



**Cordova Community Pool Replacement Project
Cordova Recreation & Park District
Addendum #2**

Issued Thursday August 17, 2017

1. A drop box link to Cordova Community Pool Plans and Design-Build Plans is listed below:
<https://www.dropbox.com/sh/emngs7bqe3qqpis/AAD5InHCn6Bb6ghbpMiRb0p3a?dl=0>
2. The Architect's Agreement template is attached.
3. Sign-in sheets for the two walk-through meetings held so far are attached.

I have read and understand the above addendum.

Consultant Name:

Date:

**STANDARD FORM OF AGREEMENT
BETWEEN DISTRICT AND ARCHITECT**

AGREEMENT

BETWEEN the District: CORDOVA RECREATION AND PARK DISTRICT

and the Architect: _____

Master Agreement for architectural services

Assigned Project(s):

Date: _____

The District and Architect agree as set forth below.

**TERMS AND CONDITIONS OF AGREEMENT
BETWEEN DISTRICT AND ARCHITECT**

Scope of Services: All architectural services, including full design services for completion of the assigned Project(s), in accordance with Architect's proposal attached hereto as Exhibit A and project specific scope of work set forth in Exhibit B attached here to, subject to specific requirements and conditions as follows:

**ARTICLE 1
ARCHITECT'S RESPONSIBILITIES**

1.1 ARCHITECT'S SERVICES

1.1.1 The Architect's services consist of those services performed by the Architect, Architect's employees and Architect's consultants as enumerated in Exhibit A, Exhibit B and Articles 2 and 3 of this Agreement and any other services included in Article 12. Project specific services in addition to those set forth in Article 2, 3 and Article 12, shall be set forth in Exhibit B, on a project by project basis. To the extent one or more services set forth in Articles 2, 3 and 12, are not applicable to a given project or otherwise in conflict with specific project services, those inapplicable services will be identified by the parties upon execution of this agreement.

1.1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the District, the Architect shall submit for the District's approval a schedule for the performance of the Architect's services which may be adjusted in writing by mutual agreement of the parties as the Project proceeds, and shall include allowances for periods of time required for the District's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the District shall not, except for reasonable cause, be exceeded by Architect or District.

1.1.3 The services covered by this Agreement are subject to the time limitations contained in Subparagraph 11.4.1.

**ARTICLE 2
SCOPE OF ARCHITECT'S BASIC SERVICES**

2.1 DEFINITION

2.1.1 The Architect's Basic Services consist of those described in Exhibit A, Exhibit B and Paragraphs 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal structural, mechanical

and electrical engineering services (and any other consultants which are agreed to in advance and which fees are included in the scope of the work).

2.2 SCHEMATIC DESIGN PHASE

2.2.1 The Architect shall review the program furnished by the District to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the District. The Architect shall commit his/her/its understanding of the District's requirements to writing and obtain District approval prior to proceeding with drafting of the preliminary designs. If directed by the District at the time of approval of schematics, the preliminary and final working drawings and specifications shall be prepared so that portions of the work of the Project may be performed under separate construction contracts, or so that the construction of certain buildings, facilities or other portions of the Project may be deferred.

2.2.2 The Architect shall provide a preliminary evaluation of the District's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 5.2.1.

2.2.3 The Architect shall review with the District alternative approaches to design and construction of the Project.

2.2.4 Upon approval of the District of the services set forth in paragraph 2.2.1, the Architect shall prepare park plans, recreation facility plans, floor plans, elevations, and other drawings, and shall outline specifications to fix and illustrate the size and character of the entire Project in its essentials as to kinds of materials, quantities, categories of proposed work, type of structure, and such other work as may be required. The design document shall comply with the applicable laws, statutes, ordinances, codes, rules and regulations in force as of the date of this Agreement.

2.2.5 The Architect shall submit to the District a preliminary estimate of Construction Cost based on current area, volume or other unit costs. Preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Architect, represent the Architect's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the District has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the District's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect.

2.2.6 The Architect will review all survey and record drawings and related information provided by the District in the performance of services for this project. Architect will provide field review of existing conditions and survey/record document information (not including destructive testing, disassembly of existing structures, nor excavation) to determine if additional information of existing improvements is required. Architect will request in writing any additional information of existing improvements necessary for the performance of services outlined in this Agreement.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the District in the program, schedule or construction budget, the Architect shall prepare, for approval by the District, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate

2.3.2 The Architect shall advise the District of any adjustments to the preliminary estimate of Construction Cost.

2.3.3 Upon completion of the Design Development Phase, the Architect shall provide the District with drawings, outline specifications, and other documents approved by the District for use in preparing a further estimate of Construction Cost, and shall assist the District in preparing such estimate of Construction Cost.

2.3.4 The Architect shall assist the District in applying for and obtaining required approvals from all agencies having jurisdiction over the Project during any stage of the Project.

2.3.5 If Federal, or state grant monies are involved, the Architect shall notify the Federal, or state grant agencies having jurisdiction over the Project as to whether or not there is any indicated adjustment in previous estimates of the project construction cost arising from market fluctuations or approved changes in scope or requirements.

2.4. CONSTRUCTION DOCUMENTS PHASE

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the District, the Architect shall prepare, for approval by the District, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements of the park project, recreational facility or other Project, but not limited to, the work required for the architectural, structural, technical, electrical, plumbing, service-connected equipment, and site work, and shall, upon

request of the District submit necessary general conditions of the contract. The Architect shall provide the services of professional structural, mechanical, civil, electrical, and other engineers as included in Architect's proposal, qualified by training and experience in their respective fields, needed, to address the requirements of the Project; shall submit a list of the names of the engineers to be employed by the Architect to the District, in advance, for the District's review and approval, which approval shall not be unreasonably withheld. The Construction Documents shall comply with the applicable laws, statutes, ordinances, codes, rules, and regulations.

2.4.2 The Architect shall assist the District in preparation of the necessary bidding information.

2.4.3 The Architect shall advise the District of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions. Preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Architect, represent the Architect's best judgment as a design professional familiar with the construction industry. It is recognized that neither the Architect or the District has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the District's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect.

2.4.4 The Architect shall be responsible, with the assistance of the District, for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Architect shall be responsible for making such changes in the construction documents as may be suggested by governmental authorities, during such authorities review and back check, at Architects expense when instructed to do so by the District.

2.4.5 The Architect shall include in the bidding information, plans or specifications, a requirement that the Contractor(s) provide operation manuals and adequate training for the District in the operation of irrigation, lighting, plumbing, mechanical, electrical, heating and air conditioning systems installed by the Contractor(s).

2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 The Architect, following the District's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost along with any bid alternates, shall assist the District in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction, by rendering interpretations and clarifications of the Drawings and Specifications in

appropriate written form. The Architect shall assist the District in conducting pre-award conferences with successful bidders.

2.5.2 In the event the lowest responsible bid (or bids) exceeds either the funds appropriated for the Project or the final estimates provided by the Architect by more than ten percent (10%), the Architect, in consultation with and at the direction of the District, shall provide such modification in the Contract Documents as shall be necessary to bring the cost of the Project within the Project's budget as established by the District of the Architect's final estimates, as the District shall determine. This redesign effort shall constitute the Architect's sole responsibility with respect to its opinions of probable construction costs, and the District agrees to cooperate with the Architect in revising the Project scope and quality in order to reduce the bids or negotiated price so that they do not exceed the Architect's opinion of probable construction costs.

2.6 CONSTRUCTION PHASE ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 Subject to the time limitations set forth in Paragraph 11.4.1, the Architect's responsibility to provide Basic Services for the Construction Phase under the Agreement commences with the awarding of any Contract for construction and terminates at the later of the issuance to the District of the final Certificate of Payment to all Contractors, issuance of a certificate of occupancy, or submission of record drawings unless extended under the terms of paragraph 10.3.3.

2.6.2 The Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement, as may be amended by the District.

2.6.3 Duties, responsibilities, and limitations of authority of the Architect shall not be restricted, modified, or extended without written agreement of the District and Architect and notice to the Contractor.

2.6.4 The Architect shall be the architectural representative of, and shall advise, and consult with the District during construction and any correction period. Instructions to the Contractor(s) shall be forwarded through Architect. The Architect shall have authority to act on behalf of District only to the extent provided in this Agreement unless otherwise modified by written instrument.

2.6.5 The Architect, as a representative of District, shall visit the site not less than once every other week while work is in progress, and as often as necessary and appropriate to the stage of construction, to observe and review the site and work; to familiarize himself/herself with the progress and quality of the work; and determine for the District's benefit and protection, if the work is proceeding in

accordance with the intent of the contract documents and construction schedule. On the basis of his/her onsite observations as an Architect, the Architect shall keep the District informed of the progress and quality of the work and he/she shall use reasonable care to guard the District against defects and deficiencies in the work and against the Contractor's failure to carry out the work in accordance with the intent of the construction documents and the construction schedule. The Architect shall provide, at no further cost to the District, services made necessary by major defect or deficiencies in the work of the Contractor which through reasonable care should have been discovered by the Architect and properly reported to the District and Contractor by which the Architect failed to do.

2.6.6 The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work; except to advise the District that the Work is in accordance with the Contract Documents. Except as provided in this Agreement, the Architect shall not be responsible for the contractor's schedules or failure to carry out the Work in accordance with the Contract Documents and shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents, or employees, or any other persons performing portions of the Work.

2.6.7 Both the District and the Architect shall at all times have access to the Work wherever it is in preparation or progress.

2.6.8 The District and Contractor shall communicate through the Architect; except (1) as may otherwise be provided in the Contract Documents, (2) when direct communications have been specifically authorized, or (3) when such communication has been attempted and could not reasonably be accomplished in a timely manner in consideration of the requirements of the Project. Where direct communication between District and Contractor has occurred, the District and Contractor shall promptly and jointly document the nature and result of the communication and shall provide a copy of the document to the Architect. Communications by and with the Architect's consultants shall be through the Architect.

2.6.9 Based on the Architect's observations of the Work, and evaluations of the Contractor's Applications for Payment, the Architect shall review and certify the amounts due the Contractor. Review and certification shall be complete to allow payment to the Contractor within the time required by law. The use of the word "certify" or "certification" by a licensed architect in the practice of architecture constitutes an expression of professional opinion regarding those facts or findings that are the subject of the certification, and does not constitute a warranty or guarantee, either expressed or implied. This is not intended to alter the standard of care ordinarily exercised by a licensed architect.

2.6.10 The Architect's certification for payment shall constitute a representation to the District, based on the Architect's observations at the site as provided in Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best

of the Architect's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and site observations, to minor deviations from the Contract documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site observations to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the District to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

2.6.11 When the Architect determines through observations at the site or by other means that the Work does not conform to the Contract Documents, the Architect shall promptly notify the District of the Architect's intent to reject such Work and shall reject nonconforming Work unless the District stops the Architect in writing within twenty-four (24) hours of being notified. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed, or completed. Where such additional inspection and testing is to be an additional cost to the District, such additional inspection and testing is to be required by the Architect only upon advance notice and approval by District. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, and their agents or employees or other persons performing portions of the Work.

2.6.12 The Architect shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of the District or of separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of construction means, methods, techniques, sequences or procedures, The Architect's approval of a

specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

2.6.13 The Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Architect for the District's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

2.6.14 The Architect shall conduct site observations to determine the date or dates of Substantial Completion and the date of final completion, shall receive and forward to the District for the District's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

2.6.15 The Architect shall interpret and decide matters concerning performance of the Contractor under the requirements of the Contract Documents on written request of either the District or Contractor. The Architect's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

2.6.16 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decision, the Architect shall endeavor to secure faithful performance by the Contractor.

2.6.17 The Architect shall advise and the District shall have the final authority on questions relating to aesthetic effect. Both parties shall strive to act in a manner which is consistent with the intent expressed in the Contract Documents.

2.6.18 The Architect shall render written evaluation and/or opinions within a reasonable time on all claims, disputes or other matters in question between the District and Contractor relating to the execution or progress of the Work as provided in the Contract Documents.

2.6.19 The Architect shall provide coordination of construction performed by separate Contractors or by the District's own forces and coordination of services in connection with construction performed and equipment supplied by the District, including establishing and conducting a regular schedule of monthly meetings between Contractors and the District, if necessary. Such monthly meetings shall be held throughout the entire construction Phase of the Project and shall be for the primary purpose of assessing the progress of the Work of each

Contractor and recommending to the District such remedial actions as are necessary to ensure required progress and completion in accordance with the construction schedule and within contract time. The Architect shall submit to the District and to the Contractor a full report of each such meeting as soon after the meeting as is practical.

2.6.20 The Architect shall provide services in evaluating claims submitted by the Contractor or others in connection with the Work.

2.6.21 The Architect shall provide services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to drawings, specifications, and other documentation resulting therefrom.

ARTICLE 3

ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified elsewhere in this Agreement as being included in Basic Services, and they shall be paid for by the District as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraph 3.2 and 3.4 shall only be provided if authorized in advance in writing by the District. If, in the opinion of the Architect, services described under Contingent Additional Services in Paragraph 3.3 are required due to the circumstances beyond the Architect's control, the Architect shall advise the District of the need for those services in writing prior to commencing such services. If the District deems that such services described under Paragraph 3.3 are not required, the District shall give prompt written notice to the Architect. If the District indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services. If, however, services described under Paragraph 3.3 are required due to circumstances within the control of the Architect, such services shall be provided as a part of Basic Services. Notwithstanding any provision to the contrary, no compensation shall be paid to the Architect for additional services that become necessary as a result of the fault or negligence of the Architect or his agents or employees.

3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

3.2.1 If more extensive representation at the site than is described in Subparagraph 2.6.5 is required, the Architect shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

3.2.2 Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefore as agreed by the District and Architect. The duties, responsibilities and limitations of authority of Project

Representatives shall be as described in the edition of AIA Document B352 current as of the date of this Agreement, unless otherwise noted.

- 3.2.3** Through the observation by such Project Representatives, the Architect shall endeavor to provide further protection for the District against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement.

3.3 CONTINGENT ADDITIONAL SERVICES

- 3.3.1** Making revisions in Drawings, Specifications or other documents when such revisions are:

.1 inconsistent with approvals or instructions previously given by the District, including revisions made necessary by adjustments in the District's program or Project budget;

.2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or

.3 due to changes required as a result of the District's failure to render decisions in a timely manner.

- 3.3.2** Providing services required because of significant changes in the Project including, but not limited to size, quality, complexity, the District's schedule, or other method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 5.2.5; provided, however, that where the services are made necessary because of a significant increase in the size, quality, or complexity of the Project which results in a significant increase in Construction Cost and, therefore, the Architect's fee for Basic Services, which fee is commensurate with the services required of the Architect, this provision shall not apply.

- 3.3.3** Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

- 3.3.4** Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the District or Contractor under the Contract for Construction.

- 3.3.5** Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

3.4 OPTIONAL ADDITIONAL SERVICES

- 3.4.1** Providing Financial feasibility or other special studies.
- 3.4.2** Providing planning surveys, site evaluations or comparative studies of prospective sites.
- 3.4.3** Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.
- 3.4.4** Providing services relative to future facilities, systems and equipment.
- 3.4.5** Providing detailed quantity surveys or inventories of material, equipment and labor.
- 3.4.6** Providing analysis of owning and operating costs.
- 3.4.7** Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.
- 3.4.8** Providing services for planning tenant or rental spaces.
- 3.4.9** Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.
- 3.4.10** Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
- 3.4.11** Providing services after the issuance to the District by the Architect of the final Certificate for Payment, except as provided in Subparagraph 11.4.1.
- 3.4.12** Providing services of consultants for other than architectural, structural, civil, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.
- 3.4.13** Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 4

DISTRICT'S RESPONSIBILITIES

- 4.1** The District shall, with the Architect's assistance, identify requirements for the Project, including a program which shall set forth the District's objectives, schedule, constraints, and criteria, including space requirements and relationships, flexibility, expendability, special equipment, systems, and site requirements.
- 4.2** The District shall establish and update an overall budget for the Project, including the Construction Cost, the District's other costs and reasonable contingencies related to all of these costs.
- 4.3** If requested by the Architect, the District shall furnish evidence that financial arrangements have been made to fulfill the District's obligations under this Agreement.
- 4.4** The District shall designate a representative authorized to act on the District's behalf with respect to the Project. The District or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.
- 4.5** The District shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a project benchmark.
- 4.6** The District shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.
- 4.6.1** The District shall furnish the services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Architect,
- 4.7** The District shall furnish structural, mechanical, chemical, and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

- 4.8** The District shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the District may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the District.
- 4.9** The services, information, surveys and reports required by Paragraphs 4.5 through 4.8 shall be furnished at the District's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.
- 4.10** Prompt written notice shall be given by the District to the Architect if the District becomes aware of any fault or defect in the Project or nonconformance with the contract documents, but the District's failure or omission to do so shall not relieve the Architect of his/her/its responsibilities hereunder and the District shall have no duty of observation, inspection, or investigation.
- 4.11** The proposed language of certificates or certifications requested by the Architect or Architect's consultants shall be submitted to the Architect for review and approval at least 14 days prior to execution. The District shall not request certifications that would require knowledge or services beyond the scope of this Agreement.

ARTICLE 5

CONSTRUCTION COST

5.1 DEFINITION

- 5.1.1** The Construction Cost shall be the total cost or estimated cost to the District of all elements of the Project designed or specified by the Architect.
- 5.1.2** The Construction Cost shall include the cost at current market rates of labor and materials furnished by the District and equipment designed, specified, selected or specially provided for by the Architect, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction.

5.1.2.2 During the bidding and Negotiation Phase, Construction Cost shall be determined by the lowest responsible bid or bids.

5.1.2.3 During the Construction Phase, Construction Cost shall be determined by the Contract Sum as stated in the District-Contractor Agreement, as amended by any Change Orders formally approved by the District and Contractor.

- 5.1.3** Construction Cost does not include the compensation of the Architect and Architect's consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the District as provided in Article 4.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

- 5.2.1** Evaluations of the District's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Architect, represents the Architect's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the District has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the District's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect.
- 5.2.2** No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Architect shall be permitted to include contingencies for design bidding and price escalation, to determine what materials, equipment component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.
- 5.2.3** If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits Construction Documents to the District, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the District and the date on which proposals are sought.
- 5.2.4** If a fixed limit of Construction Cost (adjusted as provided in Subparagraph 5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal, after the use of mutually agreed to bid alternates, the District shall:
- .1 give written approval of an increase in such fixed limit;
 - .2 authorize rebidding or renegotiating of the Project within a reasonable time;

- .3 if the Project is abandoned, terminate in accordance with Paragraph 8.3; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

5.2.5 If the District chooses to proceed under Clause 5.2.4.4, the Architect, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit, if established as a condition of the Agreement. The modification of Contract Documents shall be the limit of the Architect's responsibility arising out of the establishment of a fixed limit. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

ARTICLE 6

USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

- 6.1** The Drawings, Specifications and other documents prepared by the Architect for this Project are instruments of the Architect's service for use solely with respect to this Project. Unless otherwise provided, the District shall be deemed the owner of these documents. The Architect and the Architect's consultants shall retain all common law, statutory or other reserved rights, including copyrights.
- 6.2** Upon execution of this Agreement, the Architect grants to the District a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the District shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the District to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for the purposes of completing, using and maintaining the Project.
- 6.3** Except for the licenses granted in Paragraph 6.2, no other license or right shall be deemed granted or implied under this Agreement. The District shall be permitted to authorize the Contractor, Subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Paragraph 6.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the District's sole risk and without liability to the Architect and the Architect's consultants.

- 6.4 Prior to the Architect providing to the District any Instruments of Service in electronic form or the District providing to the Architect any electronic data for incorporation into the Instruments of Service, the District and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

ARTICLE 7

ARBITRATION

- 7.1 Subject to the agreement of the parties, claims, disputes or other matters in question between the parties to this Agreement or breach thereof may be subject to and decided by arbitration. If the parties agree to submit any dispute to arbitration, each shall have the right to discovery pursuant to the California Code of Civil Procedure for a period of ninety (90) days from the date of filing the claim in arbitration.
- 7.2 If a dispute arises between District and Architect, any action or proceeding, including a reference pursuant to Section 638 et seq of the Code of Civil Procedure brought by any party against any other party pursuant to this Agreement, shall entitle the prevailing party to recover all costs and expenses, including the actual fees of it's attorneys, incurred for prosecution, defense, consultation or advice in such action or proceeding, not limited to but including costs of expert witnesses, attorney preparation, and costs of discovery and investigation. In awarding attorney fees, the court will not be bound by any court fee schedule but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, attorney fees paid or incurred in good faith.

ARTICLE 8

TERMINATION, SUSPENSION OR ABANDONMENT

- 8.1 This Agreement may be terminated by either party upon not less than seven (7) days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination; or, may be terminated as a matter of convenience by either party upon thirty (30) days prior written notice.
- 8.2 If the Project is suspended by the District for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such Suspension. When the Project is resumed, the Architect's compensation shall be equitably adjusted to provide for reasonable expenses incurred in the interruption and resumption of the Architect's services.
- 8.3 This Agreement maybe terminated by the District upon not less than seven (7) days written notice to the Architect in the event that the Project is permanently abandoned. If

the Project is abandoned by the District for more than 90 consecutive days, the Architect may terminate this Agreement by giving written notice.

- 8.4** Failure of the District to make payments to the Architect in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.
- 8.5** If the District fails to make payment when due the Architect for services and expenses, the Architect may, upon seven (7) days written notice to the District, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within seven (7) days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Architect shall have no liability to the District for delay or damage caused the District because of such suspension of services.
- 8.6** In the event of termination not the fault of the Architect, the Architect will be compensated for services performed prior to termination, together with reimbursable expenses then due.

ARTICLE 9

MISCELLANEOUS PROVISIONS

- 9.1** This agreement shall be governed by the laws of the State of California.
- 9.2** Terms in this Agreement shall have the same meaning as those in AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.
- 9.3** The District and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract, current as of the date of this Agreement. The District and Architect each shall require similar waivers from their contractors, consultants and agents.
- 9.4** The District and Architect respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement, Neither District nor Architect shall assign this Agreement without the written consent of the other.
- 9.5** This Agreement represents the entire and integrated agreement between the District and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both District and Architect.

- 9.6. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the District or Architect
- 9.7 The Architect shall not knowingly specify or approve for use in the Project any new materials containing asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. If the Architect discovers that such substances as described herein have been used or do exist in the Project, the Architect shall promptly notify the District in writing. When asbestos containing materials, polychlorinated biphenyl (PCB) or other toxic or hazardous substances are suspected or found in the course of the Project, the District shall immediately provide the services of an appropriately qualified expert or consultant to determine the proper course of action.
- 9.8 The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials, The Architect's materials shall not include the District's confidential or proprietary information if the District has previously advised the Architect in writing of the specific information considered by the District to be confidential or proprietary. The District shall provide professional credit for the Architect on the construction sign and in the promotional materials for the Project.

ARTICLE 10

PAYMENTS TO THE ARCHITECT

10.1 DIRECT PERSONNEL EXPENSE

10.1.1 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

10.2 REIMBURSABLE EXPENSES

10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and shall be payable provided they are approved in advance and in writing by the District. Reimbursable Expenses include actual expenses incurred by the Architect and Architect's employees and consultants in the interest of the Project, as identified in the following clauses.

10.2.1.1 Expense of transportation outside the Sacramento and Architect's home office County areas in connection with the Project; expenses

in connection with authorized out-of-town; long-distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project.

10.2.1.2 The Architect shall provide up to twelve (12) sets of reproductions of drawings and specifications as part of its basic services and thereafter, the expense of reproductions, postage and handling of Drawings, Specifications and other documents shall be considered a reimbursable expense.

10.2.1.3 If authorized in advance by the District, expense of overtime work requiring higher than regular rates.

10.2.1.4 Expense of renderings, models and mock-ups requested by the District.

10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

10.3.1 Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Subparagraph 11.2.2.

10.3.2 If and to the extent that the time initially established in Subparagraph 11.4.1 of this Agreement is exceeded or extended through no fault of the Architect, compensation for any services rendered during the additional period of time shall be determined by mutual agreement of the parties.

10.3.3 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Subparagraph 11.2.2, based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

10.4.1 Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred

10.5 PAYMENTS WITHHELD

10.5.1 No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors,

or on account of the cost of changes in the Work other than those for which the Architect has been found by District to be liable.

10.6 ARCHITECT'S ACCOUNTING RECORDS

10.6.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the District or the District's authorized representative at a mutually convenient time.

ARTICLE 11

BASIS OF COMPENSATION

The District shall compensate the Architect as follows:

11.1 BASIC COMPENSATION

11.1.1 FOR BASIC SERVICES, as described in Article 2, project specific services set forth in Exhibit B and other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows:

CRPD intends that the basic compensation set forth herein, will be set forth by way of addendum or modification to this section of 11.1 upon acceptance of the successful Architects proposal. The agreement will be modified with a maximum sum identified for each service task set forth in the RFQ, Attachment A "Scope of Work" page 1-7, Cordova Recreation and Park District Request for Qualifications number 17-010.

11.2 COMPENSATION FOR ADDITIONAL SERVICES

11.2.1 FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES, as described in Paragraph 3.2, compensation shall be computed as follows:

Based on Hourly Rates (see attached Exhibit C)

11.2.2 FOR ADDITIONAL SERVICES OF THE Architect, as described in Article 3 and Article 12 if any, other than (1) Additional Project Representation described in Subparagraphs 3.2, and (2) services included in Article 12 if any as part of Basic Services, but excluding services of consultants, compensation shall be computed as follows:

Based on hourly Rates (see attached Exhibit C)

11.2.3 FOR ADDITIONAL SERVICES OF CONSULTANTS, including additional structural, mechanical and electrical engineering services and those provided

under Subparagraph 3.4.14 or identified in Article 12, if any, as part of Additional Services, the District shall be required to reimburse the Architect the actual amount billed to the Architect for such services.

11.3 REIMBURSABLE EXPENSES

11.3.1 FOR REIMBURSABLE EXPENSES, as described in Paragraph 10.2, and any other items included in Article 12 as Reimbursable Expenses, the District shall be required to reimburse the Architect for those monies actually expended (without mark-up) by the Architect, the Architect's employees and consultants in the interest of the Project.

11.4 ADDITIONAL PROVISIONS

11.4.1 If the BASIC SERVICES covered by this Agreement have not been completed within thirty (30) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Subparagraph 10.3.2.

11.4.2 Payments are due and payable thirty (30) days from the date of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

Ten Percent (10%) Annual Interest Rate, not compounded.

ARTICLE 12

OTHER CONDITIONS OR SERVICES

12.1 It shall be the duty of the Architect throughout the term of this Agreement, as part of Basic Services, to make a prompt written record of all meetings, conferences, discussions, and decisions made between and/or among the District, Architect, and Contractor during all phases of the Project and concerning any material condition in the requirements, scope, performance, and/or sequence of the Work and to promptly provide a copy of such record to the District and the Contractor.

12.2 The Architect agrees to maintain at no additional cost to the District the following insurances until the termination of services of this Agreement:

- a. Worker's compensation coverage that meets or exceeds legal requirements.

- b Automobile and truck liability coverage with a minimum combined single limit of liability of \$1,000,000; and
- c. Architects' and engineers' professional liability insurance coverage with minimum limits of \$ 2,000,000 per claim and/or occurrence prior to the start of construction and \$ 2,000,000 limit per claim and/or occurrence following the start of construction.

With respect to any of the insurance policies provided by the Architect pursuant to this Agreement which are claims made policies, in the event at any time any such policies are canceled or not renewed, the Architect shall provide a substitute insurance policy(ies) with terms and conditions and in amounts which comply with the terms of this Agreement and which provides for retroactive coverage to the date of cancellation or nonrenewal to fill any gaps in coverage which may exist due to the cancellation or nonrenewal of the prior claims made policy(ies). With respect to all claims made policies which are renewed, the Architect shall provide coverage retroactive to the date of commencement of work under this Agreement. All said substitute or renewed claims made policies shall be maintained in full force and effect for three (3) years from the date of completion of the Project.

12.3 The Architect agrees, to the fullest extent permitted by law, to indemnify and hold the District harmless from any damage, liability or cost (including reasonable attorney's fees and Costs of defense) to the extent caused by the Architect's negligent acts, errors or omissions in the performance of professional services under this Agreement and those of his or her sub-consultants or anyone for whom the Architect is legally liable. The Architect's obligation to indemnify does not include the obligation to defend actions or proceedings brought against the District but rather to reimburse the District for attorney's fees and costs incurred by the District in defending such actions or proceedings brought against the District to the extent caused by the Architect's negligent acts, errors or omissions in the performance of professional services under this Agreement and those of his or her sub-consultants or anyone for whom the Architect is legally liable. The District agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the District's negligent acts, and those of its contractors, subcontractors or consultants or anyone for whom the District is legally liable, and arising from the project that is subject of this Agreement. The Architect is not obligated to indemnify the District in any manner whatsoever for the District's own negligence.

12.4 Architect shall maintain a minimum of \$ 2,000,000 Errors and Omissions insurance and shall provide District with a copy of the insurance policy immediately upon execution of this Agreement. Further, Architect shall insure that all professional sub-consultants shall maintain a minimum of \$ 2,000,000 Errors and Omissions coverage.

This Agreement entered into as of the day and year first written above.

IN WITNESS WHEREOF, the parties have executed this Agreement at Rancho Cordova, California, as of the date first written above.

CORDOVA RECREATION AND PARK DISTRICT

By:
Title:

Dated: _____

APPROVED AS TO FORM:
ROBERT E. THURBON

Attorneys For Cordova Recreation and Park
District

Architect:

By: _____
Name:
Title:

Dated: _____

Exhibit A
ARCHITECTS PROPOSAL

Exhibit B
PROJECT SPECIFIC SCOPE OF WORK

The project specific scope of work set forth in Attachment A “Scope of Work Cordova Community Pool Design Project CRPD project number 17-010, set forth as Attachment A to Cordova Recreation and Park District Request for Qualifications number 17-010 “Cordova Community Pool Replacement Design Services”, will be attached here to as Exhibit B upon execution of this agreement, and for purposes of submission of proposals, incorporated herein by this reference.

Exhibit C

HOURLY RATE SCHEDULE

_____,20__

Senior Principal.....	\$ ____/HR
Principal.....	\$ ____/HR
Project Director	\$ ____/HR
Senior Project Manager	\$ ____/HR
Managing Professional	\$ ____/HR
Senior Professional	\$ ____/HR
Professional.....	\$ ____/HR
Professional Staff.....	\$ ____/HR
Intermediate Staff.....	\$ ____/HR
Staff.....	\$ ____/HR
Support Specialist	\$ ____/HR
Clerical Staff.....	\$ ____/HR
Intern.....	\$ ____/HR

REIMBURSABLE EXPENSES

Engineering Services	Actual Cost
Mileage	\$ ____/mile for travel outside the Sacramento and Architect home office County area
Lodging.....	Actual Cost
Printing.....	x Actual Cost
Postage/ Courier.....	Actual Cost