

## **AMENDMENT TO AGREEMENT FOR ARCHITECT SERVICES**

### **1. INDEPENDENT CONTRACTOR AGREEMENT FOR PROFESSIONAL ARCHITECT SERVICES FOR ACADEMY OF ALAMEDA (CHIPMAN) PLAY STRUCTURE.**

This Amendment to agreement for professional architect services for Academy of Alameda (Chipman) play structure ("Amendment") is made and executed this 12th day of November 2020 between Shah Kawasaki Architects, Inc ("Architect") and the Alameda Unified School District, a California public school district located in Alameda, California ("District") (collectively, the "Parties")

#### **RECITALS**

- A. WHEREAS, on March 12, 2020, District and Architect entered into an agreement for professional architect services ("Agreement") to be provided for the design of the Academy of Alameda (Chipman) play structure project. ("Project"); and
- B. WHEREAS, at the time the Agreement was executed, the compensation to be paid to architect at the rates indicated in Exhibit A to the Agreement was for an amount not to exceed Forty-Six Thousand Nine Hundred Eleven Dollars (\$46,911.00), which included a \$250 reimbursable allowance for printing and deliveries; and
- C. WHEREAS, it is now the desire and intention of the Parties to amend the Agreement as set forth below.

NOW, THEREFORE, in light of the foregoing facts and in further consideration of the promises and agreements of the Parties set forth herein below, it is mutually agreed as follows:

## TERMS AND CONDITIONS

Except as revised herein, all other provisions of the Agreement and/or addendum shall remain in full force and effect and are reaffirmed. If there is any conflict between this Amendment and any provision of the Agreement, the provisions of this Amendment shall control.

### THE FOLLOWING CHANGE SHALL BE MADE TO THE AGREEMENT:

1. The compensation to be paid to Architect at the rates indicated in Exhibit A to the Agreement are hereby increased to an amount not to exceed Sixty-Four Thousand Eight Hundred Eleven Dollars (\$64,811.00), which includes a \$1,400 reimbursable allowance for printing and deliveries.

ACCEPTED AND AGREED on the date indicated below:

#### ALAMEDA UNIFIED SCHOOL DISTRICT

Date: Dec 7, 2020

By: Robbie Lyng  
Robbie Lyng (Dec 7, 2020 10:00 PST)

Print Name: Robbie Lyng

Print Title: Senior Director of Construction

#### SHAH KAWASAKI ARCHITECTS, INC.

Date: 11/13/2020

By: Phillip Luo

Print Name: Phillip Luo

Print Title: Principal

Date: Dec 7, 2020

By: Shariq Khan  
Shariq Khan (Dec 7, 2020 09:07 PST)

Print Name: Shariq Khan

Print Title: Chief Business Officer

## EXHIBIT A

Alameda Unified School District  
2060 Challenger Drive  
Alameda, CA 94501

### Independent Contractor Agreement for Professional Architectural Services For Academy of Alameda (Chipman) Play Structure

This Independent Contractor Agreement for Professional Architectural Services ("Agreement") is made as of the 13th day of February in the year 2020, between the Alameda Unified School District ("District") and Shah Kawasaki Architects, a California corporation ("Architect") (individually a "Party" and collectively the "Parties").

**WHEREAS**, the District is authorized by Section 4529.12 of the California Government Code to contract with and employ any persons for the furnishing of architecture, landscape architecture, engineering, environmental services, land surveying, and construction management through a fair, competitive selection process (e.g., by using a request for proposal or request for qualification process).

**WHEREAS**, the District is in need of such services and advice and the Architect warrants that it is specially trained, licensed and experienced and competent to perform the services required by the District;

**WHEREAS**, the Architect agrees to perform the Services described in this Agreement in accordance with the standards of its profession, to District's satisfaction, and in accordance with this Agreement, including without limitation Architect licensing.

**NOW, THEREFORE**, the Parties agree as follows:

1. **Services.** The Architect shall furnish to the District the services as described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work"):
2. **Term.** The Architect shall commence providing services under this Agreement on March 13, 2020, and will diligently perform as required or requested by District as applicable. The term for these services shall expire on August 16, 2020. This Agreement may be extended upon mutual approval of both parties on an annual basis to the extent permissible under applicable law.
3. **Submittal of Documents.** The Architect shall not commence the Work under this Contract until the Architect has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<input checked="" type="checkbox"/> Signed Agreement	<input checked="" type="checkbox"/> Workers' Compensation Certificate
<input checked="" type="checkbox"/> Insurance Certificates & Endorsements	<input checked="" type="checkbox"/> W-9 Form
N/A <input type="checkbox"/> Bonds (as requested by District)	n/a <input type="checkbox"/> Other: Roofing Certification

4. **Compensation.** District agrees to pay the Architect for Services satisfactorily rendered pursuant to this Agreement, at the rates indicated and as more specifically described in **Exhibit "A,"** on an hourly basis and a per-item basis, as applicable, and up to **a maximum not-to-exceed amount of Forty-Six Thousand Nine Hundred Eleven Dollars (\$46,911.00), which includes a \$250 reimbursable allowance for printing and deliveries.** District shall pay Architect only for the all undisputed amounts in installment payments within thirty (30) days after the Architect submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made. Architect shall invoice for each separate project as assigned per **Exhibit "A."**
5. **Expenses.** Rates for expenses are included on the Schedule of Fees and Charges attached hereto as **Exhibit "B"**.
6. **Materials.** Architect shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.
7. **Payment Schedule.** District shall pay Architect for all Services contracted for under this Agreement pursuant to the Payment Schedule attached hereto as **Exhibit "C."**

8. **Independent Contractor.** Architect, in the performance of this Agreement, shall be and act as an independent contractor. Architect understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Architect shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Architect's employees.
9. **Standard of Care.** Architect's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession for services to California school districts.
10. **Originality of Services.** Architect agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Architect and shall not be copied in whole or in part from any other source, except that submitted to Architect by District as a basis for such services.
11. **Copyright/Trademark/Patent.** Architect understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Architect consents to use of Architect's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
12. **Termination.**
- 12.1. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Architect only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Architect. Notice shall be deemed given when received by the Architect or no later than three days after the day of mailing, whichever is sooner.
- 12.2. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
- 12.2.1. material violation of this Agreement by the Architect; or
- 12.2.2. any act by Architect exposing the District to liability to others for personal injury or property damage; or
- 12.2.3. Architect is adjudged a bankrupt, Architect makes a general assignment for the benefit of creditors or a receiver is appointed on account of Architect's insolvency.
- Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Architect. If the expense, fees, and/or costs to the District exceeds the cost of providing the service pursuant to this Agreement, the Architect shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.
- 12.3. Upon termination, Architect shall provide the District with all documents produced maintained or collected by Architect pursuant to this Agreement, whether or not such documents are final or draft documents.
13. **Indemnification.**
- 13.1. To the fullest extent permitted by California law and in accordance with California Civil Code section 2782.8, Architect shall indemnify, protect, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees and members ("Indemnified Parties") from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney's and consultants' fees and causes of action to property or persons, including personal injury and/or death ("Claim(s)"), to the extent that the Claim(s) arises out of, pertains to, or relates to the negligent errors or omissions (active or passive, ordinary or gross), recklessness (ordinary or gross), or willful misconduct of Architect, its directors,

officials, officers, employees, contractors, subcontractors, consultants, subconsultants or agents arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. The District shall have the right to accept or reject any legal representation that Architect proposes to defend the indemnified parties.

- 13.2. Architect's duty to indemnify under this Agreement shall apply during the term of this Agreement and shall survive any expiration or termination of this Agreement until any such Claim(s) are barred by the applicable statute of limitations and is in addition to any other rights or remedies that the District may have under the law or under this Agreement.

#### 14. Mandatory Mediation for Claims.

- 14.1. The Parties hereto agree prior to commencing any legal action relating to any Claim, as defined herein, to submit the Claim to a mandatory good-faith mediation process ("Mediation"). Except as set forth below, the Parties agree to refrain from filing, maintaining or prosecuting any action related to the Claim during the pendency of the Mediation provided that the Mediation must commence within thirty (30) days after a Party makes written demand to the other for Mediation.
- 14.2. The Parties shall participate in a minimum of one full-day mediation session before the Mediation may be declared unsuccessful and terminated by either Party. The Mediation shall be conducted in accordance with such rules as the Parties agree upon, or in the absence of agreement, in accordance with the Commercial Mediation Rules of JAMS/Endispute. Evidence of anything said, any admissions made, and any documents prepared in the course of the Mediation shall not be admissible in evidence or subject to discovery in any court action pursuant to Evidence Code section 1152.5.
- 14.3. If any Party commences a legal action without first attempting to resolve the Claim as required by this Article 11, that Party shall be in breach of this Agreement and shall not be entitled to recover attorney's fees that might have otherwise been recoverable.

#### 15. Insurance.

- 15.1. The Architect shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.
- 15.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that insure against all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from Architect's performance of any portion of the Services. (Form CG 0001 and CA 0001)
- 15.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Architect shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.
- 15.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Architect's profession.

Type of Coverage	Minimum Requirement
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000
<b>Automobile Liability Insurance - Any Auto</b>	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000
<b>Professional Liability</b>	\$ 2,000,000
<b>Workers Compensation</b>	Statutory Limits
<b>Employer's Liability</b>	\$ 1,000,000



- 15.2. **Proof of Carriage of Insurance.** The Architect shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:
- 15.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
  - 15.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
  - 15.2.3. An endorsement stating that the District and the State and their representatives, employees, trustees, officers, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Architect's insurance policies shall be primary to any insurance or self-insurance maintained by District.
  - 15.2.4. All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.
- 15.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.
16. **Assignment.** The obligations of the Architect pursuant to this Agreement shall not be assigned by the Architect.
17. **Compliance with Laws.** Architect shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Architect shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Architect observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Architect shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Architect's receipt of a written termination notice from the District. If Architect performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Architect shall bear all costs arising therefrom. Architect warrants and 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 One Thousand Dollars (\$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 laws, including, if applicable, that it and its subconsultants comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner, and are registered pursuant to Labor Code section 1725.5.
18. **Permits/Licenses.** Architect and all Architect's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement, including without limitation Architect licensing.
19. **Safety and Security:** Architect is responsible for maintaining safety in the performance of this Agreement. Architect shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
20. **Employment with Public Agency.** Architect, if an employee of another public agency, agrees that Architect will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
21. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Architect agrees to comply with applicable Federal and California laws including, but not limited to the California Fair

Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Architect agrees to require like compliance by all its subcontractor(s).

22. **Fingerprinting of Employees.** Pursuant to Education Code section 45125.2, District has determined on the basis of scope of Services, that Architect, Contractors, 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).
23. **Audit.** Architect shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Architect transacted under this Agreement. Architect shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Architect shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Architect and shall conduct audit(s) during Architect's normal business hours, unless Architect otherwise consents.
24. **District's Evaluation of Architect and Architect's Employees and/or Subcontractors.** The District may evaluate the Architect in any manner which is permissible under the law. The District's evaluation may include, without limitation:
  - 24.1. Requesting that District employee(s) evaluate the Architect and the Architect's employees and subcontractors and each of their performance.
  - 24.2. Announced and unannounced observance of Architect, Architect's employee(s), and/or subcontractor(s).
25. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. 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.
26. **Disputes:** In the event of a dispute between the parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Architect shall neither rescind the Agreement nor stop Work.
27. **Confidentiality.** The Architect and all Architect's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
28. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service, addressed as follows:

**District**

Alameda Unified School District  
2060 Challenger Drive  
Alameda, CA 94501  
**Attn: Robbie Lyng**

**Architect**

Shah Kawasaki Architects, Inc.  
570 10th Street, Suite 201  
Oakland, CA 94607  
Tel: (510) 663-6090 ;  
Attn: Philip Luo

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service.

29. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

30. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the California county in which the District's administration offices are located.
31. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
32. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
33. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.



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

**Alameda Unified School District**

Date: 3/12, 2020

By: [Signature]

Print Name: Robbie Lyng

Title: Senior Director of Construction

**Shah Kawasaki Architects**

Date: March 10, 2020

By: [Signature]

Print Name: Philip Luo

Title: Principal

Date: 3-12, 2020

By: [Signature]

Print Name: Shariq Khan

Title: Chief Business Office

**Information regarding Architect:**

Architect: Philip Luo

License No.: C 29705

Address: 570 10th St. Suite 201  
Oakland, CA 94607

Telephone: 510-663-6090

E-Mail: pluo@skarc.com

**Type of Business Entity:**

☐ Individual ☐ Sole Proprietorship  
☐ Partnership ☐ Limited Partnership  
☐ Limited Liability Company  
☒ Corporation, State: California  
☐ Other: \_\_\_\_\_

Employer Identification and/or Social Security  
Number:

EIN: 94-3323512


**NOTE: Federal Code of Regulations sections 6041 and 6209 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires your federal tax identification number or Social Security number, whichever is applicable.**

**WORKERS' COMPENSATION CERTIFICATION**

Labor Code Section 3700 in relevant part provides that every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of Section 3700 of the Labor Code which 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 I will comply with such provisions before commencing the performance of the Work of this Contract.

Date:	<u>3/10/2020</u>
Proper Name of Architect:	<u>Shah Kawasaki Architects, Inc.</u>
Signature:	<u></u>
Print Name:	<u>Philip Luo</u>
Title:	<u>Principal</u>

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Work under this Contract.)

**EXHIBIT A**  
**Scope of Services**

**1. BASIC SERVICES**

1.1. The project for this Agreement includes the following:

- Install Kompan designed play structures at Academy of Alameda (Chipman) on 401 Pacific Ave.
- SKA scope will include accessibility design upgrades for DSA review and approval; development of construction documents for bidding and negotiation (supported by SKA), and construction administration services.
- Siegfried's scope will include a site survey that includes a drainage assessment and construction documents for new curb cuts and surface re-grading at the front parking lot; and playground surface/subsurface designs. Siegfried will also provide bidding and negotiation support and construction administration services.
- Kompan will provide drawings of the play structure for incorporation in the bid documents.
- In January 2019, SKA produced a site accessibility report for AOA and, using construction documents for the playground at Franklin Elementary School, received a cost estimate for the scope of work.
- Construction Documents
  - Architecture:
    1. Site Investigation
    2. DSA Pre-application Meeting (prepare forms and preliminary drawings)
    3. Meeting with AUSD to review DSA comments and Design Drawings
    4. Prepare Construction drawings & submit for DSA Review
    5. Prepare Bid Documents (drawings & specs)
  - Civil:
    1. Site Survey
    2. Drainage Assessment
    3. Play surface and subsurface design based on Kompan's specs
    4. Play surface to blacktop ADA transition design
    5. Parking lot curb cut & surface re-grading design
    6. Prepare Bid Documents (drawings & specs)
- Construction Administration
  - Architecture & Civil:
    1. Bidding & Negotiation support via bid RFI responses
    2. Construction Administration services via RFI responses, submittal reviews, site visits, and reports (if needed).

1.2. 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 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.

1.3. 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;

- 1.3.1. Physical characteristics;
- 1.3.2. Legal limitations and utility locations for the Project site(s);
- 1.3.3. Written legal description(s) of the Project site(s);
- 1.3.4. Grades and lines of streets, alleys, pavements, and adjoining property and structures;
- 1.3.5. Adjacent drainage;
- 1.3.6. Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the Project site(s);

- 1.3.7. Locations, dimensions and necessary data for existing buildings, other improvements and trees;
- 1.3.8. Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths;
- 1.3.9. Surveys, reports, as-built drawings; and
- 1.3.10. Subsoil data, chemical data, and other data logs of borings.
- 1.4. Architect shall Visually Verify this information and all existing utilities related to the Project, 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.
- 1.5. 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.
- 1.6. **Technology Backbone.** Architect shall be responsible for the coordination of the design and the layout of the technology backbone system with the District's Information Technology Department and/or the District's technology consultant, and lay out any included technology backbone system. The coordination effort shall include location and routing of raceways, conduits and outlets and the required spaces to accommodate electrical, data and communication wiring. Architect and consultant(s) shall prepare and be responsible for documents prepared by the Architect based on the information provided by the District's technology consultant as appropriate to the level of design completion.
- 1.7. **Interior Design.** Provide interior design and other similar services required for or in connection with selection and color coordination of materials. Architect is required to coordinate the placement of furniture, equipment layout, or schematic space allocation. The District shall procure furnishings and moveable equipment. Advise the District on lead times and availability of all Project equipment, materials, supplies, and furnishings to ensure that all of these will be available to the District in a timely fashion so as to not delay the Project and/or delay the District's beneficial occupancy of the Project.
- 1.8. **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"). The District will compensate the Architect for fees incurred for providing Mandatory Assistance as Extra Services under Exhibit B. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the Architect, its agents, officers, and employees, the Architect shall reimburse the District. The District is then entitled to reimbursement of all fees paid to the Architect, its agents, officers, and employees for Mandatory Assistance.
- 1.9. **Oversight and Inspection Requirements**

The Architect must comply with the most recent Division of the State Architect (DSA) inspection, approval and certification process for projects, including the provisions in the most recent versions of DSA documents PR 13-01 (Procedure: Construction Oversight Process) and IR A-6 (Interpretation of Regulations: Construction Change Document Submittal and Approval Process).

## 2. 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:

- 2.1. **Construction Documents – 100% / Completion Stage:**
  - 2.1.1. **Architectural**
    - 2.1.1.1. Completed site plan.

- 2.1.1.2. Completed floor plans, elevations, and sections.
- 2.1.1.3. Architectural details and large blow-ups completed.
- 2.1.1.4. Finish, door, and hardware schedules completed, including all details.
- 2.1.1.5. Fixed equipment details and identification completed.
- 2.1.1.6. Reflected ceiling plans completed.
- 2.1.2. **Structural**
  - 2.1.2.1. Structural floor plans and sections with detailing completed.
  - 2.1.2.2. Structural calculations completed.
- 2.1.3. **Mechanical**
  - 2.1.3.1. Large scale mechanical details complete.
  - 2.1.3.2. Mechanical schedules for equipment completed.
  - 2.1.3.3. Completed electrical schematic for environmental cooling and exhaust equipment.
  - 2.1.3.4. Complete energy conservation calculations and report.
- 2.1.4. **Electrical**
  - 2.1.4.1. Lighting and power plan showing all switching and controls. Fixture schedule and lighting details completed.
  - 2.1.4.2. Distribution information on all power consuming equipment, including lighting, power, signal and communication device(s) branch wiring completed.
  - 2.1.4.3. All electrical equipment schedules completed.
  - 2.1.4.4. Special system components plans completed.
  - 2.1.4.5. Electrical load calculations completed.
- 2.1.5. **Civil**
  - 2.1.5.1. All site plans, site utilities, parking and roadway systems completed.
- 2.1.6. **Construction Cost Budget**
  - 2.1.6.1. Revise the Construction Cost Budget for the Project. Along with the conditions identified in the preceding phases, Architect shall update and refine the 50% Construction Documents Phase revisions to the Construction Cost Budget.
  - 2.1.6.2. The Construction Cost Budget for the Project must at no point exceed the District's Construction Budget. The accuracy of the Construction Cost Budget shall be the responsibility of the Architect.
  - 2.1.6.3. 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.
  - 2.1.6.4. At this stage of the design, the Construction Cost Budget shall not include any design contingencies in excess of the cost estimates.
- 2.1.7. **Specifications**
  - 2.1.7.1. Complete development and preparation of technical specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.
  - 2.1.7.2. No part of the specifications shall call for a designated material, product, thing, or service by specific brand or trade name unless:
    - 2.1.7.2.1. 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
    - 2.1.7.2.2. The designation is allowable by specific allowable exemptions or exceptions pursuant to Public Contract Code, section 3400.
  - 2.1.7.3. 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.
  - 2.1.7.4. At one hundred percent (100%) review, District shall review the specifications and shall direct Architect to make corrections at no cost to the District.
  - 2.1.7.5. Coordination of the Specifications with specifications developed by other disciplines.
  - 2.1.7.6. Specifications shall be in CSI format.

**2.1.8. 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.

**2.1.9. 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:

2.1.9.1. Two copies of reproducible copies of working drawings;

2.1.9.2. Two copies of specifications;

2.1.9.3. Two copies of engineering calculations;

2.1.9.4. Two copies of revised Construction Cost Budgets;

2.1.9.5. Two copies of statement of requirements for testing and inspection of service for compliance with Construction Documents and applicable codes;

2.1.9.6. Two copies of DSA file including all correspondence, meeting, back check comments, checklists to date;

2.1.9.7. Two copies 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.

**2.2. Construction Documents (CD) Final Back-Check Stage (if applicable for DSA pre-check projects)**

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.

2.2.1. **Approval of Construction Documents.** Architect shall obtain all necessary approvals for the Construction Documents for the Project from governmental agencies with jurisdiction therefor as necessary for the bidding and construction of the Work depicted in the Construction Documents, including without limitation, approvals by DSA. Architect shall revise the Construction Documents as required by DSA or other governmental agencies to obtain their respective approvals of the Construction Documents. Except for the Architect's fees (which are included in the Contract Price for Basic Services) incurred in obtaining the approvals or preparing revisions pursuant to the foregoing, the District shall pay all other costs or fees necessary for obtaining the approvals.

2.2.2. 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:

2.2.2.1. Drawings: Original drawings with each Architect/consultant's State license stamp.

2.2.2.2. Specifications: Original word-processed technical specifications in CSI format.

2.2.3. Architect shall update and refine the consultants' completed Construction Documents.

**3. 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:

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

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

3.3. The development of the bidding procedures and the construction contract documents shall be the joint responsibility of the District and the Architect.

3.4. 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.

3.5. 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.

3.6. Attend bid opening.

3.7. Coordinate with subconsultants.

3.8. Respond to District questions and clarifications.

3.9. 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:

3.9.1. Two copies of meeting report/minutes from kick-off meeting and from pre-bid site walk;



- 3.9.2. 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, and one (1) electronic set of plans in AutoCAD 2006 or compatible set and one (1) electronic copy of the conforming specifications in Microsoft Word.

#### 4. **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:

- 4.1. 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.
- 4.2. **Change Orders**
- 4.2.1. 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.
- 4.2.2. 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.
- 4.3. **Submittals**
- 4.3.1. 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.
- 4.3.2. 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.
- 4.3.3. 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 ten (10) calendar days from its receipt by the Architect. Architect's response to each submittal shall be a substantive and acceptable response. This 10-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. In no way does this provision reduce the Architect's liability if it fails to prepare acceptable documents.
- 4.4. 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. Further, The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work.
- 4.5. **Requests for Information.** During the course of construction, 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.
- 4.6. **Quality Control/Punch List Process.** Architect shall evaluate during the Construction Administration and

Closeout Phases the contractor(s)' execution and overall delivery of its work throughout the construction process shall use its best efforts to ensure the Project meets or exceeds the criteria as set forth in the Conforming Set. The Parties acknowledge that this process is not commissioning of the Project or the Project's system(s).

- 4.7. 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. Further, The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work.
- 4.8. **As-Built Drawings.** Architect shall review and evaluate for District, the contractor(s)' documentation of the actual construction performed during the Project that the contractor(s) should prepare and submit as As-Built. As-Built 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.
  - 4.8.1. Architect shall provide to contractor(s), electronic "background" copies of all plans on which the contractor(s) shall indicate its "As-Built" in electronic format back to the District.
- 4.9. **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.
- 4.10. 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.
- 4.11. 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.
- 4.12. **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:
  - 4.12.1. Two copies of meeting report/minutes from kick-off meeting;
  - 4.12.2. Two copies of observation reports;
  - 4.12.3. Two copies of weekly meeting reports.
- 4.13. **Meetings.** During this phase, Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops.
- 4.14. **Duty to Timely Respond to DSA Inquiries.** Architect acknowledges that the District, DSA, and/or the Inspector of Record may require Architect to submit changes or clarifications to the Construction Drawings and other documentation to DSA for its consideration and approval during the Construction Administration Phase ("DSA Request"). Any delay by Architect in responding to the DSA Request is likely to result in delays to the Project. Accordingly, Architect shall respond expeditiously and with all due diligence to any DSA Request ("DSA Response"), provided that in no event shall the Architect's DSA Response occur later than two (2) days after Architect receives notice of the DSA Request, unless a longer period of time is approved in writing, in advance, by the District.

## 5. CLOSEOUT PHASE

- 5.1. As the Construction Administration Phase progresses, the Architect shall perform the following Close Out Phase services for the District as required:
  - 5.1.1. 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.
  - 5.1.2. Architect shall collect from the contractor, review, and forward to the District all written warranties, operation manuals, spare parts, lien waivers, and Certificates of Inspection and Occupancy with Architect's recommendation as to the adequacy of these items.
  - 5.1.3. 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.
  - 5.1.4. Architect shall obtain all required DSA approval on all change orders and addenda to the contractor's contract.

- 5.1.5. Architect shall prepare verified report(s) for the Project (DSA-6A/E Verified Report, Rev 04/08, or more recent revision if available).
- 5.1.6. Architect shall prepare a set of Record Drawings for the Project, as requested by the District.
- 5.1.7. Architect shall review and prepare a package of all warranty and M&O documentation.
- 5.1.8. Architect shall organize electronic files, plans and prepare a Project binder.
- 5.1.9. Architect shall coordinate all Services required to close-out the design and construction of the Project with the District and between consultants.
- 5.2. When the design and construction of the Project is complete, the District may prepare and record with the County Recorder a Notice of Completion for the Project.
- 5.3. **Deliverables and Number of Copies**
  - 5.3.1. Punch lists for each site;
  - 5.3.2. Upon completion of the Project, all related project documents, including As-Built, Record Drawings. These are the sole property of the District.

**6. MEETINGS / SITE VISITS / WORKSHOPS**

- 6.1. When requested by District, Architect shall attend, take part in, and conduct meetings, site visits and workshops, as indicated below. Architect shall chair, conduct and take minutes of all meetings Architect attends (excluding Governing Board meetings and Citizens' Bond Oversight Committee meetings). 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.
- 6.2. When requested by District, the Architect shall attend, take part in, and conduct the following: architect general meetings, site visit and workshops; meetings during project initiation phase; initial site visits meetings; architectural program meetings; meetings during schematic design phase; meetings during design development phase; value engineering workshop meetings; meetings during construction documents phase; meetings during bidding phase; meetings during construction administration phase; citizens' bond oversight committee meetings; governing board meetings

**EXHIBIT B & EXHIBIT C**

**EXHIBIT B  
Hourly Personnel Rates &  
Schedule of Fees and Charges**

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, unless agreed to in writing by the Parties and approved by the District's Board.

<b>BASIC HOURLY RATE SCHEDULE</b>	
<b>Job Title</b>	<b>Hourly Rate</b>
Principal	\$ 230 .00
Senior Project Director	\$ .00
Project Director	\$ .00
Senior Project Manager	\$ .00
Managing Professional	\$ .00
Senior Professional	\$ 180 .00
Professional	\$ 155 .00
Professional Staff	\$ 130 .00
Intermediate Staff	\$ .00
Staff	\$ 100 .00
Support Specialist	\$ .00
Clerical Staff	\$ 110 .00
Intern	\$ .00

**EXHIBIT C  
PAYMENT SCHEDULE**

District shall pay Architect for all Services contracted for under this Agreement pursuant to the following schedule ("Payment Schedule"):

<b>PERCENTAGE OF TOTAL FEE PER PHASE</b>	
<b>Phase</b>	<b>Phase Amount</b>
Schematic Design Phase	5%
Design Development Phase	10%
Construction Documents Phase	35%
DSA Stamped Approval	5%
Bidding Phase	5%
Construction Administration Phase	35%
Closeout Phase	10%
Generate Punch List	2%
Sign Off On Punch List	2%
Receive and Review All O&M Documents	2%
Filing All DSA Required Closeout Documents	2%
Receiving DSA Closeout, including DSA approval of the final As-Built set of drawings	2%