



South Orange County Community College District

RFQ&P No. 5793-2022:  
Material Testing and Inspection Services for Saddleback College @ ATEP Project

Addendum No. One (1)  
October 7, 2022

**Nick Newkirk**  
Purchasing and Contracts Manager

**Note:**

All documents remain unchanged except section or parts added to, revised, deleted and/or clarified by this Addendum.

1. The Revised Appendix D Sample Agreement is attached to this Addendum. See the responses to Q3 below for the changes to the Sample Agreement.
2. The responses to the Request for Information submitted by the deadline of 5:00 PM on September 30, 2022 as well as the responses to the questions asked during the pre-proposal meeting on October 6, 2022 are shown below:

Q1: Is this RFP open to all materials testing & special inspection firms, or just those on the on-call/pre-approved list?

A1: This RFQ&P is only open to firms in the District pre-qualified pool.

Q2: According to our insurance broker, there are no carriers in California which offer Professional Liability Insurance that are “admitted carriers”. Please advise which carriers that the District is aware of that offer this.

A2: If the firm cannot provide insurance from an admitted carrier, firm shall ensure that the insurance provided shall have an A.M. Best financial rating of A:VII or better.

Q3: According to our insurance broker, most insurance carriers no longer offer Material Change Notice. Has the risk manager reviewed the feasibility of this requirement – ie. Have other vendors been successful at attaining this? Please advise.

A3: Material Change Notice will not be required. The District will issue a revised Sample Agreement via an Addendum.

Q4: Can the geotechnical report be made available for the Saddleback College @ ATEP Project? A4: Yes. See link provided below:

<https://protect-us.mimecast.com/s/NSXgCR6KDZUyOMJqU9nLIE?domain=drive.google.com>

Q5: Is the project subject to requirements of a PLA?

A5: No.

Q6: Has a Project Inspector been selected yet?

A6: No. The agreements for the general contractor, project inspector, and material testing & inspection are scheduled to be reviewed for approval at the December 12, 2022.

Q7: Can you explain the point system for pricing? Example...lowest price gets 50 points?

A7: The point system for pricing is at the discretion of the evaluation committee.

Q8: Is there an excel version of Proposal Form D- Fee and Rate Proposal available?

A8: An Excel version of Proposal Form D - Fee and Rate Proposal has been provided via this Addendum.

**REVISED APPENDIX D**

**Sample Agreement**

**(Revised Per Addendum No. 1 Issued on 10/07/22)**

**Material Testing and Inspection Services for Saddleback College @ ATEP Project**

The Respondent shall thoroughly review the below Agreement. As part of the proposal submission, indicate in a separate Tab of the RFQ&P Response the Respondent's acceptance of all terms and conditions set forth in the Agreement. If there is any term or condition of the Agreement, which a Respondent requests to be modified, the Respondent must: (i) specifically identify such term or condition; and (ii) set forth the specific text of the modification requested for each such term or condition. Notwithstanding any requested modification to any term or condition of the Agreement, no such modifications are binding on the District or enforceable against the District unless the District affirmatively and specifically accepts any such requested modification. Any Respondent whose RFQ&P Response does not identify requested modifications to terms or conditions of the Agreement will be deemed to have agreed to all terms and conditions set forth therein; if awarded the Agreement, such Respondent must execute the Agreement in the form and content attached hereto subject only to elements of such Respondent's RFQ&P Response accepted by the District.

Proposer agrees to the Agreement's terms and conditions with no exceptions.

YES                       NO

If no, pursuant to the above instructions, submit all exceptions in a separate tab.



**SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT  
GEOTECHNICAL TESTING & SPECIAL INSPECTION  
CONSULTANT SERVICES AGREEMENT**

This Geotechnical Testing & Special Inspection Consultant Agreement (“Agreement”) is between South Orange County Community College District (“District”), a California community college district and political subdivision of the State of California, and **[[ Name (Primary Second Party) ]]** (“Consultant”). District and Consultant are also referred to collectively as the “Parties” and individually as “Party.”

WHEREAS, District is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if such persons are specially trained and experienced and competent to perform the special services required; and

WHEREAS, District desires to obtain Geotechnical and/or Testing & Special Inspection Consultant Services for the **Saddleback College @ ATEP Project**, hereinafter referred to as "Project"; and

WHEREAS, Consultant is fully licensed to provide commissioning Services in conformity with the laws of the State of California; and

NOW, THEREFORE, the Parties hereto agree as follows:

**1. SCOPE OF CONSULTANT’S SERVICES.**

- A. **Services.** The Consultant’s services shall consist of those services performed by the Consultant and Consultant’s employees as enumerated in this Agreement, along with all aspects of services as identified in RFQ&P 5793-2022, referenced herein and made a part hereof as Attachment A and Consultant’s Proposal, referenced herein and made a part hereof as Attachment B. The Agreement, Attachment A and Attachment B shall collectively be defined as the “Services.” The Parties understand and agree that the Agreement shall be the prevailing and governing documents and that Attachments A and B are intended to cooperate and be complementary.
- a. **Task 1: Preparation for Entering Construction Phase.**
- i. Review of Design Documents. The Consultant, including the Consultant’s Project Manager for Project construction, shall review project plans, specifications and other documents to attain a complete understanding of the design and scope of the Project.
  - ii. Master Construction Schedule. The Consultant shall work with District and Architect to develop an understanding for the construction schedule requirements related to the associated work necessary for Project construction.
- b. **Task 2: Construction Phase.** Consultant’s assigned personnel shall perform in accordance with all testing code compliance requirements and protocols during activities for the Project. Project components include:
- i. Services will be in accordance with DSA form 103.
  - ii. Geotechnical site observation, soil placement observation, and soil testing for compliance with Geotechnical investigation Report and DSA approved documents
  - iii. Written daily reporting of on-site activities and any other project related reporting to project Inspector
  - iv. Project material testing and inspections on site and off site venues
  - v. Offsite structural steel fabrication inspection.
  - vi. Offsite structural glued laminated timber inspection.
  - vii. Site observation during construction
  - viii. Attend pre-installation meeting when special inspection is required.
  - ix. Review Project requirements, approved submittal and required licenses
  - x. Concrete, rebar, retaining walls, masonry, reinforcing, welding, steel, high strength bolt, pull test, and all special inspections required by the Project including as required:
    - (a) Testing of reinforcing steel (#5 and larger)

- (b) Batch plant inspection of concrete
  - (c) Take samples of cement and collection of concrete supplier certifications
  - (d) Concrete field testing including slump, temperature, and cylinder collection for subsequent testing
  - (e) Continuous inspection for masonry
  - (f) Compression testing for concrete cylinders, mortar and grout prisms
  - (g) Testing of masonry unit
  - (h) Testing and inspection of anchors, bolts, and dowels
  - (i) Drilling and testing of masonry cores
  - (j) Preparation of final affidavits
  - (k) Review of steel placement
  - (l) Visual field welding inspection
  - (m) Asphalt Testing
- xi. Site Inspection of construction materials and fabrications
  - xii. Laboratory and field testing of project materials
  - xiii. Post-report consultation, as required
  - xiv. Daily Operations.
    - (a) Only the District and its authorized representative will have the authority to request services.
    - (b) Unless otherwise agreed in advance and authorized by the District, all requests for services must be in writing and must be communicated to the Consultant's office a minimum of 24 hours in advance.
    - (c) A two-hour minimum charge will be applied to each request for in-house services and four hours for material testing (i.e. concrete, steel, masonry and welding) services with no travel time included. Where possible, a single trip will be used to address multiple testing issues.
    - (d) Technicians will check in with the District's DSA inspector of record at the job site before start of daily work and prior to leaving the site. The technician will submit a field report that will indicate the services performed the amount of time spent, and the number of tests taken.
    - (e) The rates shown on the attached fee schedule shall include the cost of all related equipment.
    - (f) Test samples taken, but not required, may be disposed of by Consultant.
    - (g) An assessment of the billing against the contract amount will be maintained by the Consultant and submitted to the District for monthly review with the invoice submittal. If it appears that any testing/inspection line items will be exceeding the planned budget, the Consultant will notify the District at 80% billing to review the reasons for the overage and whether any corrective action is appropriate for budget adjustments.
  - xv. Site Observations.
    - (a) Consultant On-Site. At all times during which there are associated work construction activities, Consultant shall have personnel at the Site to observe Site construction activities including analysis of all samples as required by this Project.
    - (b) Rejection of Work. Whenever in the ordinary course of discharging its services hereunder, Consultant shall discover or observe patent conditions of defective or deficient construction or workmanship which has or may have an adverse impact upon the safety of persons or property, Consultant shall take prompt action appropriate under the circumstances, including stopping the work and thereupon notifying the District in writing. In other circumstances, where defective or deficient work is observed by Consultant, the District shall be notified in writing by the Consultant of such conditions.
  - c. Task 3: Post-Construction Phase. Review and Transmittal of Contractor Close-Out Documents. The Consultant shall begin to consider associated work close out requirements upon execution of the contract. The Consultant shall receive from the Contractor the close-out documents and items to be submitted by the Contractor under the terms of its Contract upon completion of its obligations. The Consultant shall review the Contractor's close-out documents and items to determine conformity with requirements of the Contract. If the Consultant

determines that the Contractor's close-out documents and items are not in conformity with requirements, the Consultant shall make written recommendations to the District for measures to secure compliance with the requirements of the Contract. The Consultant shall deliver to the District all the Contractor's close-out documents and items.

d. **Task 4 –Project Specific Deliverables:**

All DSA required reports.

- B. **Coordination of Others.** The Consultant shall coordinate efforts with the college, the college's designees, construction performed by separate contractors or by the District's own employees.

**Compliance with Applicable Laws, Policies, Procedures, Rules & Regulations.** Consultant shall comply with District's policies, procedures, rules, regulations and/or guidelines that include but are not limited to a smoke, alcohol, and controlled substances free campus, conflict of interest, workplace violence, code of conduct, harassment and discrimination prevention and drug-free environment.

Consultant agrees to comply with all federal, state and local laws, rules, regulations, and ordinances that are now and may in the future become applicable to Consultant, Consultant's business, equipment and personnel engaged in Work covered by this Agreement or accruing out of the performance of such Work. Additionally, Consultant shall strictly comply with all health and safety guidelines consistent with Cal/OSHA and CDC.

**COVID-19 Related Responsibilities.** Consultant shall respond to all potential COVID-19 exposure events immediately. If a possible COVID-19 infection or potential exposure event occurs involving Consultant and any of its employees performing Work on District property pursuant to the terms of this Agreement, Consultant shall immediately notify the District. While the confidentiality of all medical conditions must be maintained in accordance with applicable law, the District reserves the right to inform any District staff, employees, students, and/or visitors that an unnamed individual has been diagnosed with COVID-19 if any of the District's staff, employees, students, or visitors might have been exposed to the disease so such individual(s) may take measures to protect their own health.

Consultant and its subconsultants shall ensure that its employees will at all times comply with the District's current [COVID-19 Contractor Protocols](#).

**Compliance with Economic Sanctions Imposed in Response to Russia's Invasion of Ukraine.** Consultant shall comply with the economic sanctions imposed in response to Russia's actions in Ukraine, including with respect to, but not limited to, the federal Executive Order 14065 and the sanctions identified on the U.S. Department of the Treasury website. Consultant shall comply with any sanctions imposed under state law, including with respect to, but not limited to, Executive Order N-6-22 from the State of California's Executive Department:

<https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf>

- C. **Materials and Expenses.** Consultant shall furnish, at their own expense, all labor, materials, equipment, supplies and other items necessary to complete the Services to be provided pursuant to this Agreement. The District shall not be liable to Consultant for any costs or expenses paid or incurred by the Consultant in performing Services for the District. The Consultant's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of their profession.

- D. **Work Plan.** Work with the District to finalize Project requirements:

- a. Develop a list of all plans, specifications and other documents necessary to perform Services.
- b. Ensure that scope of Services conforms to the Project plans and specifications.
- c. The Consultant shall investigate existing site conditions and shall immediately notify the District of any conditions that are different and or is a deviation from what was identified by the District.

- E. **Division of State Architects (DSA) and Department of Industrial Relations (DIR) Compliance.** The Consultant shall comply with the following:

- a. DSA and the Uniform/International Building Code (UBC/IBC). Consultant shall have experience with DSA and shall be required to coordinate with the District and its consultants.
- b. DIR requirements. Firms must pay prevailing wages to those labor classifications requiring the payment of prevailing wages. Questions concerning predetermined wage rates should be directed to <https://www.dir.ca.gov/oprl/dprevwagedetermination.htm> or to the following:

Department of Industrial Relations

## 2. ADDITIONAL CONSULTANT SERVICES.

- A. District Authorized Additional Services.** Requests for additional services shall be made by the District in writing. This Agreement is not a pre-authorization for additional services. Consultant shall be compensated for additional services in accordance with the provisions of the Agreement and the amounts indicated Attachment B. If the duration of Consultant Services is extended, due to the District's need for Additional Services, the Consultant shall be entitled to additional compensation as set forth in Attachment B. Consultants shall perform additional services only upon the approval and execution of an amendment to this Agreement by both parties. The Consultant shall request payment for additional services in a separate line item on the same invoice submitted for services in a format pre-approved by the District.
- B. Consultant's Request for Additional Services.** Consultant shall notify the District in writing of the need for additional services required due to circumstances beyond the Consultant's control. Consultant shall obtain written authorization from the District before rendering such services. Compensation for such services shall be compensated based on the amounts indicated in Attachment B. Such services shall include:
- a. Material Project Scope Changes. Services that are required or necessary as a result of significant changes in the Project scope or other requirements of the Project, including Project size, quality, or complexity or material changes to the Master Construction Schedule.
  - b. Damage or Destruction to Project. Except to the extent caused by the Consultant, Services and consultation associated or necessitated by damage or destruction to the Project prior to completion by an act of God, fire or other casualty.
  - c. After Final Certificate of Payment. Providing Services after issuance to the District of the final certificate for payment except as provided herein.
  - d. Other Services. Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted Consultant's practice.
  - e. Consultants shall perform additional services only upon the approval and execution of an amendment to this Agreement by both parties.

## 3. TERMS OF SERVICE.

- A. Time is of the Essence.** Time is of the essence in the performance of each Party's obligations under this Agreement, including without limitation Engineer's performance of the Services required hereunder and District's payment of all sums due to Engineer.
- B. Term.** This Agreement shall commence on **January 3, 2023**. The Parties understand that the Services under this Agreement shall be diligently performed by the Engineer for the anticipated construction timeframe of **660 calendar days**. The Engineer's Agreement terminates at the issuance of the final Certificate for Payment to the District or 60 days after the date of substantial completion of construction.
- C. Extension.** This term shall be extended at no cost to the District as result of delays caused directly by Consultant's actions. The term may be extended due to construction delay other than those delays caused by Consultant's actions.
- D. Billing Rate.** Should services be necessary after the expiration of contract duration, they can be provided in accordance with the Billing Rates as provided in Attachment B.

**4. COMPENSATION TO THE CONSULTANT.** The District shall compensate the Consultant as follows:

**A. Contract Price for Services.** The Contract Price for the Consultant's performance of the Services under this Agreement shall be firm and fixed consisting of the following not to exceed lump sum prices:

Task 1: Preparation for Entering Construction Phase	\$	[[ Construction Prep Amount ]]
Task 2: Construction Phase	\$	[[ Construction Amount ]]
Task 3: Post-Construction Phase	\$	[[ Post-Construction Amount ]]
Task 4: Project Specific Deliverables	\$	[[ Project Specific Deliverables Amount ]]
District Controlled Allowance	\$	50,000.00

District agrees to pay Consultant, as full consideration and compensation for Consultant's performance of the Work under this Agreement, a total amount not to exceed **[[ Contract Total Amount (Spelled Out) ]]** Dollars (**[[ Contract Total Amount ]]**) ("Contract Amount"). Additional details: Attachment B.

**B. Price Inclusions.** The Agreement Price is inclusive of personnel expenses (inclusive of all benefits and burdens), fees, labor, material, all direct and indirect cost, personnel expenses of any sub-consultant or subcontractor to the Consultant, travel for personnel to and from the Site, travel within the Counties of Los Angeles, Orange, Riverside, San Diego, San Bernardino, and Ventura, insurance and all other overhead/administrative expenses or costs and profit associated with performance of the Services, except for Allowable Reimbursable Expenses as described in the provision below. At no time shall meals be considered a reimbursable expense.

District Controlled Allowance. The District Controlled Allowance (Allowance) for this project is not to exceed amount of Fifty Thousand and 00/100 Dollars (\$50,000.00). The intended for use at the sole discretion of the District. The Allowance has been established to allow for unanticipated project related requirements as identified by the District. Allowance shall not be used in lieu of an Amendment/Change Order for changes for the scope of work. The Allowance shall not be used by the Consultant without specific prior written direction and approval from the District's Project Manager. The Allowance will be identified separately and will be included in the total proposal amount. The Allowance may be removed from the Agreement at any time at the discretion of the District's Project Manager via an Amendment. Any unused portions of the Allowance remaining at the end of the project will be deducted from the final cost and credited to the District thereby reducing the total Agreement value by that amount.

**C. Payment in Full.** This compensation shall be compensation in full for all Services performed by the Consultant under the terms of this Agreement, except where additional compensation is agreed upon between the Consultant and District in writing as provided for as additional services.

**D. Reimbursable Expenses.** Any expenses incurred by the Engineer and Engineer's employees in the interest of the Project shall require District's written approval before being incurred. The District shall not be liable to Engineer for any costs or expenses paid or incurred by Engineer and Engineer's employees in performing Services for District, except reimbursable expenses that has been pre-approved in writing. Records of such expenses shall be provided to the District's review and approval. Reimbursable Expenses:

- a. Are in addition to compensation for Basic and Additional Services and include expenses incurred by the Engineer and Engineer's employees and Engineers in the interest of the Project.
- b. Shall only be authorized, pre-approved and most economical transportation, air fare for out-of-town travel related to the Project; and fees paid for securing approval of authorities having jurisdiction over the Project. Engineer's normal travel expense (including to and from the Project) and meals are excluded.
- c. Expenses related to reproduction, (except those needed for the use of the Engineer and their Engineers or identified specifically as a deliverable), postage and handling of Drawings, Specifications and other documents.
- d. Expense of renderings, models and mock-ups requested by the District if not part of Engineer's Basic Services will be reimbursed.
- e. There shall be no markups on reimbursable expenses.



- E. Criteria and Billing for Extra Work.** The following extra services to this Agreement shall be performed by Consultant if needed and requested by the District:
- a. Providing Services that are outside Orange, Los Angeles, San Diego or Riverside County.
  - b. Provide Services that are beyond allowable daily hours.
  - c. Providing Services required in connection with replacement of such work because of damage caused by fire or other causes during construction.
  - d. Providing Services made necessary because of construction contractor default.
  - e. Fees for extra work shall not be paid in the event that the Consultant is required to adjust performance as a result of the Division of the State Architect's definition of required knowledge.
  - f. The fee per hour for extra work identified below shall be inclusive of all overhead, administrative, direct and indirect costs and profits. The hourly rates reflected in Attachment B shall be effective as of the date of execution of this Agreement and shall remain firm through the entirety of the term.
- F. Consultant Monthly Billing Statements.** Consultant shall submit monthly billing invoices to the District for payment of the Contract Price for Services, authorized Additional Services, and previously approved and allowable Reimbursable Expenses performed or incurred in the immediately prior month in a format previously approved by the District. Previously approved and allowable Reimbursable Expenses shall be itemized and evidence shall be provided of the cost or value of any Allowable Reimbursable Expense costs for which payment is requested by Consultant. Services are to be invoiced by phase in accordance with percent complete.
- a. Contractor to send invoices to [AccountsPayable@socccd.edu](mailto:AccountsPayable@socccd.edu) and to the District Project Manager at [[ Project Manager Email ]] or mail to South Orange County Community College District, 28000 Marguerite Parkway, Mission Viejo, CA 92692, Attn: Accounts Payable. Payment shall be net 30 days upon satisfactory completion and acceptance of Services. If payment term differs, it must be noted in the Compensation to the Consultant provision as stipulated herein. **To ensure prompt and accurate payment, all invoices related to this Agreement shall reference the following Agreement Number: DSFP-GEOTA-5793-2022.**
- G. Non-Waiver of Rights.** Neither the District's review, approval of, nor payment for, any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement. Consultant shall remain liable to the District in accordance with applicable law for all damages to the District caused by Consultant's failure to perform any of the Services furnished under this Agreement.
- H. District Payment of Contract Price.** Within 30 days of the date of the District's receipt of Consultant's billing invoices, District will make payment to Consultant of undisputed amounts of the Contract Price due for Basic Services, authorized Additional Services, and Allowable Reimbursable Expenses.
- I. Withholding Payment.** The District may, however, withhold or deduct from amounts otherwise due Consultant hereunder if Consultant shall fail to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after Consultant has fully cured its failure of performance, less costs, damages or losses sustained by the District as a result of such failure of performance of a material obligation hereunder.
- J. Late payments.** Invoices shall be on a form and in the format approved by the District. Payments are due and payable upon receipt of the Consultant's invoice. Amounts unpaid 30 days after the invoice date shall bear interest at the legal rate prevailing at the time, at the site of the Project.
- K. Schedule Delay.** To the extent that the time initially established for the completion of Consultant's Services is exceeded or extended through no fault of the Consultant, compensation for any Services rendered during the additional period of time shall be computed at standard hourly rates as established in Attachment B.

## **5. CONSULTANT'S SERVICES AND RESPONSIBILITIES.**

- A. Statement of Services.** The Consultant's Services shall consist of those Services performed by the Consultant and Consultant's employees as enumerated in this Agreement
- B. Standard of Care and Professional Conduct.** The Consultant shall perform all Services hereunder in a professional manner, using the degree of care and skill ordinarily exercised by, and consistent with, the current professional practices and standards of a professional practicing in California. The Consultant will furnish, at its expense, the Services that are set forth in this Agreement and represents that the Services are within the technical

and professional areas of expertise of the Consultant or any subconsultant the Consultant has engaged or will engage to perform the Service(s). If the District desires, the District shall request in writing, the Consultant to provide Services in addition to, or different from, the Services described herein. The Consultant shall advise the District in writing of any Services that, in the Consultant's opinion, lie outside of the technical and professional expertise of the Consultant. The Services completed herein must meet the approval of the District and shall be subject to the District's general right of inspection to secure the satisfactory completion thereof.

Consultant or Consultant's employees, subconsultants, or volunteers who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services described herein, a threat to the safety of persons or property, or any of Consultant's employees, subconsultants, or volunteers who fail or refuse to perform the Services in a manner acceptable to the District, shall be promptly removed by the Consultant and shall not be contracted to perform this or any future Services for the District.

- C. **Key Individual Assignment.** The Consultant has been selected to perform the Services described herein because of the skills and expertise of key individuals. Consultant assigned for this Project is referenced in the Communication provision as stipulated herein. The Consultant shall designate [[ Name of Principal ]] as Principal, [[ Name of Project Executive ]] as Project Executive, [[ Name of Principal Geotechnical Engineer ]] as Principal Geotechnical Engineer and a Project Management Team consisting of ENTER PROJECT MANAGER NAME HERE as Project Manager. So long as their performance continues to be acceptable to the District, these named individuals shall remain in charge of the Project. Additionally, the Consultant must furnish the name of all other key personnel in Consultant's firm that will be associated with the Project.
- D. **Replacement of Key Individual.** If the designated project manager or any other designated lead or key person fails to perform to the satisfaction of the District, then upon written notice, the Consultant will have 10 working days to remove that person from the Project and replace that person with one acceptable to the District after review of resume and/or interview.
- E. **Relationship of Consultant to Other Project Participants.** Consultant's Services hereunder shall be provided in conjunction with agreements between the District and: (a) the Architect; (b) the Inspector; (c) Test/Inspection Service Providers; and (d) others providing services in connection with bidding and/or construction of the Project. Consultant shall coordinate all Services with District consultants and/or other project participants as necessary to complete contract requirements.
- F. **Acceptance of Project Schedule.** The Consultant shall accept the District's Project schedule for the performance of the Consultant's Services. The schedule may be adjusted as the Project proceeds by mutual written agreement of the parties and shall include allowances for time required for the District's review and for approval by authorities having jurisdiction over the Project. The time limits established by this schedule shall not, be exceeded by the Consultant, except for reasonable cause, as established by the District.
6. **INDEPENDENT CONTRACTOR.** Consultant, in the performance of this Agreement, shall be and act as an independent Contractor and not an employee of the District. Consultant and its subconsultants, understand and agree that they shall not be considered officers, agents, employees, or volunteers of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Consultant assumes the full responsibility of their actions and/or liabilities including those of their employees or agents as they relate to the Work to be provided under this Agreement. Consultant shall assume full responsibility for withholding and payment of all federal, state, local and applicable income taxes; workers' compensation; contributions, including but not limited to, unemployment insurance and social security with respect to Consultant and Consultant's employees. Consultant should be aware that the IRS regulations require District to report total income exceeding six hundred dollars (\$600) under this and any additional Agreements in any given year. The District will not withhold taxes, unemployment insurance or social security for Consultant or Consultant's employees or subconsultants. Consultant agrees to defend, indemnify and hold the District, its Board of Trustees, officers, agents, employees, representatives, and volunteers harmless from and against any and all liability arising from any failure or alleged failure of Consultant to withhold or pay any applicable tax, unemployment insurance or social security when due or any failure or alleged failure to comply with any applicable regulation applicable to Consultant's employees or subconsultants.

## **7. HOLD HARMLESS & INDEMNIFICATION AND INSURANCE.**

- A. **Hold Harmless & Indemnification.** To the fullest extent permitted by law, the Consultant and its subconsultants shall defend (with counsel of District's choosing), indemnify, and hold harmless the District, its Board of Trustees, officers, agents, employees, representatives, and volunteers (collectively "Indemnified Parties") from any and all

claims, demands, causes of action, costs, expenses, liabilities, losses, in law or equity, property damage, personal injury, damages or injuries/illnesses (including COVID-19) of any kind, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, negligence, recklessness or willful misconduct of Consultant, its officials, officers, agents, employees, representatives, subconsultant, or volunteers, in connection with the performance of the Consultant or its subconsultant's Work of this Agreement or obligations hereunder, including without limitation the payment of all consequential damages, expert witness fees, attorney's fees, and other related costs and expenses. In the event any article sold and delivered hereunder is covered by any patent, copyright, or application thereof, Consultant and its subconsultants shall defend, indemnify, and hold harmless South Orange County Community College District, its Board of Trustees, officers, agents, employees, representatives, and volunteers from any and all losses, costs or expenses resulting from claims, suits or judgments rendered for violation of rights under such patents, copyright, or application. Consultant and its subconsultants shall reimburse the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers for all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity provided herein. This hold harmless and indemnification includes, but is not limited to, compensatory damages, regulatory fines, penalties, and extra-contractual liability. In no event shall the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers be liable for any loss of Consultant or its subconsultants' business, revenues or profits, or special, consequential, incidental, indirect or punitive damages of any nature, even if the District its Board of Trustees, officers, agents, employees, representatives, and/or volunteers have been advised in advance of the possibility of such damages.

- a. Consultant and its subconsultants' obligation to indemnify the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers shall not be restricted to insurance proceeds, if any, received by the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers.
- b. The Parties understand and agree that this shall be the sole indemnity, as defined by California Civil Code § 2772, governing this Agreement. Any other indemnity that may be attached to this Agreement as an Exhibit shall be void and unenforceable between the Parties.
- c. Neither termination of this Agreement nor completion of the acts to be performed under this Agreement shall release Consultant and/or its subconsultants from their obligations to indemnify as to any claims or causes of action asserted so long as the event(s) upon which such claim or cause of action is predicated shall have occurred prior to the effective date of termination or completion.

**B. Insurance.** The Consultant and its subconsultants shall maintain in full force and effect throughout the term of this Agreement the following policies of insurance with no less than the limits set forth herein. District may adjust, Consultant and its subconsultants' required minimum coverage limits set forth herein at the commencement of a renewal term by providing Consultant written notice.

- a. A.M. Best Financial Rating. Policies of insurance required herein shall be issued by insurers with an A.M. Best financial rating of A:VII or better.
- b. Admitted Carrier(s). Policies of insurance shall be afforded by insurers who are admitted - licensed to transact business in the State of California.
- c. Workers' Compensation and Employer's Liability. In accordance with the laws of the State of California, Consultant shall maintain Workers' Compensation insurance with statutory limits and Employer's Liability coverage with not less than One Million Dollars (\$1,000,000) for Each Accident, One Million Dollars (\$1,000,000) for Disease - Each Employee, and One Million Dollars (\$1,000,000) for Disease - Policy Limit.
- d. Commercial General Liability. Insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate, an Excess Liability/Umbrella Policy with a limit of Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate, and Two Million Dollars (\$2,000,000) per occurrence for Products and Completed Operations to cover losses including, but not limited to blanket contractual liability, broad form property damage, products & completed operations, personal injuries/illnesses, and wrongful death.
- e. Automobile Liability. Insurance with combined single limits of not less than One Million Dollars (\$1,000,000) per occurrence to cover losses involving Symbol 1, "Any Auto".
- f. Professional Liability aka Errors and Omissions. Consultant and its subconsultants shall each procure and maintain throughout the term of this Agreement, Professional Liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence or claim and Two Million Dollars (\$2,000,000) general aggregate to cover against liability claims/lawsuits related to the professional Services as stated herein. If coverage is written on a claims made and reported form, Consultant and its subconsultants shall purchase and maintain Extended

Reporting Period (aka tail coverage) coverage for a minimum of 10 years following the termination date of this Agreement.

- g. Additional Insured Endorsement. Consultant and its subconsultants shall each issue District an endorsement naming the District, its Board of Trustees, officers, agents, employees, representatives, invitees, and volunteers as Additional Insureds to Consultant and its subconsultants' Commercial General Liability and Automobile Liability insurance policies.
- h. Primary and non-contributory endorsement. Consultant and its subconsultants' Commercial General Liability and Automobile Liability insurance policies and limits shall be primary and any of the District's insurance coverage and limits shall be non-contributory.
- i. Waiver of Subrogation Endorsements. Consultant and its subconsultants shall each issue District an endorsement waiving all rights of subrogation against the District, its Board of Trustees, officers, agents, employees, representatives, invitees, and volunteers with respect to Consultant and subconsultant's commercial general liability, automobile liability, and workers' compensation insurance policies.
- j. No Cancellation or Material Modification. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy's provisions.
- k. Certificate(s) of Insurance and Endorsement(s). Certificate(s) and Endorsement(s) evidencing the required coverages and limits set forth herein shall be provided to the District upon Consultant's execution of this Agreement. No work shall commence by Consultant or its subconsultants until the required certificate(s) of insurance and endorsement(s) have been furnished to the District. Should Consultant or its subconsultant's insurance expire during the term of this Agreement, renewal certificate(s) of insurance and endorsement(s) shall be provided prior to the expiration of the policies or within 10 days of expiration. Failure of consultant or its subconsultants to furnish the required certificate(s) and endorsement(s) shall not be deemed a waiver of this provision by the Consultant, as stated herein. Any endorsements limiting coverage shall be stricken.

## **8. CONSULTANT'S WORK PRODUCT.**

- A. Matters Produced Under this Agreement**. Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all rights, titles and interests in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance, and distribution of the matters, for any purpose and in any medium.
- B. Electronic Copy of Documents**. Consultant shall perform the Services under this Agreement and shall deliver electronic copy of all reports and documentation via flash drive and/or a reasonable medium chosen by the District in PDF format upon completion of work. If Services are terminated prior to completion, a copy of the Services completed to date shall be provided to the District.
- C. Copyright/Trademark/Patent Materials**. Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium for no monetary gains to the Consultant.

Consultant is responsible for arranging and paying for all rights and copyrights necessary and for all costs arising from the use of any material covered by copyright, patent, trademark or franchise. Consultant agrees to defend, indemnify, and hold harmless the District from any claims or costs, including legal fees, which might arise from questionable use of any such material. The District reserves the right to require verification.

## **9. TERMINATION OR SUSPENSION OF PROJECT.**

- A. Termination for Convenience**. The District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for Services satisfactorily rendered to the date of termination. Seven day written notice by District shall be sufficient to stop performance of Services by Consultant. Notice shall be considered applicable as of the date established on the termination notice and deemed given when received by the Consultant or no later than three days after the day of mailing, whichever is sooner. If this Contract is terminated in part (by elimination of

any Services) pursuant to the foregoing, the Consultant shall continue to fully and timely perform all other obligations not subject to such partial termination.

- B. Termination for Cause.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include: (a) material violation of this Agreement by the Consultant; or (b) any act by Consultant exposing the District to liability to others for personal injury or property damage; or (c) Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency. Written notice by District shall contain the reasons for such intention to terminate and unless within ten days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the ten days cease and terminate. In the event of such termination, the District may secure the required Services from another Consultant. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District. Written notice by District shall be deemed given when received by the other party or no later than three days after the day of mailing, whichever is sooner.
- C. Suspension of Project.** The District may suspend this Agreement at any time without penalty by written notice to Consultant of such suspension. The Suspension Notice shall set forth the reason for the suspension, the anticipated term of the suspension and shall be provided to the Consultant not less than 15 days prior to the suspension date. If the Project is suspended by the District for more than 90 consecutive days, the Consultant shall be compensated for Services satisfactorily performed prior to such suspension. When the Project is resumed, and upon District's review and approval, the Consultant's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Consultant's Services.
- D. Abandonment of Project.** If the District abandons the Project for more than ninety consecutive days, the Consultant shall be compensated for Services satisfactorily performed prior to the abandonment. Upon mutual consent by both Parties this Agreement may terminated.
- E. Non-Payment.** Except for the Withholding Payment provision, the District's failure to make payments to the Consultant in accordance with this Agreement shall be considered substantial nonperformance and may cause for termination by the Consultant.
  - a. In the event the District fails to make timely payment, the Consultant may, upon seven (7) days written notice to the District, suspend performance of Services under this Agreement.
  - b. Unless payment in full is received by the Consultant within seven (7) days of the date of the notice, the suspension shall take effect without further notice.
- E. Consultant Compensation.** The Consultant shall be compensated for Services satisfactorily performed prior to a termination, which is not the fault of the Consultant. The District shall pay the Consultant only the fee associated with the Services provided, since the last billing and up until the notice of termination.
- F. Liability for District Damages.** In the event of termination due to the fault of the Consultant, Consultant shall receive compensation due for Services satisfactorily rendered prior to the date of termination. The Consultant is liable for all damages suffered by the District due to Consultant's failure to perform as provided in the Agreement.

## **10. DISPUTES, MEDIATION, AND ARBITRATION.**

- A. Mediation Requirements.** All claims, disputes, controversies, or breaches arising out of or relating to the Project or to this Agreement, shall be first attempted to be resolved through mediation. The District and Consultant agree that, in the event that a dispute comes to litigation, the Consultant shall be responsible for the District's legal expenses.
- B. Arbitration.** If mediation is unsuccessful, claims, disputes, controversies, or breaches arising out of or relating to this Agreement shall be decided by arbitration in accordance with the American Arbitration Association then prevailing unless the Parties mutually agree otherwise.
  - a. No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement except by written consent containing a specific reference to this Agreement and signed by the Consultant, District and any other person sought to be joined. Consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein or with any person not named therein.

- b. This Agreement to arbitrate shall be specifically enforceable under applicable law in Orange County, California court having jurisdiction thereof.
  - c. Notice of demand for arbitration shall be filed in writing with the other Party to this Agreement in accordance with the rules of the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other matter in questions would be barred by the applicable statutes of limitation.
  - d. In any judicial proceeding to enforce this Agreement to arbitrate, the only issues to be determined shall be those set forth in 9 U.S.C. Section 4 Federal Arbitration Act and such issues shall be determined by the court without a jury. All other issues, such as, but not limited to, the ability to arbitrate, prerequisites to arbitration, compliance with contractual time limitations, applicability of indemnity clauses, clauses limiting damages and statutes of limitation shall be for the arbitrators whose decision thereon shall be final and binding. There shall be no interlocutory appeal of an order compelling arbitration.
  - e. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
  - f. Unless otherwise provided, this Agreement shall be governed by the law of the state and county where the Project is located.
- C. Services to Continue.** In the event of a dispute between the Parties as to performance of the Services, the interpretation of this Agreement, or payment or non-payment for Services performed or not performed, the Parties shall attempt to resolve the dispute. Pending resolution of the dispute, Consultant agrees to continue to diligently perform and provide Services hereunder until completion of the Services. If the dispute is not resolved, Consultant agrees it will neither rescind this Agreement nor stop the progress of the Services.

## **11. DISTRICT'S RESPONSIBILITIES.**

- A. District Provided Information.** The District shall provide to the Consultant full information regarding requirements for the Project, including information regarding the District's objectives, schedule, constraints and criteria. At the written request of the Consultant, District shall provide Consultant copies of applicable documents related to the Project.
- B. District Representative.** The District shall appoint a representative authorized to act on the District's behalf with respect to the Project. The District or its authorized representative shall render decisions in a timely manner. Consultant shall follow and accept directives from the District's designated representatives and not from other District employees or consultants. The District shall notify Consultant in writing if, at its sole option, it makes a change in the District representatives. Unless modified by written notice by the District to the Consultant, the primary District Representative is:
 

**Project Manager**  
**[[ Project Manager ]]**  
**[[ Project Manager Email ]]**
- C. District Notification.** The District shall give prompt written notice to the Consultant if the District becomes aware of any fault or defect in the Project or nonconformance with the construction Agreement. However, the District's failure or omission to do so shall not relieve the Consultant of their responsibilities hereunder and the District shall have no duty to observe, inspect or investigate the Project.
- D. District Consultants.** Other consultants required or desired by the District in connection with the Project shall be retained and paid for by the District. Such other consultants include, but may not be limited to, legal counsel, insurance/surety consultants and audio-visual equipment/installation consultants.

## **12. MISCELLANEOUS.**

- A. Representations and Warranties.** Consultant and its subconsultants on its own behalf and on behalf of all of its employees, makes the following certifications, representations, and warranties for the benefit of the District. In addition, Consultant and its subconsultants acknowledge and agree that the District, in deciding to engage Consultant pursuant to this Agreement, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this Agreement and the course of Consultant's engagement hereunder:

Consultant and its employees are qualified in all respects to provide to the District all of the Services contemplated by this Agreement and, to the extent required by any applicable laws, Consultant and its employees have all licenses, permits, qualifications, and/or governmental approvals that are legally required to perform the Work as described herein. Such licenses, permits, qualifications, and/or governmental approvals shall be maintained throughout the term of this Agreement.

Consultant, in providing the Services and in otherwise carrying out its obligations to the District under this Agreement, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including workers' compensation and equal protection and non-discrimination laws. Consultant shall be liable for all violations of such laws and regulations in connection with the Work as described herein.

- B. Equal Opportunity/Non-Discrimination.** Consultant shall not discriminate against any individual with respect to their compensation, terms, conditions, or privileges of employment; or discriminate in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect their status as a consultant because of such individual's race, color, religion, sex, national origin, age, disability, medical condition, marital status, veteran status, or any other category protected by law.

Consultant shall ensure that all Services and benefits rendered to the District, its Board of Trustees, officers, agents, employees, representatives, students, consultants/contractors and volunteers are provided free of any form of harassment and without regard to race, color, religion, sex, age, disability, medical condition, marital status, national origin, veteran status, or any other category protected by law. Consultant shall comply with Americans with Disabilities Act and the Rehabilitation Act of 1973, as amended.

- C. Certification Regarding the California Penal Code Section 290.** By executing this Agreement, Consultant agrees to comply with the rules and regulations of the Sex Offender Registration Act, California Penal Code Section 290.95. Consultant certifies and understands that every person required to register under Section 290 shall disclose their status as a registrant, upon application or acceptance of a position, to that person, group, or organization. Furthermore, no person who is required to register under Section 290 because of a conviction for a crime where the victim was a minor under sixteen (16) years of age shall be an employer, employee, or independent Consultant, or act as a volunteer with any person, group, or organization in a capacity in which the registrant would be working directly and in an unaccompanied setting with minor children on more than an incidental and occasional basis or have supervision or disciplinary power over minor children. A violation of this section is a misdemeanor punishable by a fine not exceeding One Thousand Dollars (\$1,000), by imprisonment in a county jail not to exceed a period of six (6) months, or by both that fine and imprisonment.

- D. Background Check.** Consultant hereby certifies that Consultant has never been charged with a felony, including any "violent felony" as defined in California Civil Code section 667.5(c) or serious felony defined by California Civil Code section 1192.7 prior to, or on the date of, this Agreement. Consultant shall notify District in writing immediately if Consultant is charged with any felony during the term of this Agreement in which case District may terminate this Agreement immediately. Consultant further hereby authorizes the District or other organizations to conduct a comprehensive review of his/her background upon District's request. Consultant hereby consents to the background check to the fullest extent permitted by law. Consultant agrees to indemnify, defend and hold harmless the District from any claims, damages, harms, and costs, including legal and processing fees arising from the requirements of this Section, including any such issue arising from any felony Consultant has been charged with, or is charged with, during this Agreement. Failure to complete any required step to provide the background check and information required herein upon District request within thirty (30) days shall be grounds for termination of this Agreement.

- E. Audit and Inspection of Records.** At any time during the normal business hours and as often as District may deem necessary, Consultant shall make available to District for examination at District's place of business as specified herein, all data, records, investigation reports and all other materials respecting matters covered by this Agreement and Consultant will permit the District to audit, and to make audits of all invoices, materials, payroll, records of personnel and other data related to all matters covered by this Agreement.

- F. Review, Approval or Acceptance.** Review, approval or acceptance of Consultant's Services whether by District or others, shall not relieve Consultant from responsibility for accuracy in Consultant's Services.

- G. Cumulative Rights, Waiver, and Modification.** Duties and obligations imposed by this Agreement, and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or inequity. The failure of District or Consultant to seek redress for violation of, or to insist upon, the strict performance of any term or

condition of this Agreement shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

- H. **Employment with Public Agency.** If Consultant is an employee of another public agency, Consultant agrees that they will not receive salary or remuneration, other than vacation pay, for the actual time in which Services are actually being performed pursuant to this Agreement.
- I. **Governing Law.** The terms and conditions of this Agreement shall be governed by the laws of the State of California with jurisdiction/venue in Orange, California.
- J. **Force Majeure.** The Consultant and District are excused from performance during the time and to the extent that they are prevented from obtaining, performing any act or rendering any Services required under this Agreement by a Force Majeure Event. If a Force Majeure Event caused the failure or delay beyond the Parties' control and which by the Parties' exercise of due diligence could not reasonably have been avoided, an extension of contract times in an amount equal to the time loss due to such delay shall be the Consultant's sole and exclusive remedy for such delay. A "Force Majeure Event" shall mean events or circumstances occurring by acts of God, such as tornadoes, lightning, earthquakes, hurricanes, floods, or other natural disasters; epidemics; pandemics; quarantine restrictions; fire; strikes; lock-out; commandeering of materials, products, plants or facilities by the government; terrorist attacks; wars; riots; civil disturbances; or governmental acts, including sanction, embargo, and import or export regulation, or order; when satisfactory evidence thereof is presented to the other party, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the party not performing.
- K. **Assignment.** The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant without the express written approval of the District.
- L. **Notices.** All notices or demands to be given under this Agreement by either Party to the other Party shall be in writing and given either by: (a) personal service, (b) by U.S. Mail, mailed either by certified or registered mail, return receipt requested, with postage prepaid, or (c) electronic mail. Service shall be considered given when received, if personally served, or, if mailed, on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either Party may be changed by written notice given in accordance with the notice provisions of this Article. At the date of this Agreement:

DISTRICT: South Orange County Community College District  
Priya Jerome, Exec. Dir.-Procurement, Central Svcs. & RM  
28000 Marguerite Parkway  
Mission Viejo, CA 92692  
(949) 582-4850 / purchasing-dept@socccd.edu

CONSULTANT:

[[ Name (Primary Second Party) ]]  
[[ Contact Name (Primary Second Party Contact) ]], [[ Contact Title (Primary  
Second Party Contact) ]]  
[[ Street Line 1 (Primary Second Party) ]]  
[[ City/Town (Primary Second Party) ]], [[ State/Province (Primary Second Party) ]]  
[[ Postal Code (Primary Second Party) ]]  
[[ Contact Phone Number (Primary Second Party Contact) ]] / [[ Contact E-mail  
(Primary Second Party Contact) ]]

A Party may change their designated representative and/or address for the purposes of receiving notices and communications under this Agreement by notifying the other Party of the change in writing and in the manner described in this Article.

- M. **Communications.** Communication between the Parties shall be sent to the following addresses:

**DISTRICT**

[[ Project Manager ]]

**CONSULTANT**

[[ Name (Primary Second Party) ]]



South Orange County Community College District	[[ Name of Consultant ]]
28000 Marguerite Parkway	[[ Street Line 1 (Primary Second Party) ]]
Mission Viejo, CA 92692	[[ City/Town (Primary Second Party) ]]
[[ Project Manager Email ]]	[[ Consultant Email ]]

**N. Definitions.**

- a. Contract. An agreement for Construction Services awarded by the District to a Design Build Entity/ Contractor/Consultant for the construction of a portion of the Project.
- b. Consultant. A Consultant to the District under an agreement awarded by the District in relationship to construction Services of the Project.
- c. Design Documents. The drawings, specifications, calculations and other work product and instruments of service prepared by or on behalf of the Architect for the Project. Design Documents include surveys, soil reports and other documents prepared for the Project by a licensed Architect or registered Engineer, under contract with the District.
- d. Architect. The Architect is [[ Architectural Firm ]].References to the Architect include [[ Name of Architect ]] and their managers retained to prepare or provide any portion of the Design Documents.
- e. Submittals. Shop Drawings, Product Data or Samples prepared or provided by a Design Build Entity or a Subcontractor to the Design Build Entity or suppliers illustrating some portion of Services of the Project.
- f. Site. The physical area for construction and activities relating to construction of the Project.
- g. Construction Agreement Documents. The Agreement Documents issued by or on behalf of the District under an Agreement for construction of the Project. Construction Agreement Documents include all modifications issued by or on behalf of the District. Unless otherwise expressly stated, references to the Construction Agreement Documents are referenced to all of the Agreement Documents issued for the Contract awarded for Project construction.
- h. Substantial Completion. Substantial Completion is when the Services identified in the Agreement has been completed, including completion of all installation Services. Substantial completion shall deemed to have been achieved when the Project can be used for its intended purposes, subject only to minor corrections, repairs or modifications.
- i. Final Completion. Final Completion is when all of the Services in the Agreement have been completed and installed (including items noted for correction, repair or modification upon Substantial Completion) and the Consultant has completed all other obligations to be performed on its part under the Agreement.

**P. Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

**Q. Interpretation.** In interpreting this Agreement, it shall be deemed to have been prepared by the Parties jointly, and no ambiguity shall be resolved against District on the premise that it or its attorneys were responsible for drafting this Agreement or any provision hereof. The captions or heading set forth in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any Articles or other provisions of this Agreement. Any reference in this Agreement to an Article, unless specified otherwise, shall be a reference to an Article of this Agreement.

**R. Conflict of Interest.** Consultant hereby represents, warrants and covenants that (i) at the time of execution of this Agreement, Consultant has no interest and shall not acquire any interest in the future, whether direct or indirect, which would conflict in any manner or degree with the performance of Work under this Agreement; (ii) Consultant has no business or financial interests which are in conflict with Consultant's obligations to District under this Agreement; and (iii) Consultant shall not employ in the performance of Work under this Agreement any person or entity having any such interests.

**S. Accessibility of Information and Communication Technology.** The Consultant hereby warrants that the goods or services to be provided to the District when applicable shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. S794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 194. The Consultant agrees to promptly respond to and resolve any

complaint regarding accessibility of its products or services. Consultant further agrees to indemnify and hold harmless the District from any claim arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of this order or Agreement.

Consultant is responsible for following all Federal and California accessibility laws set forth under Sec 508 of the Rehabilitation Act of 1973, passed in 2000 and updated in 2017 and California Government Code Section 7405. All materials and Information and Communication Technology (ICT) produced or provided by the Consultant, as part of this contract must meet the standards set forth under these laws. These requirements include, but are not limited to, closed captioning of all videos or portions of videos; all presentations; training materials; curriculum; computers; and all other ICT as defined under the law, must be created and delivered in a manner where they meet accessible requirements. All websites developed and maintained must be accessible, built to the most current and highest Web Content Accessibility Guidelines (WCAG), and be delivered with documentation allowing the District to certify it as accessible and in compliance with California Government Code Sections 7405 and 11135. Consultant is responsible for all claims and expenses borne by the District, which arise out of the work under this contract, found to be non-compliant with Federal and California Laws. These costs include but are not limited to legal costs, court costs, and costs for remediation of work produced.

**T. Certification Regarding Debarment, Suspension or Other Ineligibility.** (Applicable to all agreements funded in part or whole with federal funds).

- a. By executing this contractual instrument, Consultant agrees to comply with applicable federal suspension and debarment regulations, including, but not limited to, regulations implementing Executive Order 12549 (29 C.F.R. Part 98) (see Appendix 15).
- b. By executing this contractual instrument, Consultant certifies to the best of its knowledge and belief that it and its principals:
  - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - ii. Have not, within a three-year period preceding the execution of this contractual instrument, been convicted of, or had a civil judgment rendered against them, for: (a) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) or private transaction or contract; (b) Violation of Federal or State antitrust statutes; (c) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or (d) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects Consultant's present responsibility;
  - iii. Are not presently indicted for, or otherwise criminally or civilly charged by any government entity (Federal, State or Local), with commission of any of the offenses enumerated in b.2) above, of this certification; and
  - iv. Have not, within a three-year period preceding the execution of this contractual instrument, had one or more public transaction (Federal, State or Local) terminated for cause or default;
  - v. Shall not, except as otherwise provided under applicable federal regulations, knowingly enter into any lower tier covered transaction with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded by any federal department or agency from participation in such transaction; and
  - vi. Include in all lower tier covered transactions, and all solicitations for covered transactions, provisions substantially similar to those set forth herein.

**U. Entire Agreement/Amendment.** The Agreement documents consist of this Agreement, any exhibits attached to or referenced herein, and all amendments and/or modifications issued in writing, duly approved or ratified by the District's Board of Trustees, and executed by the Parties shall be interpreted to the benefit of the District. Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (a) provisions set forth in this Agreement, (b) provisions set forth in any referenced attachments or exhibits to this Agreement attached or incorporated herein by reference. However, the Parties understand and agree that the service specified in the Agreement and any provisions set forth in any referenced attachments or exhibits to this Agreement is intended to cooperate and be complementary; provided further, however, that in the event of a conflict between the Agreement and the provisions set forth in any referenced attachments or exhibits, the Agreement shall control, unless the provisions set forth in any referenced attachments or exhibits to this Agreement provides the District with greater benefits or more expansive Work in which case the provisions set forth in any referenced attachments or exhibits to this Agreement shall complement the terms of this Agreement.

- V. **Supersedes.** This Agreement constitutes the entire Agreement between the parties to this Agreement and supersedes all prior and contemporaneous negotiations and understandings between the Parties whether oral or written expressed or implied in relation to the Services contemplated in this Agreement for this specific Project. No other Agreement or understanding concerning the same has been entered into or will be recognized.
- W. **Authority to Execute.** The individual(s) executing this Agreement on behalf of the Consultant is/are duly and fully authorized to execute this Agreement on behalf of Consultant and to bind the Consultant to each and every term, condition, and covenant of this Agreement.
- X. **Approval by District's Board of Trustees.** Pursuant to Education Code Section 81655, this Agreement is not valid and does not constitute an enforceable obligation against the District unless and until District's Board of Trustees has approved or ratified this Agreement as evidenced by a motion duly passed and adopted by the Board of Trustees.

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

**[[ NAME (PRIMARY SECOND PARTY) ]]**

**South Orange County Community College District**

Signature:

Signature:

Print Name:

Print Name:

Title:

Title:

Date:

Date: