

**INDEPENDENT CONSULTANT AGREEMENT
FOR
ARCHITECTURAL SERVICES**

This Independent Consultant Agreement for Architectural Services ("Agreement") is made and entered into as of **August 18, 2023**, by and between the **Tahoe Truckee Unified School District** ("District") and Ward-Young Architects, a California corporation ("Consultant"), (together, "Parties").

WHEREAS, the District is authorized by Government Code section 4529.12 to procure a contract for architectural services through a fair, competitive selection process (e.g., by obtaining proposals, or using a request for proposal or request for qualification process);

WHEREAS, the District has employed such a fair and competitive selection process and has determined to select Consultant to perform the architectural services set forth herein; and

WHEREAS, the Consultant is specially trained and experienced and competent to perform the architectural services required by the District, and those services are needed on a limited basis.

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** Consultant shall provide architectural services for **Truckee High School Field House** located at 11725 Donner Pass Rd, Truckee, CA 96161, as further described in **Exhibit "A"** attached hereto and incorporated herein by this reference ("Services").
2. **Term.** Consultant shall commence providing services under this Agreement on September 6, 2023, and will diligently perform as required and complete performance by August 31, 2024, unless this Agreement is terminated and/or otherwise cancelled prior to that time.
3. **Submittal of Documents.** Consultant shall not commence the Services under this Agreement until Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

- Signed Agreement
- Workers' Compensation Certification
- Fingerprinting/Criminal Background Investigation Certification
- Insurance Certificates and Endorsements
- W-9 Form

4. **Compensation.** District agrees to pay Consultant for services satisfactorily rendered pursuant to this Agreement on a Time and Expense Basis a total fee not to exceed **One Hundred Thirty-Two Thousand Dollars (\$132,000.00)**. District shall pay Consultant according to the following terms and conditions:

4.1. Reserved

4.2. The Services shall be performed at the hourly billing rates and/or unit prices included in **Exhibit "B"** If hourly billing applies, the itemized invoice shall reflect the hours spent by Consultant in performing its Services pursuant to this Agreement.

- 4.3. Reserved
- 4.4. Reserved
- 5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing services for District, except as follows:
 - 5.1. Routine and customary expenses not to exceed \$2,000 without District approval;
or
 - 5.2. Expenses approved in advance in writing by District.
- 6. **Reserved**
- 7. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees. In the performance of the work herein contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.
- 8. **Performance of Services.**
 - 8.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession, and under similar circumstances, for services to California school districts (the "standard of care").

Consultant shall carefully study and compare all documents, findings, and other instructions and shall at once report to District, in writing, any error, inconsistency, or omission that Consultant or its employees may discover. To the extent required to meet the applicable standard of care, Consultant shall have responsibility for discovery of errors, inconsistencies, or omissions.
 - 8.2. **Meetings.** Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.
 - 8.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
 - 8.4. **Reserved**

9. **Originality of Services.** Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.
10. **Ownership of Data.** Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for the District to use, at its discretion, all plans including, but not limited to, record drawings, specifications, estimates and other documents that Consultant prepared or caused to be prepared pursuant to this Agreement. Consultant retains all rights to all copyrights over designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that Consultant prepares or causes to be prepared pursuant to this Agreement. District acknowledges that the documents are project-specific and are not intended for reuse on other projects; the license to use the documents is granted only when Ward-Young Architects is paid for services duly rendered in conformance with this Agreement; and Ward-Young Architects shall be permitted to retain one record copy of all project-related information.

In the event the District changes or uses any fully or partially completed documents without Consultant's knowledge or participation or both, the District agrees to release Consultant of responsibility for such changes, and shall defend, indemnify and hold Consultant harmless from and against any and all claims on account of any damages or losses to property or persons, or economic losses, arising out of that change or use, unless and only to the extent Consultant is found to be liable in a forum of competent jurisdiction. In the event that the District uses any fully or partially completed documents without Consultant's full involvement, the District shall remove all title blocks and other information that might identify Consultant.

11. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.
12. **Disputes.** In the event of a dispute between the parties as to performance of the Services, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute in good faith. Pending resolution of the dispute, Consultant agrees it will neither rescind the Agreement nor stop the performance of the Services, but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute. Disputes may be determined by mediation if mutually agreeable, otherwise by litigation. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial

written notice. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Consultant shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Consultant's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Consultant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

13. Termination.

13.1. **For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for Services rendered in conformance with this Agreement to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by Consultant or no later than three (3) calendar days after the day of mailing, whichever is sooner.

13.2. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

13.2.1. material violation of this Agreement by Consultant; or

13.2.2. any act by Consultant exposing the District to liability to others for personal injury or property damage.

Written notice by District shall contain the reasons for such intention to terminate and unless within seven (7) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, the District may upon the expiration of the seven (7) calendar days, terminate Consultant's right to proceed under the Agreement. In the event of this termination, the District may secure the required services from another Consultant. If the expense, fees, and/or costs to the District exceed the cost of providing the Service pursuant to this Agreement, District is entitled to withhold from monies due Consultant, if any, and District may seek legally allowable damages from Consultant for breach of contract. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

13.3 **With Cause by Consultant.** Consultant may terminate this Agreement upon giving seven (7) days written notice of intention to terminate for cause. Cause shall include:

13.3.1. material violation of this Agreement by Consultant; or

13.3.2. District's failure to make payments to the Consultant in accordance with this Agreement.

Consultant's written notice shall contain the reasons for such intention to terminate and unless within seven (7) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, Consultant may upon the expiration of the seven (7) calendar days, terminate Consultant's right to proceed under the Agreement.

14. Indemnification.

- 14.1. General Liability. To the fullest extent permitted by law and except to the extent provided in Section 14.2, Consultant shall indemnify, defend (with counsel reasonably satisfactory to the District), and hold harmless the District, its Governing Board, officers, employees, trustees, Project Manager, and Construction Manager, but not any contractors or consultants retained by any of the District Indemnified Parties (collectively referred to as the "District Indemnified Parties") from third party losses, costs, expenses, including reasonable attorneys' fees, liabilities, claims, courts costs, demands, causes of action, fines, judgments and penalties (collectively, "Liability") arising from (a) third party claims, including for death, or injury to people or damage or injury to property, to the extent caused by the negligent acts, errors or omissions of Consultant, or its employees or Subconsultants ("Consultant Parties"); (b) third party liens or stop notices that may at any time be filed or claimed against the site of the Project or any portion thereof, or the District (except when such liens or stop notices are caused by District's default in its obligation to pay Consultant pursuant to the provisions of this Agreement) as a consequence of the failure of Consultant to pay a Consultant Party ; (c) any third party claims under workers' compensation acts and other employee benefit acts with respect to Consultant's employees arising out of the Services; (d) third party claims arising from Consultant's material breach of the Agreement, including Consultant's material breach of any representations or covenants given in this Agreement; or (e) third party claims relating to actual violation of any applicable local, state or federal law, regulation or code by Consultant or Consultant Parties.

The indemnity set forth in this Section 14 shall apply during the term of this Agreement (or Consultant's performance thereof) and shall survive the expiration or termination of this Agreement until such time as action against the District Indemnified Parties on account of any matter covered by such indemnity is barred by the applicable statute of limitations.

District, at District's expense, shall: (a) notify Consultant promptly in writing of any such claim; (b) supply Consultant with all available information, assistance and authority that Consultant requires to defend or settle the claim; (c) allow Consultant to control the defense, compromise or settlement of the claim with counsel reasonably acceptable to District; and (d) for any costs or expenses where District will seek reimbursement from Consultant hereunder, District does not incur any cost or expense subject to this indemnity without the prior written consent of Consultant, such consent not to be unreasonably withheld.

- 14.2. Professional Liability. Notwithstanding anything to the contrary contained herein, with respect to Liability that both (1) arises out of, pertains to or results from the negligent acts, errors or omissions of Consultant and/or any of Consultant Parties in the performance of professional services, and (2) is not covered by Consultant's general liability insurance policy, Consultant shall not be required to defend any District Indemnified Parties against any such Liability, including any up front duty of defense; provided, however, with respect to any defense costs (including, without limitation, court costs, attorneys' fees, and expert witness costs) incurred by District in defending any District Indemnified Party against such Liability, Consultant agrees to reimburse District and/or District Indemnified Parties, as applicable, for the reasonable costs incurred as a result of such defense as follows:

Upon a determination by a court or arbitration panel of competent jurisdiction, or as agreed between District and Consultant in the context of dispute resolution, that Consultant and a District Indemnified Party are each partially responsible for the Liability that is the subject of the defense afforded by District, Consultant shall reimburse District a percentage of all costs incurred in defending the District Indemnified Party that is equal to the percentage of fault for the applicable Liability that is determined to be due to the fault of the Consultant Parties. In other words, in a comparative fault situation, if there is a determination or it is otherwise agreed by the District and Consultant that Consultant and/or any of Consultant Parties is 25% liable for the applicable Liability and District or another District Indemnified Party is 75% liable for the applicable claim, Consultant shall be obligated to reimburse District for 25% of all defense costs incurred by District in defending the District Indemnified Party against such claim or dispute.

For any Liability that arises out of, pertains to or results from the negligent acts, errors or omissions of Consultant and/or any of Consultant Parties in the performance of professional services and subject to 14.2.1 above, Consultant shall only be required to indemnify a District Indemnified Party for such Liability to the extent such Liability is ultimately determined by a court or arbitration panel of competent jurisdiction to have been caused by the negligence or willful misconduct of Consultant or its Consultant Parties. Consultant's obligations set forth in this Section 14 shall not exceed Consultant's or Consultant Parties' proportionate share of the fault.

- 14.3. Notwithstanding that Consultant has no upfront duty to defend, as provided in Section 14.2, if litigation or other dispute resolution proceeding (arbitration) arises out of Consultant or the Consultant Parties' negligent acts, errors or omissions in the Services provided under this Agreement between District and a third party (collectively, a "Dispute"), upon the District's written request, the District and the Consultant agree to undertake good faith measures to allow the Consultant to reasonably assist the District, at no cost to the District, in resolving the Dispute ("Mandatory Assistance"). At the commencement of the Mandatory Assistance phase, District and Consultant shall act in good faith as to the scope and extent of further assistance including discussing in good faith the entering into a joint defense / common interest agreement. During the Mandatory Assistance phase, each Party shall be responsible for their own attorneys' fees and costs incurred; however, each Party reserves its rights pursuant to Civil Code section 2782.8. Consultant shall not be obligated to prejudice its legal position in any manner in the Mandatory Assistance phase. Consultant shall have no obligations under this Section 14.3 if Consultant is a party to the Dispute.
- 14.4. To the furthest extent permitted by California law, District shall defend, indemnify and hold free and harmless Consultant and the Consultant Parties from Liability arising from the negligence, recklessness, or willful misconduct of the District Indemnified Parties. Consultant, at Consultant's expense, shall: (a) notify District promptly in writing of any such claim; (b) supply District with all available information, assistance and authority that District requires to defend or settle the claim; (c) allow District to control the defense, compromise or settlement of the claim with counsel reasonably acceptable to District; and (d) for any costs or expenses where Consultant will seek reimbursement from District hereunder, Consultant does not incur any cost or expense subject to this indemnity without the prior written consent of District, such consent not to be unreasonably withheld. The indemnity set forth in this Section shall apply during the term of this Agreement (or

Consultant's performance thereof) and shall survive the expiration or termination of this Agreement until such time as action against the Consultant and the Consultant Parties on account of any matter covered by such indemnity is barred by the applicable statute of limitations.

15. Insurance.

- 15.1. Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	\$ 1,000,000 \$ 2,000,000
Automobile Liability Insurance - Non-owned and Hired Autos (provided under Commercial Liability Insurance Policy) Each Occurrence	\$ 1,000,000
Professional Liability	\$ 1,000,000
Workers' Compensation	Statutory Limits
Employers' Liability	\$ 1,000,000

- 15.1.1. **Commercial General Liability (CGL) Insurance.** Commercial General Liability Insurance that shall protect Consultant, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.) Consultant has no company owned or registered vehicles and automobile liability coverage is provided under the "hired and non-owned vehicle" provision of Consultant's CGL policy.
- 15.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.
- 15.1.3. **Professional Liability (Errors and Omissions).** Professional Liability Insurance as appropriate to Consultant's profession, coverage to continue through completion of construction plus two (2) years thereafter.

- 15.2. **Proof of Insurance.** Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:
- 15.2.1. Reserved
 - 15.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation notice will be sent, and length of notice period.
 - 15.2.3. An endorsement stating that the District Indemnified Parties are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies, as applicable but specifically excluding the Professional Liability policy, shall (i) be "primary and noncontributory" to any insurance or self-insurance maintained by District; and (ii) also state that there shall be a waiver of subrogation.
 - 15.2.4. All policies except the Professional Liability, Workers' Compensation Insurance, and Employers' Liability Insurance Policies shall be written on an occurrence form.
 - 15.2.5. Consultant shall provide to District, within 10 days written notice, copies of all insurance policies required under this Agreement.
 - 15.2.6. If Consultant normally carries insurance in an amount greater than the minimum amounts required by District, that greater amount shall become the minimum required amount of insurance for purposes of the Agreement. Therefore, Consultant hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Agreement.
- 15.3. **Acceptability of Insurers.** 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.
- 15.4. Consultant will provide District with (a) notice of nonavailability of insurance, and/or (b) notice of cancellation of any required insurance under this Article 15 not be less than ten (10) days prior to cancellation. District may, at its discretion, pay for Consultant's insurance and deduct the value of such premiums from amounts due or to become due to Consultant. Consultant understands and acknowledges the insurance coverage required are material to the Agreement.
16. **Assignment.** Neither party shall assign this Agreement without the signed written consent of the other party.
17. **Compliance with Laws.** Consultant shall observe and comply with applicable rules and regulations of the governing board of the District and applicable federal, state, and local laws, ordinances and regulations. Consultant shall give notices required by applicable law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If Consultant observes that the Services required by this Agreement are at variance with

such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Consultant's receipt of a written termination notice from the District.

17.1. **LABOR CODE REQUIREMENTS:** Only to the extent that Consultant provides services to the District in the capacity as a Contractor as defined in Business & Professions Code Section 7026 or under the Professional Engineers Act (Business & Professions Code Section 6700, *et seq.*), and specifically excluding Consultant's Services that constitute the practice of architecture under Business & Professions Code section 5500 *et seq.* from such compliance, Consultant shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1 – 5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with the District.

17.1.1. **Registration:** If applicable, before a public works contract can be awarded, Consultant and its subcontractor(s) shall be registered with the Department of Industrial Relations in accordance with Labor Code section 1771.1.

17.1.2. **Certified Payroll Records:** Consultant and its subcontractor(s) shall keep accurate certified payroll records of workers and shall electronically submit certified payroll records directly to the Department of Industrial Relations weekly or within ten (10) days of any request by the District or the Department of Industrial Relations.

17.1.3. **Labor Compliance:** Consultant shall perform the Services of the Project while complying with all the applicable regulations, including section 16000, *et seq.*, of Title 8 of the California Code of Regulations and is subject to labor compliance monitoring and enforcement by the Department of Industrial Relations.

18. **Certificates; Permits; Licenses; Registration.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement.

19. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.

20. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore Consultant agrees to comply with applicable federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code section 1735 and District policy. In addition, Consultant agrees to require like compliance by all of its subcontractor(s).

21. **Fingerprinting of Employees.** It is not contemplated at the time of execution of this Agreement that Consultant or its employees will have contact with students during the provision of services under this Agreement. If, at a future time, Consultant will have contact with any pupils, Consultant shall comply with the provisions of Education Code section 45125.1 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 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, subcontractors, agents, and employees or agents of Consultant Parties 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 that may be required with this Agreement, shall be provided in writing to the District prior to each individual's commencement of employment or performing any portion of the Services and prior to permitting contact with any student. If Consultant is a sole proprietor, and, at a future time, it is determined that Consultant will have contact with any pupils, Consultant and all of the Consultant Parties must agree to allow the District to process and submit background checks and fingerprinting, as required by Education Code section 42125.1(k), under procedures established by the California Department of Justice and the Federal Bureau of Investigation, and the results of those background checks and fingerprints must reveal that Consultant and none of the Consultant Parties, if any, have been arrested or convicted of a serious or violent felony, as defined by the California Penal Code. No Services shall commence until such determinations by DOJ and FBI have been made.

22. **Reserved**

23. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

24. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:

24.1. Requesting that District employee(s) evaluate Consultant and Consultant's employees and subcontractors and each of their performance.

24.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).

25. **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. Except for (a) any applicable and available insurance coverage as required in this Agreement, or (b) Consultant's recklessness or willful misconduct, Consultant's aggregate liability for all claims arising out of or related to this Agreement shall not exceed the total compensation actually paid by District to Consultant under this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District or Consultant 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.

26. **Confidentiality.** Consultant and all Consultant’s agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all confidential information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement. This confidentiality provision shall not pertain to information that was known previously by Consultant but not protected as confidential, information that is in the public domain, information that Consultant may be legally or ethically obligated to disclose, information that needs to be shared with sub-consultants or the Consultant’s own employees, and the right of Consultant to retain one record copy of all project information.

27. **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 overnight delivery service, addressed as follows:

District:

Tahoe Truckee Unified School District
1160 Donner Pass Road
Truckee, CA 96161
ATTN: Mrs. Kerstin Kramer
Superintendent - Chief Learning Officer

Consultant:

Ward Young Architects
12010 Donner Pass Road, Suite 201
Truckee, CA 96161
ATTN: Ron Larkins
Principal

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

28. **Integration; 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.

29. **California Law; Venue.** 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 the county in which the District’s administrative offices are located.

30. **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.

31. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

32. **Provisions Required by Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
33. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
34. **Attorney's Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
35. **Tolling of District's Claims.** Consultant agrees to toll all statutes of limitations for District's assertion of claims against Consultant that arise out of, pertain to, or relate to contractors' or subcontractors' claims against District involving Consultant's Services under this Agreement, until the contractors' or subcontractors' claims are finally resolved.
36. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
37. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
38. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.
39. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
40. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

[SIGNATURES ON FOLLOWING PAGE]

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

Dated: _____, 2023

Dated: August 17, _____, 2023

Tahoe Truckee Unified School District

Ward Young Architects

By: _____

By: R. Larkins

Print Name: Mrs. Kerstin Kramer

Print Name: Ron Larkins

Print Title: Superintendent/CLO

Print Title: Principal

Information regarding Consultant:

License No.: C24333

Registration No.: _____

Address: 12010 Donner Pass Road

Truckee Ca 96161

Telephone: 5305873859

Facsimile: _____

E-Mail: ral@wyarch.com

Type of Business Entity:

- Individual
- Sole Proprietorship
- Partnership
- Limited Partnership
- Corporation, State: California
- Limited Liability Company
- Other: _____

Employer Identification and/or
Social Security Number

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires Consultant to furnish the information requested in this section.

Exhibit "A"



12010 DONNER PASS ROAD, SUITE 201 TRUCKEE, CA 96161
530 587 3859 VOICE 530 587 8908 FAX
www.wyarch.com

August 16, 2023

Mr. Rob Koster, Director of Facilities
Tahoe Truckee Unified School District
11603 Donner Pass Road
Truckee, CA 96161

TIM WARD, Architect, A.I.A.
Principal
LARRY YOUNG, Architect A.I.A., A.I.C.P.
Principal
ROBERT HECK, Architect, A.I.A.
Principal
DON FULDA, Architect, A.I.A.
Principal
TED BROBST, Architect
Principal
MIKE MUSSANO, Architect, A.I.A.
Principal
RON LARKINS, Architect
Principal

Re: Truckee High School – Field House Improvements
Design Development thru Construction Administration Phase

Dear Rob,

The scope of services proposed in the existing agreements for the Truckee High School Field House have been completed. Per your request, this amendment will expand our services to include Design Development through Construction Administration Phase Services.

Scope of Services:

We will provide architectural design services for the project described above. Our services will include the services of Structural, Mechanical, and Electrical Engineers.

Architectural:

Ward|Young will continue to develop the design for the scope as currently shown in the Schematic Design. We will develop the drawings to define the proposed repairs and new finishes. We will select interior finishes and prepare materials samples and color scheme for the District’s approval. We will coordinate the DSA Application and approval process, assist the District with bidding the project, and provide standard Construction Phase Services.

Structural:

We propose to use Shields Engineering to provide analysis of existing the structural system to demonstrate that the proposed improvements do not trigger a structural retrofit of the structure. Should a Structural Retrofit be required for the building, an additional amendment will be provided for those services. Shields Engineering will provide structural consulting where needed for the project and structural design of the foundation system of the new scoreboard.

M&E:

We propose to use Sugarpine Engineering for Mechanical and Electrical Engineering services. Their scope will include design of power outlets around the gym space, removal of abandoned circuits, power for data/wifi system, and exit lighting. Mechanical improvements will include providing a minimal heat source in

TAHOE/TRUCKEE AREA AND SAN FRANCISCO AREA OFFICES

Mr. Rob Koster
August 16, 2023
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the southern storage room, and louver specification in the old attic vents. No plumbing scope is anticipated in the project.

This proposal and fee estimate assumes that the project can be described as new finishes in the existing Field House that was certified by DSA in application number #02-115419. We have not included in the fee estimate any time associated with building code analysis of the remainder of the campus as that has been previously certified by DSA. Additionally, we have not included in the fee estimate detailed site survey or accessibility evaluation for the Path of Travel from the south parking lot or throughout the remainder of the building as that has also been certified by DSA in 2018. As noted in the structural description, Structural Retrofit design is not included in this proposal.

Meetings:

We will attend up to 2 design meetings with the various user groups to review the proposed finishes. We will attend the Pre-Bid conference and Bid Opening, and Preconstruction Meeting. We will attend weekly meetings during the construction phase; we have assumed 10 meetings throughout the course of construction.

Compensation:

The services described above shall be provided on a time and expense basis in accordance with Exhibit B of the architectural services agreement for a not to exceed amount of \$132,000.

Please let us know if you have any comments or questions.

Sincerely,

WARD-YOUNG ARCHITECTS
a California corporation



Ron Larkins
Principal C-24333

Exhibit "B"**FEE SCHEDULE:**

All services performed on a Time and Expense ("hourly") basis will be charged as indicated below. These hourly rates are subject to adjustment in accordance with Ward-Young Architects' annual review of salaries, wages, and overhead costs.

Services by:	Charge to Owner/Client:
Principal	\$220
Sr. Associate	\$180
Associate	\$160
Project Architect	\$150
Staff Architect/Project Manager	\$140
Assistant Project Manager/ Job Captain	\$135
Sr. Designer/Drafter	\$130
Int. Designer/Drafter 2	\$125
Int. Designer/Drafter 1	\$115
Jr. Designer/Drafter	\$105
Clerical	\$ 85

EXPENSES CHARGED TO OWNER/CLIENT:

Reimbursable Expenses will be charged at direct cost times a 1.1 multiplier, including services performed and expenses incurred in the interest of the project by professional consultants. These expenses include the following:

- 1) Secretarial tasks, such as typing of Specifications and reports.
- 2) Expense of transportation and living expenses beyond a 30-mile radius of the office in connection with out-of-town travel authorized by the Owner.
- 3) Fees paid for securing approval of authorities having jurisdiction over the Project.
- 4) Reproductions.
- 5) Postage and handling of Drawings, Specifications, and other materials related to the Project.
- 6) Expense of overtime work requiring higher than regular rates, if authorized by the Owner.
- 7) Renderings and models requested by the Owner.
- 8) Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of that normally carried by the Architect and Architect's consultants.

PAYMENTS:

Invoices will be presented monthly and are due and payable upon receipt, unless other payment arrangements have been agreed upon in writing. Amounts not received 30 days from the invoice date will be subject to a charge of 1.5% per month (annual percentage rate of 18%) from the invoice date. Necessary costs and expenses of collection, including reasonable attorney's fees, shall be borne by the Client.

No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the work other than those for which the Architect has been found to be liable.

OWNERS' RESPONSIBILITIES:

The Owner shall provide full information, including a program which shall set forth the Owner's objectives, schedule, constraints, budget with reasonable contingencies and criteria.

The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project. The surveys and legal information shall include, as applicable, rights-of-way, restrictions, easements, encroachments, zoning, and deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade including inverts and depths. All the information on the survey shall be referenced to a project benchmark.

INSTRUMENTS OF SERVICE:

Drawings, Specifications, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants, are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights. Upon execution of this Agreement, the Architect grants to the Owner a non-exclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that