

AGREEMENT FOR DESIGN SERVICES

CONTRA COSTA COMMUNITY COLLEGE DISTRICT

WITH

FOR

[NAME OF] PROJECT

(CRITERIA ARCHITECT FOR DESIGN-BUILD PROJECT DELIVERY METHOD)

_____ , 202_

TABLE OF CONTENTS

Article 1	Definitions	1
Article 2	Scope, Responsibilities and Services of Criteria Architect	2
Article 3.	Criteria Architect Staff	4
Article 4	Schedule of Services	4
Article 5	Fee and Method of Payment	5
Article 6	Payment for Extra Services or Changes.....	5
Article 7	Ownership of Data	6
Article 8	Termination of Contract.....	7
Article 9	Indemnity / Criteria Architect Liability.....	8
Article 10	Conduct on Project Site	8
Article 11	Responsibilities of the District.....	8
Article 12	Liability of District.....	9
Article 13	Nondiscrimination	9
Article 14	Insurance	10
Article 15	Covenant against Contingent Fees	10
Article 16	Entire Agreement/Modification.....	10
Article 17	Non-Assignment of Agreement	10
Article 18	Law, Venue.....	10
Article 19	Alternative Dispute Resolution	11
Article 20	Tolling of Claims.....	11
Article 21	Attorneys' Fees	11
Article 22	Severability	11
Article 23	Employment Status	11
Article 24	Certificate of Criteria Architect.....	13
Article 25	Cost Disclosure - Documents and Written Reports	13
Article 26	Notice & Communications	13
Article 25	Disabled Veteran Business Enterprise Participation	13
Article 28	District's Right to Audit.....	13
Article 29	Exhibits "A" through "E"	14

EXHIBIT A – RESPONSIBILITIES AND SERVICES OF CRITERIA ARCHITECT	A-1
EXHIBIT B – CRITERIA AND BILLING FOR EXTRA SERVICES	B-1
EXHIBIT C – SCHEDULE OF SERVICES	C-1
EXHIBIT D – PAYMENT SCHEDULE	D-1
EXHIBIT E – INSURANCE REQUIREMENTS	E-1

AGREEMENT FOR DESIGN SERVICES

This Agreement for Design Services is made as of _____, 202__, between the Contra Costa Community College District, a California community college district ("District") and _____ ("Criteria Architect") (collectively "Parties"), for the design services as a criteria architect, in accordance with the Design-Build project delivery method under Education Code section 81700 et seq., of the [Name of] Project ("Project"), located at [Address].

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. **Construction Budget:** The total amount indicated by District for the Project plus all other costs, including design, administration, financing, and all other costs.
 - 1.1.3. **Construction Manager:** The District's representative on the Project if the District retains a construction manager, project manager, or owner's representative.
 - 1.1.4. **Consultant(s):** Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Criteria Architect.
 - 1.1.5. **Criteria Architect:** The criteria architect listed in the first paragraph of this Agreement, licensed by the State of California, including all Consultants to Criteria Architect.
 - 1.1.6. **Criteria Documents:** The performance criteria, concept drawings, and other documents prepared by Criteria Architect that set forth the basic scope and needs of the Project, expected cost range, performance and prescriptive requirements such as those relating to quality, durability, longevity, life-cycle, design guide illustrations, and other information deemed necessary to inform interested parties of the contracting opportunity and to establish design standards for the Project. Criteria Documents shall include the level of detail necessary, in Criteria Architect's professional judgment, to provide a sufficient basis for interested parties to submit proposals for the completed design and construction of the Project.
 - 1.1.7. **Design-Build:** The method of project delivery set forth in Education Code section 81700 et seq. The definitions set forth in section 81701 are also incorporated by referenced herein.
 - 1.1.8. **District:** Contra Costa Community College District.

- 1.1.9. **DSA:** Division of the State Architect.
- 1.1.10. **Estimated Construction Cost Budget:** The estimated total cost to District of all elements of the Project designed or specified by Criteria Architect. The Construction Cost Budget does not include the compensation of Criteria Architect and Criteria Architect's Consultants, the cost of land, rights-of-way, financing or other costs which are the responsibility of District, including construction management.
- 1.1.11. **Extra Services:** District-authorized services outside of the scope in **Exhibit A** or District-authorized reimbursables not included in Criteria Architect's Fee.
- 1.1.12. **Service(s):** All labor, materials, supervision, services, tasks, and work that the Criteria 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 Criteria Architect

- 2.1. Criteria Architect shall render the Services as described in **Exhibit A**, commencing with receipt of a written Notice to Proceed signed by District representative. Criteria Architect's Services will be completed in accordance with the schedule attached as **Exhibit C**.
- 2.2. The District intends to award the Project to a design-build entity pursuant to Education Code section 81700 et seq. Criteria Architect shall not be eligible to participate in the design-build competition for the Project or to perform services on the project as a subconsultant to the design-build entity.
- 2.3. Criteria Architect shall provide Services that shall comply with professional architectural or engineering standards, including the standard of care applicable to architects and engineers under California law, designing community college facilities for California public community college districts in or around the same geographic area of the District, 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.
- 2.4. Criteria Architect shall contract for or employ at Criteria Architect's expense, Consultant(s) to the extent deemed necessary for completion of Criteria Documents for the Project, 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 District for approval prior to commencement of Services, as indicated below. District reserves the

right to reject Criteria Architect's use of any particular Consultant. Nothing in the foregoing procedure shall create any contractual relationship between District and any Consultant employed by Criteria Architect under terms of the Agreement. Criteria Architect shall require each of the Consultants retained by it to execute agreements with standard of care and indemnity provisions commensurate with the Agreement, but Criteria Architect shall remain solely responsible and liable to District for all matters covered by this Agreement.

- 2.5. Criteria Architect shall coordinate with District personnel, or its designated representatives as may be requested and desirable, including with other professionals employed by 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 any.
- 2.6. Criteria Architect shall identify the regulatory agencies that have jurisdiction over essential building and, to the extent necessary for preparing Criteria Documents, design elements and coordinate with and implement the requirements of the regulatory agencies, including without limitation, the California Community College Chancellor's Office, Department of General Services (DGS), Division of the State Architect (DSA), including DSA Fire/Life Safety, DSA Access Compliance Section, DSA Structural Safety Section, State Fire Marshal and any regulatory office or agency that has authority for review and supervision of community college district construction projects.
- 2.7. Criteria Architect shall provide computer-generated pictures downloaded to computer files, updated as requested by the District, that the District may use on its website.
- 2.8. As part of the basic Services pursuant to this Agreement, Criteria Architect is not responsible for, however, it shall coordinate and integrate its work with any such information provided by District:
 - 2.8.1. Ground contamination or hazardous material analysis.
 - 2.8.2. Any asbestos and/or lead testing, design or abatement; however, it shall coordinate and integrate its work with any such information provided by District.
 - 2.8.3. Compliance with the California Environmental Quality Act ("CEQA"), except that Criteria 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.
 - 2.8.4. Historical significance report.
 - 2.8.5. Soils investigation.
 - 2.8.6. Topographic surveys of existing conditions.

- 2.8.7. State and local agency permit fees.
- 2.8.8. Commissioning agents and reports.
- 2.8.9. Testing and Inspection services.
- 2.8.10. Geotechnical hazard report.

Article 3. Criteria Architect Staff

- 3.1. The Criteria Architect has been selected to perform the Services herein because of the skills and expertise of key individuals.
- 3.2. The Criteria Architect agrees that the following key people in Criteria Architect’s firm shall be associated with the Project in the following capacities:

Principal In Charge: _____

Project Director/Manager: _____

Major Consultants: _____

Electrical: _____

Mechanical: _____

Structural: _____

Civil: _____

- 3.3. Criteria 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 Criteria Architect. In either case, the District shall be allowed to interview and approve replacement personnel.
- 3.4. If any designated lead or key person or employee fails to perform to the satisfaction of the District, then upon written notice Criteria Architect shall have five (5) calendar 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. Criteria Architect represents that Criteria 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 Criteria Architect.

Article 4. Schedule of Services

- 4.1 Criteria Architect shall commence Services under this Agreement upon receipt of a written Notice to Proceed and shall prosecute the Services diligently as described in **Exhibit A** to proceed with and complete the Services in compliance with the schedule in **Exhibit C**. Subject to the industry Standard of Care, time is of the essence and failure of Criteria

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 Criteria Architect's or Criteria Architect's Consultant(s)' reasonable control.

Article 5. Fee and Method of Payment

- 5.1. District shall pay Criteria Architect for all Services contracted for under this Agreement an amount equal to _____ Dollars (\$_____) ("Fee").
- 5.2. The District shall pay Criteria Architect the Fee pursuant to the provisions of **Exhibit D**.
- 5.3. Criteria Architect shall bill its work under this Agreement in accordance with **Exhibit D**.
- 5.4. No increase in Fee will be due from change orders generated during the construction period to the extent caused by Criteria Architect's error or omission.
- 5.5. The Criteria Architect's Fee set forth in this Agreement shall be full compensation for all of Criteria Architect's Services incurred in the performance hereof as indicated in **Exhibit D**.
- 5.6. The Criteria 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.
- 5.7. 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 Criteria Architect shall remain liable to the District in accordance with this Agreement for direct damages to the District caused by Criteria Architect's failure to perform any of the Services furnished under this Agreement to the standard of care of the Criteria Architect for its Services, which shall be, the standard of care under California law for architects performing similar work for California community college districts in or around the same geographic area as the District.

Article 6. Payment for Extra Services or Changes

- 6.1 District-authorized services outside of the scope in **Exhibit A** or District-authorized reimbursable not included in Criteria 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 Criteria Architect without prior written authorization by the District's authorized representative, the District will not be obligated to pay for such service. The foregoing provision notwithstanding, Criteria Architect will be paid by the District as described in **Exhibit B** for Extra Services that the District's authorized representative verbally requests, provided that Criteria Architect confirms such request in writing pursuant to the

notice requirements of this Agreement and proceeds with such Extra Services not earlier than two (2) business days after the District receives confirmation of the request from the Criteria Architect.

Article 7. Ownership of Data

- 7.1. 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 Criteria Architect or its Consultants prepare or cause to be prepared pursuant to this Agreement.
- 7.2. Criteria 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 Criteria Architect or its Consultants prepare or cause to be prepared pursuant to this Agreement.
- 7.3. Criteria Architect shall perform the Services and prepare all documents under this Agreement with the assistance of Building Information Management (BIM) or Computer Aided Design Drafting Technology ("CADD") (e.g., AutoCAD). Criteria Architect shall deliver to District all drawings in DWG format.
- 7.4. (RESERVED)
- 7.5. Following the termination of this Agreement, for any reason whatsoever, Criteria 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:
 - 7.5.1. One (1) set of the Criteria Documents, in hard copy, reproducible format and in electronic PDF format.
 - 7.5.2. One (1) set of fixed image BIM or CADD files in DXF format and PDF format of the drawings that are part of the Criteria Documents.
 - 7.5.3. One (1) set of non-fixed image BIM or CADD drawing files in DXF or DWG or both formats of the Project.
 - 7.5.4. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data and reports prepared by the Criteria Architect under this Agreement.
 - 7.5.5. The obligation of Section 7.5 of this Agreement shall survive the termination of this Agreement for any reason whatsoever.
- 7.6. In the event the District changes or uses any fully or partially completed documents without Criteria Architect's participation, the District agrees to release Criteria Architect of responsibility for such changes and shall hold Criteria 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. In the event that the District uses any fully or partially completed documents without the Criteria Architect's full involvement, the District shall remove all title blocks and other information that might identify Criteria Architect and its Consultants.

Article 8. Termination of Contract

- 8.1. If Criteria Architect fails to perform Criteria Architect's duties to the reasonable satisfaction of the District, or if Criteria Architect fails to fulfill in a timely and professional manner Criteria Architect's material obligations under this Agreement, or if Criteria 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 Criteria Architect. In the event of a termination pursuant to this subdivision, Criteria Architect may invoice the District for all Services performed until the date of termination, but the District shall have the right to withhold payment and deduct any amounts equal to the District's direct costs caused by Criteria Architect's negligent actions, errors, or omissions that caused the District to terminate the Agreement. The District may, at its discretion, provide the design time to cure its default or breach.
- 8.2. District shall have the right in its sole discretion to terminate the Agreement for its own convenience. Criteria Architect, upon written notice from the District of such termination, shall immediately cease Services on the Project. In the event of a termination for convenience, Criteria Architect may invoice District and District shall pay all undisputed invoice(s) for Services performed pursuant to the terms set forth in this Agreement until the District's notice of termination, not to exceed the Fee.
- 8.3. 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.
- 8.4. Criteria 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 sixty (60) days after receipt of written notice from Criteria Architect to the District. Criteria Architect may invoice the District and the District shall pay all undisputed invoice(s) for Services performed pursuant to the terms set forth in this Agreement until Criteria Architect's notice of termination, not to exceed the Fee.
- 8.5. If the District suspends the Project for more than one hundred twenty (120) consecutive days, Criteria Architect shall be compensated for Services performed up to the notice of that suspension. When the Project is resumed, the schedule shall be adjusted, and Criteria Architect's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Criteria Architect's Services. If the District suspends the Project for more than two (2) years, Criteria Architect may terminate this Agreement by giving written notice.

Article 9. Indemnity/Criteria Architect Liability

- 9.1. To the furthest extent permitted by California law, in accord with Civil Code section 2782.8, Criteria Architect shall indemnify and hold free and harmless the District, its Governing Board, representatives, officers, consultants, employees, trustees, and volunteers (“the Indemnified Parties”) from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity (“Claim”) that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Criteria Architect, its officers, employees, subcontractors, consultants, or agents, including without limitation the payment of all consequential damages. Criteria Architect shall also, to the furthest extent permitted by California law, in accord with Civil Code section 2782.8, defend the Indemnified Parties at Criteria Architect’s own expense, including attorneys’ fees and costs, from any and all Claim(s) and allegations relating thereto with counsel approved by District where such approval is not to be unreasonably withheld. Whereas the cost to defend the Indemnified Parties charged to the Criteria Architect shall not exceed the proportionate percentage of Criteria Architect’s fault as determined by a court of competent jurisdiction, any amounts paid in excess of such established fault will be reimbursed by the District. Notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense cost due to bankruptcy or dissolution of the business, the Criteria Architect shall meet and confer with other parties regarding unpaid defense costs.
- 9.2. Criteria Architect shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnified Parties in any Claim. Criteria Architect’s obligation pursuant to Article 9.1 includes reimbursing the District for the cost of any settlement paid by the Indemnified Parties and for any and all fees and costs, including but not limited to legal fees and costs, expert witness fees, and consultant fees, incurred by the Indemnified Parties in the defense of any Claim(s), or to enforce the indemnity herein. Criteria Architect’s obligation to defend or to indemnify shall not be restricted to insurance proceeds. District shall also have the right to accept or reject any legal representation that Criteria Architect proposes to defend the Indemnified Parties.
- 9.3. District may withhold any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Criteria Architect from amounts owing to Criteria Architect.

Article 10. Conduct on Project Site

For all workers on District property, Criteria Architect shall comply with all applicable federal, state and local laws regarding COVID-19.

Article 11. Responsibilities of the District

- 11.1. The District shall examine the documents submitted by the Criteria Architect and shall render decisions to avoid unreasonable delay in the process of the Criteria Architect’s Services.

- 11.2. The District shall verbally or in writing advise Criteria Architect if the District becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Criteria Architect's documents. Failure to provide such notice shall not relieve Criteria Architect of its responsibility therefore, if any.
- 11.3. Unless the District and Criteria Architect agree that a hazardous materials consultant shall be a Consultant of the Criteria Architect, the District shall furnish the services of a hazardous material consultant or other consultants when such services are requested in writing by Criteria 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 Criteria Architect. If the hazardous materials consultant is furnished by the District and is not a Consultant of the Criteria Architect, the specifications shall include a note to the effect that the hazardous materials consultant's specifications are included in the Criteria Architect's bid documents for the District's convenience and have not been prepared by the Criteria Architect. The note shall also direct questions about the hazardous materials consultant's specifications related to asbestos and lead paint survey and/or abatement documentation to the preparer of the hazardous materials consultant's specifications.

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 Criteria Architect, or by its employees, even though such equipment be furnished or loaned to Criteria Architect by District.

Article 13. Nondiscrimination

- 13.1. Criteria Architect agrees that no discrimination shall be made in the employment of persons under this Agreement because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of such person.
- 13.2. Criteria Architect shall comply with any and all applicable regulations and laws governing nondiscrimination in employment.

Article 14. Insurance

- 14.1. Criteria Architect shall comply with the insurance requirements for this Agreement, set forth in **Exhibit E**.
- 14.2. Criteria 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

Criteria Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Criteria 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 Criteria 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. Criteria 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. Criteria Architect specifically acknowledges that in entering this Agreement, Criteria 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 Criteria Architect, Criteria 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 Criteria Architect and any such assignment, transfer, delegation or sublease without Criteria Architect's prior written consent shall be considered null and void. If an assignment is approved, this Agreement shall be binding on the successors and assign of the parties.

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

- 19.1. 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. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice.
- 19.2. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Criteria Architect shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Criteria Architect's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Criteria Architect submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.
- 19.3. Pending resolution of the dispute, Criteria Architect agrees it will neither rescind the Agreement nor stop the performance of the Services.

Article 20. Tolling of Claims

Criteria Architect agrees to toll all statutes of limitations for District's assertion of claims against Criteria Architect that arise out of, pertain to, or relate to contractors' or subcontractors' claims against District involving Criteria Architect's work, until the contractors' or subcontractors' claims are finally resolved.

Article 21. 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, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

Article 22. 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 23. Employment Status

- 23.1. Criteria 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 Criteria Architect performs the Services that are the subject matter of this Agreement; provided always, however, that the Services to be provided by Criteria Architect shall be provided in a manner consistent with all applicable standards and regulations governing such Services.
- 23.2. Criteria Architect understands and agrees that Criteria 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.
- 23.3. 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 Criteria Architect, or any employee or Consultant of Criteria 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 Criteria Architect which can be applied against this liability). The District shall then forward those amounts to the relevant taxing authority.
- 23.4. Should a relevant taxing authority determine a liability for past services performed by Criteria Architect for the District, upon notification of such fact by the District, Criteria Architect shall promptly remit such amount due or arrange with the District to have the amount due withheld from future payments to Criteria Architect under this Agreement (again, offsetting any amounts already paid by Criteria Architect which can be applied as a credit against such liability).
- 23.5. A determination of employment status pursuant to the preceding two (2) paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Criteria Architect shall not be considered an employee of the District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Criteria Architect is an employee for any other purpose, then Criteria 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 Criteria Architect or its employees of Consultants was not an employee.
- 23.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 24. Certificate of Criteria Architect

- 24.1. Criteria Architect certifies that the Criteria 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.
- 24.2. Criteria 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.
- 24.3. Criteria 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 Criteria Architect is performing Services as part of a "public works" or "maintenance" project, and since the total compensation is one thousand dollars (\$1,000) or more, the Criteria Architect agrees to fully comply with and to require its Consultant(s) to fully comply with all requirements of the Prevailing Wage Laws, if applicable to the Criteria Architect and its Consultants' professional services to be provided under this Agreement.

Article 25. Cost Disclosure - Documents and Written Reports

Criteria 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 26. Notice & Communications

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

District:
 Contra Costa Community College District
 500 Court Street
 Martinez, CA 94553
 ATTN: _____
 EMAIL: _____

Criteria Architect:

 ADDRESS: _____

 ATTN: _____
 EMAIL: _____

Any notice personally given shall be effective upon receipt. Any notice sent by electronic mail 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 27. (RESERVED)

Article 28. District's Right to Audit

- 28.1. District retains the right to review and audit, and the reasonable right of access to Criteria Architect's and any Consultant's premises to review and audit the Criteria 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 Criteria 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.
- 28.2. 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 Criteria Architect is in compliance with all requirements of this Agreement.
- 28.3. 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.
- 28.4. Criteria Architect shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry for a minimum of four (4) years. Criteria 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, Criteria Architect shall submit exact duplicates of originals of all requested records to the District.
- 28.5. Criteria Architect shall include audit provisions in any and all of its subcontracts and shall ensure that these sections are binding upon all Consultants.
- 28.6. Criteria Architect shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of Criteria Architect's Project-related records and information.

Article 29. Exhibits **A** through **E** attached hereto are hereby incorporated by this reference and made a part of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

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

CONTRA COSTA COMMUNITY COLLEGE DISTRICT

[NAME OF CRITERIA ARCHITECT]

Date: _____, 20__

Date: _____, 20__

By: _____

By: _____

Title: _____

Title: _____

EXHIBIT A

**RESPONSIBILITIES AND SERVICES OF PROJECT CRITERIA DOCUMENTS AND
TEMPORARY SWING SPACE ARCHITECT**

TABLE OF CONTENTS

A.	SCOPE OF PROJECT	1
B.	BASIC SERVICES	1
C.	CRITERIA DOCUMENTS SERVICES	3
D.	PROPOSAL PHASE	12
E.	DESIGN SUBMITTALS REVIEW PHASE	13
F.	MONITORING PHASE	13
G.	MEETINGS / SITE VISITS / WORKSHOPS.....	16

EXHIBIT A

RESPONSIBILITIES AND SERVICES OF PROJECT CRITERIA DOCUMENTS AND TEMPORARY SWING SPACE ARCHITECT

PROJECT CRITERIA DOCUMENTS AND TEMPORARY SWING SPACE ARCHITECT shall provide all professional services necessary for completing the following:

A. SCOPE OF PROJECT

The planning and oversight of design and construction as a Project Criteria Documents and Temporary Swing Space Architect in accordance with the Design-Build method of project delivery under Education Code section 81700 et seq., for:

Project scope includes a newly renovated and expanded Engineering Technology (ET) building that will provide a state-of-the-art facility that will support student-centered, equity-infused learning and teaching environments for the next 30 to 40 years. It will house existing Architecture, Engineering, Construction, Mechanical Technology, Electronics and Electronic Technology, Industrial Design, Energy Systems programs, future ET programs, and a Math & Engineering Student Success Center. The general scope for this project includes the selective demolition of the existing early 1970's era ET building to preserve its current structural systems, bringing those structural systems up to current code, rebuilding within the existing footprint to completely modernize the overall facility and its systems for current and future programs, provide for expansion or reconfiguration of existing spaces to house a supportive and collaborative learning center for math students, and students in the ET programs by including a new Math and Engineering Student Success Center. The scope of work also includes the development of temporary swing space for the occupants of the existing Engineering Technology Building until the newly renovated building is ready for occupancy.

The renovated and expanded Engineering Technology building is envisioned to include approximately 33,000SFT of updated and modernized space for existing and future ET programs, plus the addition of up to 7,000SFT of new Math & Engineering Student Success Center. There will be a need to look at the existing building spaces and determine if there are space efficiencies and adjacencies that can be achieved in order to maximize available space for the Success Center. The project seeks to also reimagine the building's architectural presence so that it will serve as both a focal point and an inspiring invitation to the DVC campus from south access points.

B. BASIC SERVICES

Project Criteria Documents and Temporary Swing Space Architect ("Consultant") agrees to provide the Services described below:

1. The Consultant's primary task is to define program requirements in coordination with the District, DVC Project leadership team, project users, Project Manager and any other stakeholders deemed necessary by the PM or District team. Consultant is responsible for the professional quality and technical accuracy of all studies, reports, projections, master plans, designs, drawings, specifications and other services furnished by Consultant under the Agreement as well as coordination with all master plans, studies, reports and other information provided by District. Consultant shall, without additional

compensation, correct or revise any errors or omissions in its studies, reports, projections, master plans, design, drawings, specifications and other Services.

2. Subject to the industry Standard of Care, the Consultant shall perform its services with care and diligence to confirm that its Criteria Documents, Temporary Swing Space Design, and all other information provided by or on behalf of the District to potential design-build entities contain sufficient detail, in Consultant's professional judgment, to enable a Design-Build entity to complete the Project according to a Design-Build project delivery methodology.
3. The District shall provide all information available to it to the extent the information relates to Consultant's scope of work. This information shall include, if available:
 - a. Physical characteristics;
 - b. Legal limitations and utility locations for the Project site(s);
 - c. Written legal description(s) of the Project site(s);
 - d. Grades and lines of streets, alleys, pavements, and adjoining property and structures;
 - e. Adjacent drainage;
 - f. Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the Project site(s);
 - g. Locations, dimensions and necessary data with respect to existing buildings, other improvements and trees;
 - h. Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths;
 - i. Surveys, reports, as-built drawings, record drawings; and
 - j. Subsoil data, chemical data, and other data logs of borings.

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

If Consultant determines that the information or documentation the District provides is insufficient for purposes of design, or if Consultant requires: a topographical survey; a 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, then, at the soonest possible time after Consultant has become aware that this additional information is needed, the Consultant shall request that the District acquire that information. If the Parties mutually agree in writing, this additional information and service shall be procured through the Consultant, who may invoice the District for those services as Extra Services.

4. **Technology Backbone.** Consultant shall assist the PM and District's Facility, Police Services and Information Technology departments with the development and coordination of design criteria and the layout of the technology backbone system for this project using available Campus and District standards.
5. **District Standards.** Consultant shall incorporate into its work and the work of all Sub-Consultants any adopted District standards for facilities and construction including, but not limited to, District Educational Specifications, Technical Specifications and Material Standards. Consultant shall meet with the PM and the District in order to identify and incorporate any specific design standards into the Project Criteria Documents such as:
 - a. Classroom Design Standards
 - b. Building Automation System (BAS)
 - c. Information Technology Systems (IT)
 - d. Audio Visual Systems (AV)
 - e. Wayfinding & Building Signage
 - f. Fire Alarm System
 - g. Locksets and Keying
 - h. Panic Door Hardware
 - i. Security Design Guidelines
6. **Project Document Control.** The Contra Costa Community College Bond Program will be utilizing industry standard document control software. Consultant MUST participate and have experienced team members, or willingness to have team members trained, to be able to work in District's software platform throughout the duration of the project.
7. **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 Consultant, its agents, officers, and employees agree to assist in resolving the dispute or litigation. Consultant'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. CRITERIA DOCUMENTS SERVICES

1. Project Initiation

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

- a. Within the first week following execution of the Agreement, review the proposed Schedule of Services set forth in **Exhibit C** to the Agreement and prepare a detailed scope of work list and work plan for documentation in a computer-generated Project schedule to the District's satisfaction. This scope of work list and work plan will identify specific tasks including, but not limited to: interviews, data collection,

analysis, report preparation, planning, programming, concepts and schematic design preparation and estimating that are part of the work of the Project. Consultant shall also identify milestone activities or dates, specific task responsibilities, required completion times necessary for review and approval by the District and by all regulatory agencies and additional definition of deliverables.

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

2. **Development of Criteria Documents**

Consultant shall prepare for the District's review of Criteria Documents as follows:

a. Program Development

- (i) Perform pre-design investigations, interviews and meetings 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, student focus group input, and imposed by regulatory codes. Review all information and data pertinent to the Project including Education Plan, Curated Portfolio of Findings and Planning Principles, survey, site maps, structural feasibility study, geotechnical reports and recommendations, soil testing results reports, and pertinent historical data, and other relevant information provided by the District. Consultant shall also identify and notify the District of any inconsistencies discovered in the information provided by District or any additional information or services that may be reasonably needed for the Project.
- (ii) Based on the information gathered from investigations and interviews with user groups, student focus 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. A 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.
- (iii) 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.
- (iv) Review building space adjacencies with diagrams and bubble diagrams, site and building configuration and aesthetics, and develop the necessary test fit(s) to meet the program requirements.
- (v) Review, update and confirm any existing technical specifications. Prepare new specifications where the District may not have existing specifications in place.
- (vi) Evaluate the site infrastructure that will service the building, defining the building program, and related disciplines such as architectural, structural,

civil, MEPs, IT, AV/CCTV, access control, security systems, FF&E floor layout, ADA path of travel, hardscape and landscape.

- (vii) Assess the overall campus master plan and provide advice and recommendations regarding access for fire lanes; required building setbacks, adequate outdoor space, overall campus circulation and ADA accessibility travel paths and other code compliance requirements with agency jurisdictions.
- (viii) Investigate existing conditions for all associated utility runs and points of connection required. Identify deficiencies and make recommendations for infrastructure upgrades adjacent to the project, which may include work outside what is the minimum required scope for the project.
- (ix) Evaluate the existing as-built drawings and field confirm all dimensions and layouts match. Update as-built drawings with any changes.
- (x) Make recommendations on selective demolition locations to verify concealed structural elements match as-built drawings. Document any deviations from the as-built documents.
- (xi) Review DSA codes pertaining to the proposed Project design.
- (xii) Identify design issues relating to functional needs, directives and constraints imposed by applicable regulatory codes.
- (xiii) Administer Criteria Documents as required to coordinate work with the District and among consultants.
- (xiv) As part of the services for the temporary swing space planning and design, Consultant shall evaluate and provide up to four (4) options/scenarios for required swing space development, including pros, cons, and cost ROM's for each option for consideration by the District facilities, users, and maintenance & operations personnel. This step shall occur as part of the pre-design/programming phase prior to beginning design of the temporary swing space.

b. Design Criteria

- (i) 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:
 - (A) 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 necessary physical requirements.
 - (B) Environmental Requirements, such as: Temperature Range, Ventilation, Natural Light, Artificial Light, Acoustics, and other Special Provisions.

- (C) 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.
- (D) Materials and Finishes, for: Floors and Base, Walls, Ceilings, Doors, Glazing, Casework and cabinetry requirements, etc.
- (E) Identify Fixtures, Finishes, and Equipment (FF&E) needs for this project including detailed surveys and assessments of existing FF&E, in consultation with the District, identifying the re-use of any existing FF&E and/or the specification of new FF&E required for the project. The District or DBE will be responsible for the final design and procurement of new FF&E or relocation of existing FF&E as identified by this Consultant, but any prescriptive FF&E requirements as identified by the District shall be included in the Project Criteria Documents.
- (F) Diagrams: For selective spaces, provide specific spatial layout requirements for cabinetry, Technical FF&E, Telecommunications, Audio Visual, Utilities and special systems.
- (G) 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, user groups, and student focus 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, Technical Equipment, FF&E, Acoustical, Data, Security, Audio Visual, Landscaping and Sustainable Design. Narratives shall describe in detail, specific levels of performance and/or prescriptive specifications for relative systems.
- (ii) Conduct interviews and meetings with key District personnel to determine prescriptive building systems where the District may require more definition in the Basis of Design and incorporate this information as required.
- (iii) Establish that there are adequate building separations.
- (iv) Evaluate basic storm drainage scheme, storm water management ponds, points of connection and preliminary sizing for all utilities and systems.
- (v) Collaborate with the District and PM for preliminary Geotechnical services. Contracting for these services will held separately under the District. (This is for data only and will not include recommendations, as final Geotechnical survey shall be provided by DBE.)

- (vi) Address ADA accessibility, and ADA Path of Travel compliance.
- (vii) Work with the PM and District to incorporate project specific Design Standards.
- (viii) Recommend energy efficiency opportunities and various building system options to improve the site and the overall campus experience, while meeting prescribed codes, standards, and energy and sustainability goals.
- (ix) Evaluate and identify issues (Note: Design solutions not required) regarding the condition of the underground infrastructure in relation to the project, such as potable water, storm drains, fire water, central plant systems, sanitary line, electrical, IT and security systems and there is sufficient capacity in the site utility systems for the project to function as intended.
- (x) Interact and coordinate the effort with the District's consultants to identify the projects' specific "as-built" underground infrastructure condition and define inter-agency coordination expectations.
- (xi) Review and provide comments regarding existing As-Built(s) and other project related documents that would be of value to the DBE in designing the project.
- (xii) Identify any issues that require upgraded/upsized or replacement of equipment/infrastructure.
- (xiii) Prepare and submit applications and documentation for project certification or incentive programs including but not limited to LEED, WELL, California Energy Design Assistance (CEDA), and PG&E's Market Access Program.
- (xiv) Conduct total cost of ownership/life cycle cost analysis on various design options, to allow the District to make informed design decisions that may inform the basis of design.

d. Diagrammatic Plans

- (i) Provide diagrammatic plans of the project as needed to convey the general building location relative to other buildings on campus and the general building organization in coordination with the programming adjacency diagrams.
- (ii) Diagrammatic Plans shall include the following:
 - (A) Site Plan: Illustrate general building location and footprint; front, rear, and side yard distances from streets and other buildings in coordination with code analysis; general building organization as it relates to outdoor spaces, hard and soft-scape 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) Floor plans: Suggest 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.
- (C) Roof Plan: Depict general rooftop drainage plan; critical mechanical equipment locations, and finishes.
- (D) Building Sections: showing interior spaces and scale of the ceiling heights relative to roof structure and anticipated roof framing depths.
- (E) Building Elevations: Detail building heights, exterior envelope treatment, materials and finishes, entrances, shading devices, roof eaves, and other exterior features critical to the proposed design.
- (F) Perspective Renderings: Provide at least four exterior representations of the building exterior showing mass, volume and aesthetic features of the building exterior. Provide at least four interior perspective depictions showing critical engineering technology and/or classroom space.

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. Diagrammatic Sketches and Images

- (i) Provide diagrammatic sketches, conceptual diagrams, and/or images of critical programmatic spaces where particular layouts of rooms, or partial layouts of rooms, require stringent detailed relationships such as: Engineering Technology and FF&E layouts, classroom and FF&E layouts, Smart classrooms, AV relationships, etc.

g. Design Documents Phase (Temporary Swing Space Design Only)

- (i) Upon District's acceptance of Consultant's work in the previous Phase and assuming District has not delayed or terminated the Agreement, the Consultant shall prepare from the accepted deliverables from the Pre-Design and Programming Phase, the Construction Documents, which consist of the following for each proposed system within Consultant's scope of work:

- (A) Preliminary Design (Schematic Design and Design Development) – Preliminary design documents must be in full compliance with all applicable laws, building codes, ordinances, and other requirements by regulatory authorities.
 - (1) The District shall conduct a constructability review of the Preliminary Design Documents. A report shall be given to the Consultant who shall make necessary changes along with providing written comments for each item listed in the report.
- (B) Working Drawings (Construction Documents) – 100% Construction Documents must be in full compliance with all applicable laws, building codes, ordinances, and other requirements by regulatory authorities.
 - (1) The District shall conduct a constructability review of the Construction Documents. A report shall be given to the Consultant who shall make necessary changes along with providing written comments for each item listed in the report.
 - (2) Specifications:
 - (a) Complete development and preparation of technical specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.
 - (b) No part of the specifications shall call for a designated material, product, thing, or service by a specific brand or trade name unless:
 - (I) 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
 - (II) The designation is allowable by specific allowable exemptions or exceptions pursuant to Public Contract Code, section 3400.
 - (c) 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.
 - (d) At one hundred percent (100%) review, District shall review the specifications and shall direct Consultant to make corrections at no cost to the District.
 - (e) Coordination of the Specifications with specifications developed by other disciplines.

- (3) DSA submittal and approval will be managed by Consultant based on the final set of Working Drawings.

3. **Presentation**

Consultant, along with any involved sub-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**

Within seven (7) days of the end of this Phase, Consultant shall provide to the District one (1) hard copy of the following items produced in this Phase, together with one (1) copy of each item in electronic format:

- a. Criteria Documents, including programming, design concepts, and performance requirements as described herein.
- b. Temporary Swing Space documents, including construction documents, specifications, engineering calculations, statement of requirements for testing and inspection service for compliance with Construction Documents and applicable codes, DSA file including all correspondence, meeting, back check comments, check lists to date, and a statement indicating any authorized changes made to the design from previous phases.
- c. Copies of the meeting Reports/Minutes from the Kick-off and other meetings; and
- d. Copies of the renderings provided to District for public presentation.

NOTE: Digital documents must be PDF files that are word searchable, with a 25 MB max size. Each electronic document must be "Bookmarked". The Bookmark name/label must match the tab/section/sheet name label. (For example: Plan sheet A101 - 1st Floor Plan must have a Bookmark name/label of A101 - 1st Floor Plan.)

5. **Meetings**

Throughout the criteria design development and temporary swing space design, Consultant shall conduct and facilitate design criteria development meetings and design workshops, site visits and review sessions with District Representatives and user groups, as needed to complete the Design Criteria Documents and Temporary Swing Space Design.

6. **Criteria Documents**

The details listed above, shall comprise the "Criteria Documents", which will stipulate the specific Basis of Design, Design Criteria, and requirements of the project, to be utilized by the DBE to complete the design and construction of the project under a Design-Build project delivery method. The Criteria Documents shall be included in the Design-Build Request for Proposals as the document which define the District's

requirements and parameters for the building(s) design and site improvements, which the DBE's design will be held to for compliance.

The method of procurement for the Temporary Swing Space project has not been determined at this time.

7. Construction Cost Estimating & Budget

Consultant shall develop and prepare Criteria Documents and Temporary Swing Space design that define the building and associated site improvements that can be built within the District's Construction Cost Budget for these project(s). These estimates will form the basis of the final Construction Cost Budget that will be provided to the proposing Design Build Entities (DBE's) and/or Temporary Swing Space bidders and are to be based on the final Project Criteria and Temporary Swing Space Construction Documents as approved by the District. The following conditions apply to the Construction Cost Budget prepared by the Consultant:

- 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 for the Construction Cost Budget prepared by the Consultant shall be in the building systems format (e.g., foundations, substructure, structural system, exterior wall enclosure, window systems, etc.).
- c. Contingencies for design, bidding and construction are to be included as individual line items, with the percentage and basis of calculation clearly identified.
- d. Indirect cost items for the Design Build Entity (DBE) and/or Contractor are to be included as individual line items (e.g. General Conditions, General Requirements, Bonds, Insurance, Contractors Fee, etc.), with the percentage and basis of calculation for each item clearly identified.
- e. Consultant shall include all information and estimates from the District and/or PM that are intended to be part of the Construction Cost Budget.
- f. At a time mutually agreed upon by the Consultant, the District and PM, the Consultant shall submit its proposed Construction Cost Budget to the District and PM to further develop, review and reconcile the Construction Cost Budget.
- g. 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.
- h. The Construction Cost Budget for the project(s) must at no point exceed the District's Construction Cost Budget for the project. The accuracy of the Construction Cost Budget shall be the responsibility of the Consultant.

8. Retention & Reporting:

- a. The District intends to retain the Consultant throughout the life of the project. The Consultant, in conjunction with the Project Manager, will coordinate the effort to

oversee the work to be performed by the DBE and/or Contractor through the design and construction phase, closeout and DSA certification.

- b. Consultant will assist the PM team to provide quality control of the DBE's services, from schematic design, design development, construction documents, DSA approval; construction through closeout to DSA Certification to ensure compliance with the criteria documents and performance specifications. However, the Consultant will not direct the DBE team. Any communication, evaluation or advice the Consultant may have regarding the DBE's performance during the life of the project shall be communicated to the DBE by and through the PM, the latter in turn, will communicate and share any concerns with the DBE team, as the PM may deem necessary. At all times the Consultant shall not communicate directly nor direct the DBE team's work, except through the PM.
- c. Consultant shall, without additional compensation, correct or revise any errors or omissions in its studies, reports, projections, master plans, design drawings, specifications and other services.

D. PROPOSAL PHASE

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

1. Be a member of District's proposal review panel and assist District in the Design-Build entity evaluation process.
2. Assist District in document clarification and in the preparation of addenda as necessary for issuance only by District in accordance with a Request for Proposals or Qualifications.

Temporary Swing Space (Bidding Phase)

1. Upon District's acceptance of Consultant's work in the previous Phase and assuming District has not delayed or terminated the Agreement, the Consultant shall perform Bidding Phase services for District as follows:
 - a. While the Temporary Swing Space Project is being advertised for bids, all questions concerning intent shall be referred to the District for screening and subsequent processing through the Consultant.
 - b. 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 Consultant for decision by the District as to the proper procedure required. Corrective action will be in the form of an addendum prepared by the Consultant and issued by the District.
 - c. Coordinate with sub consultants.
 - d. Respond to District questions and clarifications.
 - e. Upon completion of the Bidding Phase, Consultant will produce a Conforming Set of plans and specifications incorporating all addenda issued thus far.

E. DESIGN SUBMITTALS REVIEW PHASE

Upon District's acceptance of Consultant's work in the previous Phase and assuming District has not delayed or terminated the Agreement, Consultant shall perform Design Submittals Review Phase services for District as follows:

1. Upon District's written authorization to proceed, Consultant shall review design submittals, including Schematic Design, Design Development, and Construction Documents submitted by Design-Build Entity.
2. Prepare and submit a written analysis of recommendations concerning the submittals. The analysis shall specifically address any deviations from District's minimum requirements/performance requirements or design guide illustrations.
3. Review upon 100% Schematic Design, 100% Design Development and 95% Construction Document submittals as submitted by Design-Build entity. Consultant's review shall include backcheck after corrections are made to each submittal by Design-Build entity.

F. MONITORING PHASE

Upon District's acceptance of Consultant's work in the previous Phase and assuming District has not delayed or terminated the Agreement, Consultant shall perform Monitoring Phase services for District during the course of construction and through Project close-out as follows:

1. Attend and participate in a pre-construction meeting called by District. Attendees shall be Consultant's consultants, Design-Build Entity, major subcontractors, District, and others as deemed necessary by District.
2. Advise or otherwise assist District regarding Design-Build entity's compliance with Project design intent and Criteria Documents. This includes, but is not limited to:
 - a. periodic site visits upon request of District;
 - b. review and analysis of construction documents upon request of District;
 - c. general consultation to District on design matters;
 - d. cooperating with District or District's representative in provision of Services during this Phase.
3. Consultant shall be fully responsible for all matters related to Consultant's design and recommendations to District, which are carried out by District without substantive change.
4. Consultant shall not be responsible for administration of communications with Design Builder, chairing meetings with Design Builder, monitoring the Project schedule, negotiating price changes, or coordinating Project closeout.
5. Meetings: During this phase, Consultant shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops as indicated below in Section G.

Temporary Swing Space (Construction Administration Phase)

1. Upon District's acceptance of Consultant's work in the previous Phase and assuming District has not delayed or terminated the Agreement, the Consultant shall perform Construction Administration Phase services for the District as follows:
 - a. The Consultant'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.
 - b. During construction, the Consultant must furnish all necessary additional drawings for supplementing, clarifying, and/or correcting purposes and for change orders. The District will request these drawings from the Consultant and the Consultant will furnish these documents 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 will be submitted to the District for duplication and distribution.
 - c. Submittals:
 - (i) The Consultant will 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.
 - (ii) The Consultant's action upon contractor's submittals executed as expeditiously as possible to cause no unreasonable delay in the construction of the Project or in the work of separate contractors, while allowing sufficient time in the Consultant's professional judgment to permit adequate review. In no case shall the review period associated with a single, particular submittal exceed twenty-one (21) calendar days from its receipt by the Consultant. The Consultant's response to each submittal will be a substantive and acceptable response. This 21-day time period shall not include time when a submittal is within the District's control or if the submittal is being reviewed by DSA. In no way does this provision reduce the Consultant's liability if it fails to prepare acceptable documents.
 - d. RFI's:
 - (i) During the course of construction, all Requests for Information ("RFI") must be responded to as expeditiously as possible to not impact and delay the construction progress. In no case will the review period associated with an RFI exceed seven (7) calendar days from the receipt by the Consultant. Consultant's response to each RFI shall be a substantive and acceptable response. This 7-day time period will 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 Consultant's liability if it fails to prepare acceptable documents.
 - e. On the basis of on-site observations, the Consultant will keep the District informed of the progress and the quality of the work, and will endeavor to guard the District

against defects and deficiencies in the work. The Consultant will notify the District in writing of any defects or deficiencies in the work by any of the District's contractors that the Consultant may observe. However, the Consultant will shall not be a guarantor of the contractor's performance.

- f. Record Drawings. The Consultant will review and evaluate for District, the contractor(s)' recorded changes which the contractor(s) must prepare and submit as Record Drawings. Record Drawings must show all changes made during the construction project, including changes necessitated by change orders, and recorded by the District's construction contractor(s) on a Conforming Set.
- g. As-Built Drawings. The Consultant must incorporate all information on all Record Drawings and prepare one set of final As-Built Drawings for the District. The As-Built Drawings must incorporate onto one set of drawings all changes from all Record Drawings, sketches, details, and clarifications. If a set of As-Built Drawings has been requested by the District, then (1) the Consultant must deliver them to the District at completion of the construction and (2) it shall be a condition precedent to the District's approval of the Consultant's final payment. The Consultant may insert the following notice on the As-Built Drawings:
 - (i) These drawings (or corrected specifications) have been prepared based on information submitted, in part, by others. The Consultant has provided a review consistent with its legal standard of care.
- h. O&M Manuals / Warranties. Consultant must review equipment, operation 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.
- i. The Consultant must provide, 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 as requested by the District and/or the District's representative.
- j. Recommendations of Payment by the Consultant constitutes Consultant's representation to the District that work has progressed to the point indicated to the best of Consultant's knowledge, information, and belief, and that the quality of the work is in general conformance with the contract documents.

Temporary Swing Space (Closeout Phase)

- a. As the Construction Administration Phase progresses, the Consultant will perform the following Close Out Phase services for the District as required:
 - (i) The Consultant will review the project and observe the construction as required to determine when the contractor has completed the construction of the Project and will prepare punch lists of items which remain in need of correction or completion.
 - (ii) The Consultant will 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 the Consultant's recommendation as to the adequacy of these items.

- (iii) The Consultant will prepare or collect, as applicable, and provide to DSA, all reports required by DSA related to the design and construction of the Project.
- (iv) The Consultant will obtain all required DSA approval on all change orders and addenda to the contractor's contract.
- (v) The Consultant will prepare a final verified report for the Project.
- (vi) The Consultant will prepare a set of As-Built Drawings for the Project, as required by the District.
- (vii) The Consultant will review and prepare a package of all warranty and M&O documentation.
- (viii) The Consultant will shall organize electronic files, plans and prepare a Project binder which contains all applicable files and plans for each Project.
- (ix) The Consultant will coordinate all Services required to close-out the design and construction of the Project with the District and between consultants.
- (x) The Consultant will provide 2 hard copies and a working file in "Excel" of a detailed list of outstanding items to be furnished, installed, corrected or otherwise supplied to meet all applicable contract requirements (The Punch List).

G. MEETINGS / SITE VISITS / WORKSHOPS

1. Consultant shall attend, take part in, conduct meetings, site visits, and workshops as required. Consultant shall chair, conduct and take minutes of all coordination meetings with its Consultant(s) during the entire project. Consultant shall invite the District and/or its representative to participate in these meetings. Consultant shall keep a separate log to document design/coordination comments generated in these meetings.
2. **General Meeting, Site Visit, and Workshop Requirements**
 - a. Consultant shall always be prepared to answer questions and issues from District staff, site staff, potential bidders, and/or design-build entities, as applicable.
 - b. Consultant shall maintain a log of all meetings, site visits or site observations held in conjunction with the Criteria Documents, with documentation of major discussion points, observations, decisions, questions or comments. These shall be furnished to the District.
 - c. As required, Consultant shall provide at no additional cost to the District copies of all documents or other information needed for each meeting, site visit, and workshop.

3. Meetings for Project Initiation meeting

- a. Within the first week following execution of the Agreement, Consultant shall participate in a Project kick-off meeting to determine the Project intent, scope, budget and timetable, which shall encompass the following:
 - (i) Consultant, its appropriate consultant(s), and District staff, shall attend the meeting.
 - (ii) The Project kick-off meeting will introduce key team members from the District and the Consultant to each other, defining roles and responsibilities relative to the Project.
 - (iii) During this meeting, Consultant shall:
 - (A) Identify and review pertinent information and/or documentation necessary from the District for the completion of the Project.
 - (B) Review and explain the overall Project goals, general approach, tasks, work plan and procedures and deliverable products of the Project.
 - (C) Review and explain the scope of work and Project work plan for all parties present; determine any adjustments or fine tuning that needs to be made to the work plan.
 - (D) Establish the Project milestone dates.
 - (E) Review documentation of the Project kick-off meeting prepared by the District's representative and comment prior to distribution.

4. Meetings for Criteria Documents meetings

- a. Attend and take part in meetings for purposes of reviewing Criteria Documents and Outline Specifications with District's Departments.

5. Meetings During RFP Phase meetings

- a. Attend and take part in meetings for the purposes of coordinating District's RFP documents with the design intent and Criteria Documents and to establish the phasing plans to incorporate into the RFP.

6. Meetings during Project Bid, Award, and Design with the District

- a. Attend and take part in meetings with District staff to answer RFP questions and issue Clarifications/Addendum as needed, review submittals, audit proposed cost and evaluation/interview.
- b. Attend and take part in meetings with District regarding review of design-build entity's drawings and specification for conformance with the RFP and review of design-build entity's schedule of values.

[END OF EXHIBIT]

EXHIBIT B

CRITERIA AND BILLING FOR EXTRA SERVICES

The following Extra Services are not included in Basic Services and shall be performed by Criteria Architect if needed and if authorized or requested by District as long as such services are not required as a result of the willful misconduct, negligence, errors or omissions of the Criteria Architect or the Criteria Architect’s Consultants:

- A. Providing deliverables or other items in excess of the number indicated in **Exhibit A**. Before preparing, providing, sending, or invoicing for extra deliverables, Criteria Architect shall inform District that expected deliverables may be in excess of the number indicated in **Exhibit A**, so that District can procure the additional deliverables itself or direct Criteria Architect to procure the deliverables at District’s expense or on District’s account at a specific vendor.
- B. Providing services as an expert and/or witness for District in any mediation, arbitration, and/or trial in which Criteria Architect is (1) not a party, and (2) did not in any way cause the dispute that is being adjudicated.
- C. 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.

<u>Job Title</u>	<u>Hourly Rate</u>
Principal:	\$_____
Principal Architect:	\$_____
Project Architect:	\$_____
Draftsperson:	\$_____
Clerical:	\$_____

- D. The mark-up on any approved item of Extra Services shall not exceed five percent (5%).
 - 1. The following items are approved for mark-up:
 - a. Subconsultant Invoices.
 - 2. Any approved item of Extra Services not identified in the above list may not be marked-up.
- E. Format and Content of Invoices for Extra Services:

Criteria Architect acknowledges that District requires Criteria Architect’s invoices to include detailed explanations of the Services performed.

[END OF EXHIBIT]

EXHIBIT C

SCHEDULE OF SERVICES

- A. Promptly after the execution of this Agreement, Criteria Architect shall prepare and submit for approval to the District a Schedule of Services showing the order in which Criteria Architect proposes to carry out Criteria 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. Criteria 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. Criteria Architect shall complete Services required under the Criteria Documents Phase section within the _____ **calendar days** as outlined in the proposal, and after written authorization from the District to proceed.
- C. The durations stated above include the review periods required by the District and all other regulatory agencies.
- D. (RESERVED insert project schedule and major milestone schedule of deliverables)
- E. All times to complete tasks set forth in this Exhibit are of the essence, as indicated in the Agreement. Any extensions, if approved, shall be authorized in writing by the District.

[END OF EXHIBIT]

EXHIBIT D

PAYMENT SCHEDULE

A. Compensation

1. The payment of consideration to Criteria Architect as provided herein shall be full compensation for all of Criteria Architect's Services incurred in the performance hereof, including, without limitation, all costs for personnel, travel, 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 Criteria Architect shall be as stated in Article 5 of the Agreement.

B. Method of Payment

1. Invoices shall be on a form approved by District and are to be submitted to District via District's authorized representative.
2. Criteria Architect shall submit to District on a monthly basis documentation showing proof that payments were made to its Consultant(s).
3. Criteria Architect shall submit to District for approval a copy of Criteria Architect's monthly pay request format.
4. Upon receipt and approval of Criteria Architect's invoices, District agrees to make payments of undisputed amounts within thirty (30) days of receipt of the monthly invoice for the percentage of Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon completion of **the Monitoring Phase**.

[END OF EXHIBIT]

EXHIBIT E

INSURANCE REQUIREMENTS

- A.** Criteria 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 Criteria Architect, his agents, representatives, employees and consultant(s). Criteria Architect's liabilities, including but not limited to Criteria 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 Criteria Architect's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated as a material breach of contract by District.
- B. Minimum Scope and Limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits:
5. **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.
 6. **Commercial Automobile Liability, Any Auto.** One million dollars (\$1,000,000) per occurrence.
 7. **Workers' Compensation Liability.** For all of Criteria Architect's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Criteria Architect shall keep in full force and effect, a Workers' Compensation policy. Criteria Architect shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
 8. **Employer's Liability.** For all of Criteria Architect's employees who are subject to this Agreement, Criteria Architect shall provide employer's liability coverage with minimum liability coverage of one million dollars (\$1,000,000) per accident for bodily injury or disease.
 9. **Professional Liability.** This insurance shall cover the prime Criteria Architect and his/her consultant(s) for two million dollars (\$2,000,000) aggregate limit subject to no claim deductible, coverage to continue through completion of construction plus two years thereafter.
- C.** District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.
- D. Deductibles and Self-Insured Retention:** Criteria Architect shall inform District in writing if any deductibles or self-insured retention exceeds twenty-five thousand dollars (\$25,000). At the option of District, either:

1. District can accept the higher deductible;
2. Criteria Architect's insurer shall reduce or eliminate such deductibles or self-insured retention as respects District, its officers, officials, employees and volunteers; or
3. Criteria Architect shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

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

1. District, District's Program/Project Manager, Construction Manager, or both, their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of Criteria Architect; instruments of Service and completed operations of Criteria Architect; premises owned, occupied or used by Criteria Architect; or automobiles owned, leased, hired or borrowed by Criteria 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, Criteria Architect's insurance coverage shall be primary and non-contributory insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of Criteria Architect's insurance and shall not contribute with it.
3. Criteria Architect shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
4. 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.
5. Criteria 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.
6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, denied renewal, or materially changed in coverage except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to District. Criteria Architect further agrees to notify District immediately of any change in status affecting Criteria Architect's licensing and/or ability to perform duties described herein.

F. Acceptability of Insurers: Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A:VII. Criteria Architect shall inform District in writing if any of its insurer(s) have an A.M. Best's rating less than A:VII. At the option of District, either:

1. Accept the lower rating; or

2. Require Criteria Architect to procure insurance from another insurer.

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

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

[END OF EXHIBIT]