AGREEMENT FOR ON-GOING ARCHITECTURAL SERVICES

This Agreement for On-Going Architectural Services ("Agreement") is entered into this 8th day of September 2004 by and between OHLONE COMMUNITY COLLEGE DISTRICT, a California Community College District ("District") and tBP Architecture. ("Architect"); the District and the Architect are collectively referred to herein as "the Parties." This Agreement is entered into with reference to the following Recitals, all of which are incorporated herein by this reference.

RE C I TA L S

WHEREAS, from time-to-time, the District is engaged in the design, bidding and construction of works of improvement consisting generally of the demolition, construction and/or alteration of new and existing physical facilities at the District’s Ohlone College Campus, located in the City of Fremont, California. These works of improvement are hereinafter collectively referred to as "the Projects" and singularly referred to as "an Assigned Project".

WHEREAS, in connection with the Projects, on or about May 19, 2004, the District issued a Request for Qualifications/Proposals ("the RFQ/P") pursuant to which the District requested responses from architects to provide architectural and related services for the Projects; by this reference, the RFQ/P is incorporated herein.

WHEREAS, the Architect submitted a written response dated June 2, 2004 to the RFQ/P ("the RFQ/P Response"); by this reference, the RFQ/P Response is incorporated herein.

WHEREAS, the Projects require the preparation of Design Documents.

WHEREAS, applicable law, rule or regulation requires the oversight of some portions or all of the construction of the Projects by a California licensed architect.

WHEREAS, the District desires to retain Architect to provide and perform architectural and related services in connection the design, bidding and construction of the Projects assigned by the District to the Architect under this Agreement; the specific terms and conditions for an Assigned Project will be as set forth in the Project Assignment in substantially the form attached hereto as Exhibit A.

WHEREAS, Architect is duly licensed as an architect under the laws of the State of California and is qualified and capable of providing and performing the services and its other obligations under this Agreement in accordance with the terms hereof.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the District and Architect agree as follows:

AGREEMENT

1. BASIC SERVICES. Architect shall provide Basic Services and authorized Additional Services for an Assigned Project, as more particularly enumerated in this Agreement and in the Project Assignment for the Assigned Project. All Basic Services and authorized Additional Services for an Assigned Project shall be performed and completed by employees of the Architect and the Architect’s Design Consultants. Architect’s services hereunder shall be performed or provided consistent with the Basic Services Completion Schedule set forth in a Project Assignment and with professional skill and care and in such a manner as to avoid hindrance, interruption or delay to the orderly progress and completion of the design, bidding and construction of the Assigned Projects. The scope of Basic Services to be provided by the Architect in connection with an Assigned Project shall be in accordance with the Project Assignment issued by the District for an Assigned Project; the form of Project Assignment is attached hereto as Exhibit A and incorporated herein by this reference.

2. ARCHITECT COMPENSATION.

2.1. Contract Price. For each Assigned Project, the District will pay the Contract Price set forth in the Project Assignment for the Assigned Project. Unless otherwise expressly provided in the Project Assignment for an Assigned Project, the Contract Price for an Assigned Project includes the Architect’s fee, Design Consultants’ fees, personnel expense of the Architect and Design Consultants, inclusive of all benefits and burdens, travel for the personnel of the Architect and Design Consultants to and from their respective offices and the District as well as travel within the counties of Santa Clara, San Mateo, Marin, Sonoma, Solano, Napa, Contra Costa, San Francisco and Alameda, insurance and all other administrative or overhead costs associated with or arising out of performance of the Basic Services designated in the Project Assignment for an Assigned Project. If an Architectural Services Budget is established in the Project Assignment for an Assigned Project, the aggregate amount paid by the District for the Basic Services for the Assigned Project shall not exceed the amount of the Architectural Services Budget.

2.2. Construction Phase Changes; Adjustment of Contract Price. The Contract Price for the Basic Services for an Assigned Project is not subject to adjustment unless there are Changes authorized by the District during the Construction Phase of an Assigned Project which are not the result of errors, omissions or other defects in the Design Documents or failures of the Architect or Design Consultants to timely and completely perform the Basic Services for the Assigned Project. If services of the Architect or Design Consultants are required in connection
with Changes during the Construction Phase of an Assigned Project which do not result from errors, omissions or other defects in the Design Documents or failures of the Architect or Design Consultants to timely and completely perform the Basic Services for an Assigned Project, the Contract Price for an Assigned Project will be equitably adjusted to reflect the additional services provided. If a Change during the Construction Phase of an Assigned Project is the result of errors, omissions or other defects in the Design Documents or failures of the Architect or the Design Consultants to timely and completely perform the Basic Services, services required of the Architect or the Design Consultants in connection with such Change shall not result in adjustment of the Contract Price for the Assigned Project.

2.3. Reimbursable Expenses. The Contract Price for Architect’s Basic Services for an Assigned Project includes all costs and expenses of a non-capital nature reasonably and necessarily incurred by Architect to perform the Basic Services including without limitation expenses for telephone, postage, delivery, office supplies, reproduction of plans and prints, photographic film and development and travel to and from the offices of the Architect and Design Consultants to the Assigned Project and the District’s Administrative offices. Unless expressly authorized in advance by the District, no payment will be made by the District for expenses or costs of any kind, type or nature.

2.4. Additional Services. If the District authorizes or directs the Architect to perform or provide Additional Services described generally in Article 3 of the Conditions to this Agreement in connection with an Assigned Project, Architect shall be compensated for its personnel providing such Additional Services in accordance with the schedule attached to the Project Assignment for the Assigned Project (“the Rate Schedule”).

2.5. District Payments.

2.5.1. Allocation of Contract Price. The District’s payment of the Contract Price for Basic Services for an Assigned Project shall be allocated amongst the various Phases of the Basic Services for an Assigned Project as set forth in the Project Assignment for an Assigned Project.

2.5.2. Architect Billings to District. During the course of providing Basic Services for an Assigned Project, Architect shall submit monthly billing invoices to the District for payment of the Contract Price for Basic Services and authorized Additional Services performed in the immediately prior month. Architect’s billings shall be in such form and format as may be reasonably requested by District.

2.5.3. District Payments to Architect. Within forty-five (45) days of receipt of Architect’s billing invoices, District will make payment to Architect of undisputed amounts of the Contract Price due for Basic Services and authorized Additional Services. No deductions shall be made or withheld from payments due Architect hereunder on account of any penalty, assessment, liquidated damages or other amounts withheld by the District from payment to the Contractor engaged by the District for construction of an Assigned Project. The District may, however, withhold or deduct from amounts otherwise due Architect hereunder if Architect shall fail to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after Architect has fully cured such failure of performance, less costs, damages or losses sustained by the District resulting therefrom. Notwithstanding any provision of this Agreement to the contrary, if the District shall, in good faith, dispute the amount due Architect under any billing invoice rendered by Architect under this Agreement, pursuant to Civil Code §3320(a), the District may withhold from payment to the Architect an amount not to exceed one hundred and fifty percent (150%) of the disputed amount.

3. TERM; TIME

3.1. Initial Term; Renewal Terms. The initial term of this Agreement shall commence upon the District and the Architect each executing a counterpart copy hereof, delivery of an executed counterpart copy hereof to the other and ratification of this Agreement by the District’s Board of Trustees ("the Initial Term"). The Term shall expire five (5) years after the date of ratification of this Agreement by the District’s Board of Trustees. Notwithstanding expiration of the Term if at such time, there are remaining Basic Services or authorized Additional Services to be performed by the Architect in connection with an Assigned Project under a Project Assignment issued prior to expiration of this Agreement, the Architect shall continue to diligently perform and complete all such remaining Basic Services or authorized Additional Services for the Assigned Project; notwithstanding expiration of this Agreement, the District will continue to make payment for the Basic Services and authorized Additional Services performed in connection with an Assigned Project after expiration of this Agreement in accordance with the terms of the Project Assignment.

3.2. Time. All of the Basic Services and authorized Additional Services set forth in the Project Assignment for an Assigned Project shall be completed by the Architect in a prompt and diligent manner. If a schedule for completion of Basic Services in connection with an Assigned Project is agreed upon between the District and the Architect, the Architect’s performance and completion of Basic Services shall be in accordance with such schedule. The Architect shall be liable to the District for all costs, losses, damages or other liabilities arising out
of the failure of the Architect to complete Basic Services for an Assigned Project in accordance with an agreed upon schedule, provided that the Architect’s liabilities hereunder shall not extend to costs, losses, damages or other liabilities caused by factors beyond the reasonable control of the Architect.

4. INSURANCE

4.1. Architect’s Insurance. Minimum coverage amounts for policies of insurance to be obtained and maintained by the Architect pursuant to Article 4 of the Conditions to this Agreement are:

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<thead>
<tr>
<th>Insurance Type</th>
<th>Limits</th>
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<tr>
<td>Workers Compensation</td>
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The foregoing notwithstanding, the minimum coverage amounts required for an Assigned Project may be modified as set forth in the Project Assignment for an Assigned Project.

For Large projects, over ten (10) million dollars, at District’s Discretion, increased limits may be required, up to five (5) million dollars aggregate and will be itemized in the Project Assignment.

4.2. Architect's Design Consultants' Insurance. Minimum coverage amounts for policies of insurance to be obtained and maintained by each of the Architect’s Design Consultants are:

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</tr>
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</table>

The foregoing notwithstanding, the minimum coverage amounts required for an Assigned Project may be modified as set forth in the Project Assignment for an Assigned Project.

5. MISCELLANEOUS

5.1. Governing Law; Interpretation. This Agreement shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against the District or Architect.

5.2. Successors; Non-Assignability. This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors of Architect and the District. Neither Architect nor District shall assign rights or obligations hereunder without the prior consent of the other, which consent may be withheld or granted in sole discretion of the Party requested to grant such consent.

5.3. Authority. The individual(s) executing this Agreement on behalf of Architect warrant and represent that she/he is authorized to execute this Agreement and bind Architect to all terms hereof. The individual(s) executing this Agreement on behalf of District warrant and represent that she/he his authorized to execute this Agreement and subject to approval and ratification by the District’s Board of Trustees, to bind District to all terms hereof and authority granted to enter into this Agreement.

5.4. Notices. Notices under this Agreement shall be addressed and delivered as follows:

If to District:
Marian Castaneda
Director of Purchasing, Contract Administration and Auxiliary Services
OHLONE COMMUNITY COLLEGE DISTRICT
43600 Mission Blvd.
Fremont, CA 94539

If to Architect:
Richard A. Mangum, AIA, Executive Vice President
5.5. **Entire Agreement.** This Agreement, the RFQ/P, the RFQ/P Response, the accompanying Conditions and the form of Project Assignment attached hereto as Exhibit A are all of the documents forming a part of the Agreement. If there are conflicts or inconsistencies between the terms of this Agreement, the Conditions to this Agreement or a Project Assignment and any portion of the RFQ/P Response, this Agreement, the Conditions to this Agreement and/or a Project Assignment shall prevail and govern over the RFQ/P Response. The foregoing constitute the entire agreement and understanding between the District and Architect concerning the subject matter hereof, replacing and superseding all prior agreements or negotiations, whether written or verbal. No term or condition of this Agreement shall be modified or amended except by writing executed by the District and Architect.

**IN WITNESS WHEREOF,** the District and Architect have executed this Agreement as of the date set forth above.

<table>
<thead>
<tr>
<th>“District”</th>
<th>“Architect”</th>
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<tbody>
<tr>
<td>OHLONE COMMUNITY COLLEGE DISTRICT</td>
<td>tBP Architecture</td>
</tr>
</tbody>
</table>

By: ______________________________  By: ______________________________

Signature  Signature

Name: ______________________________  Name: ______________________________

Printed Name  Printed Name

Title: ______________________________  Title: ______________________________
CONDITIONS OF AGREEMENT
FOR ARCHITECTURAL SERVICES

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CONDITIONS OF AGREEMENT
FOR ARCHITECTURAL SERVICES

ARTICLE 1. RELATIONSHIP OF THE PARTIES

1.1. Relationship of Architect to Other Project Participants. The Architect’s services under this Agreement shall be provided in conjunction with contracts between the District and other Project participants, including without limitation, the Contractor. Construction Manager, Inspector of Record and the Program Manager, if one is retained by the District for the Project. The Contractor awarded the Construction Contract is responsible for performance of its obligations under the Construction Contract. The Architect’s services under this Agreement shall not be deemed nor construed to be the Architect’s assumption of responsibility for, or control over, construction means, methods, sequences or procedures, or for safety at the Site, all of which are remain the responsibility of the Contractor.

1.2. Architect Independent Contractor Status. In providing services under this Agreement, the Architect shall be an independent contractor to the District. The express terms hereof set forth the limited extent to which the Architect is authorized to act on behalf of the District in its independent contractor status. The Architect shall be liable to the District and to third parties for the consequences of the Architect’s actions or conduct, which exceed the express limited scope of the Architect’s authority to act on behalf of the District as set forth in this Agreement.

1.3. District Responsibilities.

1.3.1. Information. The District shall provide full information in a timely manner regarding the Project, including the District’s objectives, general description of the scope, schedule requirements, Construction Budget and other constraints or requirements, which may affect the Project. District shall provide decisions in a timely manner as identified in the project schedule so as not to delay the overall progress of the Project.

1.3.2. District Representative. The District shall designate a representative to act on the District’s behalf with respect to the Project and who shall be authorized to render decisions on behalf of the District and to carry out the District’s responsibilities under this Agreement. The District Representative will discharge her/his responsibilities hereunder on behalf of the District in a manner so as to avoid unreasonable delay in the orderly and sequential progress of the Architect’s Basic Services in connection with Project design, bidding and construction.

1.3.3. District Consultants. Except for Design Consultants retained by the Architect under this Agreement, the District shall furnish all legal, accounting, insurance and other consulting services as may be necessary for Project design, bidding and construction. The District will make the sole determination of the consultants needed.

1.3.4. Tests and Inspections. The District shall furnish or otherwise retain the services for inspection/testing during Project construction as required by applicable law, code, rule, regulation or by the terms of the Construction Contract. The District shall provide, if required by applicable law, code, rule, regulation or conditions encountered during Project construction, test/inspections for hazardous or toxic materials.

1.3.5. District Notice of Non-Conformity. The District will give prompt written notice to the Architect if the District becomes aware of any fault, failure or neglect of the Architect or the services provided by or through the Architect under this Agreement, provided, that the failure or delay of the District in giving such notice shall not constitute a waiver of any right or remedy of the District arising out of such fault, failure or neglect.

1.4. Architect Standard of Care. The Architect and its Design Consultants shall provide and perform the Basic Services and authorized Additional Services: (a) using their respective professional skill and judgement; (b) acting with due care and competence applying the technical skills and knowledge applied by other architects and design consultants of good standing under similar circumstances and conditions in accordance with applicable professional standards of care and in accordance with the terms of this Agreement; and (c) in accordance with applicable law, code, rule or regulation.

ARTICLE 2. BASIC SERVICES

2.1. Architect Representation. The Architect shall designate a Job Captain or Project Architect for all Phases of the Basic Services (“the Architect Representative”). The Architect Representative shall be reasonably satisfactory to the District and shall not be replaced without the prior approval and consent of the District. The Architect Representative shall have the overall responsibility for directing and ensuring the Architect’s complete and timely performance of its obligations hereunder. During the Construction Phase of the Basic Services, the Architect Representative shall be readily available by telephone, telex, email, pager or other means of communications to provide design direction and decisions as necessary to avoid delay, hindrance or interruption to Project construction.
2.2. **Design Consultants.** The Basic Services enumerated in this Article 2 includes all architectural, engineering, specialty consultants and related design services for the Project set forth in the Project Assignment (Exhibit A) and as the architect reasonably believes is necessary to perform the basic and additional services identified in the project assignment.

2.3. **Pre-Design (Programming) Phase.** The Architect shall review the Project Construction Budget and other information provided by the District pursuant to Article 1.3.1 hereof to ascertain the requirements and constraints of the Project. In consultation with the District, understandings shall be arrived at with respect to the scope, requirements and constraints of the Project. Architect shall provide the District with a preliminary evaluation of the District’s Project requirements and constraints, including the selection of materials, building systems, equipment, the Project Construction Budget and alternative approaches to design and construction of the Project.

2.3.1. **Conceptual Design Estimate.** Architect shall provide conceptual systems-based construction cost estimate.

2.3.2. **Presentation and Approval of Conceptual Designs.** The Architect shall present the conceptual designs to the Board of Trustees for information, review and approval.

2.4. **Preliminary Plans Phase.** The Preliminary Plans Phase of the Basic Services consists of the following services.

2.4.1. **Project Evaluation.** The Architect shall review the Project Construction Budget and other information provided by the District pursuant to Article 1.3.1 to ascertain the requirements and constraints of Project design and construction. The Architect shall meet, confer and consult with the District regarding its evaluation of the Project requirements and constraints, including the proposed selection of materials/equipment for incorporation into the Project, the Project Construction Budget and alternative approaches to design, bidding and/or construction of the Project.

2.4.2. **Initial Preliminary Plans.** Based upon the Project scope, Project Construction Budget, schedule and other requirements and constraints of the Project mutually agreed upon and understood between the District and the Architect, the Architect shall prepare Initial Preliminary Plans and other documents illustrating scale and other relationships of the various components of the Project and an outline of the Specifications.

2.4.3. **District Review of Initial Preliminary Plans.** Upon the Architect achieving forty percent (40%) completion of the Initial Preliminary Plans, the Architect shall submit the same to the District for review, information and comment. Upon District review of these Initial Preliminary Plans, the Architect shall meet, confer and consult with the District regarding the same.

2.4.4. **Construction Cost Estimate.** The Architect shall prepare and submit the District for review, information and comment a Construction Cost Estimate for the Project as depicted at the forty percent (40%) completion of the Initial Preliminary Plans. If the Construction Cost Estimate materially exceeds the Construction Budget, the Architect shall meet, confer and consult with the District to mutually agree upon modifications to the Project so that the Construction Cost Estimate will conform to the Construction Budget.

2.4.5. **Completion of Initial Preliminary Plans.** The Architect shall complete the Initial Preliminary Plans which incorporate the comments/revisions of the District noted upon the District’s review of the forty percent (40%) completed Initial Preliminary Plans.

2.4.6. **District Review of Final Preliminary Plans.** Upon the Architect’s one hundred percent (100%) completion of the Initial Preliminary Plans, the Architect shall submit the same to the District for review, information and comments. The Architect shall meet, confer and consult with the District regarding comments/modifications noted upon the District’s review of the one hundred percent completed Final Preliminary Plans.

2.4.7. **Constructibility/Value Engineering Reviews.** If requested by the District, the Architect shall provide a copy of the one hundred percent (100%) completed Preliminary Plans to the District for the purpose of conducting Constructibility and/or Value Engineering reviews of the same. If the District elects to conduct Constructibility and/or Value Engineering Review of the one hundred percent (100%) completed Preliminary Plans, the Architect shall meet, confer and consult with the District regarding comments/modifications generated upon such reviews.

2.4.8. **Construction Cost Estimate of Final Preliminary Plans.** The Architect shall prepare and submit to the District, for information and review, a Construction Cost Estimate for the Project as depicted in the Final Preliminary Plans. If the Construction Cost Estimate materially exceeds the Construction Budget, the Architect shall revise the Final Preliminary Plans as necessary so that the Construction Cost Estimate for the Project depicted therein conforms to the Construction Budget. Revisions of the Final Preliminary Plans to conform to the Construction Budget shall be completed without adjustment of the Contract Price unless the District shall have directed modifications or inclusions to the scope of the Project or component parts thereof which cause the Construction Budget to be exceeded.
2.4.9. Submission of Final Preliminary Plans for Approval. The Architect shall submit to governmental agencies with jurisdiction over the Project, or any portion thereof, the Final Preliminary Plans as appropriate or necessary for review and/or approval to proceed to develop Working Drawings.

2.4.10. Presentation to Board of Trustees. The Architect shall present the Final Preliminary Plans to the District’s Board of Trustees for information, review and approval.

2.5. Working Drawings. Based upon the Final Preliminary Plans, the Architect shall prepare Working Drawings consisting of all Drawings, Specifications and other Design Documents necessary or appropriate for construction of the Project. The Working Drawings shall set forth in detail the requirements for construction of the Project with sufficient clarity, coordination and consistency to permit qualified and capable contractors to bid upon and construct the Project for the Construction Budget.

2.5.1. Initial Working Drawings. The Architect shall prepare Initial Working Drawings which incorporate the comments/modifications generated upon review of the Final Preliminary Plans by the District and/or governmental agencies or Constructibility/Value Engineering reviews of the Final Preliminary Plans.

2.5.2. District Review of Initial Working Drawings. Upon the Architect achieving forty percent (40%) completion of the Initial Working Drawings, the Architect shall submit the same to the District for review, information and comment. Upon District review of these Initial Working Drawings, the Architect shall meet, confer and consult with the District regarding the same.

2.5.3. Value Engineering of Working Drawings. If requested by the District, the Architect shall provide a copy of the forty percent (40%) completed Initial Working Drawings to the District for the purpose of conducting a Value Engineering review thereof. If the District elects to conduct such a Value Engineering review, upon completion of the same, the Architect shall meet, confer and consult with the District regarding comments/modifications generated during such review.

2.5.4. Initial Working Drawings Construction Cost Estimate. The Architect shall prepare and submit the District for review, comment and information, a Construction Cost Estimate for the Project as depicted in the forty percent (40%) completed Initial Working Drawings. If the Construction Cost Estimate materially exceeds the Construction Budget, the Architect shall meet, confer and consult with the District to mutually agree upon modifications to the Project so that the Construction Cost Estimate conforms with the Construction Budget. Revisions of the Initial Working Drawings to conform within the Construction Budget shall be completed without adjustment of the Contract Price unless the District shall have directed modifications or inclusions to the scope of the Project or component parts thereof which cause the Construction Budget to be exceeded.

2.5.5. Final Working Drawings. Upon the District’s completion of its review of the forty percent (40%) completed Initial Working Drawings, the Architect shall prepare Final Working Drawings which incorporate comments generated upon the District’s review of the Initial Working Drawings and/or the Value Engineering review of the Initial Working Drawings.

2.5.6. Constructibility Review of Final Working Drawings. If requested by the District, the Architect shall submit to the District a set of the Working Drawings submitted by the Architect to DSA for DSA approval for the purpose of the District conducting a Constructibility Review thereof. If the District elects to conduct such a Constructibility Review, the Architect shall meet, confer and consult with the District regarding comments/modifications generated during such review. The Architect shall incorporate in the Final Working Drawings all mutually agreed upon comments/modifications generated during the Constructibility Review. As necessary or appropriate, the Architect shall obtain DSA approval of the Working Drawings incorporating Constructibility Review comments/modifications.

2.5.7. Construction Cost Estimate of Final Working Drawings. Concurrently with submission of the Final Working Drawings to DSA for approval, the Architect shall prepare and submit to the District a Construction Cost Estimate for the Project as depicted in the Final Working Drawings. If the Construction Cost Estimate materially exceeds the Construction Budget, the Architect shall meet, confer and consult with the District to mutually agree upon modifications to the Project so that the Construction Cost Estimate conforms to the Construction Budget. Revisions of the Final Working Drawings to conform to the Construction Budget shall be completed without adjustment of the Contract Price unless the District shall have directed modifications or inclusions to the scope of the Project or component parts thereof, which cause the Construction Budget to be exceeded.

2.5.8. Presentation to Board of Trustees. The Architect shall present the Final Working Plans to the District’s Board of Trustees for information and review and approval.

2.5.9. Architect Provision of Design Documents. The Architect shall provide the District with electronic files (MS Word 97 or later for text documents and the most current version of AutoCAD for Drawings) of the Design...
2.6. **Bidding Phase.**

2.6.1. **Development of Bid Documents.** The Architect shall advise and make recommendations to the District for the bidding and award of the Construction Contract for the Project. The Architect will generally review and comment upon the District’s proposed forms of Construction Contract, Conditions of the Construction Contract (including without limitation, the General Conditions, Special Conditions and Supplemental Conditions). The Architect shall assist the District in preparation of forms and documents appropriate or required for bidding the Construction Contract.

2.6.2. **Bidding Process.** Bidding Process. During the bidding for Construction Contract, Architect will: (i) attend pre-bid conference(s), as called by the District; (ii) assist the District in responding to bidders’ inquiries, questions or clarification requests relating to the bidding, the Project, the Design Documents, or the Construction Documents; and (iii) where necessary or appropriate, the Architect will prepare and assist the District in issuance of addenda to the Construction Documents for the Project. Architect will assist the District in the receipt and review of bidders’ Bid Proposals, including the review of Bids Proposals for responsiveness and bidder responsibility, analyses of Bid Proposals and recommendations for the selection of the Contractor for the award of the Construction Contract. As requested by the District, the Architect will assist the District in obtaining required governmental approval(s) for award of the Construction Contract. The District will be responsible for the distribution of documents during the Bidding Process.

2.6.3. **Bid Costs Exceeding Project Construction Budget.** If within one hundred fifty (150) days of the date upon which Architect obtains final DSA approval of the Working Drawings, the District shall have solicited Bid Proposals from bidders for award of the Construction Contract and such Bid Proposals are opened by the District within said one hundred fifty (150) days and the lowest bona fide Bid Proposal exceeds the Project Construction Budget, the District may: (i) approve of an increase in the Project Construction Budget; (ii) reject all Bid Proposals and authorize re-bidding of the Project; (iii) abandon or terminate the Project; or (iv) revise the Project scope, or reduce or eliminate portions of the Project so as to limit and reduce Construction Costs. Unless the District has theretofore directed changes, modifications or inclusions in the scope of the Project or component parts thereof which cause the Bid Proposals to exceed the Project Construction Budget plus a maximum allowance of five percent (5%), if the District elects to revise the Project pursuant to (iv) above, the Architect shall make all necessary revisions to the Construction Documents without adjustment of the Contract Price; if the District elects to reject all Bid Proposals and re-bid the Project, for such subsequent re-bid(s), Architect shall perform the obligations set forth in Articles 2.5.1 and 2.5.2 above in connection with such re-bid(s) without adjustment of the Contract Price.

2.6.4. **District Discretion to Award Multiple Construction Contracts.** In the sole exclusive discretion of the District, construction of the Project may be with a single general contractor under contract to the District or with multiple trade contractors each under contract to the District. The project delivery method selected by the District, may result in an amendment to this agreement.

2.7. **Construction Phase.**

2.7.1. **Administration of Construction Contract.** Architect will provide assistance to the District in administration of the Construction Contract and construction of the Project. The scope of the Architect’s services in administration of the Construction Contract shall include all activities and responsibilities set forth herein and in the Construction Contract. If the District retains a Project Manager for the Project, the Architect’s administration of the Construction Contract shall be in conjunction with the services and responsibilities of the Project Manager. The Architect shall be a representative of the District and shall advise and consult with the District regarding Project construction until Final Payment under the Construction Contract is due and Final Completion of Project construction is certified by the Architect. The Architect shall have the authority to act on behalf of the District only to the extent expressly provided for by the terms hereof and as may be subsequently modified in accordance with the provisions hereof. Duties, responsibilities and limitations of the Architect’s authority shall not be restricted, modified or extended without written agreement of the District and the Architect along with consent by the Contractor and/or Project Manager as necessary or appropriate. Architect shall cooperate with and comply with controls, procedures, processes and reporting functions reasonably implemented by the District with respect to design or construction of the Project.

2.7.2. **Site Observations; Project Meetings.** The Architect shall attend weekly or other meetings relating to the Project and shall visit the Site at intervals appropriate to the stage of construction, as required by the conditions of construction or the Site, or as may be reasonably requested by the District from time to time for the purpose of becoming generally familiar with the progress and quality of the Work completed and to
2.7.3. Contractor Applications for Payment.

2.7.3.1. Development of Payment Procedures. In consultation with the District and the Project Manager if any, the Architect shall assist in the development and implementation of procedures, forms and documents for the submittal, review, processing and disbursement of Progress Payments to the Contractor.

2.7.3.2. Certification of Payment Due. Based on the Architect’s observations and evaluations and in conjunction with the observations and evaluations of the Project Manager and the District’s Inspector of Record, the Architect shall certify the amount due on each Application for Progress Payment. Such certification shall be the Architect’s representation to the District that based upon the Architect’s Site observations in accordance with this Agreement and the data contained in the Application for Progress Payment, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the terms of the Construction Contract. Issuance of a Certificate for Payment shall constitute the Architect’s representation to the District that the Contractor is entitled to the amount certified.

2.7.3.3. Limitations Upon Architect’s Certification. The Architect’s certifications and representations hereunder are subject to an evaluation of the Work for conformity with the terms of the Construction Contract upon Substantial Completion, the results of subsequent tests and inspections, minor deviations from the terms of the Construction Contract correctable prior to Final Completion and any specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall not be deemed a representation that the Architect has: (i) made exhaustive or continuous Site inspections to check the quality or quantity of the Work; (ii) reviewed construction means, methods, sequences or procedures; (iii) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the District to substantiate the Contractor’s right to payment, excepted as included in the materials accompanying an Application for Progress Payment transmitted to and reviewed by the Architect hereunder; or (iv) ascertained for or what purpose the Contractor has used funds previously disbursed under prior Application(s) for Progress Payment.

2.7.3.4. Final Payment. In conjunction with the Project Manager and the District’s Inspector of Record, the Architect shall review, evaluate and certify for payment the Contractor’s Application for Final Payment.

2.7.3.5. Timely Action by Architect. Upon receipt of any of the Contractor’s Applications for Progress Payment and the Application for Final Payment, the Architect shall promptly commence and complete its review, evaluation and certification of the amount due on each such application so that the District can make payment of the amount certified within the time permitted by law without incurring liability for interest and/or the Contractor’s attorneys fees resulting from untimely payments of any Progress Payment or the Final Payment. In the event the application for payment is not processed within the time outlined in the construction contract, the Architect shall notify the District in writing.

2.7.4. Rejection of Work. The Architect shall have the authority, after notification to the District, to reject Work, which does not conform with the requirements of the Construction Contract. Whenever the Architect considers it necessary or appropriate for implementation of the intent of the Construction Contract upon notice to and authorization by the District, the Architect may require additional inspection or testing of the Work in accordance with the provisions of the Construction Contract, whether such Work is prepared, fabricated, installed or constructed. This authority of the Architect, or the Architect’s good faith determination to exercise or not exercise such authority, shall not, however, give rise to a duty or
responsibility of the Architect to the District, the Contractor or any others performing or providing Work of
the Project to exercise or not to exercise such authority.

2.7.5. Submittals.

2.7.5.1. **Submittal Procedures.** In consultation with the District and the Project Manager if any, Architect
shall assist in the development and implementation of forms, documents and procedures for the
handling, review and processing the Contractor’s Submittals required for the Work.

2.7.5.2. **Submittal Review.** The Architect shall review, and take appropriate action upon Submittals for the
limited purpose of checking for conformance with the information given and the design concept
expressed in the Design Documents. The Architect’s actions hereunder shall be taken with such
reasonable promptness as to cause no delay, interruption or hindrance to the activities of the
Contractor or others performing construction activities at the Site affected by such Submittal while
allowing sufficient time in the Architect’s professional judgment to permit adequate review. If a
Submittal Schedule or time frames for completion of the Architect’s review and evaluation of
Submittals are developed and established pursuant to the Construction Contract with the participation
and concurrence of the Architect, Architect’s actions hereunder shall conform with such Submittal
Schedule or time frames; Architect shall be responsible for all results or consequences of its failure or
refusal to complete its review and evaluation of Submittals in accordance with such Submittal
Schedule. When professional certification of performance characteristics of materials, systems or
equipment is required by the terms of the Construction Contract, the Architect shall be entitled to rely
upon such certification to establish that the materials, systems or equipment will meet the
performance criteria required by the Construction Contract.

2.7.5.3. **Limitations Upon Submittal Review.** The Architect’s review of Submittals is not for the purpose of
determining the accuracy and completeness of other details such as dimensions and quantities or for
substantiating instructions for installation or performance of equipment or systems designed by the
Contractor, all of which remain the responsibility of the Contractor in accordance with the
Construction Contract. The Architect’s review shall not constitute approval of safety precautions or,
unless otherwise expressly stated by the Architect, construction means, methods, sequences or
procedures.

2.7.6. Changes.

2.7.6.1. **Changes Procedures and Processing.** In consultation with the District and the Project Manager if
any, the Architect shall assist in the development of procedures, forms and processes for the
evaluation of Changes or potential Changes to the Work.

2.7.6.2. **Evaluation of Changes; Change Orders.** The Architect shall assist the District and the Project
Manager if any, in evaluating Change Proposals of the Contractor and will advise the District of the
nature, extent and scope of Change Proposals along with alternatives. Where Changes are authorized
by the terms of the Construction Contract, the Architect shall prepare, execute and forward to District
a Change Order describing such Change and the adjustment if any, to the Contract Price or Contract
Time of the Construction Contract.

2.7.6.3. **Authority to Direct Minor Changes.** The Architect may authorize and direct minor Changes in the
Work which do not involve an adjustment of the Contract Time or the Contract Price of Construction
Contract and which are consistent with the intent of the Design Documents. Such Changes shall be
effected by written order issued by the Architect and copied to the District.

2.7.7. Interpretations.

2.7.7.1. **Procedures for Handling Contractor’s Requests.** In conjunction with the District and the Project
Manager, the Architect shall assist in the development of forms, documents and procedures for the
transmittal, handling, response and disposition of requests and inquiries relative to the Work or the
Design Documents.

2.7.7.2. **Architect’s Interpretation.** The Architect shall interpret and decide matters concerning the
performance of the District or the Contractor on written request of either the District or the
Contractor. The Architect shall respond to and issue clarifications as necessary to address and resolve
questions or inquiries of the Contractor relative to coordination, consistency and clarity of the Design
Documents and the component parts thereof. The Architect’s responses to the foregoing shall be
made with reasonable promptness and within any time limits established in the Construction Contract
or which may otherwise be mutually agreed upon.

2.7.7.3. **Effect of Architect’s Decisions.** The Architect’s decisions and interpretations rendered hereunder
shall be consistent with the intent of and reasonably inferable from the Construction Contract or the
Design Documents and shall be in writing or in the form of drawings. When making such decisions
or interpretations, the Architect shall endeavor to secure faithful performance of the Contractor and the District, shall show no partiality to either and shall not be liable for the results of such decisions or interpretations rendered in good faith, in accordance with the terms hereof and the Architect’s discharge of due care. The Architect’s decisions or interpretations in matters pertaining to aesthetic effect shall be final and binding on the Contractor and District if consistent with the intent expressed in the Construction Contract or Design Documents.

2.7.8. Contractor Claims. The Architect shall render written decisions regarding claims, disputes or other matters in controversy between the District and the Contractor arising under the Construction Contract, including the execution or progress of Work thereunder. The Architect’s decisions shall be in accordance with any applicable time limits set forth in the Construction Contract; if no time limits are set forth, the Architect shall render decisions within a reasonable time.

2.7.9. Records and Reports. The Architect shall maintain current, accurate and complete records of the Project Construction, including without limitation, correspondence, memorandum, Change Orders, Change Order Requests, Proposal Requests and similar Project records. The Architect shall timely prepare and submit all reports regarding the Project construction required by applicable law, rule or regulation.

2.7.10. Limitations Upon Architect’s Construction Phase Services. Architect’s services during the Construction Phase shall not be deemed Architect’s assumption of, or control over, construction means, methods and sequences or Site safety, all of which remain the responsibility of the Contractor. Architect shall not have control over or charge of the acts or omissions of the Contractor or its Subcontractors or their agents and employees.

2.8. Post-Construction Phase.

2.8.1. Substantial Completion. Upon request of the Contractor and in conjunction with the District, the Architect shall inspect the Work to determine if Substantial Completion has been achieved and if not the measures necessary to achieve Substantial Completion. The Architect shall determine and certify the date of Substantial Completion of the Project.

2.8.2. Punchlist. At the time of determining Substantial Completion and in conjunction with the District, the Project Manager and the Contractor, the Architect shall note the conditions of the Work requiring correction, replacement, removal or other action necessary to comply and conform with the requirements of the Construction Contract (“the Punchlist”). The Architect shall, in conjunction with the District, the Project Manager, if any, and the Contractor, determine the time reasonably necessary to complete the Punchlist items. If mutual agreement is not reached establishing the time for the Contractor’s completion of the Punchlist, the Architect shall make a binding good faith determination of the time for the Contractor’s completion of the Punchlist. The Architect shall thereafter periodically monitor the Contractor’s performance and completion of the Punchlist.

2.8.3. Final Completion. In conjunction with the District and upon request of the Contractor, the Architect shall inspect the Work to determine that Final Completion has been achieved and that the Work conforms and complies with the requirements of the Construction Contract, including completion of the Punchlist prepared at Substantial Completion. The Architect shall determine and certify the date of Final Completion.

2.8.4. Close-Out Documents. The Architect shall compile and assemble the Contractor’s close-out documents for delivery to the District, including without limitation, Record As-Built Drawings, Operations and Maintenance manuals, key schedules and warranties. The Architect shall prepare and submit for processing such documentation as required by governmental agencies, including DSA, in connection with completion of the Work of the Project. Within sixty (60) days of the date of Final Completion, Architect shall provide District with a complete reproducible set of “Architect’s Record Drawings” which shall be based upon the Contractor’s “As-Built” drawings showing significant changes between the Work of the Drawings made during construction, including those incorporated into Change Orders issued under the Construction Contract, locations of building systems concealed or covered, including without limitation, utility structures and distribution systems and electrical, mechanical, plumbing and structural systems. Each sheet of the Architect’s Record Drawings shall note clearly “RECORD” with the data source, date of drawing and distribution systems and electrical, mechanical, plumbing and structural systems. Each sheet of the Architect’s Record Drawings shall note clearly “RECORD” with the data source, date of drawing and distribution systems and electrical, mechanical, plumbing and structural systems.

ARTICLE 3. ADDITIONAL SERVICES

3.1. Additional Services. The services described in this Article 3 are not included in the scope of Architect’s Basic Services hereunder. If the District shall request any of the Additional Services described in this Article 3, Architect shall be compensated for the same in accordance with Paragraph 2.3 of the Agreement.
3.2. **Contingent Additional Services.** If Contingent Additional Services described below are provided by Architect through no fault or neglect of Architect, prior to providing any such Additional Services, Architect shall notify the District in writing; the District may direct the Architect to not proceed with all or any portion of Contingent Additional Services described in Architect’s written notice. The following constitute Contingent Additional Services:

3.2.1. **Revisions to Design Documents.** Making significant revisions to the Drawings, Specifications or other Design Documents where such revisions are: (i) inconsistent with approval or instructions previously given by the District, including revisions necessary due to significant adjustments in the District’s Program, budget or construction completion time for the Project; (ii) required by enactment of, or revisions to codes, laws, rules or regulations applicable to the Work of the Project where such enactment or revision could not have been reasonably foreseen by Architect; or (iii) due to the District’s failure to render decisions in a timely manner.

3.2.2. **Contractor Default.** Services required or necessary as a result of the default or termination of the Contractor, failure of performance by the District or the Contractor, or major defects or deficiencies in the Work of the Contractor which were not and could not have been noted by the Architect in its Site observations under Article 2 hereof.

3.2.3. **Contractor Requested Substitutions.** Providing services in connection with the evaluation(s) or request(s) by the Contractor to provide substitute or alternative systems, equipment or materials to those indicated in the Design Documents and making subsequent revisions to the Design Documents and other documentation resulting therefrom.

3.2.4. **Damage/Destruction to the Work.** Providing consultation or other services in connection with repairs, replacements or corrections of the Work damaged or destroyed by fire or other casualty so long as no negligent or willful acts, omissions or other conduct of Architect, Design Consultants or their employees, agents or representatives have caused or contributed to such damage or destruction.

3.2.5. **Expert Witness Services.** Providing services as an expert witness in connection with a public hearing, arbitration or other legal proceeding arising out of the Project, except where Architect is a party thereto, is called as a percipient witness (in which case Architect shall be entitled to witness fees and costs as allowed by law) or is found liable for damages or other relief.

3.3. **Optional Additional Services.** The Optional Additional Services described herein shall be provided by Architect only upon the specific written request of the District. Optional Additional Services shall be compensated for in accordance with the terms of this Agreement.

3.3.1. **Future Systems.** Services relative to future systems, facilities or equipment not included within the scope of the Project.

3.3.2. **Existing Conditions.** Services to investigate existing conditions or facilities not included within the scope of the Project or to provide measured drawings thereof.

3.3.3. **Furniture, Furnishings, Equipment.** Services in connection with the District’s selection, procurement or installation of furniture, furnishing or equipment not included within the scope of the Project.

3.3.4. **Financial Feasibility Studies.** Providing financial feasibility or other special study.

3.3.5. **Special Surveys; Studies.** Providing planning surveys or special surveys for Site evaluations, comparative studies or assessment of environmental conditions.

3.3.6. **Verification of District Provided Information.** Providing services to verify the accuracy of drawings or other information provided by the District.

3.3.7. **Ownership Costs.** Analysis of ownership, operational or maintenance costs.

3.3.8. **Additional Design Consultants.** Providing services of Design Consultants, except for those included as part of the Basic Services hereunder.

**ARTICLE 4. INSURANCE AND INDEMNITY**

4.1. **Architect Insurance.**

4.1.1. **Workers Compensation and Employers Liability Insurance.** Architect shall purchase and maintain Workers’ Compensation Insurance covering claims under workers’ or workmen’s compensation, disability benefit and other similar employee benefit acts may be liable. Architect shall purchase and maintain Employer’s Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee’s employment by Architect. The Employer’s Liability Insurance required of Architect hereunder may be obtained by Architect as a separate policy of insurance or as an additional coverage under the Workers’ Compensation Insurance required to be obtained and maintained by Architect hereunder.

4.1.2. **Commercial General Liability and Property Insurance.** Architect shall purchase and maintain Commercial General Liability and Property Insurance as will protect Architect from the types of claims set forth below.
which may arise out of or result from Architect’s services under this Agreement and for which Architect may be legally responsible: (i) claims for damages because of bodily injury, occupational sickness or disease or death of Architect’s employees; (ii) claims for damages because of bodily injury, sickness or disease or death of any person other than Architect’s employees; (iii) claims for damages insured by usual personal injury liability coverage; (iv) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (v) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; and (vi) contractual liability insurance applicable to Architect’s obligations under this Agreement. District shall be an additional named insured to Architect’s commercial general liability insurance policy.

4.1.3. Professional Liability Insurance. Architect will procure and maintain professional liability insurance covering liabilities of the Architect arising out of the performance of services under this Agreement.

4.1.4. Design Consultants’ Insurance. Each of the Design Consultants retained by the Architect to provide or perform a portion of the services or obligations of the Architect under this Agreement shall obtain and maintain policies of insurance for Workers Compensation, Employers Liability, Commercial General Liability/Property Damage and Professional Liability. The District shall be an Additional Named Insured on each Design Consultant’s Commercial General Liability Insurance Policy. Each policy of insurance to be obtained by each of the Architect’s Design Consultants shall conform with the standards or requirements set forth in Articles 4.1.1, 4.1.2 and 4.1.3 above.

4.1.5. Coverage Amounts. Insurance to be procured and maintained by Architect and its Design Consultants hereunder shall be in the coverage amounts set forth in the Agreement.

4.1.6. Policy Endorsements; Evidence of Insurance. Architect shall deliver to the District Certificates of Insurance evidencing each of the policies of insurance in the coverage amounts required hereunder. All policies of insurance required hereunder shall be issued by insurer(s) admitted to issue insurance by the State of California and to the reasonable satisfaction of the District. Coverage under each policy of insurance required hereunder, whether by endorsement or otherwise, shall provide that such policy will not be modified, canceled or allowed to expire without at least thirty (30) days advance written notice to the District.

4.2. District General Liability Insurance. District shall obtain and maintain General Liability Insurance covering District for claims of bodily injury, death or property damage arising out of the Project. District may, at its sole election, provide self-insurance in satisfaction of its obligations hereunder.

4.3. Indemnity.

4.3.1. Architect Indemnity of District. To the fullest extent permitted by law, the Architect shall indemnify, defend and hold harmless the District and its employees, officers, Board of Trustees, individual members of the Board of Trustees, agents and representatives (“the Indemnified Parties”) from any and all claims, demands, losses, responsibilities or liabilities for: (i) injury or death of Architect’s employees arising out of this Agreement; (ii) injury or death of persons or damage to property, or (iii) other costs or charges, to the extent directly or indirectly arising out of or attributable, in whole or in part, to the negligent or willful acts, omissions, errors and/or other conduct of Architect, its Design Consultants or the employees, agents and representatives of Architect or any of its Design Consultants in performing or providing any of the obligations, services or other work product contemplated under this Agreement. The foregoing shall include without limitation, attorneys fees and costs incurred by the Indemnified Parties and shall survive the termination of this Agreement until any such claim, demand, loss, responsibility or liability covered by the provisions hereof is barred by the applicable Statute of Limitations.

4.3.2. District Indemnity of Architect. The District shall indemnify, and hold harmless Architect from all claims arising out of bodily injury (including death) and physical damage (other than to the Project itself and property covered by insurance under Article 4.1.2 hereof) which arise out of the negligent or willful acts, omissions or other conduct of the District.

ARTICLE 5. TERMINATION; SUSPENSION

5.1. Termination for Default. Either the District or Architect may terminate this Agreement upon seven (7) days advance written notice to the other if there is a default by the other Party in its performance of a material obligation hereunder and such default in performance is not caused by the Party initiating the termination. Such termination shall be deemed effective the seventh (7th) day following the date of the written termination notice, unless during such seven (7) day period, the Party receiving the written termination notice shall commence to cure it default(s) and diligently thereafter prosecute such cure to completion. In addition to the District’s right to terminate this Agreement pursuant to the foregoing, the District may terminate this Agreement upon written
notice to Architect if: (a) Architect becomes bankrupt or insolvent, which shall include without limitation, a
general assignment for the benefit of creditors or the filing by Architect or a third party of a petition to reorganize
debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for Architect or
any of Architect’s property on account of Architect’s insolvency; or (b) if Architect disregards applicable laws,
codes, ordinances, rules or regulations. If District exercises the right of termination hereunder, the Contract Price
due the Architect, if any, shall be based upon Basic Services, authorized Additional Services and Reimbursable
Expenses incurred or provided prior the effective date of the District’s termination of this Agreement, reduced by
the District’s prior payments of the Contract Price and losses, damages, or other costs sustained by the District
arising out of the termination of this Agreement or the cause(s) for termination of this Agreement. Payment of
the amount due the Architect, if any, shall be made by District only after completion of the Post-Construction
Phase of this Agreement. Architect shall remain responsible and liable to District for all losses, damages or other
costs sustained by District arising out of termination pursuant to the foregoing or otherwise arising out of
Architect’s default hereunder, to the extent that such losses, damages or other costs exceed any amount due
Architect hereunder for Basic Services, Reimbursable Expenses or authorized Additional Services.

5.2. District’s Right to Suspend. The District may, in its discretion, suspend all or any part of the construction of the
Project or the Architect’s services hereunder; provided, however, that if the District shall suspend construction of the
Project or Architect’s services hereunder for a period of sixty (60) consecutive days or more and such
suspension is not caused by the Architect’s default or the acts or omissions of Architect or its Design
Consultants, upon rescission of such suspension, the Contract Price will be subject to adjustment to reflect actual
costs and expenses incurred by Architect, if any, as a direct result of the suspension and resumption of Project
construction or Architect’s services hereunder.

5.3. District’s Termination of Agreement for Convenience. The District may, at any time, upon seven (7) days
advance written notice to Architect terminate this Agreement for the District’s convenience and without fault,
neglect or default on the part of Architect. In such event, the Agreement shall be deemed terminated seven (7)
days after the date of the District’s written notice to Architect or such other time as the District and Architect may
mutually agree upon. In such event, the District shall make payment of the Contract Price to Architect for
services provided through the date of termination plus actual costs incurred by Architect, if any, as a direct result of the suspension and resumption of Project
construction or Architect’s services hereunder.

5.4. Architect Suspension of Services. If the District shall fail to make payment of any undisputed portion of the
Contract Price when due Architect hereunder, Architect may, upon seven (7) days advance written notice to the
District, suspend further performance of services hereunder until payment in full is received. In such event,
Architect shall have no liability for any delays or additional costs of Project construction due to, or arising out of,
such suspension.

5.5. Architect Obligations Upon Termination. Upon the District’s exercise of the right of termination under Article
5.1 or Article 5.3, the Architect shall take action as directed by the District relative to on-going preparation of the
Design Documents or Project construction. If requested by the District, the Architect shall within five (5) days of
such request, assemble and deliver to the District all work product, instruments of service and other items of a
tangible nature (whether in the form of documents, drawings, samples or electronic files) prepared by or on
behalf of the Architect under this Agreement. The Architect shall deliver the originals of all work product,
instruments of service and other items of a tangible nature requested by the District pursuant to the preceding
sentence; provided, however, that the Architect may, at its sole cost and expense, make reproductions of the
originals delivered to the District.

ARTICLE 6. GENERAL

6.1. Marginal Headings; Captions. The titles of the various Paragraphs of the Agreement and the Articles of these
Conditions are for convenience of reference only and are not intended to and shall in no way enlarge or diminish
the rights or obligations of Architect and District hereunder.

6.2. Cumulative Rights; No Waiver. Duties and obligations imposed by this Agreement and rights and obligations
hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or
failure to act by District hereunder shall be deemed a waiver of any right or remedy afforded hereunder or
acquiesce or approval of any breach or default by Architect.

6.3. Notices. Notices Architect or District are required or desire to serve on the other shall be valid only if addressed
to the other as set forth in the Agreement or modified by notice hereunder from time to time. Notices shall be
effective only if transmitted by personal delivery requiring signature acknowledging receipt or by United States
Mail, Certified, Return Receipt Requested, First Class, postage fully pre-paid.

6.4. Disputes.

6.4.1. Continuation of Architect Services. Except in the event of the District’s failure to make undisputed
payment of the Contract Price due Architect, notwithstanding any disputes between District and Architect
hereunder, Architect shall continue to provide and perform services hereunder pending a subsequent resolution of such disputes.

6.4.2. Mandatory Mediation. All claims, disputes and other matters in controversy between the Architect and the District arising out of or pertaining to this Agreement shall be submitted for resolution by non-binding mediation conducted under the auspices of the American Arbitration Association (“AAA”) and the Construction Mediation Rules of the AAA in effect at the time that a Demand For Mediation is filed. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the District or the Architect commencing arbitration proceedings pursuant to Article 6.4.3 below.

6.4.3. Arbitration. All claims, disputes or other matters in controversy between Architect and District arising out of or pertaining to the Project or this Agreement which are not fully resolved through the mandatory mediation set forth in Article 6.4.2 above shall be settled and resolved by binding arbitration conducted under the auspices of the AAA Construction Industry Arbitration Rules in effect at the time of the filing of a Demand for Arbitration. If any claim or dispute is asserted by the Architect, the Project Manager if any, the Contractor or the District relating to the Project and arising in whole or in part out of this Agreement, the services provided by or through the Architect hereunder or the Instruments of Service prepared by or through the Architect, the District agrees that any arbitration proceedings initiated between Architect and District hereunder shall be consolidated with any arbitration proceedings initiated in connection with such other claim or dispute with the Architect or the Contractor. Any arbitration hereunder shall be conducted in the AAA Regional Office closest to the Site.

6.4.4. Attorneys Fees. If either party is forced to file suit to enforce the arbitration award, then that party is entitled to recover attorneys’ fees and costs associated with that suit.

6.5. Severability. If any provision of this Agreement is deemed illegal, invalid unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted herefrom, but all remaining provisions will remain and continue in full force and effect.

6.6. Records.

6.6.1. Architect Accounting Records. Architect shall maintain complete and accurate records of its personnel engaged in performing any service hereunder, personnel expenses, Reimbursable Expenses and other direct costs incurred in connection with performance under this Agreement. Records shall be maintained on the basis of generally accepted accounting principles applied consistently and shall be available for inspection or reproduction by the District upon reasonable request at mutually convenient times during Architect’s performance hereunder. Following completion of the Project and the Agreement or the termination of this Agreement, Architect shall maintain accounting records for five (5) years or such longer period required by applicable law, code, rule or regulation, during which time such records shall be available to District or as otherwise required by law, code, rule or regulation for inspection or reproduction.

6.6.2. Project Records. Records, documents and other materials generated or received by Architect in the course of performing services hereunder may, following completion of the Project or termination of this Agreement, be retained by the District in its sole discretion.

6.7. Definitions.

6.7.1. Construction Contract. The Contract for Construction awarded by the District to the Contractor for the construction of the Project. If the District awards multiple trade contracts to construct the Project, references to "the Construction Contract" in this Agreement shall refer collectively to all trade contracts awarded by the District for Project construction or to each individual trade contract, as applicable by the context in which such term is utilized.

6.7.2. Contractor. The individual or entity awarded the Construction Contract by the District for the Project. If the District awards multiple trade contracts to construct the Project, references to “the Contractor” in this Agreement shall refer collectively to all of the trade contractors constructing the Project or to each individual trade contractor, as applicable by the context in which such term is utilized.

6.7.3. Design Documents. The Drawings, Specifications, calculations and other work product prepared by the Architect or its Design Consultants for the Project or any portion thereof. Design Documents include Drawings, Specifications and other documents prepared by the Architect or a Design Consultant for the Project.

6.7.4. Design Consultant(s). Design Consultant(s) are individuals or entities retained by Architect to provide or perform a portion of the Architect’s services or work product hereunder, including any portion of the Design Documents. Design Consultants shall be duly licensed as required by law, rule or regulation and shall be qualified to perform or provide the portion of Architect’s services or work product assigned by having previously provided design consulting services for California public school project design and construction. The District shall have the right to reasonably disapprove a Design Consultant. Architect shall
be responsible for the adequacy, timeliness and quality of services or work product provided or performed by Design Consultants; Architect shall be liable to District for, and shall defend, indemnify and hold harmless District and its Board of Trustees, employees, officers, agents and representatives from and against, all losses, costs, damages, liabilities, actions or demands to the extent arising out of the negligent services or work product provided or performed by Design Consultants.

6.7.5. **Submittals.** Shop Drawings, Product Data or Samples prepared or provided by the Contractor or its Subcontractor(s) or supplier(s) illustrating some portion of the Work.

6.7.6. **Site.** The physical area for construction and related activities of the Project.

6.7.7. **Drawings and Specifications.** The Drawings are the graphic and pictorial portions of the Design Documents showing generally the location, design and dimensions of the Work, including without limitation, plans, elevations, sections, details, schedules and diagrams. Specifications are the portion of the Design Documents which consist of written requirements for materials, equipment, construction systems, standards, criteria and workmanship for the Work and related services.

6.7.8. **Work.** All of the construction and other services required by the terms of the Construction Contract, including all labor, materials, equipment and other services required of the Contractor under the terms of the Construction Contract to complete the Project.

6.7.9. **Project Construction Budget.** The Project Construction Budget refers to the total award from the construction contract(s), plus the cost of all approved additive change orders with the exception of items resulting from the architect’s errors or omissions, exclusive of the Contract Price under this Agreement, site acquisition costs and the costs of furniture, furnishing and/or equipment for the Project. The Project Construction Budget established by the District may be modified by the District upon notice to the Architect.

6.7.10. **Construction Cost Estimate.** Construction Cost Estimates are estimates prepared by or on behalf of the Architect of the current costs of labor, materials, equipment and services plus a reasonable allowance for the Contractor’s profit, overhead and administrative cost as necessary to complete construction of the Project in accordance with the Design Documents. Construction Cost Estimates shall include a reasonable allowance for contingencies relating to market conditions at the time of solicitation of Contractor bids for the Work of the Project and Changes in the Work during construction of the Project; the allowance for contingency costs shall be consistent with the contingency established by the District in the Project Construction Budget, if any.

6.7.11. **Program Manager.** The District’s Project Manager is the individual or entity retained by the District as an independent contractor to provide certain management, planning, other services and/or work product in connection with the design and/or construction of the Project. Services, functions and responsibilities of the Project Manager shall be provided in conjunction with and complementary to the Architect’s services and work product under this Agreement. If the District has not retained or designated a Project Manager as of the execution of this Agreement, without adjustment of the Contract Price hereunder, the District reserves the right to subsequently retain a Project Manager to provide services and/or work product as generally described herein.

6.7.12. **Construction Documents.** Construction Documents are all of the documents issued by or on behalf of the District for bidding and construction of the Project. Construction Documents include, without limitation, the Design Documents, the Construction Contract and documents issued by or on behalf of the District for bidding of the Construction Contract.

6.8. **Use of Design Documents.**

6.8.1. **Ownership.** The provisions of Education Code Section 17317 notwithstanding, all of the Instruments of Service of the Architect and Design Consultants, including without limitation, the originals and reproducible transparencies of the Drawings, Specifications and other Design Documents prepared by or on behalf of the Architect or a Design Consultant under this Agreement (which include, but are not limited to, working drawings, and master plans, preliminary sketches, architectural presentation drawings, structural and other engineering calculations or computations and estimates) are and shall remain the property of the District. By executing the Agreement, the Architect acknowledges that it transfers to the District and waives copyright rights to the Design Documents, including without limitation all common law, statutory and other reserved rights. Upon the termination of this Agreement or the abandonment or all or any portion of the Project, the District may use any portion of the Design Documents (whether they are completed or in progress) for any purpose, in the sole and exclusive discretion of the District without additional compensation to the Architect. In the event of any unauthorized use, or any reuse or modification of the Architect’s drawings, Specifications or other documents, in any format, by any persons, firms, or legal entities, the District agrees to indemnify, defend and hold the Architect and its consultants harmless from
and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorney’s fees and all legal expenses and fees incurred through appeal, and all interest thereon, accruing to or resulting from any and all persons, firms and any other legal entities, on account of any damages or loss to property or persons, including, but not limited to injuries or death or economic losses, arising out of such use, or any reuse or modification of (1) the Architect’s Drawings, Specifications or other documents, or (2) the Architect’s data, as defined below, except where the Architect is found to be solely liable as between the parties hereto as well as between any other persons, firms or other legal entities for such damages or losses by a court or forum of competent jurisdiction. Architect shall not, without the prior consent and approval of the District which may be granted, withheld or restricted in the sole and exclusive discretion of the District, reproduce or otherwise use any documents owned by the District pursuant to the this Agreement. The Architect does not transfer and shall retain its rights in its standards, conventions, details and related items that will enable it to provide its professional services to other clients on other projects. The Architect will not copy or use any unique Project-specific design elements on other projects. Architect shall retain the right to the use of the designs, drawings and other technical data for marketing purposes unless restricted by a confidentiality agreement.

6.8.2. CADD Diskettes. At each stage of the Architect’s submission of Preliminary Plans and Working Drawings to the District pursuant to the terms of this Agreement, Architect shall also submit corresponding CADD diskettes. During the term of the Agreements, the District may request that the Architect provide copies of its Drawings, Specifications and other documents, or portions of the same, in an electronic format (“Data”) to the District or others on behalf of the District. However, the providing and/or the transferring of Data are not and shall not be deemed a sale. The Data are instruments of professional service and as such, the Architect makes no representations or warranties, expressed or implied, of the Data’s merchantability or fitness for a particular purpose with respect to its quality, adequacy, accuracy, completeness or sufficiency as to any results to be or intended to be achieve as to its use. The District acknowledges that anomalies and errors can be introduced into the Data when it is transferred or used in an incompatible computer environment and solely accepts the risks associated with and/or the responsibility for any damages to hardware, software or computer systems or network related to any use of the Data. The Data is being furnished, “as is.” The Architect shall have no duty to modify or update the Data. The District and any other parties using the Data are responsible for modifying their computer systems to properly use the Data. The District agrees that it will obligate any party using the Data to be bound to the terms of this Article 6 as if such party was the District.
PROJECT ASSIGNMENT NUMBER 1
(EXHIBIT A TO AGREEMENT FOR ON-GOING ARCHITECTURAL SERVICES)

This Project Assignment is executed between OHLONE COMMUNITY COLLEGE DISTRICT (“District”) and tBP Architecture (“Architect”) pursuant to the Agreement for On-Going Architectural Services (“Agreement”) between the Architect and the District dated September 8, 2004. By this reference, the Agreement is incorporated herein as if set forth in full.

1. Project Description.
Project Definition Services for the Ohlone College Fremont Campus

2. Basic Services. The Architect will provide the following Basic Services noted below for the above-described Project (see Agreement and Conditions to Agreement for detailed description of each of the following identified Basic Services).

Basic Services as per tBP Project Definition Services Proposal Dated August 24, 2004.

Design Consultants Included

- Structural: Dasse Design
- Civil: Sandis Humber Jones
- Mechanical: Ainsworth Associates
- Electrical: Toft Wolff Farrow, Inc.
- Landscaping: Joni L. Janecki and Associates
- Cost Estimating: Hanscomb Faithful Gould
- Food Service: Presidio Design Group
- Bookstore: Kremer and Associates

3. Architect Compensation:

A. Contract Price. Based on Hourly Schedule NOT TO EXCEED $200,000.00 plus Reimbursables, at actual cost, not to exceed $10,000.00

B. Allocation of Contract Price to Phases of Basic Services. N/A

C. Additional Services Rate Schedule: As per tBP Professional Rate Schedule, submitted with the proposal and attached to this document.

Basic Services Completion Schedule: To be completed within six (6) months from date of notice to proceed.


<table>
<thead>
<tr>
<th>OHLONE COMMUNITY COLLEGE DISTRICT</th>
<th>TBP ARCHITECTURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature</td>
<td>Signature</td>
</tr>
<tr>
<td>Marian Castaneda</td>
<td>By: __________________________</td>
</tr>
<tr>
<td>Director of Purchasing, Contract Administration and Auxiliary Services</td>
<td>Title: __________________________</td>
</tr>
<tr>
<td>Date: __________________________</td>
<td>Date: __________________________</td>
</tr>
</tbody>
</table>
August 24, 2004

Deanna Walston  
Vice President Business Services  
Ohlone College  
43600 Mission Boulevard  
PO Box 3909  
Fremont, CA 94539-0390

Subject: Project Definition Services Proposal  
Ohlone College  Fremont Campus  
tBP Project No.: 20445.00

Dear Ms. Walston:

We are pleased to submit this proposal to provide Project Definition Services for the Ohlone College Fremont Campus.

Scope of Project Definition Services:
The purpose of this Project Definition Phase is to meet with the College community to reach consensus on an approach for the implementation of all identified campus projects. During this process overall campus planning goals will be identified and discussed, individual division and department goals and objectives identified, budgets and schedules estimated, suitability of existing campus and building facilities identified, in order to arrive at an approach to proceeding with project implementation.

Project Approach:
We strongly recommend a participatory and collaborative process. We suggest working with your designated liaison person to schedule meetings and interviews with the Executive Group, Task Force, and Division Deans and Department Coordinators to ensure that the College community is an integral part of the planning process.

Work Plan:
Our proposed work plan provides a logical sequence for developing our collective understanding of the College’s needs, and an innovative range of planning concepts to develop into final recommendations and conclusions.

Initiation
- Executive Group Meeting #1  
  - Identify “Vision” for the Campus
- Task Force Meeting #1  
  - Review planning process and approvals process  
  - Identify Divisions/Departments and Leadership  
  - Identify Liaison person for scheduling and coordination of meetings between consultants and college staff  
  - Schedule Tasks
- Obtain District Furnished Information
- Prepare, review and distribute Questionnaires to Division/Department

Data Gathering
- User Groups complete Questionnaires

Interviews and Meetings
- Division/Department Meetings (1st Set)  
  - Interviews and meetings regarding overall planning goals to revitalize the campus, i.e., mainstreet concept, parking, alternative energy, building and landscape aesthetics.  
  - Interviews and meetings regarding faculty offices, classrooms, sciences, student services, deaf studies, fine arts…to be impacted by the planning process.
- Interviews and meetings with the Student Services staff to define the building and site requirements for the Student Services building.
- Interviews and meeting with Architect, Bookstore Consultant, and College Bookstore Coordinator.
- Interviews and meeting with Architect, Food Service Consultant, and Food Service Coordinator.
- Interviews and meetings with Facilities Groups for condition of buildings, site utilities, communications, security, fire, safety, maintenance, environment.…

Compile and Review Findings
- **Executive Group Meeting #2**
  - Review findings and course of action
- **Task Force Meeting #2**
  - Review findings and course of action
- **Prepare Outline Scopes**
- **Division/Department Meeting (2nd Set)**
  - Review findings and course of action
- **Revise Outline Scopes**

Concepts
- **Prepare Alternative Conceptual Approaches**
- **Executive Group Meeting #3**
  - Review concepts
- **Task Force Meeting #3**
  - Review concepts
- **Division/Department Meetings (3rd Set)**
  - Review concepts

Feasibility
- **Determine Feasibility of Concepts**
  - Scope, Construction Budget, Time
- **Existing Facilities Review**
  - General overview of suitability

Conclusions
- **Executive Group Meeting #4**
  - Review “Draft” conclusions
- **Task Force Meeting #4**
  - Review “Draft” conclusions
- **User Group Meetings (4th Set)**
  - Review “Draft” conclusions
- **Finalize Project Definition Study**
  - Submit Study

In addition to the meetings listed, we will conduct one Board workshop, one community meeting, one presentation to the College and one presentation to the Board of Trustees (as requested).

**Deliverables:**
A Final Project Definition Study identifying campus and individual division and departmental goals and objectives, individual projects and scopes, construction cost budgets, schedules, alternative approaches for project implementation and conclusions. The Study will be submitted in 8 ½ x 11 format with supplemental graphics as needed to clarify the alternative approaches.

**Architectural and Engineering Design Services:**
This Proposal includes professional architectural planning services, and limited bookstore, food service, structural, mechanical, electrical, landscape, civil engineering, and cost estimating services.
We propose DASSE Design, Inc. (structural), Ainsworth Associates (mechanical), Toft Wolff Farrow, Inc. (electrical), Joni L. Janecki & Associates (landscape), Sandis Humber Jones (civil), Hanscomb Faithful Gould (cost estimating), Presidio Design Group (food service), and Kremer & Associates (bookstore).

**District Furnished Information**
4. College’s Program Summary (list of spaces) for the impacted division/departments.
5. Educational planning for the impacted divisions/departments.
6. District’s anticipated milestone planning schedule or target dates, including Newark Campus.
7. Site Survey (topography, utilities, easements,…..) stamped and signed by licensed CA Civil engineer.
9. Draft Master Plan for the Ohlone College Fremont Campus.
10. Building floor plans (indicating current use).
11. Existing Campus and Building Drawings.
12. Current Campus landscape planting plan, electrical distribution system, telecommunications distribution system, and other existing conditions information pertinent to this work.

**Compensation for Project Definition Services:**
tBP proposes to provide professional project definition planning services in accordance with the attached Professional Rates schedule.

(The project definition planning effort relies heavily on input from the District Representatives and the College staff. As such it is difficult to determine how much effort will be required of our office and our consultants. We recommend the District budget $200,000 for this effort. tBP will not exceed the indicated allowance without prior written authorization from the District.)

**Reimbursable Expenses:**
Reimbursable expenses are in addition to the fee and include those expenses incurred in the interest of the Project. We recommend a budget allowance of $10,000.

**Schedule:**
We propose to accomplish the work consistent with existing standards of professional service and with special consideration for the College’s particular needs. We propose to work with the College to define a schedule based on the College’s academic calendar and the availability of staff.

**Additional Services:**
Fee compensation for additional services shall be Hourly in accordance with our Professional Fee Schedule.

Please review our proposal and feel free to contact us to discuss the details. Thank you again for asking our team to perform these professional services.

Sincerely,
tBP/Architecture

Richard A. Mangum, AIA
Executive Vice President

cc Jay Malone, tBP/Architecture
Gary Frye, tBP/Architecture

Attachments: Professional Fee Schedule
PROJECT ASSIGNMENT NUMBER 2
(EXHIBIT A TO AGREEMENT FOR ON-GOING ARCHITECTURAL SERVICES)

This Project Assignment is executed between OHLONE COMMUNITY COLLEGE DISTRICT ("District") and tBP Architecture ("Architect") pursuant to the Agreement for On-Going Architectural Services ("Agreement") between the Architect and the District dated September 8, 2004. By this reference, the Agreement is incorporated herein as if set forth in full.

1. Project Description.
Design Services for the New Student Services Building on the Fremont Campus

2. Basic Services. The Architect will provide the following Basic Services noted below for the above-described Project (see Agreement and Conditions to Agreement for detailed description of each of the following identified Basic Services).

Basic Services as per tBP Design Services Proposal Dated August 24, 2004.

- Preliminary Plans
- Preliminary Plans Value Engineering
- Preliminary Plans Phase Constructability Review
- Working Drawings
- Working Drawings Value Engineering
- Working Drawings Constructability Review
- Bidding
- Construction
- Post-Construction

- LEED Documentation and LEED Certification Submission Package

Design Consultants Included

- Structural: Dasse Design Inc.
- Civil: Sandis Humber Jones
- Mechanical: Ainsworth Associates
- Electrical: Toft Wolff Farrow, Inc.
- Landscaping: Joni L. Janecki and Associates
- Cost Estimating: Hanscomb Faithfull and Gould
- LEED: Davis Langdon Wilson
3. Architect Compensation:

A. **Contract Price.** Lump Sum Fixed Fee: One Million, Two Hundred Ninety Four Thousand Dollars ($1,294,000) plus Reimbursables, at actual cost, not to exceed $32,000.

B. **Allocation of Contract Price to Phases of Basic Services.**

<table>
<thead>
<tr>
<th>Phase</th>
<th>Percentage</th>
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</thead>
<tbody>
<tr>
<td>Initial Preliminary Plans</td>
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<tr>
<td>Final Preliminary Plans</td>
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<tr>
<td>Working Drawings</td>
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<tr>
<td>Bidding</td>
<td>3%</td>
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<tr>
<td>Construction</td>
<td>19%</td>
</tr>
<tr>
<td>Post-Construction</td>
<td>1%</td>
</tr>
</tbody>
</table>

C. **Additional Services Rate Schedule:** As per tBP Professional Rate Schedule submitted with the proposal and attached to this document.

4. **Architect Personnel:**

- Richard A. Mangum, AIA  Principal-In-Charge
- Gary R. Frye, AIA  Project Manager
- Deborah Shepley, AIA  Programmer
- Gary Moon, AIA  Project Designer
- Pamela L. Kurz,  Project Architect
- Philip J. Newsom  Sustainable Design Specialist
5. Basic Services Completion Schedule:

<table>
<thead>
<tr>
<th></th>
<th>START DATE</th>
<th>FINISH DATE</th>
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</thead>
<tbody>
<tr>
<td>PRE DESIGN</td>
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<tr>
<td>INITIAL PRELIMINARY PLANS</td>
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<td>02/15/05</td>
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<td>05/27/05</td>
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<tr>
<td>WORKING DRAWINGS</td>
<td>05/30/05</td>
<td>11/18/05</td>
</tr>
<tr>
<td>REVIEW &amp; BIDDING</td>
<td>11/19/05</td>
<td>05/15/06</td>
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<tr>
<td>CONSTRUCTION</td>
<td>05/16/06</td>
<td>09/26/07</td>
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<tr>
<td>POST-CONSTRUCTION</td>
<td>09/27/07</td>
<td>11/23/07</td>
</tr>
</tbody>
</table>

OHLONE COMMUNITY COLLEGE DISTRICT

______________________________
Signature

Marian Castaneda
Director of Purchasing, Contract Administration
and Auxiliary Services

Date: ________________________

TBP ARCHITECTURE

______________________________
Signature

By: _________________________

Title: _______________________

Date: _______________________

PROJECT ASSIGNMENT #2 STUDENT SUPPORT SERVICES BUILDING – ON-GOING ARCHITECTURAL SERVICES AGREEMENT
OHLONE COMMUNITY COLLEGE DISTRICT CONTRACT #193-0604-001
August 24, 2004

Deanna Walston
Vice President Business Services
Ohlone College
43600 Mission Boulevard
PO Box 3909
Fremont, CA 94539-0390

Subject: Design Services Proposal
New Student Services Building
Ohlone College Fremont Campus
tBP Project No.: 20446.00

Dear Ms. Walston:

We are pleased to submit this proposal to provide Design Services for the proposed new Student Services Building at the Ohlone College Fremont Campus.

Project Description:
A new Student Services Building, approximately 25,604asf/42,673gsf, at Ohlone College Fremont Campus, to be located south of existing buildings 6 and 7, forming a new south gateway to the core building campus. It is the District’s desire that this new Building obtain LEED certification. This Project does not involve any new parking. Campus parking is to be provided as a separate project. Sitework is limited to transitional planting, sidewalks, plazas, and site utilities as required to connect the Building to the surrounding campus. The Building and Site Construction Cost Budget is $15,320,000, based on a construction start date of October 2005.

Scope of Design Services:
tBP/Architecture will provide the following basic Design Services as set out in the Conditions to Agreement and as modified herein.

1. Preliminary Plans,
2. Preliminary Plans Phase Constructability Review,
3. Working Drawings,
4. Working Drawing Constructability Review,
5. Bidding,
6. Construction,
7. Post-Construction.

Additional Design Services to be provided:

1. LEED Documentation and LEED Certification submission package. (Excludes commissioning, USGBC fees, testing and verification.)

Design Services which are not included:

1. Information Technology Services
5. Special Graphics services including wayfinding, building directory, and other special signage. (Basic services include interior room identification signage, ADA, fire/life safety signage, and exterior building identification signage.)

6. Value Engineering meetings with the College with the purpose of reducing the Project Construction Cost.

7. Record Drawings.

Architectural and Engineering Design Services:
This Proposal includes normal Architectural, Structural, Mechanical/Plumbing/Fire Protection, Electrical, Landscape, Civil Engineering (building services), and Cost Estimating design services, supplemented with LEED’s design services.

We propose DASSE Design, Inc. (structural), Ainsworth Associates (mechanical), Toft Wolff Farrow, Inc. (electrical), Joni L. Janecki & Associates (landscape), Sandis Humber Jones (civil), Hanscomb Faithful & Gould (cost estimating), and Davis Langdon Wilson (LEED).

District Furnished Information:
1. District’s Construction Cost Budget for the Student Services Building.
2. District’s Program Summary (list of spaces) for the proposed Student Services Building.
3. District’s anticipated schedule for occupying the Building.
4. Site Survey (topography, utilities, easements…) stamped and signed by a licensed CA Civil Engineer.
5. Geotechnical Report and Seismic Hazards Report
6. Existing Building Drawings within and adjacent to the site.
7. Current Campus electrical distribution system.
8. Current Campus telecommunications distribution system.

Compensation for Design Services (Preliminary Plans thru Post-Construction):
Fee compensation shall be a lump sum fixed fee of $1,294,600.

The fee shall be broken down as follows:

<table>
<thead>
<tr>
<th>Design Phase</th>
<th>Percentage</th>
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<tr>
<td>Initial Preliminary Design Phase</td>
<td>15%</td>
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<tr>
<td>Final Preliminary Design Phase</td>
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<tr>
<td>Working Drawings Phase</td>
<td>42%</td>
</tr>
<tr>
<td>Bid Phase</td>
<td>3%</td>
</tr>
<tr>
<td>Construction Administration Phase</td>
<td>19%</td>
</tr>
<tr>
<td>Post Construction Phase</td>
<td>1%</td>
</tr>
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</table>

Schedule:
We propose to accomplish the work based on the following:

<table>
<thead>
<tr>
<th>Phase</th>
<th>Duration</th>
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<tbody>
<tr>
<td>Pre-Design Phase</td>
<td>1.5 months</td>
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<tr>
<td>College Review</td>
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<tr>
<td>Initial Preliminary Design Phase</td>
<td>3 months</td>
</tr>
<tr>
<td>College Review/approval</td>
<td>TBD</td>
</tr>
<tr>
<td>Final Preliminary Design Phase</td>
<td>3 months</td>
</tr>
<tr>
<td>College Review/approval</td>
<td>TBD</td>
</tr>
<tr>
<td>Initial Working Drawings Phase</td>
<td>2 months</td>
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<td>College Review/approval</td>
<td>TBD</td>
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<tr>
<td>Final Working Drawings Phase</td>
<td>3 months</td>
</tr>
<tr>
<td>College Review/approval</td>
<td>TBD</td>
</tr>
</tbody>
</table>
Ohlone College
Page 3 of 3

DSA Approval 6 months
Bid Phase 2 months
Construction Administration Phase 16 months
Post Construction Phase 2 months

Reimbursable Expenses:
Reimbursable expenses are in addition to the fee(s) and include those expenses incurred in the interest of the Project. We recommend a budget allowance of $32,000 for Design services.

Additional Services:
Fee compensation for additional services shall be Hourly in accordance with our Professional Fee Schedule. See attached.

Please review our proposal and feel free to contact us to discuss the details. Thank you again for asking our team to perform these professional services.

Sincerely,
tBP/Architecture

Richard A. Mangum, AIA
Executive Vice President

cc Jay Malone, tBP/Architecture
Gary Frye, tBP/Architecture

Attachments: Professional Fee Schedule (Ohlone College)
PROFESSIONAL RATES

Effective this date the following hourly rates will be charged for work performed on your project in the categories of architectural services. The job categories relate to work performed in the offices of tBP/Architecture.

<table>
<thead>
<tr>
<th>Position</th>
<th>Rate</th>
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<tbody>
<tr>
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<td>Managing Principal</td>
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<tr>
<td>Senior Project Manager</td>
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<tr>
<td>Project Manager</td>
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<tr>
<td>Senior Planner</td>
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<tr>
<td>Project Architect</td>
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<tr>
<td>Senior Contract Administrator</td>
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<tr>
<td>Project Leader</td>
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<td>Contract Administrator</td>
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<tr>
<td>Specification Writer</td>
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<td>Job Captain</td>
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<tr>
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<td>Intermediate Drafter</td>
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<tr>
<td>Junior Drafter</td>
<td>$ 65.00</td>
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<tr>
<td>Administrative</td>
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</table>

Services provided by engineering and special consultants assigned to the project and authorized for professional services will be charged at one point one zero (1.10) times the amount billed to tBP/Architecture.

All printing, delivery or other reimbursable project expenses will be charged at one point (1.00) times the amount billed tBP/Architecture.

The rates listed above are current as of January 1, 2004. They will remain in effect for a minimum of six months, at which time they will be evaluated relative to the current increases in the cost-of-living index.