

**SOLANO COMMUNITY COLLEGE DISTRICT
GOVERNING BOARD AGENDA ITEM**

TO: **Members of the Governing Board**

SUBJECT: **CONTRACT AMENDMENT #1 WITH LIONAKIS FOR
ARCHITECTURAL SERVICES FOR THE FAIRFIELD
NEW SCIENCE BUILDING PROJECT**

REQUESTED ACTION:

Information **OR** **Approval**
 Consent **OR** **Non-Consent**

SUMMARY:

On December 17, 2014 the Board approved an agreement in the amount of \$1,800,000 with Lionakis for full architectural services for the new Science Building Project utilizing a Lease-Lease Back project delivery method.

The District has subsequently decided to change the project delivery method from Lease-Lease Back to Design Build. This amendment is to modify the December 17, 2014 contract scope of work from full design services to the services required to provide Criteria Documents and to provide Criteria Architect review

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STUDENT SUCCESS IMPACT:

- Help our students achieve their educational, professional and personal goals
- Basic skills education
- Workforce development and training
- Transfer-level education
- Other:

Ed. Code: Board Policy: 3225;3520 Estimated Fiscal Impact: -\$983,310.00 Measure Q Funds

SUPERINTENDENT'S RECOMMENDATION: **APPROVAL** **DISAPPROVAL**
 NOT REQUIRED **TABLE**

Yulian Ligioso
Vice President, Finance and Administration

PRESENTER'S NAME

4000 Suisun Valley Road
Fairfield, CA 94534

ADDRESS

(707) 864-7209

TELEPHONE NUMBER

Yulian Ligioso
Vice President, Finance and Administration

VICE PRESIDENT APPROVAL

April 8, 2016

**DATE SUBMITTED TO
SUPERINTENDENT-PRESIDENT**

Celia Esposito-Noy, Ed.D.
Superintendent-President

April 8, 2016

**DATE APPROVED BY
SUPERINTENDENT-PRESIDENT**

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SUMMARY:

CONTINUED FROM THE PREVIOUS PAGE

and participation in the Design Builder phases of the project to ensure that the Design Builder Architect of Record maintains the intent of the Criteria Documents as approved by the District. This amendment replaces the original contract language with revised scope and terms. Note that it reduces the contract amount to a not-to exceed fee of \$816,690. This amendment thus recognizes a reduction of \$983,310 from the original contract amount.

The Board is asked to approve a contract amendment to Lionakis revising the scope of work to be Criteria Architect services and revising the contract amount to be: not to exceed \$816,690.

The contract amendment is available online at <http://www.solano.edu/measureq/planning.php>

**AMENDMENT #1 FOR CRITERIA DOCUMENT
ARCHITECTURAL SERVICES**

SOLANO COMMUNITY COLLEGE DISTRICT

AND

LIONAKIS

FOR

SCIENCE BUILDING PROJECT PHASE 1

APRIL 20, 2016

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This Amendment #1 for Criteria Document Architectural Services is made as of April 20, 2016, and replaces in full the scope and terms of the contract that was approved on December 17, 2014 for Architectural Services for the Science Building Phase I between the Solano Community College District, a California community college district, ("District") and Lionakis ("Architect") (collectively "Parties"), for the following project ("Project"):

Science Building - Phase 1 Project

The Science Building Phase 1 original contract Scope of Services included full architectural services including pre-design (programming and modeling), Schematic Design, Design Development, Construction Documents, and providing support during Bidding, Construction Administration, and project close-out. The Science Building Phase 1 was to be built under a "Lease-Lease Back" project delivery method.

This amendment revises the scope of work, construction budget, and the change in delivery method of the project from a Lease-Lease Back to a Design Build delivery project. Lionakis' contract is being revised to reflect the change from a contract providing full architectural services to one of providing Criteria Document Architectural Services and oversight during the project life to assure compliance to the approved criteria documents.

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 of 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/Criteria Architect**: The Architect identified 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. **Criteria Documents**: Those documents prepared by the Criteria Architect which describe the Owner's performance criteria and requirements for the project for all disciplines. Criteria Documents typically include drawings, performance narratives and /or specifications along with a Basis of Design (BOD). These documents are included as a part of the Request for Proposals (RFP) for design and construction of the project by the Design Build Entity (DBE).
 - 1.1.5. **Construction Change Documents ("CCD")**: The documentation of changes to the DSA-approved construction documents.

- 1.1.6. **Construction Cost Budget:** The total cost to District of all elements of the Project designed or specified by the Architect, with escalation to the mid-point of construction including contractor mark-ups, bonds and insurance fees, and any other standard fees 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 land, rights-of-way, financing or other costs which are the responsibility of the District, including construction management.
- 1.1.7. **Consultant(s):** Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Architect.
- 1.1.8. **District:** The Solano Community College District.
- 1.1.9. **DSA:** The Division of the State Architect.
- 1.1.10. **Project:** Science Building Phase 1.
- 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 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 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 Design Build selection process. District reserves its right to use alternative delivery methods and the Architect's scope of work may be adjusted accordingly.
- 2.4. Architect acknowledges that all California public school districts are obligated to develop and implement the following storm water

requirements, and Architect shall provide preliminary design and performance criteria and specify in the Criteria Documents that the Design Builder the design for the same, 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") that contains specific best management practices ("BMPs") and establishes numeric effluent limitations 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 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 preliminary 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 and civil engineers, landscaper architect, 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 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 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 State labor compliance, if applicable. 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 State labor compliance, if applicable.
- 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 Department of Education, the Office of Public School Construction, the Department of General Services, DSA, including DSA Fire/Life Safety, DSA Access Compliance Section, DSA Structural Safety Section, the State Fire Marshal and any regulatory office or agency that has authority for review and supervision of school district construction projects.
- 2.7.1. If the Project is subject to DSA jurisdiction, then Architect, and its Consultants, if any, shall comply with all the DSA requirements, without limitation, all the requirements included and/or referenced in the following forms:
- 2.7.2.1. Form DSA IR A-6, Construction Change Document Submittal and Approval Process.
- 2.7.2.2. Form DSA IR A-24, Construction Phase Duties of the School District, Contractor and Design Professional.
- 2.7.2.3. Form DSA PR 13-01, Construction Oversight Process Procedure.
- 2.7.1.3.1. Each of Architect's duties as provided in the Construction Oversight Process Procedure shall be performed timely so as not to result in any delay to the Project.
- 2.8. Architect shall give efficient supervision to Services, using its best skill and attention. Architect shall carefully study and compare all contract documents, drawings, specifications, and other instructions ("Criteria Documents") and shall at once report to District, Construction Manager, any error, inconsistency, or omission that Architect or its employees may discover, in writing. Architect shall have responsibility for discovery of errors, inconsistencies, or omissions.
- 2.9. Architect recognizes that the District will obtain the services of a Construction Manager and that Architect may have to assume certain coordination and management responsibilities, including tracking Requests for Information ("RFI") and providing responses to certain RFIs regarding their conformance to the Criteria Documents.

- 2.10. Architect shall provide computer-generated pictures downloaded to computer files, updated as requested by the District, that the District may use on its website.
- 2.11. As part of the basic Services pursuant to this Agreement, Architect is not responsible for:
 - 2.11.1. Ground contamination or hazardous material analysis.
 - 2.11.2. Any asbestos and/or lead testing, design or abatement; however, it shall coordinate and integrate its work with any such information provided by District.
 - 2.11.3. 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.
 - 2.11.4. Historical significance report.
 - 2.11.5. Soils investigation.
 - 2.11.6. Geotechnical hazard report.

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:

Principal in Charge: Dave Younger

Project Architect(s): Jonathan McMurtry

Project Architect(s): Jason Ellis

Project Architect(s): Matthew Engman

Project Architect(s): Tenley Lubarsky

Major Consultants:

Electrical: Ray Juachon - Integral

Mechanical: John Andary - Integral

Structural: Kerry Volker - Lionakis

Civil: Jim Grossi - CSW/ST2

Lab Specialist: Mark Ranyak - RFD

Landscape: David Gates - Gates & Assoc.

Estimating: Frank Fernandez - Cummings

- 3.3. Architect shall not change any of the key personnel listed above without prior written approval by the District, unless said personnel cease to be employed by Architect. In either case, the 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 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 stated in this paragraph.
- 3.5. Architect represents that 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

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 it's 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 **Exhibit "A,"** the Architect shall have responsibility to further develop, review, and reconcile the Construction Cost Budget for the District. A cost estimate will be included with the initial draft of the Criteria Documents that are presented to the District for review. The District and 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 Criteria 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. Architect shall maintain cost controls throughout the Project to deliver the Project within the Construction Cost Budget.

Article 6. Fee and Method of Payment

6.1. The District shall pay Architect for all Services contracted for under this Agreement a not to exceed amount equal to the following ("Fee"):

An amount equal to Eight Hundred Sixteen Thousand Six Hundred Ninety Dollars (\$816,690.00) based on the rates set forth in **Exhibit "D."**

This amount is a total contract amount and includes an amount of Three Hundred Fourteen Thousand One Hundred Dollars (\$314,100) that has previously been paid out for services already rendered by Lionakis for Programming, Pre-Design, and Schematic Design portions of the work.

6.2. The 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 CCDs and/or change orders generated during the construction period.

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 Service 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, 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 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 the District to use, at its discretion, all plans including, but not limited to, record drawings, specifications, estimates and other documents that Architect or its

Consultants prepare or cause to be prepared pursuant to this Agreement.

- 8.2. Architect retains all rights to all copyrights over designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that Architect or its Consultants prepare or cause to be prepared pursuant to this Agreement.
- 8.3. Architect shall perform the Services and prepare all documents under this Agreement with the assistance of Computer Aided Design Drafting Technology (CADD) (e.g., AutoCAD). Architect shall deliver to 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. The 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 Architect or its Consultant(s) subsequent to it being given to the District.
- 8.5. Following the termination of this Agreement, for any reason whatsoever, 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 Criteria 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 Criteria Documents.
 - 8.5.3. One set of non-fixed image CADD drawing files in DWG format of the drawings that are part of the Criteria Documents.
 - 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 Architect's knowledge or participation or both, the District agrees to release Architect of responsibility for such

changes, and shall hold Architect harmless from and against any and all claims on account of any damages or losses to property or persons, or economic losses, arising out of that change or use, unless Architect is found to be liable in a forum of competent jurisdiction. In the event that the District uses any fully or partially completed documents without the Architect's full involvement, the District shall remove all title blocks and other information that might identify Architect and its 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 the District for all Services performed until the notice of termination, but the 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 Agreement.
- 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. 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 the District and the District shall pay all undisputed invoice(s) for Services performed until 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, Architect, upon written notice from the District of such termination, shall immediately cease Services on the Project. The District shall pay 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, Architect shall be compensated for Services performed prior to notice of that suspension. When the Project is resumed, the schedule shall be adjusted and 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, 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 Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (“the indemnified parties”) from any and all claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Architect, its officers, employees, subcontractors, consultants, or agents.
- 10.2. Architect’s obligation pursuant to section 10.1 includes reimbursing the District for the cost of any settlement paid by the indemnified parties and for any and all fees and costs incurred by the indemnified parties to enforce the indemnity herein. Architect’s obligation to indemnify shall not be restricted to insurance proceeds. District shall also have the right to accept or reject any legal representation that Architect proposes to defend the indemnified parties.
- 10.3. District may withhold any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Architect from amounts owing to Architect.

Article 11. Responsibilities of the District

- 11.1. 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.
- 11.2. The District shall verbally or in writing advise 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.
- 11.3. Unless the District and 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 is 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 related to asbestos and lead paint survey and/or abatement documentation to its preparer.

Article 12. Liability of District

- 12.1. 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 or the Services performed in connection with this Agreement.
- 12.2. 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 13. Nondiscrimination

- 13.1. 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.
- 13.2. Architect shall comply with any and all applicable regulations and laws governing nondiscrimination in employment.

Article 14. Insurance

- 14.1. Architect shall comply with the insurance requirements for this Agreement, set forth in **Exhibit "E."**
- 14.2. 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 15. 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 16. Entire Agreement/Modification

This Agreement, including the Exhibits attached 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 17. 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 18. Law, Venue

18.1. 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.

18.2. 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 19. 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. If this method proves unsuccessful, then all claims, disputes or controversies as stated above may be decided through arbitration, if agreed to in writing by all Parties.

Article 20. Attorneys' Fees

In the event either party shall bring any action or legal proceeding for damages for any alleged breach of any provision of or performance under this Agreement, to terminate this Agreement, or to enforce, protect or establish any term or covenant of this Agreement or right or remedy of either party, the prevailing party shall be entitled to recover, as a part of the action or proceeding, reasonable attorneys' fees and court costs, including consultants' fees, attorneys' fees and costs for appeal, as may be fixed by the court. The term "prevailing party" shall mean the party who received substantially the relief requested, whether by settlement, dismissal, summary judgment, judgment, or otherwise.

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 an independent contractor and nothing in this Agreement is intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the District to exercise discretion or control over the professional manner in which Architect performs the Services that 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 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 the 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, or any employee or Consultant of Architect, is an employee of the District 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). The 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 the District, upon notification of such fact by the District, Architect shall promptly remit such amount due or arrange with the 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 the 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 or its employees of Consultants 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 and California Code of Regulations 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 "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 requirements of the Prevailing Wage Laws.

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:

Solano Community College District
360 Campus Lane
Suite 203
Fairfield, CA 94534
ATTN: Ines Zildzic

Architect:

Lionakis
1919 19th Street
Sacramento, CA 95833
ATTN: Dave Younger
FAX: (916) 558-1919

Any notice personally given shall be effective upon receipt. Any notice sent by facsimile shall be effective the day after transmission. 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. District's Right to Audit

26.1. District retains the right to review and audit, and the reasonable right of access to Architect's and any 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 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.

- 26.2. 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 is necessary to discover and verify whether Architect is in compliance with all requirements of this Agreement.
- 26.3. 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 is 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.
- 26.4. Architect shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. 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, Architect shall submit exact duplicates of originals of all requested records to the District.
- 26.5. Architect shall include audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all Consultants.
- 26.6. 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 27. Other Provisions

- 27.1. Architect shall be responsible for the cost of reviewing CCDs and/or change orders caused by the Architect's willful misconduct, recklessness, or negligent acts, errors or omissions. Without limiting Architect's liability for indirect cost impacts, the direct costs for change orders which 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 Contract Documents. These amounts shall be paid by Architect to District or the District may withhold those costs from amounts owing to Architect.
- 27.2. 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 as the District.

- 27.3. Each party represents 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 28. Exhibits "A" through "E", 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.

**SOLANO COMMUNITY COLLEGE
DISTRICT**

LIONAKIS

Date: _____, 20____

Date: _____, 20____

By: Yulian Ligioso

By: Dave P. Younger, AIA, LEED

Title: VP, Finance and Administration

Title: Principal

EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF ARCHITECT

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EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF CRITERIA ARCHITECT

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

A. SCOPE OF PROJECT

- 1. Project Name: Fairfield Science Building Phase I

Approximate Gross Square Footage: 33,880 SF

Construction Cost Budget: \$25,097,000

B. BASIC SERVICES

Criteria Architect agrees to provide the Services described below:

- 1. Criteria Architect shall be responsible for the professional quality and technical accuracy of all studies, reports, projections, master plans, designs, drawings, performance criteria narratives, 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.

Criteria Architect will use all due care and diligence to confirm that its plans and specifications and all other information provided by or on behalf of the District to potential bidders discloses and publishes any potentially relevant information that could, in any way, have an impact on a contractor's cost of performance. Architect shall advise the District of the most effective methods of identifying and securing such information as part of each stage of design. Criteria Architect shall track for District's benefit all such suggested and disclosed information.

2. The District has existing Campus Site Plans, Geotechnical reports, Topographic and Utility Surveys, which will be made available to the Criteria Architect for use in development of the Design Criteria Documents. If Criteria Architect determines that additional site information is required, Criteria Architect shall contract directly with consulting services and be responsible for the cost of additional site information.

If Criteria Architect determines that additional information or documentation is required for purposes of developing Design Criteria Documents, such as topographical survey; geotechnical report; test borings; test pits; determinations of soil bearing values; percolation tests; ground corrosion tests; resistivity tests;; tests for anticipating subsoil conditions; and/or other information that the District does not have already available, the Criteria Architect shall be responsible for contracting and/or acquiring that information directly with consultants and shall be responsible for all associated costs.

3. **Technology Backbone.** Criteria Architect shall be responsible for the coordination of the design criteria for the technology backbone system and equipment with the District's information technology department.
4. **District Standards.** Criteria Architect shall incorporate the adopted District Standards for facilities and construction into the Criteria Documents. The Standards shall be made part of the Criteria Documents/RFP by reference and attached as an appendix. Proposal of any deviations from the District Standards, or incorporation of design elements in the Criteria Documents that are in conflict with District Standards shall brought to the attention of the District for review and approval.
5. **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. 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. DESIGN CRITERIA SERVICES

1. Project Initiation

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

- a. Within the first week following execution of the Agreement, prepare a detailed work plan and schedule to the District's satisfaction. The work plan will identify specific tasks including, but not limited to: interviews, data collection, analysis, Design Criteria workshops, planning, architectural programming, concepts and diagrammatic drawings as required to define all aspects of the Design Criteria for the project. Criteria Architect shall also identify milestone activities or dates, specific task responsibilities, required completion times necessary for review and approval by the District.

- 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 Design Criteria Documents

Architectural Program:

Criteria Architect shall prepare for the District's review an Architectural Program as follows:

- a. Perform pre-design investigations and interviews with user groups 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 to meet the educational plan, user group requirements, and imposed by regulatory codes. Review all information and data pertinent to the Project including Education Plan, survey, site maps, geotechnical reports and recommendations, soil testing results reports, and pertinent historical data, and other relevant information provided by District.
 - (i) Based on the information gathered from interviews with user groups, educational plan, and other research and needs assessment, prepare an inventory of program space needs listing the rooms/spaces required for the project and approximate assignable square footage requirements for each room/space. As Program Space Summary shall be provided listing all rooms/spaces needed for the project with a subtotal of assignable square footage and applicable increase factor to approximate building gross square footage and overall building area.
 - (ii) Based on the function and relationship of the program room/space needs, prepare room/space adjacency diagrams that convey the building organization and required relationships between individual rooms/spaces.
- b. Prepare detailed Room/Space Data Sheets, which outline the requirements for each room listed in the program space summary. Room Data Sheets shall clearly indicate the detailed requirements for each room, including, but not limited to:
 - (i) Room Requirements, such as assignable square footage (ASF), the number of rooms, Occupancy loads, special ceiling height requirements, access constraints, security, hours of use, required adjacencies to other program rooms/spaces, and other physical necessary requirements.
 - (ii) Environmental Requirements, such as: Temperature Range, Ventilation, Natural Light, Artificial Light, Acoustics, and other Special Provisions.
 - (iii) Services, such as: Fire Protection requirements, Ventilation, Exhaust, Filtration, Power, Telecommunications, Audio Visual, Emergency Power, Sinks, Floor Drains, Water, Compressed Air, Natural Gas, and other infrastructure needs for future expansion of services and environmental requirements.
 - (iv) Materials and Finishes, for: Floors and Base, Walls, Ceilings, Doors, Casework and cabinetry requirements, laboratory work
 - (v) Fixtures, Finishes, and Equipment (FF&E) needs: Group I and Group II FF&E requirements.

- (vi) Diagrams: For selective spaces, provide specific spatial layout requirements for cabinetry, Telecommunications, Audio Visual, Utilities and special systems.
- (vii) Provide any other information that is deemed as important criteria or requirements for specific rooms, as a result of conducting the criteria development meetings with District Representatives and user groups.

c. **Basis of Design Narratives and Specifications:**

- (i) Provide Basis of Design narratives for key building systems, including, but not limited to: Architectural, Civil, Structural, Mechanical, Plumbing, Electrical, Automotive, Acoustical, and Sustainable Design. Narratives shall describe in detail, specific levels of performance and/or prescriptive specifications for relative systems.
- (ii) Provide outline specifications for prescriptive building systems where District Standards may require more definition to clearly describe the Basis of Design expected by the District.

d. **Diagrammatic Plans:**

- (i) Provide diagrammatic plans of the project as needed to convey the general building location relative to other buildings on campus, the general building organization in coordination with the architectural program adjacency diagrams.
- (ii) Diagrammatic Plans shall include the following:
 - (A) **Site Plan:** showing general building location and footprint; front, rear, and sideyard distances from streets and other buildings in coordination with code analysis; general building organization as it relates to outdoor spaces, hard as softscape areas; building entrances, service entries, utility yards and/or critical utility equipment locations, ADA Path of travel to building entrances, areas of refuge (if required).
 - (B) **Utility Plans:** Show existing underground utility plans along with points of connection and required capacities needed to meet project performance requirements.
 - (C) **Floor plans:** showing building interior organization and relative program spaces as per programmatic adjacency diagrams; common spaces, building entrances, required exits and means of egress in coordination with code analysis, ADA path of travel and means of egress, and critical FF&E components shown diagrammatically on floor plans.
 - (D) **Roof Plan:** General rooftop drainage plan; critical Mechanical equipment locations, finishes as per District Standards.
 - (E) **Building Sections:** showing interior spaces and scale of the ceiling heights relative to roof structure and anticipated roof framing depths.
 - (F) **Building Elevations:** showing building heights, exterior envelope treatment, materials and finishes, entrances, shading devices, roof eaves, and other exterior features critical to the proposed design.
 - (G) **Perspective Renderings:** Provide at least two exterior renderings of the building exterior showing mass, volume and aesthetic features of the building exterior. Provide at least two

interior perspective rendering showing typical laboratory and classroom spaces.

e. Code Analysis:

- (i) Review all applicable codes pertaining to the proposed Project design, and provide a Code Analysis to ensure the project can be built as indicated in the diagrammatic plans
- (ii) Identify design issues relating to functional needs, directives and constraints imposed by applicable regulatory codes.

f. Administer Project as required to coordinate work with the District and among Consultants.

g. Diagrammatic Sketches and Images:

- (i) Provide diagrammatic sketches, concept diagrams, and/or images of critical programmatic spaces where particular layouts of rooms, or partial layouts of rooms, require stringent detailed relationships such as: locations of lab equipment and venting along with FF&E layouts, Smart classroom AV relationships, etc.
- (ii) Review preliminary of Group II Furniture and equipment lists to insure inclusion of required infrastructure needed to facilitate the use and placement of all FF&E.

h. Design Criteria Documents:

The combination of items 2.a through 2.g, as outlined above, shall comprise the "Design Criteria Document", which will stipulate the specific Basis of Design, design criteria and requirements of the project, to be utilized by the Design-Build Entity (DBE) to complete the design and construction of the project under a Design-Build project delivery method. The Design Criteria Documents shall be included in the Design-Build Request for Proposals as the document which defines the Districts requirements and parameters for the building design and site improvements, which the DBE's design will be held to for compliance.

i. Construction Cost Budget

- (i) The Criteria Architect shall develop and prepare Design Criteria Documents that define a building and associated site improvements that can be built within the District's Construction Cost Budget for the Project. The estimates forming the basis of the Construction Cost Budget are to be based on the developed functional architectural program as approved by the District. The following conditions apply to the Construction Cost Budget prepared by the Criteria 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 approved by the District and its representatives.
 - (B) The format of the Construction Cost Budget prepared by Criteria Architect shall be in a building systems format (e.g., foundations,

substructure, structural system, exterior wall enclosure, window systems, etc.) for new buildings.

- (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) Criteria 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) Criteria Architect shall submit its proposed Construction Cost Budget to the District and Program/Construction Manager for review and approval. At that time Criteria Architect shall coordinate with the District and Program/Construction Manager to further develop, review, and reconcile the Construction Cost Budget.
 - (F) Mechanical, electrical, civil, landscaping, and estimating consultant(s) shall participate in progress meetings 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 District's Construction Budget for the project. The accuracy of the Construction Cost Budget shall be the responsibility of the Criteria Architect.

3. Presentation

Criteria Architect, along with any involved consultant(s), shall present and review with the District and, if directed, with the District's governing board, the summary and detail of work involved in this Phase, including two dimensional renderings of any proposed facility suitable for public presentation.

4. Deliverables and Numbers of Copies

Criteria 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. Five hard copies of the Design Criteria Documents, comprised of Architectural Program; Narratives and Specifications; Diagrammatic Plans, Sketches, and Images; and Code Analysis, as defined in 2.a through 2.g above.
- b. Digital copies of all meeting Reports/Minutes from Design Criteria Kick-off meeting, DSA compliance meetings, and all other Criteria Development meetings.
- c. Two copies of renderings provided to District for public presentation.

5. Meetings

During this Phase, Criteria Architect shall conduct and facilitate design criteria development meetings and workshops, site visits, and review sessions with District Representatives and User Groups, as needed to complete the Design Criteria Documents.

D. DESIGN-BUILD REQUEST FOR PROPOSAL PHASE (DBE RFP)

Upon District's acceptance of Criteria Architect's work in the previous Phase and assuming District has not delayed or terminated the Agreement, Criteria Architect shall assist the District as follows:

1. In the event that items requiring interpretation or clarification in the form of a Request for Clarification (RFC) of the Criteria Documents submitted by prospective DBEs during the DBE RFP period, those items shall be analyzed by the Criteria Architect with an opinion or interpretation provided for decision by the District as to the proper response required. Corrective action will be in the form of a response to the RFC prepared by the Criteria Architect and issued by the District.
2. Participate in two (2) confidential meetings with District and each of the three Design Build teams during the proposal phase.
3. Participate in the review and evaluation of proposals received from Design Build teams.

E. PEER REVIEW OF DESIGN-BUILD ENTITY DD AND CD PHASE DOCUMENTS

During the DBE's Design Development (DD) and Construction Documents (CD) phases the Criteria Architect will answer Requests for Clarifications (RFCs) made by the DBE about the Criteria Documents and will perform a peer review of the DBE's design documents for general conformance to the Design Criteria Documents. There will be three reviews of the DBE's design documents at the following stages of completion:

1. 100% DD phase
2. 50% CD phase
3. 95% CD phase

Each review will be performed to insure that the design documents, at each stage, are in general conformance with the intent of the Criteria Documents. Upon completion of each review the Criteria Architect will meet with District, the Construction Manager, the Program Manager, and the DBE to provide findings and needed changes to plans to conform to the intent of the Criteria Documents.

Participate with the District team in the final review, and approval, of the completed construction documents prior to submission of documents into DSA for their review.

F. DESIGN-BUILD CONSTRUCTION ADMINISTRATION PHASE

1. Criteria Architect's responsibility to provide basic services for the Design-Build Construction Phase under the Agreement 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. Submittals

- a. At the District's request Criteria Architect shall review a limited number of contractor's submittals such as: shop drawings, Project data, samples and Construction Change Documents, but only for the purpose of checking for conformance with the Criteria Documents and DBE contract scope of work.
 - b. Criteria 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 Criteria 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 Criteria 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.
3. **RFCs.** During the course of construction as part of the basic services, Criteria Architect must respond to all Requests for Clarifications ("RFC") to the Design Criteria Documents as expeditiously as possible so as not to impact and delay the construction progress. In no case shall the review period associated with an RFC exceed seven (7) calendar days from receipt by the Criteria Architect. Criteria Architect's response to each RFC shall be a substantive and acceptable response. This seven-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.

G. POST CONSTRUCTION CLOSEOUT

1. Participate in one onsite construction visit to review completion of and conformance of project to the Criteria Documents.
2. Provide a letter to the District stating projects overall conformance to the Criteria Documents noting any significant deviations against the Criteria Documents that are identified.

[END OF DOCUMENT]

EXHIBIT "B"

CRITERIA AND BILLING FOR EXTRA SERVICES

The following Extra Services 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 required by the enactment or revisions of codes, laws, or regulations subsequent to the preparation of the Criteria Documents.
- B. Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of that work.
- C. Providing services made necessary by the default of contractor(s).
- D. In the absence of a final Certificate of Payment or Notice of Completion, providing services more than ninety (90) days after the date of completion of work by contractor(s) and after Architect has completed all of its obligations and tasks under the Agreement.
- E. 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 the District can procure the additional deliverables itself or direct Architect to procure the deliverables at the District's expense or on the District's account at a specific vendor.
- F. Providing services as directed by the District that are not part of the Basic Services of this Agreement.
- G. Providing services 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.
- H. The following rates, which include overhead, administrative cost and profit, shall be utilized in arriving at the fee for Extra Services and shall not be changed for the term of the Agreement.

Job Title	Hourly Rate
Principal In Charge	\$230.00
Associate Principal	\$210.00
Project Director	\$165.00
Senior Project Manager	\$160.00
Project Manager	\$145.00
Project Architect	\$135.00
Staff Architect	\$125.00
Project Coordinator	\$75.00
Staff Technician	\$55.00

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

EXHIBIT "C"

SCHEDULE OF SERVICES

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

B. Architect shall complete Services required under the Criteria Document Phase within **60 calendar days** after written authorization from District to proceed.

- | | | |
|----|--|-----------|
| 1. | Submittal of Draft Criteria Docs/Cost Estimate | 5/20/16 |
| 2. | 2 weeks for District Review | 6/3/2016 |
| 3. | 2 Weeks for Final Criteria Docs | 6/17/2016 |

C. Architect shall comply with all schedules as provided by the DBE and approved by the District. Preliminary milestone schedule as follows:

- | | |
|----|--------------------------------------|
| 1. | DB Proposal Phase – 7/1/16 – 9/12/16 |
| 2. | DBE Design Docs - 10/16 – 9/17 |
| 3. | Construction phase – 5/17 – 1/19 |

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

E. 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 Services are incurred as a result of the District's inability to comply with requested meeting schedules, Architect shall maintain the right to request an adjustment in the Schedule of Services 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 Services 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 Services. 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 Services contracted for under this Agreement:

For the services described above to develop the program and design, prepare criteria documents and assist the College in the Design/Build process, we propose a phased fixed fee for Basic Services and "As Requested" Services of Eight Hundred Sixteen Thousand Six Hundred Ninety Dollars (\$816,690) for professional services. The fee for Basic Services and "As Requested" services for each of the phases is as follows:

Programming Services:	\$ 96,500.00
Schematic Design Services:	\$ 154,300.00
Design Revisions:	\$ 15,750.00
Criteria Document Services:	\$ 157,000.00
DBE RFP Services (12 meetings):	\$ 64,600.00
DBE CD Services (15+ Meetings):	\$ 97,200.00
DBE CA Services (18+ Meetings):	\$ 123,800.00
Closeout	<u>\$ 29,000.00</u>
Fees for Basic Services:	\$ 738,190.00
Allowance for "As-Requested" CD Meetings:	\$ 51,300.00
Allowance for "As-Requested" CA Site Visits:	\$ 27,200.00
Total Contract Amount:	\$ 816,690.00

“As-Requested” Services:

1. Attend additional meetings beyond those listed in our basic services during the DBE Construction Document Phase. This amount listed is a Not-to-Exceed amount that will be drawn upon when we are requested to attend a meeting beyond those listed. The NTE amount is based on 20 additional meetings for the Architect and 20 additional meeting for a consultant. The billing rate for each is listed below;
 - a. Architect; \$1,315 per meeting
 - b. Consultant; \$1,200 per meeting (average for all
 - c. Total Not-to-Exceed Amount = \$50,300 as shown above
2. Provide additional site visits beyond those listed in our basic services during the DBE Construction Administration Phase. This amount listed is a Not-to-Exceed amount that will be drawn upon when we are requested to attend a site visit beyond those listed. The NTE amount is based on 10 additional site visits for the Architect and 10 additional site visits for a consultant. The billing rate for each is listed below;
 - a. Architect; \$1,470 per meeting
 - b. Consultant; \$1,200 per meeting (average for all
 - c. Total Not-to-Exceed Amount = \$26,700 as shown above

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, except as provided in subdivision 4.g. herein, the District agrees to make payments of undisputed amounts within thirty (30) days of receipt of the invoice as follows:
 - a. **Programming, Schematic Design, Design Revisions Phase:**

Monthly payments for the percentage of all Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon acceptance and approval of the Programming, Schematic Design, Design Revisions Phase.
 - b. **For Criteria Documents Services:**

Monthly payments for the percentage of all Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon acceptance and approval of the Criteria Documents Phase by the District.

c. **For DBE RFP Phase:**

Monthly payments for the percentage of all Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon acceptance and approval of the DBE RFP Phase by the District.

d. **For DBE Construction Documents Phase:**

Monthly payments for percentage of all Services 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.

e. **For DBE Construction Administration Phase:**

Monthly payments for the percentage of all Services 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

f. **For "As Requested Services":**

Monthly payments for all Services requested and completed for the Phase; one hundred percent (100%) payment upon acceptance and approval of the Requested Services made by the District.

g. **For Close Out:**

Lump sum payment no sooner than thirty-five (35) days and no later than forty-five (45) days after completion of all items in this phase.

EXHIBIT "E"

INSURANCE REQUIREMENTS

- A. Architect shall procure prior to commencement of the Services 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 Services 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 by the District as a material breach of contract.
- B. **Minimum Scope and Limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits:
1. **Commercial General Liability.** Two million dollars (\$2,000,000) 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.** Two million dollars (\$2,000,000) 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, Architect shall keep in full force and effect, a Workers' Compensation policy. 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. **Employment Practices Liability.** For all of the Architect's employees who are subject to this Agreement, 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 Two million dollars (\$2,000,000) per occurrence. 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) on a Claims Made basis for five million dollars (\$5,000,000) aggregate limit subject to no more than two hundred thousand dollars (\$200,000) per claim deductible, coverage to continue through completion of construction plus two (2) years thereafter.
- C. The District reserves the right to modify the limits and coverages described herein.

D. **Deductibles and Self-Insured Retention:** Architect shall inform the District in writing if any deductibles or self-insured retention exceeds two hundred thousand dollars (\$200,000). At the option of the District, either:

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

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, its 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, 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 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. 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, 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.

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. 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, the District may either:

1. Accept the lower rating; or
2. Require Architect to procure insurance from another insurer.

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

1. Certificates of insurance showing maintenance of the required insurance coverages; 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 coverages on its behalf. All endorsements are to be received and approved by the District before Services comment.