



South Orange County Community College District

**RFQ&P No. 4921-2022
Engineering Services for Electrical Infrastructure Projects
at Irvine Valley College**

Addendum No. Two (2)

May 31, 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 due date for proposals has been extended to Tuesday, June 7, 2022 at 12:00 PM.
- 2.** Proposal Form E: Fee and Rate Proposal has been replaced in its entirety and the revised version has been attached to this Addendum. Proposers shall utilize the Revised Proposal Form E: Fee and Rate Proposal when submitting proposals.
- 3.** The page limit for Proposal Form C: Related Experience, Approach, and Methodology has been changed from a two (2) page limit to a five (5) page limit.
- 4.** Appendix D: Sample Agreement has been replaced in its entirety and the revised version has been attached to this Addendum. Proposers shall utilize the Revised Appendix D: Sample Agreement when submitting proposals.
- 5.** Interviews for shortlisted firms will be conducted via Zoom on June 21, 2022 from 1:00 PM to 5:00 PM. Firms will be notified with their respective interview timeslot and instructions no later than June 14, 2022.

REVISED PROPOSAL FORM E
FEE AND RATE PROPOSAL
Issued Per Addendum No. 2 on 5/31/22

The proposed fee schedule shall include fully burdened hourly rates for each title/individual proposed for the work. It is the proposer’s responsibility to understand the complexity of the District as well as the complexity of the proposed work and to submit a not-to-exceed fee accordingly using the form below.

Fees shall be firm and fixed.

Indicate the billable hourly rate and estimated total hours required to fulfill their duties. Such rates shall include all labor, materials, overhead and profit (OH&P), and other direct and indirect costs including incidental travel. Actual contract rates and project fees will be subject to negotiation prior to issuance of any agreement.

1. Fees for Phase 1 Task 1:

Estimated # of Hours	Hourly Billable Rate	Fees
	\$	\$
Total Not to Exceed Fee for Phase 1 Task 1:		\$

2. Fees for Phase 1 Task 2:

Estimated # of Hours	Hourly Billable Rate	Fees
	\$	\$
Total Not to Exceed Fee for Phase 1 Task 2:		\$

3. Fees for Phase 2 Tasks 1-4:

Each proposing firm shall provide a not to exceed fee percentage based on the complete hard and soft costs associated based upon the Statement of Probable Costs prepared in Phase 1.

	Phase 2 Task 1	Phase 2 Task 2	Phase 2 Task 3	Phase 2 Task 4
Total Not to Exceed Percentage of Statement of Probable Costs (Including All Hard and Soft Costs)	%	%	%	%

Note:

- *The District reserves the right to negotiate and finalize the fee for Phase 2 services prior to the issuance of the notice to proceed with Phase 2 services.*
- *A District Controlled Allowance in an amount not to exceed 10% of the Final Negotiated Contract Value will be included for Phase 2 services.*

4. Rates for Additional Services. The following rates, which include overhead, administrative cost and profit, shall be utilized in arriving at the fee for Additional Services. The hourly rates reflected below shall be effective as of the date of execution of an Agreement between the District and the Firm.

Service/Discipline	Position/Title	Proposed Hourly Rate
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
<i>Duplicate as necessary for ALL services/disciplines, positions/titles and proposed hourly rates</i>		

APPENDIX D

Sample Agreement - Issued Per Addendum No. 2 on 5/31/22

Engineering Services for Electrical Infrastructure Projects at Irvine Valley College

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 ENGINEERING SERVICES AGREEMENT

This Engineering Services Agreement ("Agreement") is between **South Orange County Community College District on behalf of Irvine Valley College** ("District"), a California community college district and political subdivision of the State of California, and **[[Name (Primary Second Party)]]** ("Engineer"). District and Engineer 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 Engineering Services for Electrical Infrastructure Projects at Irvine Valley College, hereinafter referred to as "Project"; and

WHEREAS, Engineer is specially trained and fully licensed as required by the State of California, experienced and competent to provide Consultant Services in conformity with the laws of the State of California.

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 4921-2022 Engineering Services for Electrical Infrastructure Projects at Irvine Valley College, 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 document and that Attachments A and B are intended to cooperate and be complementary.

a. **Phase 1 Task 1:** Assessment of the existing electrical system currently serving each of the buildings on the Irvine Valley College (IVC) campus.

i. Develop a detailed Basis of Design for assessment of existing electrical system. The Basis of Design shall minimally include the following:

a. **Creation of record documentation:** Building Electrical System – Create a single line diagram for each building, showing service to the building, low voltage distribution boards, panelboards, and major equipment connected to the main switchboard shall be provided. Provide a floor plan showing location of main switchboard, distribution boards, and panelboards for each of the buildings as part of deliverables. Panel schedules and distribution panel schedules shall be provided based on visual identification of existing breaker sizes and confirmation of loads from IVC Facilities and Current reports. Type and make of all equipment shall be identified and documented.

b. **Assessment of the existing electrical system:** Conduct assessment of existing electrical system serving the buildings, inclusive of the a) Main Powerhouses, b) Main building service and associated breakers, c) Identifying and reviewing condition of conduits and feeders serving individual distribution boards in the building with facilities staff, and d) Distribution transformers and branch circuit panelboards in the building. Assessment shall address age, condition, availability of spare parts, issues related to reliability and quality of power, recommended testing as applicable on equipment/feeders, code related issues, capacity issues and redundancy issues. Include pictures of existing equipment in each of the buildings as part of deliverables

Provide a report of an assessment of existing systems in each of the buildings along with recommendations and associated costs shall be provided as part of deliverables. Your report shall also prioritize buildings in order of their critical needs and identify systems/components requiring immediate attention.

c. **Identification of upgrades/modifications/replacements needed to provide reliable and uninterrupted power to each of the buildings.**

- d. Creation of equipment maintenance plan: Prepare a maintenance plan for each piece of the equipment. Maintenance plan shall reference applicable NETA standards, Cal OSHA and NFPA standards and shall be prioritized based on age of the equipment for each of the buildings.
 - e. Conduct an arc flash, protective device coordination, and short circuit study: An arc flash, protective device coordination, and short circuit study shall be undertaken for each building, from the SCE owned Powerhouse feeding the building to each downstream panelboard, in order to comply with Cal OSHA. Assistance in opening the existing electrical system will be provided by IVC Facilities. Provide separate fees for hiring a contractor to set the breakers recommendations provided in the report, and to conduct an arc flash, coordination, and short circuit study from the main switchboard to each distribution board/panelboard for each of the buildings.
- ii. Engineer shall prepare a written Statement of Probable Cost upgrades.
- b. **Phase 1 Task 2**: Basis of Design for assessing the impacts of additional loads from solar energy production, battery storage or EV charging stations and loads from future building construction reflected in the campus 2020 Facilities Master Plan (FMP).
 - i. The detailed Basis of Design shall minimally include the following:
 - a. Evaluation of power interconnect infrastructure requirements to support future PV solar systems to be constructed in phases. Review the five proposed PV locations to determine capacity of proposed points of connection and methods of interconnection to the campus grid. Study interconnection agreement with SCE and provide recommendations.
 - b. Analyze of the use of battery energy storage systems for peak load shaving and to discharge stored power to the grid during times of low solar production and in support of Net Zero goals.
 - c. Review and assessment of power requirements for future EV charging stations in the overall power distribution upgrade design effort. EV charging stations are planned to be co- located with the solar systems with the potential for battery energy storage systems as well.
 - d. Review and assessment of the existing capacity that may be impacted by additional loads from solar energy production, battery storage or EV charging stations, and the impacts of additional loads from future building construction reflected in the campus 2020 Facilities Master Plan (FMP).
 - ii. Engineer shall Provide the estimated electrical load for the various segments of the campus grid to support the design effort.
 - iii. Prepare a written Statement of Probable Cost for the upgrades.
 - c. **Phase 1 Tasks 1 and 2: Assessment Services**:
 - i. Attend kick-off meeting with District and College.
 - ii. Review existing documents for the electrical distribution.
 - iii. Coordinate with SCE.
 - iv. Attend site visit to verify existing conditions.
 - v. Engineer shall provide an Electrical Contractor on site to open medium voltage equipment and vaults.
 - vi. Prepare Draft Basis of Design Narrative.
 - vii. Prepare sketches indicating locations of equipment and potential revisions.
 - viii. Prepare preliminary cost estimate for suggested corrections/revisions.
 - ix. Attend meeting with the District/College to review Basis of Design, associated costs, potential impacts (power outages, new equipment locations), and District comments.
 - x. Incorporate review comments into the Basis of Design and sketches.
 - xi. Update probable cost estimate.
 - d. **Phase 1 Task 1: Testing Services**:
 - i. Provide field investigation to determine location of existing equipment.
 - ii. Provide single line diagram of each of the buildings showing service to the building, main switchboard, distribution boards, panelboards, and any major equipment connected to the main distribution board.
 - iii. Provide floor plans showing locations of main switchboard, distribution boards, and panelboards for each of the buildings.

- iv. Provide panel schedules based on visual identification of existing breaker sizes and confirmation of loads from IVC Facilities for each of the buildings.
 - v. Identify and document type and make of each of the equipment.
 - vi. Provide an assessment of the existing electrical system serving each of the buildings at the campus. This will include assessment of the a) main distribution board and associated breakers, b) identifying and reviewing condition of conduits and feeders serving individual distribution boards in the building with facilities staff, and c) distribution transformers and branch circuit panelboards in the building. The assessment shall address age, condition, availability of spare parts, issues related to reliability and quality of power, recommended testing as applicable on equipment/feeders, code related issues, capacity issues and redundancy issues. Pictures of existing equipment in each of the buildings shall also be included as part of the deliverables.
 - vii. Provide a report providing assessment of existing electrical system in each of the buildings along with recommendations and associated costs. The report shall prioritize buildings in order of their critical needs and identify systems/components requiring immediate attention.
 - viii. Provide a maintenance plan for each of the equipment and shall be prioritized based on age of the equipment in each of the buildings.
 - ix. Attend meetings with District and College to review progress and deliverables for each of the project elements identified above.
 - x. Testing is anticipated to be done during Campus holiday or shut down time.
 - xi. Engineer shall advise which company is on their team as subconsultant/subcontractor for testing.
- e. **Phase 2: Full Design Services:**
- i. **Phase 2 Task 1:** Develop plan for protective relay and breaker testing, equipment cleaning.
 - ii. **Phase 2 Task 2:** Full design to replace switchgear (per recommendation of Burns/McDonnell Underground Utility Condition Assessment & Capacity Analysis Report, dated December 6, 2019):
 - a. Based upon the Basis of Design developed in Phase 1 Task 1, and upon Notice to Proceed from the District, the Engineer shall prepare a full design to replace switchgear. Services shall include submission and approval of the completed design to the Division of the State Architect for approval.
 - iii. **Phase 2 Task 3:** Develop full design to replace substations (per recommendation of Burns/McDonnell Underground Utility Condition Assessment & Capacity Analysis Report, dated December 6, 2019):
 - a. Based upon the Basis of Design developed in Phase 1 Task 1, and upon Notice to Proceed from the District, the Engineer shall develop full design to substations. Services shall include submission and approval of the completed design to the Division of the State Architect for approval.
 - iv. **Phase 2 Task 4:** Develop full design to add electrical meters at each unit substation and building.
 - v. **Phase 2 Tasks 1 through 4: Pre-Construction Phase:**
 - a. Participate in a general Project kick-off meeting to include the Engineer's sub-Engineers, and District staff.
 - b. After Programming and before beginning Schematic Design, the Engineer shall submit to the District a written preliminary estimate of the construction cost and shall advise the District, in writing, of any adjustments to the estimate of Construction Cost.
 - c. Based on the approved preliminary documents outlining the scope of work and any further adjustments authorized by the District, the Engineer shall prepare, for approval by the District, Construction Documents consisting of drawings and specifications setting forth in detail the requirements for the construction of the Project.
 - d. Final documents shall include:
 - i. Final contract documents shall consist of the following:
 - 1. Drawings: All drawings with Engineer/sub-consultant's State license stamp and DSA stamp.
 - 2. Specifications: Original technical specifications on reproducible masters or CD/DVD format if acceptable to District's reprographics firm in CSI format.
 - 3. Completely coordinated sub-consultant's work.
 - ii. Engineering System Architecture:

1. Completed site plan.
 2. Architectural details and large blow-ups completed.
 3. Associated Site utility plans completed.
 4. Updated Site Single Line Diagram
- iii. Structural:
1. Structural floor plans and sections with detailing completed.
 - ii. Structural calculations completed.
- iv. Electrical:
1. Lighting and power plan including all switching and controls.
 2. Complete electrical distribution including a single line diagram indicating final location of data/telephone, switchboards, communications, controls; (high and low voltage) motor control centers, panels, transformers, and emergency generators, if required.
 3. All electrical equipment schedules completed.
 4. All fire alarm systems completed and compatible with existing College fire alarm system to meet current DSA requirements.
 5. Electrical load calculations completed.
 6. All technology distribution system completed from existing vault to owner furnished contractor installed IDF/patch panels and new data drops at locations coordinated between College and Engineer.
 7. All low voltage distribution system completed from nearest point of connection at existing nearest buildings, vaults or other terminal cabinets as coordinated between the Engineer and the District.
- v. Probable Cost:
1. Update and refine the Probable cost. Prepared by specification section, summarized by CSI category. The probable cost shall include unit costs of materials, labor, and equipment. Sales tax, contractor's mark-ups shall be identified as a separate line item. Soft cost including estimated general conditions shall be listed separately.
 2. Provide Probable Cost submission at Schematic, Design Development and Construction Documents phases.
- vi. Specifications:
1. Complete development and preparation of technical specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project in CSI format.
 2. Specifications shall not contain restrictions that will limit competitive bids other than those approved by the District as necessary to meet maintenance requirements.
 3. During the Construction Phase, the Engineer will provide Construction Administration services commencing with the award of the contract and terminating at either at DSA Certification or upon the issuance of the final Certificate of Payment by the Contractor.
 4. Construction Administration services will include at minimum: attendance at all construction meetings, site visitation to review progress and provide quality control checks, review of all submittals/shop drawings, response to requests for interpretation, preparation of any drawings related for clarification, inclusive of DSA CCD's, review of contractor pay applications, preparation of punch list, review of Contractor change requests, issuance of any other documents necessary for any government authority, and DSA closeout and certification. Engineer is to provide electronic Record Drawings to the District.
 - a. Bid Prep: The Engineer shall prepare all necessary bidding information and bidding forms required by the District and shall assist the District in preparing the conditions of the Contractor's contract and coordinating same with the technical specifications. Plans or specifications, which include a requirement that the Contractor provide operation manuals and adequate training for the District in the operation of mechanical, electrical,

heating and air conditioning systems installed by the Contractor, shall be part of the bid documents prepared by the Engineer.

- b. Bid Marketing: The Engineer, following the District's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the District in obtaining bids for the Project.
- c. Over-Budget at Bid: If the lowest bid exceeds the budget for the Project (or exceeds the budget by a certain percentage), the Engineer, in consultation with and at the direction of the District, shall provide such modifications in the Construction Documents as necessary to bring the cost of the Project within its budget.

f. **Phase 2 Tasks1 through 4: Construction Phase:**

- i. Construction Administration. The Engineer shall provide administration of the construction contract. The Engineer's responsibility to provide services for the construction of the Project commences with the award of a construction contract and terminates at the issuance to the District of the final certificate for payment by the Engineer and the final close out acknowledgement by the Division of the State Engineer.
- ii. Evaluate Contractor Performance. The Engineer shall evaluate the performance of the Contractor under the requirements of the construction contract when requested in writing by the District.
- iii. Submittals. The Engineer shall review and approve or take other appropriate action upon Contractor's submittals of shop drawings, product data, and samples for the purpose of checking for conformance with the construction contract. The Engineer's action shall be taken as to cause no delay in the work, while allowing sufficient time in the Engineer's professional judgment to permit adequate review and in no case exceed fifteen (15) days after receipt. When certification of performance characteristics of materials, systems or equipment is required by the construction contract, the Engineer shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the construction contract.
- iv. Substitutions. The Engineer shall provide services in connection with evaluating substitutions proposed by the Contractor, obtain written acceptance by the District for any changes to the original documents and making subsequent revisions to drawings, specifications and other documentation resulting there from.
- v. District Representative. The Engineer shall be the District's representative during construction and shall advise and consult with the District until final payment to the Contractor is due. The Engineer shall have authority to act on behalf of the District only to the extent provided in this Agreement unless otherwise modified in writing.
- vi. Site Visits. The Engineer shall visit the site not less than once per week while work is in progress, and as often as necessary and appropriate to the stage of construction, to inspect the site and work; to familiarize himself/herself with the progress and quality of the work; and to determine for the District's benefit and protection if the work is proceeding in accordance with the construction contract and schedule. On the basis of his/her on-site observations and inspections as an Engineer, the Engineer shall keep the District informed of the progress and quality of the work and he/she shall use reasonable care to guard the District against defects and deficiencies in the work and against the Contractor's failure to carry out the work in accordance with the construction contract and the schedule. The Engineer shall provide services made necessary by major defect or deficiencies in the work of the Contractor which through reasonable care should have been discovered by the Engineer and promptly reported to the District and Contractor but which he/she failed to do.
- vii. Site Access. The Engineer shall have access to the work at all times.
- viii. Certification of Payment. The Engineer shall review and certify the amounts due the Contractor. The Engineer's certification for payment shall constitute a representation to the District, based on the Engineer's observations and inspections at the site that the work has progressed to the point indicated, that quality of the work is in accordance with the construction contract and that the Contractor is entitled to payment in the amount certified.
- ix. Reject Work. The Engineer shall reject work which does not conform to the construction contract. The Engineer has authority to require additional inspection or testing of the work in accordance with the provisions of the construction contract, whether or not such work is fabricated, installed or completed.
- x. Change Orders. The Engineer shall prepare change orders with supporting documentation and data for the District's approval and execution in accordance with the construction contract, and may authorize minor changes in the work not involving an adjustment in the contract sum or an extension of time. The Engineer shall evaluate and make written recommendations regarding Contractor's proposals for possible change

orders. DSA change orders shall be submitted for approval on an on-going basis throughout the project. Engineer shall prepare a set of reproducible record drawings showing significant changes in the work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Engineer

- xi. Claim Evaluation. The Engineer shall evaluate and render written recommendations, within a reasonable time on all claims, disputes or other matters at issue between the District and Contractor relating to the execution or progress of the work as provided in the construction contract.
- xii. Substantial Completion. The Engineer shall inspect the Project to determine the date or dates of substantial completion and the date of final completion, receive and forward to the District for the District's review all written warranties and related documents required by the construction contract and issue a final certificate for payment upon compliance with the requirements of the construction contract.
- xiii. Record Drawings. Engineer shall prepare a set of CAD drawings showing significant changes in the work made during construction based on marked up prints, drawings and other data furnished by the Contractor to the Engineer.

g. **Phase 2 Tasks 1 through 4: Construction Close-Out Phase:**

- i. Punch List. The Engineer's responsibility to provide services for the Close Out phase under this Agreement commences with the Contractor's request for a punch list walk and terminates at the close out of the project with the Division of the State Architect, if required.
 - a. Engineer shall develop and confirm completion of comprehensive punch lists items including Engineers as appropriate to identify apparent deficiencies in construction following the acceptance of the contractor's work.

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.

C. 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 each of its respective employees will at all times comply with the District's current [COVID-19 Contractor Protocols](#).

D. Regulatory Compliance. The Engineer shall comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules and regulations currently existing and as amended, enacted, issued or adopted in the future and which are applicable to the Project.

E. Existing Conditions. The Engineer shall investigate existing conditions or facilities and make measured drawings of such conditions or facilities.

F. Non Responsibility. Engineer and Engineer's Engineers shall have no responsibility for:

- a. The presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including, but not limited to, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.
- b. Ground contamination

- c. Environmental Impact Report/CEQA declarations
- d. Historical significance report
- e. Soils Investigation/Geotechnical Hazard Report
- f. Topographical survey

G. Coordination for Government Authorities. The Engineer shall file documents required for the approval of governmental authorities having jurisdiction over the Project including funding submittals with the District's assistance. Included in this filing shall be an energy modeling document for submittal to the State. The District shall pay all fees required by such governmental authorities.

H. Qualified Personnel. The Engineer shall provide enough qualified personnel to properly perform services required under this Agreement and District shall have the right to remove any of Engineer's personnel from the Project.

I. Subconsultants. The Engineer has submitted a list of qualified engineers for the Project (Attachment B). Engineer shall ensure that each engineer places his or her name, seal and signature on all drawings and specifications prepared by said engineer. The Engineer is responsible for the management of their Engineers in order to meet the terms of all phases of this agreement. Nothing in the foregoing shall create any contractual relationship between District and any Engineers employed by Engineer under the terms of this Agreement. Engineer is as responsible for the performance of its Engineers as it would be if it had rendered these services itself.

J. Materials and Expenses. Engineer 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 Engineer for any costs or expenses paid or incurred by the Engineer in performing Services for the District. The Engineer's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of their profession.

K. 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 Engineer 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.

L. Division of State Architects (DSA) and Department of Industrial Relations (DIR) Compliance. The Engineer shall comply with the following:

- a. DSA and the Uniform/International Building Code (UBC/IBC). Engineer shall have experience with DSA and shall be required to coordinate with the District and its Engineers.
- 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
 Division of Labor Statistics and Research
 Prevailing Wages Unit
 P.O. Box 420603
 San Francisco, CA 94142
 Phone: (415) 703-4474

2. ADDITIONAL ENGINEER'S 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. Engineer shall be compensated for additional services in accordance with the provisions of the Agreement and the amounts indicated in Attachment B. If the duration of Engineer Services is extended, due to the District's need for Additional Services, the Engineer shall be entitled to additional compensation as set forth in Attachment B. Engineers shall perform additional services only upon the approval and execution of an amendment to this Agreement by both parties. The Engineer 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. Engineer's Request for Additional Services. Engineer shall notify the District in writing of the need for additional services required due to circumstances beyond the Engineer's control. Engineer 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 Engineer, 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 Engineer's practice.
- e. Engineers 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 **[[Start Date]]**. The Parties understand that the Services under this Agreement shall be diligently performed by the Engineer for the anticipated construction timeframe of **[[Anticipated Construction Duration Days/Months]]**. 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.

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:

Phase 1: Basis of Design

- Not to Exceed Fees for Phase Task 1: \$
- Not to Exceed Fees for Phase Task 2: \$

Phase 2: Full Design Services

- Not to Exceed Fee Percentage for Phase 2 Task 1: %
- Not to Exceed Fee Percentage for Phase 2 Task 2: %
- Not to Exceed Fee Percentage for Phase 2 Task 2: %
- Not to Exceed Fee Percentage for Phase 2 Task 4: %

- o The total construction cost will be established upon the completion of Phase 1 services.
- o The Not to Exceed Fee Percentages identified above shall be based on the established total construction costs inclusive of all hard and soft costs.
- o The District will negotiate and finalize the fee for all Phase 2 services prior to the issuance of the Notice to Proceed with Phase 2 services pursuant to the percentages identified above.
- o The pricing will be established for Phase 2 services via an amendment to the Agreement.
- o The amendment for Phase 2 services shall include but not limited to Pre-Construction Phase, Construction Phase, and Construction Close Out Phase.
- o The Engineer shall only proceed with Phase 2 services upon the District's issuance of a Notice to Proceed.

- 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.
- 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 Engineer 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 Engineer 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. Engineer Monthly Billing Statements. Engineer 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 Engineer. Services are to be invoiced by phase in accordance with percent complete.

Engineer 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 Engineer provision as stipulated herein. **To ensure prompt and accurate payment, all invoices related to this Agreement shall reference the following Agreement Number: IVCFMO-ENGSA-4921-2022.**

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, and Engineer shall remain liable to the District in accordance with applicable law for all damages to the District caused by Engineer'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 Engineer's billing invoices, District will make payment to Engineer of undisputed amounts of the Contract Price due for Services, authorized Additional Services, and Allowable Reimbursable Expenses.

I. Withholding Payment. The District may, however, withhold or deduct from amounts otherwise due Engineer hereunder if Engineer 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 Engineer 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 Engineer'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 Engineer's Services is exceeded or extended through no fault of the Engineer, compensation for any Services rendered during the additional period of time may be computed at standard hourly rates as established in Attachment B.

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

- A. **Statement of Services.** The Engineer's Services shall consist of those services performed by the Engineer and Engineer's employees as enumerated in this Agreement.
- B. **Standard of Care and Professional Conduct.** The Engineer 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 Engineer 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 Engineer or any subconsultant the Engineer has engaged or will engage to perform the Service(s). If the District desires, the District shall request in writing, the Engineer to provide Services in addition to, or different from, the Services described herein. The Engineer shall advise the District in writing of any Services that, in the Engineer's opinion, lie outside of the technical and professional expertise of the Engineer. 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.

Engineer or Engineer'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 Engineer'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 Engineer and shall not be contracted to perform this or any future Services for the District.

- C. **Key Individual Assignment.** The Engineer has been selected to perform the Services described herein because of the skills and expertise of key individuals. Engineer assigned for this Project is referenced in the Communication provision as stipulated herein. The Engineer shall designate [[Name of Principal]] as Principal and [[Name of Project Executive]] as Project Executive and [[Name of Principal Engineer]] as Principal Engineer 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 Engineer must furnish the name of all other key personnel in Engineer'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 Engineer 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 Engineer to Other Project Participants.** Engineer's Services hereunder shall be provided in conjunction with applicable contracts between the District and: (a) the Contractor; (b) the Inspector; (c) Test/Inspection Service Providers; and (d) others providing services in connection with bidding and/or construction of the Project. Engineer shall coordinate all Services with District Engineers and/or Project participants as necessary to complete contract requirements.
- F. **Acceptance of Project Schedule.** The Engineer shall accept the District's Project schedule for the performance of the Engineer'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 Engineer, except for reasonable cause, as established by the District.

- 6. **INDEPENDENT CONTRACTOR.** Engineer, in the performance of this Agreement, shall be and act as an independent contractor and not an employee of the District. Engineer 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. Engineer assumes the full

responsibility of their actions and/or liabilities including those of their employees or agents as they relate to the Services to be provided under this Agreement. Engineer 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 Engineer and Engineer's employees. Engineer 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 Engineer or Engineer's employees or subconsultants. Engineer 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 Engineer 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 Engineer's employees or subconsultants.

7. HOLD HARMLESS & INDEMNIFICATION AND INSURANCE.

A. Hold Harmless & Indemnification. To the fullest extent permitted by law, the Engineer 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 Engineer, its officials, officers, agents, employees, representatives, subconsultant, or volunteers, in connection with the performance of the Engineer or its subconsultant's 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, Engineer 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. Engineer 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 Engineer 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. Engineer 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 Engineer 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 One Million Dollars (\$1,000,000) 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 One Million Dollars (\$1,000,000) 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. 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.
- 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. ENGINEER'S WORK PRODUCT.

- A. Matters Produced Under this Agreement**. Engineer 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. Engineer consents to use of Engineer'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**. Engineer 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.** Engineer 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. Engineer consents to use of Engineer'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 Engineer.

Engineer 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. Engineer 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 Engineer 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 Engineer. Notice shall be considered applicable as of the date established on the termination notice and deemed given when received by the Engineer 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 Engineer 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 Engineer; or (b) any act by Engineer exposing the District to liability to others for personal injury or property damage; or (c) Engineer is adjudged a bankrupt, Engineer makes a general assignment for the benefit of creditors or a receiver is appointed on account of Engineer'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 Engineer. 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 Engineer 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 Engineer 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 Engineer shall be compensated for Services satisfactorily performed prior to such suspension. When the Project is resumed, and upon District's review and approval, the Engineer's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Engineer's Services.
- D. **Abandonment of Project.** If the District abandons the Project for more than ninety consecutive days, the Engineer 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 Engineer in accordance with this Agreement shall be considered substantial nonperformance and may cause for termination by the Engineer.
- a. In the event the District fails to make timely payment, the Engineer 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 Engineer within seven (7) days of the date of the notice, the suspension shall take effect without further notice.
- E. **Engineer Compensation.** The Engineer shall be compensated for Services satisfactorily performed prior to a termination, which is not the fault of the Engineer. The District shall pay the Engineer 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 Engineer, Engineer shall receive compensation due for Services satisfactorily rendered prior to the date of termination. The Engineer is liable for all damages suffered by the District due to Engineer'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 Engineer agree that, in the event that a dispute comes to litigation, the Engineer 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 Engineer, 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, Engineer agrees to continue to diligently perform and provide Services hereunder until completion of the Services. If the dispute is not resolved, Engineer 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 Engineer full information regarding requirements for the Project, including information regarding the District's objectives, schedule, constraints and criteria. At the written request of the Engineer, District shall provide Engineer 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. Engineer shall follow and accept directives from the District's designated representatives and not from other District employees or Engineers. The District shall notify Engineer 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 Engineer, the primary District Representative is:

Project Manager

[[Project Manager]]

[[Project Manager Email]]

- C. District Notification.** The District shall give prompt written notice to the Engineer 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 Engineer of their responsibilities hereunder and the District shall have no duty to observe, inspect or investigate the Project.

- D. **District Engineers.** Other Engineers required or desired by the District in connection with the Project shall be retained and paid for by the District. Such other Engineers include, but may not be limited to, legal counsel, insurance/surety Engineers and audio-visual equipment/installation Engineers.

12. **MISCELLANEOUS.**

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

Engineer 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, Engineer 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.

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

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

Engineer shall ensure that all Services and benefits rendered to the District, its Board of Trustees, officers, agents, employees, representatives, students, Engineers/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. Engineer 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, Engineer agrees to comply with the rules and regulations of the Sex Offender Registration Act, California Penal Code Section 290.95. Engineer 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 Engineer, 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.** Engineer hereby certifies that Engineer 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. Engineer shall notify District in writing immediately if Engineer is charged with any felony during the term of this Agreement in which case District may terminate this Agreement immediately. Engineer further hereby authorizes the District or other organizations to conduct a comprehensive review of his/her background upon District's request. Engineer hereby consents to the background check to the fullest extent permitted by law. Engineer 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 Engineer 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, Engineer 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 Engineer 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 Engineer's Services whether by District or others, shall not relieve Engineer from responsibility for accuracy in Engineer'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 Engineer 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 Engineer is an employee of another public agency, Engineer 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 Engineer 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 Engineer'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 Engineer pursuant to this Agreement shall not be assigned by the Engineer 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 or (b) by U.S. Mail, mailed either by certified or registered mail, return receipt requested, with postage prepaid. 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

Engineer:

[[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	Engineer
[[Project Manager]]	[[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/Engineer for the construction of a portion of the Project.
- b. Engineer. A Engineer 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 Engineer 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. Engineer hereby represents, warrants and covenants that (i) at the time of execution of this Agreement, Engineer 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) Engineer has no business or financial interests which are in conflict with Engineer's obligations to District under this

Agreement; and (iii) Engineer shall not employ in the performance of Services under this Agreement any person or entity having any such interests.

- S. Accessibility of Information and Communication Technology.** The Engineer 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 Engineer agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services. Engineer 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.

Engineer 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 Engineer, 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. Engineer 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, Engineer 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, Engineer 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 Engineer'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 Services 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 Engineer is/are duly and fully authorized to execute this Agreement on behalf of Engineer and to bind the Engineer 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: