hereby agree to the full performance of the covenants herein.

IN WITNESS WHEREOF, the Client and the Architect have executed this Agreement the day and year first above written.

ARCHITECT

CLIENT

FRICK, FRICK & JETTÉ ARCHITECTS

SILVER VALLEY UNIFIED SCHOOL DISTRICT



Signature

Signature District Representative

Gino Bastianon, President

Print Name / Title

Print Name / Title