

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE KENSINGTON FIRE PROTECTION DISTRICT AND  
MAR JANG DESIGN, A CALIFORNIA CORPORATION  
FOR  
KENSINGTON PUBLIC SAFETY BUILDING RENOVATION**

THIS AGREEMENT for consulting services is made by and between the Kensington Fire Protection District (“District”) and Mar Jang Design, a California Corporation a/k/a MarJang Architecture (“Consultant”) (together sometimes referred to as the “Parties”) as of November 18, 2021 (the “Effective Date”), and applies to all work or services provided by Consultant before, on, or after the Effective Date.

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to District the professional architectural services described in the Scope of Services attached as Exhibit A at the time and place and in the manner and for the project (the “Project”) specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on the completion of Construction Administration as specified in Exhibit A, and Consultant shall complete the services described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the District’s right to terminate the Agreement, as referenced in Section 8. Notwithstanding the foregoing this Agreement may be extended on a month to month basis for up to 6 months upon the written consent of the Consultant and the District Manager, provided that: a) sufficient funds have been appropriated for such purchase as demonstrated by the District in writing, b) the price charged by the Consultant for the provision of the services described in Exhibit A does not increase. None of the foregoing shall affect the District’s right to terminate the Agreement as provided for in Section 8.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner consistent with but limited to, that degree of professional skill and care ordinarily observed by a competent practitioner of the architectural profession in which Consultant is engaged in the same or similar locality under the same or similar circumstances. The foregoing is referred to as the “Standard of Care.” Nothing shall require the Consultant to exercise professional skill and judgment greater than the Standard of Care.
- 1.3 Assignment of Personnel.** Consultant shall, consistent with the Standard of Care, assign only competent personnel to perform services pursuant to this Agreement. In the event that District, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from District of such desire of District, reassign such person or persons.

1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Consultant's obligations hereunder, and shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project

1.5 **Job Site Safety.** Notwithstanding any contrary or potentially ambiguous description of Consultant's services, it is intended that the Consultant shall have no responsibility for job site safety on the Project. The District's contractor and subcontractors shall have full and sole authority for all safety programs and precautions and the means, methods, techniques, sequences and procedures in connection with the work of the Project. When Consultant is present at the site, Consultant shall have no authority to take any action whatsoever on the site regarding safety precautions or procedures. No provision of this Agreement shall be interpreted to confer upon Consultant any duty owed under the common law, under OSHA, or any other statute or regulation to construction workers or any other party regarding safety or the prevention of accidents at the jobsite.

**Section 2. COMPENSATION.** District hereby agrees to pay Consultant a sum not to exceed \$394,450, notwithstanding any contrary indications that may be contained in Consultant's proposal, unless the Agreement is modified by a properly executed change order or amendment, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. District shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from District to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to District in the manner specified herein. Except as specifically authorized by District in writing, Consultant shall not bill District for duplicate services performed by more than one person.

Consultant and District acknowledge and agree that compensation paid by District to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subconsultants of Consultant. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subconsultants may be eligible. District therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. No individual performing services under this Agreement shall bill more than 2,000 hours in a fiscal year unless approved, in writing, by the District Manager or his/her designee. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;

- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- A copy of the applicable time entries or time sheets shall be submitted showing the following:
  - Daily logs of total hours worked by each individual performing services under this Agreement
  - Hours must be logged in increments of tenths of an hour or quarter hour
  - If this Agreement covers multiple projects, all hours must also be logged by project assignment
  - A brief description of the services, and each reimbursable expense
- The total number of hours of services performed under the Agreement by Consultant and each employee, agent, and subconsultant of Consultant performing services hereunder;
- The Consultant's signature;
- Consultant shall give separate notice to the District when the total number of hours worked by Consultant and any individual employee, agent, or subconsultant of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and District. Such notice shall include an estimate of the time necessary to complete services described in Exhibit A and the estimate of time necessary to complete services under any other agreement between Consultant and District, if applicable.

**2.2 Monthly Payment.** District shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. District shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

**2.3 Final Payment.** District shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to District of a final invoice, if all services required have been satisfactorily performed.

**2.4 Total Payment.** District shall pay for the services to be rendered by Consultant pursuant to this Agreement. District shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. District shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement,

unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- 2.5 Hourly Fees.** Fees for services performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.
- 2.6 Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B, and shall not exceed **\$23,662.50**. Reimbursable Expenses include a 5% consultant mark-up that shall also be charged on fee modifications for additional services. Expenses not listed in Exhibit B are not chargeable to District. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 Payment upon Termination.** In the event that the District or Consultant terminates this Agreement pursuant to Section 8, the District shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for services satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. District shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

District shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with District employees and reviewing records and the information in possession of the District. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of District. In no event shall District be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

**Section 4. INSURANCE REQUIREMENTS.** Before fully executing this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the services hereunder by the Consultant and its agents, representatives, employees, and subconsultants. Consistent with the following provisions, Consultant shall provide proof satisfactory to District of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning services. Consultant shall maintain the insurance policies required by this section throughout the term of

this Agreement. The cost of such insurance shall be included in the Consultant's bid or proposal. Consultant shall not allow any subconsultant to commence services on any subcontract until Consultant has obtained all insurance required herein for the subconsultant(s) and provided evidence to District that such insurance is in effect. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

#### **4.1 Workers' Compensation.**

**4.1.1 General Requirements.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Consultant may rely on a self-insurance program to meet these requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all services performed by the Consultant, its employees, agents, and subconsultants.

**4.1.2 Submittal Requirements.** To comply with Subsection 4.1, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section; and
- b. Waiver of Subrogation Endorsement as required by the section.

#### **4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 General Requirements.** Consultant, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than \$1,000,000 and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting

therefrom, and damage to property resulting from activities contemplated under this Agreement, including without limitation, blanket contractual liability for non-professional services claims and the use of owned and non-owned automobiles.

**4.2.2 Minimum Scope of Coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an “occurrence” basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). If the Consultant has no owned autos, hired (Code 8) and non-owned autos (Code 9) shall apply. No endorsement shall be attached limiting the coverage.

**4.2.3 Additional Requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. District, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant.
- c. Consultant hereby agrees to waive subrogation which any insurer or consultant may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, the Consultant’s insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Consultant’s insurance and shall not contribute with it.

**4.2.4 Submittal Requirements.** To comply with Subsection 4.2, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section;
- b. Additional Insured Endorsement as required by the section;
- c. Waiver of Subrogation Endorsement as required by the section; and
- d. Primary Insurance Endorsement as required by the section.

### 4.3 **Professional Liability Insurance.**

4.3.1 **General Requirements.** Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing services pursuant to this Agreement in an amount not less than \$2,000,000 covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 **Claims-Made Limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least 3 years after completion of the Agreement or the services, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of 3 years after completion of services under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the District for review prior to the commencement of any services under this Agreement.

4.3.3 **Submittal Requirements.** To comply with Subsection 4.3, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.

### 4.4 **All Policies Requirements.**

4.4.1 **Acceptability of Insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 **Verification of Coverage.** Prior to beginning any services under this Agreement, Consultant shall furnish District with complete copies of all Certificates of Liability Insurance delivered to Consultant by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the District does not receive the required insurance documents prior to the Consultant beginning

services, it shall not waive the Consultant's obligation to provide them. The District reserves the right to require complete copies of all required insurance policies at any time.

**4.4.3 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written approval of District for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

**4.4.4 Wasting Policies.** No policy required by this Section 4, except for the Professional Liability Insurance policy, shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

**4.4.5 Endorsement Requirements.** Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the District.

**4.4.6 Subconsultants.** Consultant shall include all subconsultants as insureds under its policies or shall furnish separate certificates and certified endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.

**4.5 Remedies.** In addition to any other remedies District may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, District may, at its sole option exercise any of the following remedies, which are alternatives to other remedies District may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Refer to the attached Exhibit C, which is incorporated herein and made a part of this Agreement.

**Section 6. STATUS OF CONSULTANT.**

**6.1 Independent Consultant.** At all times during the term of this Agreement, Consultant shall be an independent consultant and shall not be an employee of District. This Agreement shall not be construed as an agreement for employment. District shall have the right to



control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise District shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Consultant further acknowledges that Consultant performs Services outside the usual course of the District's business; and is customarily engaged in an independently established trade, occupation, or business of the same nature as the Consultant performs for the District and has the option to perform such work for other entities. Notwithstanding any other District, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subconsultants providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by District, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of District and entitlement to any contribution to be paid by District for employer contributions and/or employee contributions for PERS benefits.

- 6.2 Consultant Not an Agent.** Except as District may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of District in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind District to any obligation whatsoever.

## **Section 7. LEGAL REQUIREMENTS.**

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subconsultants shall, comply with all laws and regulations applicable to the performance of the services hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the services hereundershall constitute a breach of contract.
- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subconsultants shall comply with all applicable rules and regulations to which District is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** Consultant represents and warrants to District that Consultant and its employees, agents, and any subconsultants have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to District that Consultant and its employees, agents, any subconsultants shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the

foregoing, Consultant and any subconsultants shall obtain and maintain during the term of this Agreement valid Business Licenses from District.

- 7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, sex, gender, religion (including religious dress and grooming practices), national origin, ancestry, physical or mental disability, medical condition (including cancer and genetic characteristics), marital status, age, sexual orientation, color, creed, pregnancy, genetic information, gender identity or expression, political affiliation or belief, military/veteran status, or any other classification protected by applicable local, state, or federal laws (each a "Protected Characteristic"), against any employee, applicant for employment, subconsultant, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

## **Section 8. TERMINATION AND MODIFICATION.**

- 8.1 Termination.** District may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 30 days' written notice to District and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; District, however, may condition payment of such compensation upon Consultant delivering to District any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the District in connection with this Agreement.

- 8.2 Extension.** District may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if District grants such an extension, District shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, District shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.4 Assignment and Subcontracting.** District and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a

determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to District for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subconsultants noted in the proposal, without prior written approval of the Contract Administrator.

- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between District and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, District's remedies shall include, but are not limited to, the following:
- 8.6.1** Immediately terminate the Agreement;
  - 8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
  - 8.6.3** Retain a different consultant to complete the services described in Exhibit A not finished by Consultant; or
  - 8.6.4** Charge Consultant the difference between the cost to complete the services described in Exhibit A that is unfinished at the time of breach and the amount that District would have paid Consultant pursuant to Section 2 if Consultant had completed the services.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 Records Created as Part of Consultant's Performance.** Drawings, specifications and other documents, including those in electronic form, prepared by the Consultant and the Consultant's subconsultants are Instruments of Service for use solely with respect to this Project. The Consultant and the Consultant's subconsultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights. Upon execution of this Agreement, the Consultant grants to the District a nonexclusive license to reproduce the Consultant'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 Consultant shall obtain similar nonexclusive licenses from the Consultant's subconsultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the District shall refrain from making further reproductions of Instruments of Service. If and upon the date the Consultant 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 purposes of completing, using and maintaining the Project.

- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the District under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Subsection 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the District. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of District or as part of any audit of the District, for a period of 3 years after final payment under the Agreement.

## **Section 10. MISCELLANEOUS PROVISIONS.**

- 10.1 Attorneys' Fees.** Intentionally left blank.
- 10.2 Mediation; Venue.** In the event of any dispute between the Parties related to this Agreement or this Project, the Parties agree to first negotiate in good faith toward a resolution with participation by representatives of each Party holding sufficient authority to resolve the dispute. If such dispute cannot be resolved in this manner, before any action or litigation is initiated other than as required to secure lien rights, the dispute shall be submitted to mediation using a mediator as mutually selected by the Parties. Such mediation shall be completed within a reasonable period of time following either Party's written demand with each Party to bear an equal share of the mediation fees and its own respective attorney and consultant fees and costs. In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties; provided, however no person or entity other than the District is an third party beneficiary this Agreement.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of District or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any District official in the services performed pursuant to this Agreement. No officer or employee of District shall have any financial interest in this Agreement that would violate California Government Code Section 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the District. If Consultant was an employee, agent, appointee, or official of the District in the previous 12 months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of California Government Code Section 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the District for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code Section 1090 *et seq.*, and, if applicable, will be disqualified from holding public office in the State of California.

At District’s sole discretion, Consultant may be required to file with the District a Form 700 to identify and document Consultant’s economic interests, as defined and regulated by the California Fair Political Practices Commission. If Consultant is required to file a Form 700, Consultant is hereby advised to contact the Dublin District Clerk for the Form 700 and directions on how to prepare it.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

**10.9 Contract Administration.** This Agreement shall be administered by the District General Manager ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

**10.10 Notices.** Any written notice to Consultant shall be sent to:

MARJANG Architecture  
930 Cole St, #101  
San Francisco, CA 94117

Any written notice to District shall be sent to:

Kensington Fire Protection District  
Att: General Manager Bill Hansell  
217 Arlington Ave  
Kensington, CA 94707

**10.11 Integration.** This Agreement, including the scope of services attached hereto and incorporated herein as Exhibits A, B, and C represents the entire and integrated agreement between District and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Compensation Schedule & Reimbursable Expenses
<u>Exhibit C</u>	Indemnification

**10.12 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**10.13 Certification per Iran Contracting Act of 2010.** In the event that this contract is for one million dollars (\$1,000,000.00) or more, by Consultant's signature below Consultant certifies that Consultant, and any parent entities, subsidiaries, successors or subunits of Consultant are not identified on a list created pursuant to subdivision (b) of Section 2203 of the California Public Contract Code as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5 of the California Public Contract Code, as applicable.


## SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

KENSINGTON FIRE PROTECTION DISTRICT

MAR JANG DESIGN, a California Corporation,  
a/k/a MARJANG ARCHITECTURE

  
\_\_\_\_\_  
Bill Hansell, General Manager

  
\_\_\_\_\_  
Karen Mar, Architect

Attest:

## SCOPE OF SERVICES

See the attached:

*Kensington Fire Protection District  
RFP 2021-03:  
Response to Request for Proposal  
Architecture Services  
June 2, 2021*



# MARJANG

## EXHIBIT A - SCOPE OF SERVICES

### PROJECT DESCRIPTION & PROGRAM

The 'project' is to provide design services and construction administration work for the renovation of the Kensington Public Safety Building. The building is a two-story wood framed structure located at 217 Arlington Road, Kensington, CA. It is known that the structure lies on a site with geological hazards, specifically, proximity to an on-site fault line and issues with slope stability. It has been determined by the District that the building can only be renovated at this location as the Alquist Priolo Act does not allow for a new building to be constructed on this site. The Police Department will be relocated and only the Fire Department will be housed at this location after the renovation. The design goals would include:

#### GROUND FLOOR

##### Apparatus Bay Areas

- Renovate the existing (3) apparatus bays to include (2) apparatus bays, turnout room, decontamination room, workshop, first aid area and storage.

##### Offices & Conference

- Offices for the District Manager, Assistant and a multi-purpose room for where the general public can meet during District Board Meetings

##### Circulation & Access

- Stair, circulation corridors and an elevator shall be planned for the renovation.

#### SECOND FLOOR

##### House Areas

- Provide (3-4) "hotel" style dormitory rooms with private bathrooms. Bathrooms to include water closet, lavatory and shower only.
- Kitchen with 36" range with ventilation hood, double-sink, dishwasher and (3) refrigerators and (3) pantry storage units.
- Dining Area to seat (8) persons and Day Room to accommodate (4) persons.
- Exercise Room
- Laundry Room
- Utility Rooms - Mechanical, Electrical and IT are to remain at existing locations
- Single Occupancy Restroom with water closet and sink

##### Offices & Study

- Watch Room/Study and Captain's Office to be located the second floor. The enclosure of an existing exterior patio is being included as an addition to the project at this time to house these functions.

##### Circulation & Access

- Provide a new stair, circulation corridors and an elevator.
-

# MARJANG

## ARCHITECTURAL SERVICES & PROCESS OVERVIEW

Architectural and engineering services, and standard owner/ architect contracts as defined by the AIA (American Institute of Architects) are organized around the following five phases: Schematic Design (SD); Design Development (DD); Construction Documents (CD's); Bidding and Negotiation; and Construction (sometimes referred to as Construction Observation or 'CO'). Our services will be identified by phase, as described below.

### CONCEPT VALIDATION & SCHEMATIC DESIGN

Based on the Owner's approval of the preliminary project program and concepts developed early in this stage, the Architect shall prepare Schematic Design Documents for the Owner's approval and cost estimation. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

### DESIGN DEVELOPMENT

Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the preliminary budget for the Cost of the Work prepared by the cost estimator, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and may consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

### CONSTRUCTION DOCUMENTS

Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and may consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Construction Documents will be used to apply for applicable permits from the Agency Having Jurisdiction.

### APPROVALS AND PLAN CHECK

A permit is assumed to address the work within a single permit package for the residence. Additional work required by the permitting agency after permit submittal, if any, will be billed at an hourly rate under a separate work authorization for additional services. This will be presented to the client for review and approval prior to commencing that additional work.



# MARJANG

## BIDDING

The Architect will assist the owner in reviewing responding to request for information during the bid period and preparation of Addendum and review of construction bids, including subcontractor bids, project schedule, procurement information. The architect will be available to attend any site walks required by contractor candidates.

## CONSTRUCTION

During Construction, the standard of professional care is for the Architect to make periodic site visits to review progress, and to verify that the work is being executed in accordance with the Architect's plans and specifications. During construction, the Architect responds to contractor issued RFI's (Requests for Information), reviews shop drawings and submittals, and assists the owner with a punch list at Substantial Completion.

## ARCHITECT'S COORDINATION

The Architect shall mutually coordinate its services with those services provided by the Owner and the Owner's consultants, who shall mutually coordinate their services with those provided by the Architect. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.



**EXHIBIT B**

**COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES**

# MARJANG

## EXHIBIT B - COMPENSATION SCHEDULE

The compensation schedule shown here is an excerpt from the response document provided by Mar Jang dated 6/20/21 for the Kensington Fire Protection District Request for Proposal (RFP) 2021-03. Structural Engineering Fees for ZFA Structural Engineers have been omitted as the contract for that discipline is directly with that firm.

PHASE DESCRIPTION	MARJANG	BKF	ZFA	LIST	HALEY & ALDRICH	SFMI	MICROEST	PHASE SUBTOTAL	
	ARCH	CIVIL	STRUCTURAL	MEP	GEOTECH	SPEC SYSTEMS	COST	SPECS	
Concept Validation & Schematic Design	\$28,640.00	\$6,000.00	\$0.00	\$9,600.00	\$10,000.00	\$1,800.00	\$3,480.00	\$0.00	\$59,520.00
Design Development	\$35,800.00	\$8,200.00	\$0.00	\$33,000.00	\$0.00	\$7,340.00	\$8,700.00	\$10,000.00	\$103,040.00
Construction Documents	\$35,800.00	\$16,500.00	\$0.00	\$33,000.00	\$0.00	\$12,430.00	\$7,540.00	\$10,000.00	\$115,270.00
Bid, Permit & Conform Set	\$4,520.00	\$3,400.00	\$0.00	\$2,000.00	\$0.00	\$630.00	\$0.00	\$0.00	\$10,550.00
Construction	\$76,440.00	\$7,000.00	\$0.00	\$18,400.00	\$0.00	\$4,230.00	\$0.00	\$0.00	\$106,070.00
<b>PROJECT TOTALS</b>	<b>\$181,200.00</b>	<b>\$41,100.00</b>	<b>\$0.00</b>	<b>\$96,000.00</b>	<b>\$10,000.00</b>	<b>\$26,430.00</b>	<b>\$19,720.00</b>	<b>\$20,000.00</b>	<b>\$394,450.00</b>
								Reimbursables	\$14,000.00
								5% Consultant Mark-Up	\$9,662.50
<b>TOTAL PROJECT FEES</b>									<b>\$418,112.50</b>

The Notice to Proceed was issued on August 12, 2021 and phases associated with the compensation schedule are as follows:

Concept Validation & Schematic Design (8 weeks):	8/12/21 to 10/15/21
Design Development (10 weeks):	10/18/21 to 10/31/21
Construction Documents (10 weeks):	1/3/22 to 3/18/22
Permit/Bid/Conform Set (4 weeks):	3/25/22 thru 4/22/22
Construction (52 weeks):	6/1/2022 estimated start date



## EXHIBIT C

### INDEMNIFICATION

- A. With respect to those claims arising from operations other than professional error or omission, Consultant shall, to the extent permitted by law, indemnify, hold harmless, and assume the defense of, in any actions at law or in equity, the District, its employees, agents, volunteers, and elective and appointive boards, from all claims, losses, and damages, including property damage, personal injury, death, and liability of every kind, nature and description, arising out of, pertaining to or related to the negligence, recklessness or willful misconduct of Consultant or any person directly or indirectly employed by, or acting as agent for, Consultant, during and after completion of Consultant's work under this Agreement.
- B. With respect to those claims arising from a professional error or omission, Consultant shall defend, indemnify and hold harmless the District (including its elected officials, officers, employees, and volunteers) from all claims, losses, and damages arising from the professionally negligent acts, errors or omissions of Consultant, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault. Consultant has no obligation to pay for any of the indemnitees defense related costs prior to a final determination of liability.
- C. Consultant's obligation under this section does not extend to that portion of a claim caused in whole or in part by the sole negligence or willful misconduct of the District.
- D. Consultant shall also indemnify, defend and hold harmless the District from all suits or claims for infringement of any patent rights, copyrights, trade secrets, trade names, trademarks, service marks, or any other proprietary rights of any person or persons because of the District or any of its officers, employees, volunteers, or agents use of articles, products things, or services supplied in the performance of Consultant's services under this Agreement, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault.