AGREEMENT FOR ARCHITECTURAL SERVICES

OHLONE COMMUNITY COLLEGE DISTRICT

WITH

BKF ENGINEERS

FOR

PROJECT 6108J PARKING LOTS B & C IMPROVEMENTS

FREMONT CAMPUS

JANUARY 14, 2021
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AGREEMENT FOR ARCHITECTURAL SERVICES

This Agreement for Architectural Services is made as of January 14, 2021, between the Ohlone Community College District, a California community college district, (“District”) and BKF Engineers (“Architect”) (collectively “Parties”), for the following project (“Project”): 6108J Parking Lots B & C Improvements.

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

Article 1. Definitions

1.1. In addition to the definitions above, the following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:

1.1.1. Agreement: The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.

1.1.2. Architect: The architect listed in the first paragraph of this Agreement, including all Consultants to the Architect.

1.1.3. As-Built Drawings (“As-Builts”): Any document prepared and submitted by District contractor(s) that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by change orders.

1.1.4. Bid Set: The plans, drawings, and specifications at the end of the Construction Documents Phase that the Division of the State Architect (“DSA”) has approved and that the District can use to go out to bid for construction of the Project.

1.1.5. Conforming Set: The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase. The Architect shall ensure that DSA has approved all revisions to the Bid Set that are incorporated onto the Conforming Set and for which DSA approval is required.

1.1.6. Construction Budget: The total amount indicated by the District for the entire Project plus all other costs, including design, construction, administration, financing, and all other costs.

1.1.7. Construction Cost Budget: The total cost to District of all elements of the Project designed or specified by the Architect, as adjusted at the end of each design phase in accordance with this Agreement. The Construction Cost Budget does not include the compensation of the
Architect and the Architect’s consultants, the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District, including construction management.

1.1.8. **Consultant(s):** Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Architect.

1.1.9. **District:** The Ohlone Community College District.

1.1.10. **DSA:** The Division of the State Architect.

1.1.11. **Record Drawings:** A final set of drawings prepared by the Architect that incorporates all changes from all As-Builts, sketches, details, and clarifications.

1.1.12. **Service(s):** All labor, materials, supervision, services, tasks, and work that the Architect is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Project.

1.1.13. **Visually Verify:** To verify to the fullest extent possible by physical inspection and reasonable investigation and without any destructive action.

**Article 2. Scope, Responsibilities, And Services Of Architect**

2.1. Architect shall render the Services as described in Exhibit “A,” commencing with receipt of a written Notice to Proceed signed by the District representative. Architect’s Services will be completed in accordance with the schedule attached as Exhibit “C.”

2.2. Architect shall provide Services that shall comply with professional architectural standards including the standard of care applicable to architects designing public school and college facilities and applicable requirements of federal, state, and local law, including, but not limited to, the requirements of the California Business and Professions Code, the California Education Code, and the California Code of Regulations. All persons providing professional services hereunder shall be properly licensed as required by California law.

2.3. The District intends to award the Project to contractor(s) pursuant to a competitive bid process and a construction manager and/or contractor(s) may provide input to the Architect on the constructability and design features of the Project.

2.4. Architect acknowledges that all California community college districts are now or will soon be obligated to develop and implement the following storm water requirements, without limitation:
2.4.1. A municipal Separate Storm Sewer System (MS4). An MS4 is a system of conveyances used to collect and/or convey storm water, including, without limitation, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.

2.4.2. A Storm Water Pollution Prevention Plan (SWPPP) at:

2.4.2.1. Sites where the District engages in maintenance (e.g., fueling, cleaning, repairing) of transportation activities.

2.4.2.2. Construction sites where:

2.4.2.2.1. one (1) or more acres of soil will be disturbed, or

2.4.2.2.2. the project is part of a larger common plan of development that disturbs more than one (1) or more acres of soil.

2.4.3. Architect shall conform its design work to the District’s storm water requirements indicated above, that are approved by the District and applicable to the Project, at no additional cost to the District. In addition, as required, Architect shall develop a grading and drainage plan and a site plan from architectural information showing a final development of the site. This drawing will also include a horizontal and vertical control plan and a utility infrastructure plan. The Services described in this Subparagraph shall be provided by a professional civil engineer who contracts with or is an employee of the Architect.

2.5. Architect shall contract for or employ at Architect’s expense, consultant(s) to the extent deemed necessary for completion of the Project including, but not limited to, architects, mechanical, electrical, structural, civil engineers, landscapers, and interior designers, licensed as such by the State of California as part of the basic services under this agreement. The names of consultant(s) shall be submitted to the District for approval prior to commencement of Services, as indicated below. The District reserves the right to reject the Architect’s use of any particular consultant. Nothing in the foregoing procedure shall create any contractual relationship between the District and any consultant employed by the Architect under terms of the Agreement. Architect shall require each of the consultants retained by it to execute agreements with the standard of care and indemnity provisions commensurate with this Agreement, but Architect shall remain solely responsible and liable to District for all matters covered by this Agreement.

2.6. Architect shall coordinate with District personnel or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project. This shall include, without limitation, coordination with the persons responsible for operation of the District’s Labor Compliance Program, if
any. If the Architect employs consultant(s), the Architect shall ensure that its contract(s) with its consultant(s) include language notifying the consultant(s) of the District’s Labor Compliance Program, if any.

2.7. Architect shall identify the regulatory agencies that have jurisdiction over essential building and design elements and coordinate with and implement the requirements of the regulatory agencies, including, without limitation, the California Community Colleges Chancellor’s Office (CCCO), the Department of General Services (DGS), DSA Fire/Life Safety, DSA Access Compliance Section, DSA Structural Safety Section, State Fire Marshal and any regulatory office or agency that has authority for review and supervision of community college district construction projects.

2.8. Architect shall provide Services required to obtain any local agencies’ approval for off-site work related to the Project including review by regulatory agencies having jurisdiction over the Project.

2.9. Architect shall coordinate with the District’s DSA Project Inspector(s).

2.10. Architect recognizes that the District may obtain the services of a Construction Manager and that Architect may have to assume certain coordination and management responsibilities, including tracking RFI’s, providing RFI responses, and leading all coordination meetings between the District, Project Inspectors, and contractors on each of the Projects. The District reserves the right to retain the services of a Program Manager or Construction Manager or both at any time. The Construction Manager, if any, shall be authorized to give Architect Services authorizations and issue written approvals and Notices to Proceed on behalf of District. The District reserves the right to designate a different Construction Manager at any time. Any task, including, but not limited to, reviews or approvals that the District may perform pursuant to this Agreement may be performed by the Construction Manager, unless that task indicates it shall be performed by the governing board of the District. In addition, the District may have the Program Manager or Construction Manager perform a constructability review of Architect’s design documents. Architect shall conform any design documents to the constructability review as part of the Services under this Agreement and shall not be entitled to any compensation as Extra Services for this activity.

2.11. Architect shall provide computer-generated pictures downloaded to computer files, updated as requested by the District, that the District may use on its website.

2.12. As part of the basic Services pursuant to this Agreement, Architect is not responsible for:

2.12.1. Ground contamination or hazardous material analysis.

2.12.2. Any asbestos and/or lead testing, design or abatement; however, it shall coordinate and integrate its work with any such information provided by District.
2.12.3. Compliance with the California Environmental Quality Act ("CEQA"), except that Architect agrees to coordinate its work with that of any CEQA consultants retained by the District, to provide current elevations and schematic drawings for use in CEQA compliance documents, and to incorporate any mitigation measures adopted by the District into the Project design at no additional cost to the District.

2.12.4. Historical significance report.

2.12.5. Soils investigation.

2.12.6. Geotechnical hazard report, except as indicated in Exhibit "A."

Article 3. Architect Staff

3.1. The Architect has been selected to perform the Services herein because of the skills and expertise of key individuals.

3.2. The Architect agrees that the following key people in Architect’s firm shall be associated with the Project in the following capacities [All blanks below must be filled in by Architect and approved by District]:

   Associate: Dayne Johnson, P.E.
   Engineering Manager: Alex Croskey, P.E.
   Major Consultants: EDesignC: Rosanna Lerma, P.E.

3.3. The Architect shall not change any of the key personnel listed above without prior written approval by District, unless said personnel cease to be employed by Architect. In either case, District shall be allowed to interview and approve replacement personnel.

3.4. If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice the Architect shall have five (5) days to remove that person from the Project and replace that person with one acceptable to the District. All lead or key personnel for any consultant must also be designated by the consultant and are subject to all conditions previously stated in this paragraph.

3.5. Architect represents that the Architect has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of Services required under this Agreement and that no person having any such interest shall be employed by Architect.

3.6. Architect shall comply with Education Code Section 17302(a) and agrees that any plans and/or specifications included in the Services shall be prepared under the supervision of licensed personnel, and that
licensed personnel shall be in “responsible charge” of persons who observe the construction.

Article 4. Schedule Of Services

The Architect shall commence Services under this Agreement upon receipt of a Notice to Proceed and shall prosecute the Services diligently as described in Exhibit “A,” so as to proceed with and complete the Services in compliance with the schedule in Exhibit “C.” Time is of the essence and failure of Architect to perform Services on time as specified in this Agreement is a material breach of this Agreement. It shall not be a material breach if a delay is beyond the Architect’s or its consultant(s)’ reasonable control.

Article 5. Construction Cost Budget

5.1. Architect hereby accepts the District’s established Construction Cost Budget and Project scope. In accordance with the Exhibit “A,” the Architect shall have responsibility to further develop, review, and reconcile the Construction Cost Budget for the District at the beginning of the Project and at the completion of each design phase. The District and the Construction Manager shall also have responsibility to develop, review, and reconcile the Construction Cost Budget with the Architect.

5.2. Architect shall complete all Services as described in Exhibit “A,” including all plans, designs, drawings, specifications and other construction documents, so that the cost to construct the work designed by the Architect will not exceed the Construction Cost Budget, as adjusted subsequently with the District’s written approval. The Architect shall maintain cost controls throughout the Project to deliver the Project within the Construction Cost Budget.

5.3. If any of the following events occur:

5.3.1. The lowest responsive base bid received is in excess of five percent (5%) of the Construction Cost Budget, or

5.3.2. If the combined total of base bid and all additive alternates come in ten percent (10%) or more under the Construction Cost Budget, or

5.3.3. If the Construction Cost Budget increases in phases subsequent to the Schematic Design Phase due to reasonably foreseeable changes in the condition of the construction market in the county in which the District is located, in so far as these have not been caused by Acts of God, earthquakes, strikes, war, or energy shortages due to uncontrollable events in the world economy, then the District, in its sole discretion, has one or a combination of the following alternatives:

5.3.2.1. Give the Architect written approval on an agreed adjustment to the Construction Cost Budget.
5.3.2.2. Authorize the Architect to re-negotiate, when appropriate, and/or re-bid the Project within three (3) months time of receipt of bids (exclusive of District and other agencies’ review time) at no additional cost to the District.

5.3.2.3. Terminate this Agreement if the Project is abandoned by the District, without further obligation by either party.

5.3.2.4. Within three (3) months time of receipt of bids, instruct Architect to revise the drawings and specifications (in scope and quality as approved by the District) to bring the Project within the Construction Cost Budget for re-bidding at no additional cost to the District.

Article 6. Fee And Method Of Payment

6.1. District shall pay Architect for all Services contracted for under this Agreement an amount equal to the following (“Fee”):

An amount equal to Twenty-Two Thousand Dollars ($22,000).

6.2. District shall pay Architect the Fee pursuant to the provisions of Exhibit “D.”

6.3. Architect shall bill its work under this Agreement in accordance with Exhibit “D.”

6.4. No increase in Fee will be due from change orders generated during the construction period to the extent caused by Architect’s error or omission.

6.5. The Architect’s Fee set forth in this Agreement shall be full compensation for all of Architect’s Services incurred in the performance hereof as indicated in Exhibit “D.”

6.6. Regardless of the structure of Architect’s Fee, the Architect’s Fee may be adjusted downward if the Scope of Services of this Agreement is reduced by the District in accordance with this Agreement.

Article 7. Payment For Extra Services Or Changes

District-authorized services outside of the scope in Exhibit “A” or District-authorized reimbursables not included in Architect’s fee are “Extra Services.” Any charges for Extra Services shall be paid by the District as described in Exhibit “B” only upon certification that the claimed Extra Services was authorized as indicated herein and that the Extra Services have been satisfactorily completed. If any service is done by Architect without prior written authorization by the Construction Manager or the District’s authorized representative, the District will not be obligated to pay for such service. The foregoing provision notwithstanding, the Architect will be paid by the District
as described in Exhibit “B” for Extra Services that the Construction Manager or the District’s authorized representative verbally requests, provided that the Architect confirms such request in writing pursuant to the notice requirements of this Agreement, and proceeds with such Extra Services not earlier than two business days after the District receives confirmation of the request from the Architect.

**Article 8. Ownership Of Data**

8.1. Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for District to use, at its discretion, all plans, including, but not limited to, record drawings, specifications, and estimates that the Architect or its consultants, prepares or causes to be prepared pursuant to this Agreement.

8.2. The Architect retains all rights to all copyrights, designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that the Architect or its consultants prepares or causes to be prepared pursuant to this Agreement.

8.3. The Architect shall perform the Services and prepare all documents under this Agreement with the assistance of Computer Aided Design Drafting (CADD) (e.g., AutoCAD) Technology. The Architect shall deliver to the District, on request, the tape and/or compact disc format and the name of the supplier of the software/hardware necessary to use the design file. As to any drawings that Architect provides in a CADD file format, the District acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that the District should rely on hard copies of all documents.

8.4. In order to document exactly what CADD information was given to the District, Architect and District shall each sign a “hard” copy of reproducible documents that depict the information at the time Architect produces the CADD information. District agrees to release Architect from all liability, damages, and/or claims that arise due to any changes made to this information by anyone other than the Architect or Consultant(s) subsequent to it being given to the District.

8.5. Following the termination of this Agreement, for any reason whatsoever, the Architect shall promptly deliver to the District upon written request and at no cost to the District the following items (hereinafter “Instruments of Service”) which the District shall have the right to utilize in any way permitted by statute:

8.5.1. One set of the Contract Documents, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.

8.5.2. One set of fixed image CADD files in DXF format of the drawings that are part of the Contract Documents.
8.5.3. One set of non-fixed image CADD drawing files in DXF or DWG or both format of the site plan, floor plans (architectural, plumbing, structural mechanical and electrical), roof plan, sections and exterior elevations of the Project.

8.5.4. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data and reports prepared by the Architect under this Agreement.

8.5.5. The obligation of Section 8.5 of this Agreement shall survive the termination of this Agreement for any reason whatsoever.

8.6. In the event the District changes or uses any fully or partially completed documents without the Architect’s knowledge or participation or both, the District agrees to release Architect of responsibility for such changes, and shall indemnify, defend and hold the Architect, harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees, on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of that change or use except to the extent the Architect is found to be liable in a forum of competent jurisdiction. In the event District uses any fully or partially completed documents without the Architect’s full involvement, the District shall remove all title blocks and other information that might identify the Architect and the Architect’s consultants.

Article 9. Termination Of Contract

9.1. If Architect fails to perform Architect's duties to the satisfaction of the District, or if Architect fails to fulfill in a timely and professional manner Architect’s material obligations under this Agreement, or if Architect shall violate any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement, in whole or in part, effective immediately upon the District giving written notice thereof to the Architect. In the event of a termination pursuant to this subdivision, Architect may invoice District for all Services performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District’s costs because of Architect’s actions, errors, or omissions that caused the District to terminate the Architect.

9.2. District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Architect may invoice District and District shall pay all undisputed invoice(s) for Services performed until the District’s notice of termination.

9.3. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
9.4. The Architect has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement. Such termination shall be effective after receipt of written notice from Architect to the District. Architect may invoice District and District shall pay all undisputed invoice(s) for Services performed until the Architect’s notice of termination.

9.5. If, at any time in the progress of the Design of the Project, the governing board of the District determines that the Project should be terminated, the Architect, upon written notice from the District of such termination, shall immediately cease Services on the Project. The District shall pay the Architect only the fee associated with the Services provided, since the last invoice that has been paid and up to the notice of termination.

9.6. If the District suspends the Project for more than one hundred twenty (120) consecutive days, the Architect shall be compensated for Services performed prior to notice of that suspension. When the Project is resumed, the schedule shall be adjusted and the Architect’s compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Architect’s Services. If the District suspends the Project for more than two (2) years, the Architect may terminate this Agreement by giving written notice.

Article 10. Indemnity/Architect Liability

10.1. To the furthest extent permitted by California law, Architect shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (“the indemnified parties”) from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity (“Claim”), to property or persons, including personal injury and/or death, to the extent that any of the above arise out of, pertain to, or relate to, in whole or in part, the willful misconduct, recklessness, or negligent acts, errors, or omissions of Architect, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement, including without limitation the payment of all consequential damages.

10.2. Architect shall pay and satisfy any judgment, award or decree that may be rendered against the indemnified parties in any Claim. Architect shall also reimburse District for the cost of any settlement paid by District arising out of any Claim. Architect shall reimburse the indemnified parties for any and all legal expenses and costs, including expert witness fees and consultant fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided to the extent caused by the above agreement to indemnify. Architect’s obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the indemnified parties. District shall have the right to accept or reject any legal representation that Architect proposes to defend the indemnified parties.
10.3. Any and all costs incurred by District, or for which District may reasonably become liable, to the extent caused by the negligence of Architect in its performance hereunder, including negligent delays, shall be paid by Architect to District or the District may withhold those costs from amounts owing to Architect.

Article 11. Fingerprinting

Pursuant to Education Code section 45125.2, District has determined on the basis of scope of Services in this Agreement of this Project, that Architect, subcontractors, and their employees will have only limited contact with pupils at most. Architect shall promptly notify District in writing of any facts or circumstances which might reasonably lead District to determine that contact will be more than limited as defined by Education Code section 45125.1(d).

Article 12. Responsibilities Of The District

12.1. The District shall examine the documents submitted by the Architect and shall render decisions so as to avoid unreasonable delay in the process of the Architect’s Services.

12.2. The District shall verbally or in writing advise the Architect if the District becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect’s documents. Failure to provide such notice shall not relieve Architect of its responsibility therefore, if any.

12.3. Unless the District and the Architect agree that a hazardous materials consultant shall be a consultant of the Architect, the District shall furnish the services of a hazardous material consultant or other consultants when such services are requested in writing by Architect and deemed necessary by the District or are requested by the District. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to said matters which are to be incorporated into bid documents prepared by Architect. If the hazardous materials consultant is furnished by the District and not a consultant of the Architect, the specifications shall include a note to the effect that they are included in the Architect’s bid documents for the District’s convenience and have not been prepared or reviewed by the Architect. The note shall also direct questions about the specifications to its preparer.

Article 13. Liability Of District

13.1. Other than as provided in this Agreement, District’s financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any
special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed in connection with this Agreement.

13.2. District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Architect, or by its employees, even though such equipment be furnished or loaned to Architect by District.

Article 14. Nondiscrimination

14.1. Architect agrees that no discrimination shall be made in the employment of persons under this Agreement because of the race, national origin, ancestry, religion, age, physical or mental disability, sex, or sexual orientation of such person.

14.2. Architect shall comply with any and all applicable regulations and laws governing nondiscrimination in employment.

Article 15. Insurance

15.1. Architect shall comply with the insurance requirements for this Agreement, set forth in Exhibit “E.”

15.2. Architect shall provide certificates of insurance and endorsements to District prior to commencement of the work of this Agreement as required in Exhibit “E.”

Article 16. Covenant Against Contingent Fees

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

Article 17. Entire Agreement/Modification

This Agreement, including the Exhibits hereto, supersedes all previous contracts and constitutes the entire understanding of the Parties hereto. Architect shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both Parties. Architect specifically acknowledges that in entering this Agreement, Architect relies solely upon the provisions contained in this Agreement and no others.
Article 18. Non-Assignment Of Agreement

In as much as this Agreement is intended to secure the specialized Services of the Architect, Architect may not assign, transfer, delegate or sublet any interest therein without the prior written consent of District and any such assignment, transfer, delegation or sublease without the District’s prior written consent shall be considered null and void. Likewise, District may not assign, transfer, delegate or sublet any interest therein without the prior written consent of Architect and any such assignment, transfer, delegation or sublease without Architect’s prior written consent shall be considered null and void.

Article 19. Law, Venue

19.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.

19.2. To the fullest extent permitted by California law, the county in which the District administration office is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

Article 20. Alternative Dispute Resolution

All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution.

Article 21. Severability

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

Article 22. Employment Status

22.1. Architect shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the Architect performs the Services which are the subject matter of this Agreement; provided always, however, that the Services to be provided by Architect shall be provided in a manner consistent with all applicable standards and regulations governing such Services.

22.2. Architect understands and agrees that the Architect’s personnel are not and will not be eligible for membership in or any benefits from any
District group plan for hospital, surgical or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee.

22.3. Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Architect is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Architect which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.

22.4. Should a relevant taxing authority determine a liability for past services performed by Architect for District, upon notification of such fact by District, Architect shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Architect under this Agreement (again, offsetting any amounts already paid by Architect which can be applied as a credit against such liability).

22.5. A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Architect shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Architect is an employee for any other purpose, then Architect agrees to a reduction in District’s liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Architect was not an employee.

22.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 23. Certificate Of Architect

23.1. Architect certifies that the Architect is properly certified or licensed under the laws and regulations of the State of California to provide the professional Services that it has herein agreed to perform.

23.2. Architect certifies that it is aware of the provisions of the California Labor Code that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with those provisions before commencing the performance of the Services of this Agreement.
23.3. Architect certifies that it is aware of the provisions of California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects (“Prevailing Wage Laws”). Since the Architect is performing Services as part of an applicable “public works” or “maintenance” project, and since the total compensation is $1,000 or more, the Architect agrees to fully comply with and to require its consultant(s) to fully comply with all applicable prevailing wage requirements of the California Labor Code.

Article 24. Cost Disclosure - Documents And Written Reports

Architect shall be responsible for compliance with California Government Code section 7550, if the total cost of the Contract is over five thousand dollars ($5,000).

Article 25. Notice & Communications

Notices and communications between the Parties to this Agreement may be sent to the following addresses:

**District:**
Ohlone Community College District
43600 Mission Blvd
Bldg-4, 4311
Fremont, CA 94539

**Architect:**
BKF Engineers
1646 N. California Blvd
Suite 400
Walnut Creek, CA 94596

ATTN: Elaine Trujillo  ATTN: Dayne Johnson

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

Article 26. Disabled Veteran Business Enterprise Participation

Pursuant to section 71028 of the Education Code and Public Contract Code section 10115, the District may have a participation goal for disabled veteran business enterprises (DVBEs) of at least three (3) percent per year of funds expended each year by the District on projects that use funds California Community College Chancellor’s Office. This Project may use funds allocated under the Act. Therefore, to the extent feasible and pertaining to futurehirings, the Architect, before it executes the Agreement, shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount(s) intended to be paid to DVBEs in conjunction with the contract, and documentation demonstrating the Architect’s good faith efforts to meet these goals.

Article 27. District’s Right to Audit
27.1. District retains the right to review and audit, and the reasonable right of access to Architect’s and any sub-consultant’s premises to review and audit the Architect’s compliance with the provisions of this Agreement (“District’s Right”). The District’s Right includes the right to inspect, photocopy, and to retain copies, outside of the Architect’s premises, of any and all Project-related records and other information with appropriate safeguards, if such retention is deemed necessary by the District in its sole discretion. The District shall keep this information confidential, as allowed by applicable law.

27.2. The District’s Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the District determines are necessary to discover and verify that the Architect is in compliance with all requirements of this Agreement.

27.3. If there is a claim for additional compensation or for Extra Services, the District’s Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the District determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

27.4. The Architect shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. The Architect shall make available to the District for review and audit, all Project related accounting records and documents, and any other financial data. Upon District’s request, the Architect shall submit exact duplicates of originals of all requested records to the District.

27.5. The Architect shall include audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all subconsultants.

27.6. Architect shall comply with these provisions within fifteen (15) days of the District’s written request to review and audit any or all of Architect’s Project-related records and information.

Article 28. Other Provisions

28.1. The Architect shall be responsible for the cost of construction change orders caused directly by the Architect’s willful misconduct or negligent acts, errors or omissions. Without limiting Architect’s liability for indirect cost impacts, the direct costs for which the Architect shall be liable shall equal the difference between the cost of the change order and the reasonable cost of the work had that work been a part of the originally prepared construction documents. These amounts shall be paid by Architect to District or the District may withhold those costs from amounts owing to Architect.
28.2. Neither the District’s review, approval of, nor payment for, any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Architect shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Architect’s failure to perform any of the Services furnished under this Agreement to the standard of care of the Architect for its Services, which shall be, at a minimum, the standard of care of architects performing similar work for California school districts in or around the same geographic area of the District.

28.3. Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.

Article 29. Exhibits

Exhibits A through F attached hereto are hereby incorporated by this reference and made a part of this Agreement.

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

OHLONE COMMUNITY COLLEGE DISTRICT

By: ________________________________
Printed: _____________________________
Title: ________________________________
Date: ________________________________, 2021

BKF ENGINEERS

By: ________________________________
Printed: _____________________________
Title: ________________________________
Date: ________________________________, 2021
EXHIBIT "A"
RESPONSIBILITIES AND SERVICES OF ARCHITECT

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EXHIBIT A
AGREEMENT FOR ARCHITECTURAL SERVICES
6108J PARKING LOTS B&C IMPROVEMENTS
OHLONE COMMUNITY COLLEGE DISTRICT
EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF ARCHITECT

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

A. SCOPE OF PROJECT

1. Provide full design, construction documents and closeout services for the project as listed below:

   a) Assessment of existing conditions, and programming of new facilities
   b) Coordination with Alameda County Water District (ACWD) and Department of Water Resources (DWR) to provide new work on existing easements, if any, arranged with those utilities
   c) Management of all design disciplines necessary to develop complete design documents
   d) Design and Construction Documents
   e) DSA Submission, back check, and closeout documents
   f) Bidding / Procurement support
   g) Construction Administration
   h) Closeout Services

B. BASIC SERVICES

Architect agrees to provide the services described below:

1. Architect shall be responsible for the professional quality and technical accuracy of all studies, reports, projections, master plans, designs, drawings, specifications and other services furnished by Architect under the Agreement as well as coordination with all master plans, studies, reports, as-built from past projects and other information provided by District. Architect shall, without additional compensation, correct or revise any errors or omissions in its studies, reports, projections, master plans, design, drawings, specifications and other services.

2. The District shall provide all information available to it to the extent the information relates to Architect’s scope of work. This information shall include, if available,

   a. Physical characteristics,
   b. Legal limitations and utility locations for the Project site(s),
   c. Written legal description(s) of the Project site(s),
   d. Grades and lines of streets, alleys, pavements, and adjoining property and structures;
   e. Adjacent drainage;
   f. Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the Project site(s);
g. Locations, dimensions and necessary data with respect to existing buildings, other improvements and trees;

h. Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths;

i. Surveys, reports, as-built drawings, record drawings; and

j. Subsoil data, chemical data, and other data logs of borings.

Architect shall visually verify this information and all existing Project utilities, including capacity, and document the location of existing utility lines, telephone, water, sewage, storm drains and other lines on or around the Project to the extent determinable by the documents provided by the District.

If Architect determines that the information or documentation the District provides is insufficient for purposes of design or if the Architect requires a topographical survey; geotechnical report; structural, mechanical, and/or chemical tests; tests for air and/or water pollution; test borings; test pits; determinations of soil bearing values; percolation tests; ground corrosion tests; resistivity tests; tests for hazardous materials; tests for anticipating subsoil conditions; and/or other information that the District has not provided, the Architect shall request that the District acquire that information at the soonest possible time after Architect becomes aware that this additional information is needed. If the Parties mutually agree, this additional information and service shall be procured through the Architect, who may invoice the District for those services as Extra Services.

3. **District Standards.** District Standards. Architect shall incorporate in to its work and the work of all consultants the adopted District Standards for facilities and construction.

4. **Mandatory Assistance**

If a third party dispute or litigation, or both, arises out of, or relates in any way to the Services provided under this Agreement, upon the District's request, the Architect, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Architect's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation ("Mandatory Assistance").
C. PRE-DESIGN AND START-UP SERVICES

1. Project Initiation

Upon final execution of the Agreement with the District, the Architect shall:

a. Within the first week following execution of the Agreement, review the proposed Schedule of Work set forth in Exhibit "C" to the Agreement and prepare a detailed scope of work list and work plan for documentation in a computer-generated Project schedule to the District’s satisfaction. This scope of work list and work plan will identify specific tasks including, but not limited to: interviews, data collection, analysis, report preparation, planning, architectural programming, concepts and schematic design preparation and estimating that are part of the work of the Project. Architect shall also identify milestone activities or dates, specific task responsibilities, required completion times necessary for the review and approval by the District and by all regulatory agencies and additional definition of deliverables.

b. Review the developed work plan with the District and its representatives to familiarize them with the proposed tasks and schedule and develop necessary modifications.

2. Development of Architectural Program

The Architect shall prepare for the District’s review an architectural program as follows:

a. Perform pre-design investigations to establish appropriate guidelines around which and within which the Project is to be designed. Identify design issues relating to functional needs, directives and constraints imposed by regulatory codes. Review all data pertinent to the Project including survey, site maps, geotechnical reports and recommendations, soil testing results reports, and pertinent historical data, and other relevant information provided by District.

b. Identify design issues relating to functional needs, directives and constraints imposed by applicable regulatory codes.

c. Based on survey and topography data provided by the District, input into computer and develop existing conditions base for the Schematic Design Phase.

d. Administer Project as required to coordinate work with the District and between subconsultants.

e. Construction Cost Budget

(i) Architect shall have responsibility to further develop review, and reconcile the Construction Cost Budget within the parameters of the Project Budget established in the District’s implementation plan. The estimates forming the basis of the Construction Cost
Budget are to be based on the developed functional architectural programs as approved by the District. The following conditions apply to the Construction Cost Budget prepared by the Architect:

(A) All costs are to be based on current bid prices, with escalation rate and duration clearly identified as a separate line item; rate of cost escalation and projected bid and construction dates are to be as approved by the District and its representatives.

(B) Format shall be in a building systems format (e.g., foundations, substructure, structural system, exterior wall enclosure, window systems, etc.) for new buildings, and summarized by the Construction Specification Institute (CSI) category for buildings being modernized.

(C) Contingencies for design, bidding, and construction are to be included as individual line items, with the percentage and base of calculation clearly identified.

(D) The Architect shall include all information and estimates from the District and/or the Construction Manager that are intended to be part of the Construction Cost Budget.

(E) One week prior to submittal of documents, the Architect shall submit its proposed Construction Cost Budget to the District and the Construction Manager for review and approval. At that time, the Architect shall coordinate with the District and the Construction Manager to further develop, review, and reconcile the Construction Cost Budget.

(F) Mechanical, electrical, civil, landscape and estimating consultant(s) shall participate in the progress meeting as appropriate and shall provide input and feedback into the development of the Construction Cost Budget.

(ii) The Construction Cost Budget for the Project must at no point exceed the relevant portion of District’s Project Budget. The accuracy of the Construction Cost Budget shall be the responsibility of the Architect.

3. Deliverables and Numbers of Copies

Architect shall provide to the District a hard copy of the following items produced in this Phase, together with one copy of each item in electronic format:

a. One copy of Architectural Program (Include comparison between developed program and “model” program, include narrative explaining any substantial deviations);

b. One copy of Site Plan;
C. CONSTRUCTION DOCUMENTS PHASE

Upon District’s acceptance of Architect’s work in the previous Phase and assuming District has not delayed or terminated the Agreement, the Architect shall prepare from the accepted deliverables from the Design Development Phase the Construction Documents consisting of the following for each proposed system within Architect’s scope of work:

Construction Documents – 100% / Completion Stage:

a. Civil

All site plans, road, parking and site systems completed.

b. Construction Cost Budget

(i) Revise the Construction Cost Budget for the Project. Along with the conditions identified in the preceding phases, Architect shall update and refine the Schematic Design Construction Cost Budget.

(ii) The Construction Cost Budget for the Project must at no point exceed the relevant portion of the District’s Project Budget. The accuracy of the Construction Cost Budget shall be the responsibility of the Architect.

(iii) The Architect shall submit its proposed Construction Cost Budget to the District and the Construction Manager for review and approval. At that time, the Architect shall coordinate with the District and the Construction Manager to further develop, review, and reconcile the Construction Cost Budget.

(iv) At this stage of the design, the Construction Cost Budget shall not include any design contingencies in excess of the cost estimates.
c. Specifications

(i) Complete development and preparation of technical specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.

(ii) No part of the specifications shall call for a designated material, product, thing, or service by specific brand or trade name unless:

(A) The specification is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service, as required by Public Contract Code, section 3400; or

(B) The designation is allowable by specific allowable exemptions or exceptions pursuant to Public Contract Code, section 3400.

(iii) Specifications shall not contain restrictions that will limit competitive bids other those required for maintenance convenience by the District and only with District's prior approval.

(iv) At one hundred percent (100%) review, District shall review the specifications and shall direct Architect to make corrections at no cost to the District.

(v) Coordination of the Specifications with specifications developed by other disciplines.

(vi) Specifications shall be in CSI format.

d. Constructability Review

The District and/or its designee shall conduct a construction review of the Construction Documents. A report shall be given to the Architect who shall make necessary changes along with providing written comments for each item listed in the report.

e. Deliverables and Numbers of Copies

Architect shall provide to the District a hard copy of the following items produced in this phase, together with one copy of each item in electronic format:

(i) One copy of reproducible copies of working drawings;

(ii) One copy of specifications;

(iii) One copy of revised Construction Cost Budgets;
(iv) One copy of statement of requirements for testing and inspection of service for compliance with Construction Documents and applicable codes;

(v) One copy of a statement indicating any authorized changes made to the design from the last Phase and the cost impact of each change on the previously approved Construction Cost Budget. If no design changes occur but shifts of costs occur between disciplines, identify for District review.

2. **Construction Documents (CD) Final Back-Check Stage**

   a. The Construction Documents final back-check stage shall be for the purpose of the Architect incorporating all regulatory agencies’ comments into the drawings, specifications, and estimate. All changes made by the Architect during this stage shall be at no additional cost to the District.

   b. The final contract documents delivered to the District upon completion of the Architect’s work shall be the Bid Set and shall consist of the following:

      (i) **Drawings:** Original tracings of all drawings on Architect’s tracing paper with each Architect/consultant’s State license stamp.

      (ii) **Specifications:** Original word-processed technical specifications on reproducible masters in CSI format.

   c. Architect shall update and refine the consultants’ completed Construction Documents.

3. **Meetings**

   During this Phase, Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops as indicated below.

D. **BIDDING PHASE**

   Upon District’s acceptance of Architect’s work in the previous Phase and assuming District has not delayed or terminated the Agreement, the Architect shall perform Bidding Phase services for District as follows:

   1. Contact potential bidders and encourage their participation in the Project.

   2. Coordinate the development of the bidding procedures and the construction contract documents with the District.

   3. The development of the bidding procedures and the construction contract documents shall be the joint responsibility of the District and the Architect.
4. While the Project is being advertised for bids, all questions concerning intent shall be referred to the District for screening and subsequent processing through Architect.

5. In the event that items requiring interpretation of the drawings or specifications are discovered during the bidding period, those items shall be analyzed by the Architect for decision by the District as to the proper procedure required. Corrective action will be in the form of an addendum prepared by the Architect and issued by the District.


7. Coordinate with subconsultants.

8. Respond to District questions and clarifications.

9. Deliverables and Number of Copies

   Architect shall provide to the District a hard copy of the following items produced in this phase, together with one copy of each item in electronic format:

   a. One copy of meeting report/minutes from kick-off meeting;

   b. One copy of meeting report/minutes from pre-bid site walk;

   c. Upon completion of the Bidding Phase, Architect shall produce a Conforming Set of plans and specifications incorporating all addenda issued thus far. Architect shall supply District with two (2) complete, reproducible sets of plans and specifications marked as a Conforming Set.

E. CONSTRUCTION ADMINISTRATION PHASE

   Upon District’s acceptance of Architect’s work in the previous Phase and assuming District has not delayed or terminated the Agreement, the Architect shall perform Construction Administration Phase services for the District as follows:

   1. The Architect’s responsibility to provide basic services for the Construction Phase under the Agreement commences with the award of the contract for construction and terminates upon satisfactory performance and completion of all tasks in this phase and commencement of the Closeout Phase or upon the District’s terminating the Agreement, whichever is earlier.

   2. Change Orders

      a. Architect shall review all of contractor’s change order requests to determine if those requests are valid and appropriate. Architect shall provide a recommendation to District as to whether the change should be approved, partially approved, returned to the contractor for clarification, or rejected.
b. The Architect shall furnish all necessary additional drawings for supplementing, clarifying, and/or correcting purposes and for change orders. The District shall request these drawings from the Architect and shall be at no additional cost unless designated as Extra Services by the District. The original tracing(s) and/or drawings and contract wording for change orders shall be submitted to the District for duplication and distribution.

3. **Submittals**

a. Architect shall review and approve or take other appropriate action upon contractor’s submittals such as: shop drawings, project data, samples and change orders, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the contract documents.

b. Architect shall review contractor’s schedule of submittals and advise the District on whether that schedule is complete. The Architect shall provide the District with proposed revisions to this schedule and advise the District on whether the District should approve this schedule.

c. The Architect’s action upon contractor’s submittals shall be taken as expeditiously as possible so as to cause no unreasonable delay in the construction of the Project or in the work of separate contractors, while allowing sufficient time in the Architect’s professional judgment to permit adequate review. In no case shall the review period associated with a single, particular submittal exceed twenty-one (21) calendar days from its receipt by the Architect. Architect’s response to each submittal shall be a substantive and acceptable response. This 21-day time period shall not include time when a submittal is within the District’s control or if the submittal is being reviewed by DSA. In no way does this provision reduce the Architect’s liability if it fails to prepare acceptable documents.

4. **RFIs**

During the course of construction as part of the basic services, all Requests for Information (“RFI”) must be responded to as expeditiously as possible so as not to impact and delay the construction progress. In no case shall the review period associated with an RFI exceed seven (7) calendar days from the receipt by the Architect. Architect’s response to each RFI shall be a substantive and acceptable response. This 7-day time period shall not include time when a submittal is within the District’s control or if the submittal is being reviewed by DSA. In no way does this provision reduce the Architect’s liability if it fails to prepare acceptable documents.

5. **Notices of Deficient Work.** On the basis of on-site observations, the Architect shall keep the District informed of the progress and the quality of the work, and shall endeavor to guard the District against defects and deficiencies in the work. Architect shall notify the District in writing of any defects or deficiencies in the work by any of the District’s contractors that the
Architect may observe. However, the Architect shall not be a guarantor of the contractor's performance.

6. **As-Built Drawings.** Architect shall review and evaluate for the District, the contractor(s)’ documentation of the actual construction performed during the Project that the contractor(s) should prepare and submit as As-Builds. As-Builds are documents that show the actual construction performed during the Project, including changes necessitated by change orders, and detailed by the District’s construction contractor(s) on a Conforming Set.

7. **Record Drawings.** Architect shall incorporate all information on all As-Builds, sketches, details, and clarifications, and prepare one set of final Record Drawings for the District. The Record Drawings shall incorporate onto one set of drawings, all changes from all As-Builds, sketches, details, and clarifications. If a set of Record Drawings has been requested by the District, then (1) the Architect shall deliver it to the District at completion of the construction and (2) it shall be a condition precedent to the District’s approval of the Architect’s final payment. The Architect may insert the following notice on the Record Drawings:

These drawings [or corrected specifications] have been prepared based on information submitted, in part, by others. The Architect has provided a review consistent with its legal standard of care.

8. **O&M Manuals / Warranties.** Architect shall review equipment, operation and maintenance manuals, and a complete set of warranty documents for all equipment and installed systems, to ensure that they meet the requirements of the plans and specifications.

9. **Start up.** Architect shall also provide, at the District’s request, architectural/engineering advice to the District on start-up, break-in, and debugging of facility systems and equipment, and apparent deficiencies in construction following the acceptance of the contractor’s work.

10. **Payment Statements.** Recommendations of Payment by Architect constitute Architect’s representation to the District that work has progressed to the point indicated to the best of Architect’s knowledge, information, and belief, and that the quality of the work is in general conformance with the contract documents.

11. **Deliverables and Number of Copies**

Architect shall provide to the District a hard copy of the following items produced in this phase, together with one copy of each item in electronic format:

a. One copy of meeting report/minutes from kick-off meeting;

b. One copy of observation reports;

c. One copy of weekly meeting reports.
12. **Meetings**

During this phase, Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops as indicated below.

**F. CLOSE OUT PHASE**

1. As the Construction Administration Phase progresses, the Architect shall perform the following Close Out Phase services for the District as required:
   
   a. Architect shall review the project and observe the construction as required to determine when the contractor has completed the construction of the Project and shall prepare punch lists of items that remain in need of correction or completion.
   
   b. Architect shall collect from the contractor, review, and forward to the District all written warranties, lien waivers, and Certificates of Inspection and Occupancy with Architect’s recommendation as to the adequacy of these items.
   
   c. Architect shall prepare or collect, as applicable, and provide to DSA, all reports required by DSA related to the design and construction of the Project.
   
   d. Architect shall obtain all required DSA approval, as applicable, on all change orders and addenda to the contractor’s contract.
   
   e. Architect shall prepare a final verified report for the Project.
   
   f. Architect shall prepare a set of As-Built Drawings for the Project, as required by the District.
   
   g. Architect shall coordinate all Services required to close-out the design and construction of the Project with the District and between consultants.

2. When the design and construction of the Project is complete, the District shall prepare and record with the County Recorder a Notice of Completion for the Project.

3. **Deliverables and Number of Copies**

   a. One electronic copy of punch lists for each site;
   
   b. Upon completion of the Project, all related project documents, including As-Builts, Record Drawings. These are the sole property of the District. This provision shall survive the termination of this Agreement for any reason whatsoever.
4. **Meetings**

During this phase, Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops as indicated below.

**G. MEETINGS / SITE VISITS / WORKSHOPS**

1. Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops as indicated below. Architect shall chair, conduct and take minutes of all coordination meetings during the entire design phase with its consultant(s). Architect shall invite the District and/or its representative to participate in these meetings. Architect shall keep a separate log to document design/coordination comments generated in these meetings.

2. **General Meeting, Site Visit, and Workshop Requirements**

   a. Architect shall always be prepared to answer questions and issues from District staff, site staff, potential bidders, and/or contractors, as applicable.

   b. Architect shall maintain a log of all meetings, site visits or site observations held in conjunction with the design and construction of the Project, with documentation of major discussion points, observations, decisions, questions or comments. These shall be furnished to the District and/or its representative for inclusion in the overall Project documentation.

   c. As required, Architect shall provide at no additional cost to the District copies of all documents or other information needed for each meeting, site visit, and workshop.

   d. Each meeting may last up to one full day (eight (8) hours) and shall be held at the District office or at one of the Project sites, unless otherwise indicated.

3. **Meetings During Project Initiation Phase**

   a. Within the first week following execution of the Agreement, the Architect shall participate in one Project kick-off meeting for all sites to determine the Project intent, scope, budget and timetable, which shall encompass the following:

      (i) The Architect, its appropriate consultant(s), and District staff, shall attend the meeting.

      (ii) The Project kick-off meeting will introduce key team members from the District and the Architect to each other, defining roles and responsibilities relative to the Project.

      (iii) During this meeting, the Architect shall:
(A) Identify and review pertinent information and/or documentation necessary from the District for the completion of the Project.

(B) Review and explain the overall Project goals, general approach, tasks, work plan and procedures and deliverable products of the Project.

(C) Review and explain the scope of work and Project work plan for all parties present; determine any adjustments or fine tuning that needs to be made to the work plan.

(D) Review documentation of the Project kick-off meeting prepared by the District’s representative and comment prior to distribution.

4. **Initial Site Visits / Project Coordination Meetings**

   a. Architect shall visit the Project sites to complete a visual inventory and documentation of the existing conditions, and coordinate with the District and Program Manager.

5. **Meetings During Design Phase**

   a. Within the first two weeks following the start of the Schematic Design Phase, Architect shall conduct one design workshop, per site, with the District’s facilities team and site personnel to complete a basic design framework with computer-aided design equipment (CADD). The District may, at its discretion, allow the Architect to proceed with this meeting without using CADD. This workshop shall be ongoing and may include several meetings and shall not be concluded until each attendee has indicated his or her acceptance with the Architect’s preliminary design. This workshop shall include the following:

      (i) Architect shall designated its team member duties and responsibilities;

      (ii) Architect and District shall review District goals and expectations;

      (iii) District shall provide input and requirements;

      (iv) Architect and District shall review Project scope and budget, including the Construction Cost Budget and the Project Budget;

      (v) Prepare and/or revise the scope of work list and general work plan from the Pre-Design Phase, for documentation in a computer-generated Project schedule;

      (vi) Establish and agree regarding methods to facilitate the communication and coordination efforts for the Project.
6. **Meetings During Construction Documents Phase**

   a. At the time designated for completion of the one hundred percent (100%) Construction Document package, Architect shall conduct one meeting, per package or submittal, with the District to review the following:

      (i) Present the hundred percent (100%) Construction Document package for review and comment to proceed with preparation of final plans and specification.

      (ii) Architect and District shall provide further review of Project scope and budget, including the Construction Cost Budget and the Project Budget.

7. **Meetings During Bidding Phase**

   a. Attend and take part in one meeting, per package of submittal, with all potential bidders, District staff, and Construction Manager.

   b. Conduct one kick-off meeting, per site, with the successful bidder, District staff, and Construction Manager to finalize the roles and responsibilities of each party and provide protocols and processes to follow during construction.

8. **Meetings During Construction Administration Phase**

   a. Architect shall visit the Project site as necessary or when requested, and in no case less than once per week, sufficient to determine that the Project is being constructed in accordance with the plans and specifications, and to resolve discrepancies in the contract documents and to monitor the progress of the construction of the Project. Architect may coordinate these site visits so that it observes more than one site on one site visit to the District.

   b. Conduct weekly project meetings with District staff to review with District staff the progress of the work at each site. This is expected to be two (2) meetings, per site, but Architect acknowledges that one or more sites may not be completed in this timeframe and agrees to attend weekly project meetings, at no additional cost to the District, until the work at each Project site is complete.

   c. Architect shall ensure that consultant(s) visit the site in conformance with their agreement.
9. **Citizens’ Bond Oversight Committee Meetings**

Architect acknowledges that the design and construction of the Project is subject to oversight by the District’s citizen bond oversight committee. Architect shall, at the District’s direction, attend District citizen bond oversight committee meeting(s) and present the Architect’s design to the District’s citizen bond oversight committee for review.

10. **Governing Board Meetings**

Architect acknowledges that the District’s governing board must approve all designs. Architect shall, at the District’s direction, attend District governing board meeting(s) and present the Architect’s design to the District’s governing board for review and approval.

11. **ACWD / DWR Meetings**

Architect acknowledges that the design and construction of the Project is subject to oversight by the Alameda County Water District (ACWD) and the Department of Water Resources (DWR). Architect shall, at the District’s direction, attend ACWD and DWR coordination meetings, and present the Architect’s design to ACWD and DWR for review and approval.
EXHIBIT "B"

CRITERIA AND BILLING FOR EXTRA WORK

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

A. Making revisions in drawings, specifications, or other documents when such revisions are:
   1. Inconsistent with approvals or instructions previously given by the District.
   2. Required by the enactment or revisions of codes, laws, or regulations subsequent to the preparation of the Conforming Set.
   3. Due to changes required as a result of the District’s failure to respond to a written request from the Architect within a reasonable time, as requested by Architect.

B. Providing Work required because of significant documented changes in a Project initiated by the District, including but not limited to size, quality, complexity, the District’s schedule, or method of bidding or negotiating and contracting for construction.

C. Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing Work required in connection with replacement of that work.

D. Providing Work made necessary by the default of contractor(s), by major defects, or deficiencies in the work of contractor(s).

E. In the absence of a final Certificate of Payment or Notice of Completion, providing for Work more than sixty (60) days after the date of actual completion of work by contractor(s) and after Architect has completed all of its obligations and tasks under the Agreement.

F. Providing deliverables or other items in excess of the number indicated in Exhibit “A.” Before preparing, providing, sending, or invoicing for extra deliverables, Architect shall inform the District that expected deliverables may be in excess of the number indicated in Exhibit “A,” so that District can procure the additional deliverables itself or direct Architect to procure the deliverables at District’s expense or on District’s account at a specific vendor.

G. Providing Work as directed by the District that is not part of the Work of this Agreement.

H. Providing Work as an expert and/or witness for the District in any mediation, arbitration, and/or trial in which the Architect is (1) not a party, and (2) did not in any way cause the dispute that is being adjudicated.

I. Providing training, adjusting, or balancing of systems and/or equipment.
J. The following rates, which include overhead, administrative cost and profit, shall be utilized in arriving at the fee for extra Work and shall not be changed for the term of the Agreement.

1. See attached Architect’s fee proposal.

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

1. The following items are approved for mark-up:
   a. Subconsultant Invoices.

2. Any approved item of Extra Work not identified in the above list may not be marked-up.
EXHIBIT "C"

SCHEDULE OF WORK

A. Promptly after the execution of this Agreement, the Architect shall prepare and submit for approval to the District a Schedule of Work showing the order in which Architect proposes to carry out Architect's work ("Schedule of Work"). The Schedule of Work shall apply to the completion of all Work listed hereunder within the times established by this Agreement. The Schedule of Work shall be in the form of a progress chart clearly delineating all important increments and review dates. Architect shall update the Schedule of Work on a monthly basis and deliver two (2) copies to the District along with the monthly billing.

B. Architect shall complete all Work and Services required under Construction Documents Phase after written authorization from the District to proceed, and as more specifically indicated below. Excluded from this duration is the time associated with the Construction Documents back-check stage.

   1. 100% Submittal Package.

C. The durations stated above include the review periods required by the District and all other regulatory agencies.

D. All times to complete tasks set forth in this Exhibit are of the essence, as indicated in the Agreement. If delays in the Schedule of Work are imposed by the District’s inability to comply with requested meeting schedules, Architect shall maintain the right to request an adjustment in the Schedule of Work if deemed necessary to meet the deadlines set forth in this Exhibit. If approved, those extensions shall be authorized in writing by the District.
EXHIBIT "D"

PAYMENT SCHEDULE

A. Compensation

1. The payment of consideration to Architect as provided herein shall be full compensation for all of Architect’s Work incurred in the performance hereof, including, without limitation, all costs for personnel, travel within two hundred (200) miles of a Project location, offices, per diem expenses, printing and shipping of deliverables in the quantities set forth in Exhibit “A.” or any other direct or indirect expenses incident to providing the Work. Except as expressly set forth in the Agreement and Exhibit “B,” there shall be no payment for extra costs or expenses.

2. The total compensation to Architect shall be as stated in Article 6 of the Agreement.

3. District shall pay Architect as follows for all Work contracted for under this Agreement:

<table>
<thead>
<tr>
<th>Phase</th>
<th>Percentage of Total Fee Per Phase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Engineering / Site Assessment Phase</td>
<td>20%</td>
</tr>
<tr>
<td>Construction Document Phase</td>
<td>30%</td>
</tr>
<tr>
<td>DSA Administration/Support</td>
<td>20%</td>
</tr>
<tr>
<td>Bidding &amp; Construction Support Phase</td>
<td>20%</td>
</tr>
<tr>
<td>Closeout Phase</td>
<td>10%</td>
</tr>
</tbody>
</table>

**TOTAL BASE COMPENSATION** 100%

B. Method of Payment

1. Invoices shall be on a form approved by the District and are to be submitted in triplicate to the District via the District’s authorized representative.

2. Architect shall submit to District on a monthly basis documentation showing proof that payments were made to its consultant(s).

3. Architect shall submit to the District for approval a copy of the Architect’s monthly pay request format.

4. Upon receipt and approval of Architect’s invoices, the District agrees to make payments within thirty (30) days of receipt of the invoice as follows:

   a. **For Construction Documents Phase:**
Monthly payments for percentage of Work complete up to ninety-five percent (95%) of the fee for the phase; one hundred percent (100%) payment upon acceptance and approval of the Construction Documents Phase by the District.

b. **For Bidding Phase:**

Monthly payments for the percentage of Work complete up to ninety-five percent (95%) of the fee for the phase; one hundred percent (100%) payment upon the District’s award of the bid.

c. **For Construction Administration Phase:**

Monthly payments for the percentage of Work complete up to ninety-five percent (95%) of the fee for the phase; one hundred percent (100%) payment upon the District’s notice of completion.

d. **For Close Out:**

Lump sum payment thirty-five (35) days after completion of all items in this phase.
EXHIBIT "E"

INSURANCE REQUIREMENTS

A. Architect shall procure prior to commencement of the Work of this Agreement and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by the Architect, his agents, representatives, employees and consultant(s). Architect’s liabilities, including but not limited to Architect’s indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Architect’s failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated as a material breach of contract by the District.

B. Minimum Scope and limits of Insurance: Coverage shall be at least as broad as the following scopes and limits:

1. **Commercial General Liability.** 1 million dollars ($1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Commercial Automobile Liability, Any Auto.** 1 million dollars ($1,000,000) per accident for bodily injury and property damage.

3. **Workers' Compensation Liability.** For all of the Architect’s employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Architect shall keep in full force and effect, a Workers’ Compensation policy. That policy shall provide employers’ liability coverage with minimum liability coverage of statutory limits per accident for bodily injury or disease. The Architect shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

4. **Employers’ Liability.** For all of the Architect’s employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Architect shall keep in full force and effect, an Employment Practices Liability policy. That policy shall provide employers’ liability coverage with minimum liability coverage of 1 million dollars ($1,000,000) per occurrence. The Architect shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

5. **Professional Liability.** This insurance shall cover the prime design professional and his/her consultant(s) for 1 million dollars ($1,000,000) aggregate limit subject to no more than One Hundred Thousand Dollars
($100,000) per claim deductible, coverage to continue through completion of construction plus two years thereafter.

C. The District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.

D. **Deductibles and Self-Insured Retention:** The Architect shall inform the District in writing if any deductibles or self-insured retention exceeds One Hundred Thousand Dollars ($100,000). At the option of the District, either:

1. The District can accept the higher deductible;

2. The Architect’s insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers; or

3. The Architect shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The District, the District’s Program Manager, Construction Manager, or both, their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers (“Additional Insureds”) are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Architect; instruments of Service and completed operations of the Architect; premises owned, occupied or used by the Architect; or automobiles owned, leased, hired or borrowed by the Architect. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

2. For any claims related to the projects, the Architect’s insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Architect’s insurance and shall not contribute with it.

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

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

5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District. Architect further agrees to notify District immediately of any change in status affecting Architect’s licensing and/or ability to perform duties described herein.
F. **Acceptability of Insurers:** Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A:VII. The Architect shall inform the District in writing if any of its insurer(s) have an A.M. Best's rating less than A:VII. At the option of the District, either:

1. The District can accept the lower rating; or
2. Require the Architect to procure insurance from another insurer.

G. **Verification of Coverage:** Architect shall furnish the District with:

1. Certificates of insurance showing maintenance of the required insurance coverage; and
2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before Work commence.