



South Orange County Community College District

RFQ&P No. 3335-2021:

Landscaping and Irrigation Services at the Advanced Technology and Education Park

Addendum No. One (1)

May 19, 2021

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 Appendix G Sample Preventative Maintenance Services Agreement is attached to this Addendum.
2. The responses to the Request for Information submitted by the deadline of 5:00 PM on May 19, 2021 as well as the responses to the questions asked during the mandatory pre-proposal meeting on May 18, 2021 are shown below:

Q1: What is the estimated cost of the project itself?

A1: The annual estimated spend for this project is estimated not to exceed \$100,000 inclusive of the allowance and as-needed services.

Q2: Who is the current contractor and monthly \$?

A2: The current contractor is BrightView Landscape Maintenance. The annual contract amount for 2021 is \$90,436 inclusive of a \$22,000 allowance.

Q3: Who is doing the maintenance currently?

A3: See A2.

Q4: How long have they had the contract?

A4: BrightView Landscape Maintenance has had the contract for the last three years.

Q5: What is the current monthly Base?

A5: Weed Abatement: \$8,721 quarterly

Base Landscaping & Irrigation and Weekly Street & Parking Lot Sweeping: \$2,796 monthly

Q6: Has the scope of work changed?

A6: No.

Q7: Why is the contract out to bid?

A7: The current contract is expiring on June 30, 2021.

Q8: How much was spent on extras this last year?

A8: The District hasn't utilized the contracted services to the extent of the intended scope.

Q9: Is South Orange County Community College Satisfied with the current condition?

A9: The current site conditions do not meet the District's expectations.

Q10: Can you provide a map with detailed boundaries of the ATEP location?

A10: A site map was included in the RFQ&P via a link in the "Reference Documents" section. The red and blue lines provide the boundaries.

Q11: What is the expectation for undeveloped areas?

A11: See ATEP Site Plan referenced in A10 above, extents of the undeveloped areas are shown in Red, and the expectation is to have this area cleared/mowed quarterly along with any as-needed tree care.

Q12: Is there turf present at ATEP site? If so, how many SQFT/AC.?

A12: There is no turf present at ATEP.

Q13: Which "paved streets" are expected to have street sweeping services? Is street sweeper required at parking lot and round about locations only? Are surface streets around ATEP included (Red Hill Ave., Valencia Ave., Armstrong Ave., and Victory)?

A13: See ATEP Site Plan referenced in A10 above, extents of street sweeping are shown in Blue, inclusive of the parking lot.

Q14: Is vandalism contractor's responsibility or extra?

A14: Vandalism would not be the responsibility of the contractor.

Q15: Are all irrigation repairs labor and materials contractor's responsibility or extra?

A15: All irrigation repairs identified during the weekly scheduled maintenance services shall be approved by the District prior to such services being undertaken. For all as-needed repairs, the contractor shall provide services upon District's request. The cost for such irrigation repairs inclusive of labor and material shall be pursuant to the Fee and Rate Proposal Form E.

Q16: Is contractor responsible for irrigation system from meter, controller, or backflow?

A16: The Contractor is responsible for everything after the meter.

Q17: There are several empty planter locations with ATEP displays at roundabouts and on corners, is contractor expected to landscape these locations?

A17: That will be an added service based on the unit prices being provided for "As-Needed Materials". However, annual mulching is part of the base services.

APPENDIX G
Sample Preventative Maintenance Services Agreement
Landscaping and Irrigation Services at the Advanced Technology and Education
Park

The Proposer shall thoroughly review the below Agreement. As part of the proposal submission, indicate in a separate Tab of the RFQ&P Response the Proposer’s acceptance of all terms and conditions set forth in the Agreement. If there is any term or condition of the Agreement, which a Proposer requests to be modified, the Proposer 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 Proposer 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 Proposer must execute the Agreement in the form and content attached hereto subject only to elements of such Proposer’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

PREVENTATIVE MAINTENANCE SERVICES AGREEMENT

This Preventative Maintenance Services Agreement (“Agreement”) is between **South Orange County Community College District [[Campus Location]]** (“District”), a California community college district and political subdivision of the State of California, and **[[Name (Primary Second Party)]]** (“Contractor”). District and Contractor are also referred to collectively as the “Parties” and individually as Party.

WHEREAS, the District operates community colleges at multiple campuses, including Irvine Valley College (“IVC”), Saddleback College (“SC”), and the Advanced Technology and Education Park (ATEP); the foregoing are referred to herein collectively as the “Sites” and individually as a “Site”.

WHEREAS, District desires to obtain landscaping and irrigation services at the ATEP Site, are hereafter referred to as "Project"; and

WHEREAS, the District issued Request for Qualifications and Proposals (RFQ&P) No. 3335-2021 for Landscaping and Irrigation Services at the Advanced Technology and Education Park, and Contractor submitted a written response to the RFQ&P; Landscaping and Irrigation Services at the Advanced Technology and Education Park are hereafter referred to as “Services”; and

WHEREAS, the terms “Project” and “Services” shall be used interchangeably within this Agreement; and

WHEREAS, the Contractor is duly licensed as a Contractor in the C-27 Landscaping classification by the Contractors State License Board; and

WHEREAS, the reference to “Contractor” hereafter shall include but not be limited to the Contractor and Contractor’s employees, representatives, subcontractors, agents, board of trustees, and volunteers; and

WHEREAS, Contractor is specially trained, experienced, skilled, authorized, certified, and fully licensed as required by the State of California, experienced and competent to provide the Services subject to this Agreement in conformity with the laws of the State of California; and

WHEREAS, the terms and conditions for the Contractor’s completion of Services are set forth in this Agreement; and

NOW, THEREFORE, the parties hereto agree as follows:

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

A. **Services.** The Contractor’s Services shall consist of those Services performed by the Contractor and Contractor’s employees as enumerated in this Agreement, along with all aspects of Services as identified in RFQ&P 3335-2021 Landscaping and Irrigation Services at the Advanced Technology and Education Park, referenced herein and made a part hereof as Attachment A and Contractor’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 along with the Final Fee and Rate Proposal (Attachment C) shall be the prevailing and governing documents and that Attachments A and B are intended to cooperate and be complementary.

a. **Schedule for Base Landscaping and Irrigation Services.**

- i. **Contractor’s Services Schedule.** Prior to commencing Services for this Agreement and within fifteen (15) days after the District’s award of this Agreement, the Contractor shall prepare and submit to the District for review and acceptance a detailed schedule for base landscaping and irrigation Services the Contractor will complete during the first twelve (12) months of the Agreement which shall include the following:
 - (a) Schedule/Calendar of Events indicating when all Services will be performed.

- (b) Outline of Contractor's personnel daily/weekly/monthly/quarterly/bi-annually/annual tasks for all Services.
 - ii. **District Review and Acceptance of Contractor's Services Schedule.** The District shall have ten (10) days to review the Contractor's Schedule for Services to accept the same or to provide review comments to the Contractor for incorporation into the Services Schedule. The Contractor shall incorporate District review comments into the Services Schedule and submit the revised Services Schedule to the District for review and acceptance. The foregoing review and revision process shall continue until the District has accepted the entirety of the Services. The Services Schedule shall be prepared with commercially available project scheduling software approved in advance by the District.
 - iii. **Annual Services Schedule.** The Contractor shall prepare a Services Schedule for each twelve (12) month increment of the Term ("Annual Services Schedule"). The Contractor shall submit the Annual Services Schedule to the District for review and acceptance at least sixty (60) days prior to expiration of the then current twelve (12) month increment of the Term. Each Annual Services Schedule is subject to District review and Contractor revisions as necessary to obtain District acceptance of the entirety of the Annual Services Schedule.
 - iv. **Liquidated Damages for Failure to Comply with Services Schedule.** Failure of the Contractor to start and complete Services in accordance with the Services Schedules prepared by the Contractor and accepted by the District will subject the Contractor to Liquidated Damages set forth in this Agreement.
- B. **Industry Standards.** The Contractor shall complete all Services: (i) in accordance with applicable industry/professional "best practices"; (ii) any and all applicable manufacturer requirements and recommendations; (iii) the terms of this Agreement; and (iv) applicable laws, rules and regulations.
- C. **Permits and Licenses.** At all times when providing Services, the Contractor shall maintain all licenses, certifications, permits, governmental authorizations or approvals required by any federal, state, regional or local governmental agency to provide the Services and perform other obligations of the Contractor under this Contract. The foregoing includes without limitation: (i) City business license; (ii) CLSB Contractors' license in the C-27 electrical classification; and (iii) Department of Industrial Relations ("DIR") contractor registration.
- D. **California Department of Pesticide Regulation Requirements.** Contractor shall be currently licensed in good standing as a Pesticide Registered Applicator Business with the California Department of Pesticide Regulations. A Qualified Applicator License shall be required for all staff applying pesticide on site throughout the duration of the Agreement per California Department of Pesticide Regulation requirements.
- E. **Irrigation System Equipment Damage or Destruction.** The Contractor is responsible for damage or destruction to the irrigation system equipment, provided that damage or destruction is as a result of the Contractor's: (i) negligent or willful conduct; or (ii) breach of obligations under this Contract. The Contractor is responsible for costs, expenses, and losses resulting from (i) or (ii) above, which arise out of or are related to repairs or replacement of damaged or destroyed irrigation system equipment and the loss of services provided by the damaged or destroyed irrigation system equipment.
- F. **Employment of Labor.**
 - a. **Prevailing Wage Rates.** If any portion of the Services are deemed by the Department of Industrial Relations, Division of Labor Standards Enforcement ("DLSE") to be in the nature of "public works" requiring the payment of applicable prevailing wage rates, the Contractor is solely responsible for compliance with the obligation to make payment of at least the applicable prevailing wage rate and all other administrative requirements associated with prevailing wage rate payments, including without

limitation: (i) compliance with DIR contractor registration requirements; and (ii) completion/filing of Certified Payroll Records. Compensation due the Contractor under this Contract is not subject to adjustment if the Contractor is required to comply with prevailing wage rate requirements for any personnel providing the Services. Monitoring and enforcement of the Contractor's prevailing wage rate obligations will be by DLSE.

- b. **Contractor Personnel Compensation.** The Contractor is solely responsible for timely and full payment of: (i) compensation and other employment benefits due Contractor personnel and (ii) taxes and other similar payroll burdens.
- c. **Uniforms; Identification Badges.** All Contractor personnel shall wear Contractor furnished uniforms while at the District locations. The uniforms shall have patches on them that identify person's name and the Contractor's company name and logo. Contractor personnel may also be required to wear identification badges issued by the Contractor or the District.
- d. **Contractor Personnel Training and Education.** The Contractor shall ensure that personnel have the skills to adapt to changing technology and to efficiently complete Services by access to and completion of relevant training and education services pursuant to the applicable trade. Upon request of the District, the Contractor shall furnish reasonably satisfactory written evidence confirming that the Contractor's personnel are so skilled and have access to continuing training/education resources which are utilized to develop new/additional skills or to augment/refine existing skills. The District is not responsible for training Contractor personnel. Costs, fees, expenses and charges for training and education of Contractor personnel providing Services shall be borne by the Contractor without adjustment of the compensation due the Contractor under this Contract. Contractor personnel providing Services shall be certified, accredited and otherwise authorized by any applicable equipment manufacturer in accordance with certification, accreditation or authorization requirements of the applicable equipment manufacturer.

G. Safety and Environmental.

- a. **Contractor Personnel.** The Contractor shall provide all personnel performing Services with required safety training and safety equipment. Services shall only be completed by personnel who are properly trained, skilled, certified and authorized to complete the Services assigned to such personnel.
- b. **Waste Materials Handling and Disposal.** The Contractor is solely responsible for disposal of waste materials, including without limitation, lubricants, absorbents, and cleaning products in accordance with District requirements in compliance with manufacturer recommendations and applicable law. All waste materials must be removed in accordance with District requirements.
- c. **Work Area Safety.** The Contractor is solely responsible for implementing safety measures when completing Services at the Sites, including without limitation, warning signs and barricades. The Contractor shall keep work areas in a neat and clean condition.
- d. **Accident and Hazard Reporting.** The Contractor shall report any accidents or hazardous conditions to the District Representative immediately and no later than one hour. Contractor shall submit an accident report or hazardous condition report on forms approved by the District. The Contractor shall report to the District Representative items in need of prompt attention within one hour. Once an emergency has been stabilized, the Contractor shall not commence any corrective work until the District Representative has authorized the resumption of work. The Contractor shall report any conflict between requested work and safety requirements to the District Representative for resolution before performing the work.

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

C. **Compliance with Applicable Laws, Policies, Procedures, Rules & Regulations.** Contractor 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.

Contractor 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 Contractor, Contractor's business, equipment and personnel engaged in Work covered by this Agreement or accruing out of the performance of such Work. Additionally, Contractor shall strictly comply with all health and safety guidelines consistent with Cal/OSHA and CDC.

COVID-19 Related Responsibilities. Prior to commencing any Work under this Contract, Contractor shall be required to develop and submit to the District its COVID-19 Exposure Response and Prevention Plan (the "Plan") that is consistent with Cal/OSHA and CDC guidance. The Plan at a minimum shall require Contractor to immediately notify the District (Construction Manager) of any possible COVID-19 infections or potential COVID-19 exposure events involving Contractor and any of its employees, subcontractors and/or suppliers performing Work on District property pursuant to the terms of this Contract.

The Plan shall be developed and based on the current information available from Cal/OSHA and CDC, and shall be amended by Contractor as may be appropriate based on further information provided by Cal/OSHA and CDC and other public officials. Contractor shall promptly provide to the District any amendments or revisions to its adopted Plan. 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 worker 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.

- D. **Materials and Expenses.** Contractor 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 Contractor for any costs or expenses paid or incurred by the Contractor in performing Services for the District. The Contractor's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of their profession.
- E. **Building Access.** The District's Project Manager will provide Contractor's personnel with access to the buildings at the Sites. This applies Mondays through Fridays during normal business hours (7:00 AM to 5:00 PM), weekends, and holidays or after business hours. The District will provide the Contractor's personnel with access to the Buildings necessary for completing the Services under this Agreement. The Contractor shall follow the District's Electronic Access Control Procedures. The Contractor shall immediately notify the District's Project Manager if the Contractor loses or misplaces an access control card. The Contractor is solely responsible for: (i) informing all personnel with access to, or authority to use, any access control cards, of the limitation on the use of such cards solely and exclusively in connection with completing Services under this Agreement; (ii) prohibiting personnel from disseminating or duplicating any access control cards; and (iii) all losses, damages, costs or other liabilities arising out of the unauthorized dissemination, lost, misplaced or stolen cards, or duplication of any access control cards, including without limitation replacement building access control cards and any re-programming locks for security purposes, as reasonably determined by the District.
- F. **Existing Conditions.** The Contractor shall investigate existing conditions or facilities and make recommendations of work scope based on such conditions or facilities.
- G. **Payment Bond.** Prior to commencement of the Work, the Contractor shall furnish a Labor and Material Payment Bond as security for payment of persons or entities performing Services or furnishing materials/equipment in connection with completion of Services in a penal sum equal to One Hundred Percent (100%) of the Contract Price under this Contract. The penal sum of the Payment Bond shall be _____ Dollars (\$ _____) and in the form and content set forth in Attachment A. The failure or refusal of the Contractor to furnish the Labor and Material Payment Bond is a default by the Contractor of a material obligation of the Contractor under this Contract. The Surety issuing the Labor and Material Payment Bond shall be: (i) an Admitted Surety Insurer as that term is defined in California Code of Civil Procedure §995.120; and (ii) A.M. Best rated A-/VII or better.

2. **ADDITIONAL AS-NEEDED SERVICES AND/OR MATERIALS.**

- A. **District Authorized Additional As-Needed Services and/or Materials.** Requests for additional as-needed services and/or materials shall be made by the District in writing. This Agreement is not a pre-authorization for additional as-needed services and/or materials. Contractor shall be compensated for additional as-needed services and/or materials in accordance with the provisions of the Agreement and the amounts indicated in Attachment C. The Contractor shall request payment for additional as-needed services and/or materials in a separate line item on the same invoice submitted for services in a format pre-approved by the District.

- B. **Contractor’s Request for Additional As-Needed Services and/or Materials.** Contractor shall notify the District in writing of the need for additional as-needed services and/or materials required due to circumstances beyond the Contractor’s control. Contractor 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 C. Such services shall include:
 - a. **Material Project Scope Changes.** Services 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 Scope of Services.
 - b. Contractor, 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 Contractor’s practice.

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 Contractor’s performance of the Services required hereunder and District’s payment of all sums due to Contractor.

Term. The initial term of this Agreement shall be from July 1, 2021 to June 30, 2022. The District reserves the option to extend the term of the Agreement for additional periods. The extension term shall be executed via a duly signed Amendment by both parties. After award, Agreement is subject to cancellation with 30-days written notice by either party. The Agreement shall not exceed five (5) years.

4. **COMPENSATION TO THE CONTRACTOR.**

- A. **Contract Price for Base Landscaping and Irrigation Services.** The Contract Price for the Contractor’s performance of the Services under this Agreement shall be firm and fixed consisting of the following not to exceed lump sum prices:

Landscaping and Irrigation Services	\$	[[Amount]]
Weekly Street/Parking Lot Sweeping (52 Weeks)	\$	[[Amount]]
Per Acre Clearing Allowance (\$ per acre x 51 acres)	\$	[[Amount]]
District Controlled Allowance	\$	15,000.00

District agrees to pay Contractor, as full consideration and compensation for Contractor’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: Final Fee and Rate Proposal (Attachment C).

- B. **Price Inclusions.** The Agreement Price is inclusive of personnel expenses (inclusive of all benefits and burdens), fees, labor, material, equipment, supplies, all direct and indirect costs, personnel expenses of any sub-consultant or subcontractor to the Contractor, 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 Fifteen Thousand and 00/100 Dollars (\$15,000.00) per 12-month term. The intended for use at the sole discretion of the District. The Allowance has been established to allow for repairs, materials and labor to replace/refresh existing planting, and 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 Contractor under the terms of this Agreement, except where additional compensation is agreed upon between the Contractor 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. 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 Contractor 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. The fees and rates per hour for extra work shall be inclusive of all overhead, administrative, direct and indirect costs and profits. The fees and rates reflected in Attachment C shall be effective as of the date of execution of this Agreement and shall remain firm through the entirety of the term.
- F. **Contractor Monthly Billing Statements.** Contractor 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 Contractor. Services are to be invoiced in accordance with the percentage of Services completed in each phase.

Contractor to send invoices to 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 Contractor provision as stipulated herein. **To ensure prompt and accurate payment, all invoices related to this Agreement shall reference the following Agreement Number: DSFP-CUPCCA4-3335-2021.**

- G. **Repair Services Charges.** Charges for Repair Services shall be applicable only to services over and above those repair services that are not inclusive within the Base Landscaping and Irrigation Services. Upon troubleshooting, repairs/replacement are deemed necessary, the Contractor shall provide a proposal to the District, in accordance with the rates provided in Attachment C, for District review and consideration prior of the required repair/replacement. The proposal shall include labor rates and number of hours to complete the works as well as the cost of materials, if any. Repair work shall be completed as agreed upon in writing by the District. Payment for Repair Services will be made only if the District Representative has specifically requested a Repair Service. No payment will be made by the District and no payment is due the Contractor for any Repair Service completed by the Contractor without prior direction or authorization from the District Representative. The Contractor shall inform the District Representative of the repair and cost of the repair within 24 hours. The intent of this authority is to make efficient use of a technician's time by allowing a technician to make necessary adjustments and repairs at the time of routine scheduled maintenance services.
- a. **Repair Services Billing Records and Requirements.** The Contractor shall implement stringent billing practices for Repair Services, including separate service tickets or other written documentation of: (i) Equipment; (ii) Contractor personnel providing Repair Services; (iii) time incurred to complete a Repair Service; (iv) replaced parts; and (iv) detailed description of any other item or service for which payment is requested.
 - b. **Separate Billings.** Each separate request for Repair Services shall be subject to a separate Repair Services billing from the Contractor. Billings for Repair Services Charges must be received by the District within sixty (60) days of the date of completion of each Repair Service. The Contractor expressly waives the right to payment for any Repair Service not billed within sixty (60) days of the date completing the Repair Service; a billing submitted by the Contractor for a Repair Service completed more than sixty (60) days prior to the District's receipt thereof will not be processed or paid by the District.
 - c. **Computation of Repair Services Charges.** Payment for Repair Services will be based on time reasonably necessary for the Contractor's Repair Service personnel to complete a Repair Service request, multiplied by the applicable hourly rate set forth in Attachment C. Billing for Contractor Repair Service Personnel shall be in increments of one-quarter (1/4) of an hour and only for the duration of time actually providing Repair Services on a Campus. If the District determines that the time charged for completing a Repair Service is excessive, the Contractor's billing is subject to reduction in such amount as reasonably determined by the District based on the nature of the Repair Service and the time reasonably necessary to complete such Repair Service by qualified, skilled and experienced Repair Service personnel. In addition to payment for time of Repair Services personnel to complete a Repair Service, the Contractor will be paid for the costs for parts, materials and other similar items. Billing for labor charges inclusive of: (i) travel time; time charges permitted only for time on campus; (ii) supervision, training; (iii) administrative support costs; and (iv) are not subject to mark-up. Prevailing wage rates must be incorporated for all proposed labor charges. The allowable percentage mark-up on the Contractor's cost for field labor, materials, and equipment shall be in accordance with Attachment C.
- H. **Liquidated Damages.**
- a. **Liquidated Damages for Failure to Complete Base Landscaping and Irrigation Services.** If the Contractor fails or refuses to commence and complete Base Landscaping and Irrigation Services in accordance with the Services Schedule, the Contractor shall be liable to the District for per diem Liquidated Damages at the rate of One Hundred Dollars (\$100) per day from the date the Base Landscaping and Irrigation Service is scheduled for completion to the date of actual completion of such Services.

- b. Liquidated Damages for Failure to Comply with Repair Services Response Time. If the Contractor fails to dispatch personnel, materials and equipment necessary to respond to a Repair Service request within the Response Time required by the Repair Service request (Routine, Urgent or Emergency) as set forth above, the Contractor shall be liable to the District for Liquidated Damages in the amount of One Hundred Dollars (\$100) per hour, or any portion thereof, from the scheduled response time until personnel, materials and equipment actually respond at the Site subject to a Repair Service request. The foregoing notwithstanding, the Liquidated Damages for any delayed Repair Service request shall not exceed Five Hundred Dollars (\$500) per day. The Contractor acknowledges the Liquidated Damages for delayed response to a Repair Service request is reasonable under the circumstances existing at the time this Contract is entered into.
- I. **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. Contractor shall remain liable to the District in accordance with applicable law for all damages to the District caused by Contractor's failure to perform any of the Services furnished under this Agreement.
- J. **District Payments.** The District will make payment of the undisputed amount due for Services within thirty (30) days of the Contractor's submittal of a billing invoice. The foregoing notwithstanding, the District may withhold payment of any portion of any payment due the Contractor for losses, damages or costs sustained by the District as a result of the Contractor's default hereunder. Such withholdings will be released only after the Contractor's cure of its default(s) and the District's retention of losses, damages or costs resulting from such Contractor default. The Contractor is liable for losses, damages or costs incurred by the District resulting from a Contractor default which exceeds the amount of any payment withheld by the District pursuant to the foregoing.
- K. **Withholding or Deduction of Compensation to the Contractor.** The District may withhold or deduct any portion of the compensation due the Contractor under this Contract in such sums as determined by the District or required by applicable law for: (i) levies or other similar instruments; (ii) losses, damages or costs resulting from the Contractor's failure to fully and timely complete its obligations hereunder, including without limitation Liquidated Damages. Withholdings pursuant to (ii) above will be released only after the Contractor fully cures its failure to timely or fully complete obligations hereunder and after deducting losses, damages or costs resulting from the Contractor's failure to timely and fully complete obligations hereunder. Notwithstanding any compensation withheld or deducted from the Contractor pursuant to the foregoing, the Contractor remains liable to the District for losses, damages or costs resulting from (ii) above which exceed any amount withheld and deducted from the Contractor.
- L. **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 Contractor's invoice. Amounts unpaid 60 days after the invoice date shall bear interest at the legal rate prevailing at the time, at the site of the Project.
- M. **Schedule Delay.** To the extent that the time initially established for the completion of Contractor's Services is exceeded or extended through no fault of the Contractor, compensation for any Services rendered during the additional period of time shall be computed at standard fees and rates as established in Attachment C.

5. **CONTRACTOR'S SERVICES AND RESPONSIBILITIES.**

- A. **Statement of Services.** The Contractor's Services shall consist of those Services performed by the Contractor and Contractor's employees as enumerated in this Agreement.
- B. **Contractor's Employees.** All Services shall be completed by employees of the Contractor who are experienced, skilled, authorized, and certified (if required) to complete the Services assigned to such personnel. The Contractor shall maintain an adequate staff of professional personnel with competency, expertise and qualifications to complete Services. The Contractor shall provide substantiation of its employees' experience, skills, authorization or certification upon request of the District. Prior to providing Services, upon request from the District, Contractor shall provide, a resume, including experience, copies of current license(s) and other related information shall be submitted on each employee for review by the District. If the District objects to any of the Contractor's personnel assigned to complete Services, upon request of the District, the Contractor shall replace such personnel without cost or expense to the District. While on District property, Contractor's employees shall comply with all applicable rules, regulations

and/or policies relating to use/access to District property and personal conduct. A current valid California State Driver's License for all Contractor's employees operating a vehicle at any Site is required. Third party contracting shall not be allowed. Contractor's personnel violating applicable policies, regulations or laws are subject to penalties imposed by the policy, regulation or law violated. Contractor or Contractor's employees, subcontractors, 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 Contractor's employees, subcontractors, or volunteers who fail or refuse to perform the Services in a manner acceptable to the District, shall be promptly removed by the Contractor and shall not be contracted to perform this or any future Services for the District.

- C. **Key Individual Assignment.** The Contractor has been selected to perform the Services described herein because of the skills and expertise of key individuals. Contractor assignment for this Project is referenced in the Communication provision as stipulated herein. The Contractor shall designate [[Name of Project Executive]] as Project Executive and a Project Management Team consisting of [[Project Management Team (List individuals and titles)]]. So long as their performance continues to be acceptable to the District, these named individuals shall remain in charge of the Project. Additionally, the Contractor must furnish the name of all other key personnel in Contractor'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 Contractor 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 Contractor to Other Project Participants.** Contractor's Services hereunder shall be provided in conjunction with contracts between the District and: (a) the Architect; (b) the Contractor; (c) Test/Inspection Service Providers; and (d) others providing services in connection with the Project. The Architect is responsible for the adequacy and sufficiency of the Project design and the contents of Design Documents for the Project. Except as expressly set forth herein, neither this Agreement, nor Contractor's rendition of Services hereunder shall be deemed Contractor's assumption of responsibility for the adequacy or sufficiency of the Project design or the Design Documents for the Project, which are and remain that of the Architect. Contractor shall coordinate all work with District consultants as necessary to complete contract requirements. The Contractor shall be responsible for assisting the District with generally coordinating the services of the Inspector and Test/Inspection providers during the construction phase. The Contractor is not responsible for the completeness or accuracy of the work product or services provided by the Inspector or Test/Inspection Service Providers.
- F. **Acceptance of Project Schedule.** The Contractor shall accept the District's Project schedule for the performance of the Contractor'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 Contractor, except for reasonable cause, as established by the District.

6. **HOLD HARMLESS & INDEMNIFICATION AND INSURANCE.**

- A. **Hold Harmless & Indemnification.** To the fullest extent permitted by law, the Contractor and its subcontractors 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 Contractor, its officials, officers, agents, employees, representatives, subcontractor, or volunteers, in connection with the performance of the Contractor and/or its subcontractors' Services 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, Contractor and its subcontractors 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. Contractor and its subcontractors 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 Contractor and/or its consultants' 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. Contractor and its subcontractors' 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 Contractor and/or its subcontractors 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 Contractor and its subcontractors 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, Contractor and its subcontractors' required minimum coverage limits set forth herein at the commencement of a renewal term by providing Contractor and subcontractor (if applicable) 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 and Two Million Dollars (\$2,000,000) general aggregate to cover losses involving "Any Auto".
- f. 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.
- g. 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.
- h. 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.

- i. **No Cancellation or Material Modification.** Policies of insurance and accompanying endorsements required by this Agreement shall not be cancelled or materially modified, except upon thirty (30) days' advance written notice to District. Written notice of cancellation or material modification shall be from the insurer(s) issuing the policy(ies) of insurance to the District.
- j. **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.

7. **CONTRACTOR'S WORK PRODUCT.**

- A. **Matters Produced Under this Agreement.** Contractor 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. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance, and distribution of the matters, for any purpose and in any medium.
- B. **District Ownership of Documents.** Documents prepared by the Contractor for this Project shall be and remain the property of the District. Such documents supplied as herein required shall be the property of the District whether or not the work for which they were made is executed. Contractor grants to the District the right to copy, use, modify, and reuse any and all copyrights and designs embodied in the documents prepared or caused to be prepared by the Contractor pursuant to this Agreement.
- C. **Electronic Copy of Documents.** Upon request from the District, Contractor shall deliver electronic copy of all reports and documentation via flash drive and/or a reasonable medium chosen by the District in PDF format. If Services are terminated prior to completion, a copy of the Services completed to date shall be provided to the District.
- D. **Documentation.** Upon request from the District, the Contractor shall provide daily, weekly, monthly, quarterly, annual, or any other applicable reports.

8. **TERMINATION OR SUSPENSION OF PROJECT.**

- A. **Termination for Convenience.** The District may, at any time, with or without reason, terminate this Agreement and compensate Contractor 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 Contractor. Notice shall be considered applicable as of the date established on the termination notice and deemed given when received by the Contractor 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 Contractor 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) breach of any material obligation of this Agreement by the Contractor; or (b) any act by Contractor exposing the District to liability to others for personal injury or property damage; or (c) Contractor is adjudged bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency; or (d) Contractor conducts operations under this Agreement in violation of applicable laws. 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 Contractor. 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. **Contractor's Obligations upon Termination of Contract.** Upon the expiration of the Term or the earlier termination of this Contract for default or the District's convenience, the Contractor shall assemble and deliver to the District all work product, instruments of service and other items of a tangible nature (whether in the form of documents, drawings, maintenance manuals, equipment specifications, samples or electronic files) prepared by or on behalf of the Contractor in connection with its performance of this Contract. The Contractor shall deliver the originals of all work product, instruments or service and other items of a tangible nature within ten (10) days of the District's request for such materials. Notwithstanding any payment due from the District to the Contractor as of the District's termination of this, the District is not obligated to disburse such payment and the Contractor is not entitled to receipt of such payment until after the Contractor has fully complied with the foregoing.
- D. **Suspension of Project.** The District may suspend this Agreement at any time without penalty by written notice to Contractor 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 Contractor 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 Contractor shall be compensated for Services satisfactorily performed prior to such suspension. When the Project is resumed, and upon District's review and approval, the Contractor's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Contractor's Services.
- E. **Abandonment of Project.** If the District abandons the Project for more than ninety consecutive days, the Contractor shall be compensated for Services satisfactorily performed prior to the abandonment. Upon mutual consent by both Parties this Agreement may terminated.
- F. **Non-Payment.** Except for the Withholding Payment provision, the District's failure to make payments to the Contractor in accordance with this Agreement shall be considered substantial non-performance and cause for termination by the Contractor.
 - a. In the event the District fails to make timely payment, the Contractor 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 Contractor within seven (7) days of the date of the notice, the suspension shall take effect without further notice.
- G. **Contractor Compensation.** The Contractor shall be compensated for Services satisfactorily performed prior to a termination, which is not the fault of the Contractor. The District shall pay the Contractor only the fee associated with the Services provided, since the last billing and up until the notice of termination.
- H. **Liability for District Damages.** In the event of termination due to the fault of the Contractor, Contractor shall receive compensation due for Services satisfactorily rendered prior to the date of termination. The Contractor is liable for all damages suffered by the District due to Contractor's failure to perform as provided in the Agreement.

9. **DISPUTES, MEDIATION, AND ARBITRATION.**

- A. **Mandatory Mediation.** All claims, demands, disputes and other matters in controversy between the District and the Contractor arising out of or relating to the Fire Protection System or this Contract (collectively "Claims") are subject to mandatory non-binding mediation conducted under the auspices of Judicial Arbitration and Mediation Services (JAMS) prior to either the District or the Contractor initiating binding arbitration procedures.
- B. **Government Code Claim Requirements.** Pursuant to Government Code §930.6, Claims asserted by the Contractor against the District for money or damages, including without limitation Claims remaining after completion of the non-binding mediation resolution procedures described above are deemed a

“suit for money or damages” and shall be subject to the provisions of Government Code §§945.4, 945.6 and 946 (“Government Code Claims Process”). An express condition precedent to the Contractor’s initiation of binding arbitration proceedings relating to Claims is the Contractor’s compliance with the Government Code Claims Process, including without limitation, presentation of the Claims and action thereon by the District or deemed rejected by the District in accordance with Government Code §900, et seq.

- C. **JAMS Binding Arbitration.** Claims remaining after the mandatory mediation and Government Code Claims Process shall be resolved by binding arbitration conducted before a retired judge in accordance with the JAMS rules in effect as of the date that a Demand for Arbitration is filed, except as expressly modified herein. The locale for any arbitration commenced hereunder shall be the regional office of the JAMS closest to the Site.
- a. **Demand for Arbitration.** A Demand for Arbitration shall be filed and served within a reasonable time after the occurrence of the claim, dispute or other disagreement giving rise to the Demand for Arbitration, but in no event shall a Demand for Arbitration be filed or served after the date when the institution of legal or equitable proceedings based upon such claim, dispute or other disagreement would be barred by the applicable statute of limitations.
 - b. **Discovery.** The discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 shall be applicable to arbitration proceedings commenced hereunder and the same shall be deemed incorporated herein by this reference.
 - c. **Arbitration Award.** The award rendered by the Arbitrator(s) (“Arbitration Award”) shall be final and binding upon the District and the Contractor only if the Arbitration Award is: (i) supported by substantial evidence; (ii) based on applicable legal standards in effect that the time the Arbitration Award is issued; and (iii) supported by written findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296. Any Arbitration Award that does not conform to the foregoing is invalid and unenforceable. The District and Contractor hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§1286.4 and 1296, vacate the Arbitration Award if, after review, the Court determines either that the Arbitration Award does not fully conform to the foregoing. The confirmation, enforcement, vacation or correction of an arbitration award rendered hereunder shall be made by the Superior Court of the State of California for the County of Orange. The substantive and procedural rules for such post-award proceedings shall be as set forth in California Code of Civil Procedure §1285 et seq.
 - d. **Arbitration Fees and Expenses.** The expenses and fees of the Arbitrator(s) shall be divided equally among all of the parties to the arbitration. Each party to any arbitration commenced hereunder shall be responsible for and shall bear its own attorneys’ fees, witness fees and other costs or expenses incurred in connection with such arbitration. The foregoing notwithstanding, the Arbitrator(s) may award arbitration costs, including Arbitrators’ fees but excluding attorneys’ fees, to the prevailing party.
 - e. **Limitation on Arbitrator.** The Superior Court for the State of California for the County of Orange has the sole and exclusive jurisdiction, and an arbitrator has no authority, to hear and/or determine a challenge to the commencement or maintenance of an arbitration proceeding on the grounds that: (i) the subject matter of the arbitration proceeding is barred by the applicable statute of limitations; (ii) the subject matter of the arbitration proceeding is barred by a provision of the California Government Claims Act; (iii) the subject matter of the arbitration proceeding is outside the scope of the arbitration clause; (iv) the Contractor has failed to satisfy all conditions precedent to commencement or maintenance of an arbitration proceeding; (v) waiver of the right to compel arbitration; (vi) grounds exist for the revocation of the arbitration agreement; and/or, (vii) there is the prospect that a ruling in arbitration would conflict or potentially with a ruling in a separate pending proceeding on a common issue of law or fact.
 - f. **Limitation on Special/Consequential Damages.** In the event of the District’s breach or default of its obligations under the Contract, the damages, if any, recoverable by the Contractor shall be limited to general damages which are directly caused by the breach or default of the District and shall exclude any and all special or consequential damages, if any. The Contractor expressly acknowledges the foregoing limitation to recovery of only general damages from the District if the District is in breach or default of its obligations under the Contract Documents; the Contractor expressly waives and relinquishes any recovery of special or consequential damages from the District.

- g. **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, Contractor agrees to continue to diligently perform and provide Services hereunder until completion of the Services. If the dispute is not resolved, Contractor agrees it will neither rescind this Agreement nor stop the progress of the Services.

10. **DISTRICT'S RESPONSIBILITIES.**

- A. **District Provided Information.** The District shall provide to the Contractor full information regarding requirements for the Project, including information regarding the District's objectives, schedule, constraints and criteria. At the written request of the Contractor, District shall provide Contractor 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. Contractor shall follow and accept directives from the District's designated representatives and not from other District employees or consultants. The District shall notify Contractor 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 Contractor, the primary District Representative is:

Project Manager
[[Project Manager]]
[[Project Manager Email]]
- C. **District Notification.** The District shall give prompt written notice to the Contractor if the District becomes aware of any fault or defect in the Project or nonconformance with the Agreement. However, the District's failure or omission to do so shall not relieve the Contractor 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.

11. **MISCELLANEOUS.**

- A. **Representations and Warranties.** Contractor and its subcontractors 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, Contractor and its subcontractors acknowledge and agree that the District, in deciding to engage Contractor 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 Contractor's engagement hereunder:

Contractor 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, Contractor and its employees have all licenses, permits, qualifications, and/or governmental approvals that are legally required to perform the Services as described herein. Such licenses, permits, qualifications, and/or governmental approvals shall be maintained throughout the term of this Agreement.

Contractor, 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. Contractor shall be liable for all violations of such laws and regulations in connection with the Services as described herein.

- B. **Equal Opportunity/Non-Discrimination.** Contractor 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.

Contractor 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. Contractor 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, Contractor agrees to comply with the rules and regulations of the Sex Offender Registration Act, California Penal Code Section 290.95. Contractor 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 Contractor, 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.** Contractor hereby certifies that Contractor 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. Contractor shall notify District in writing immediately if Contractor is charged with any felony during the term of this Agreement in which case District may terminate this Agreement immediately. Contractor further hereby authorizes the District or other organizations to conduct a comprehensive review of his/her background upon District's request. Contractor hereby consents to the background check to the fullest extent permitted by law. Contractor 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 Contractor 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. Costs, fees, expenses or other charges relating to Department of Justice fingerprint checks of Contractor employees pursuant to the foregoing shall be borne solely and exclusively by the Contractor.
- E. **Audit and Inspection of Records.** At any time during the normal business hours and as often as District may deem necessary, Contractor 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 Contractor 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. **Confidential/Proprietary Information.** The Contractor and its personnel may, in the course of completing obligations hereunder: (i) prepare materials consisting of or incorporating District confidential/proprietary information; or (ii) have access to District confidential/proprietary information. Except as required by a valid order of a court of competent jurisdiction, the Contractor and its personnel shall not disburse, distribute or disseminate to any person or entity in any and in whole or in part any District confidential/proprietary information.
- G. **Review, Approval, or Acceptance.** Review, approval or acceptance of Contractor's Services whether by District or others, shall not relieve Contractor from responsibility for accuracy of Contractor's Services.
- H. **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 Contractor 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.

[[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.

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

<p>DISTRICT [[Project Manager]] South Orange County Community College District 28000 Marguerite Parkway Mission Viejo, CA 92692 [[Project Manager Email]]</p>	<p>CONSULTANT [[Name (Primary Second Party)]] [[Name of Contractor]] [[Street Line 1 (Primary Second Party)]] [[City/Town (Primary Second Party)]] [[Contractor Email]]</p>
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P. **Severability.** If any provision of this Agreement is deemed illegal, invalid unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted here from, but all remaining provisions will remain and continue in full force and effect.

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.** Contractor hereby represents, warrants and covenants that (i) at the time of execution of this Agreement, Contractor 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 Services under this Agreement; (ii) Contractor has no business or financial interests which are in conflict with Contractor’s obligations to District under this Agreement; and (iii) Contractor shall not employ in the performance of Services under this Agreement any person or entity having any such interests.

S. **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, Contractor 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, Contractor 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 Contractor'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.
- c. 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
 - d. Include in all lower tier covered transactions, and all solicitations for covered transactions, provisions substantially similar to those set forth herein.
- T. **Entire Agreement/Amendment.** The Agreement documents consist of this Agreement, any attachments 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.
- U. **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.
- V. **Authority to Execute.** The individual(s) executing this Agreement on behalf of the Contractor is/are duly and fully authorized to execute this Agreement on behalf of Contractor and to bind the Contractor to each and every term, condition, and covenant of this Agreement.
- W. **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.

[SIGNATURE PAGE TO FOLLOW]

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: