

**PROJECT MANAGEMENT AND PLANNING
CONSULTANT SERVICES AGREEMENT**

This AGREEMENT is made and entered into this <<DAY AFTER BD MTG>> day of <<MONTH>> in the year 20<<YEAR>> (“Effective Date”), by and between the **NORTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT**, hereinafter referred to as (“DISTRICT”), and <<NAME OF CONSULTANT>>, hereinafter referred to as “CONSULTANT”. The DISTRICT and the CONSULTANT are sometimes referred to herein as a “PARTY” and collectively as the “PARTIES”. This AGREEMENT is made with reference to the following facts:

WHEREAS, the DISTRICT requires services and/or advice of a highly specialized and technical nature in connection with certain financial, economic, accounting, consulting and/or administrative matters;

WHEREAS, CONSULTANT possesses the necessary knowledge, experience, and ability to perform services not available through DISTRICT personnel, and CONSULTANT is specially experienced and competent to provide to the DISTRICT certain specialized services and/or advice in one or more of the foregoing areas;

WHEREAS, DISTRICT desires to obtain specialized services and/or advice for **PROJECT MANAGEMENT AND PLANNING CONSULTING SERVICES FOR <<SITE>>** hereinafter referred to as the “PROJECT”; and

WHEREAS, CONSULTANT has indicated its willingness and commitment to provide its specialized services and/or advice to the DISTRICT on the terms hereafter set forth in this AGREEMENT.

NOW, THEREFORE, the PARTIES hereto agree that the above recitals are true and correct, and further as follows:

ARTICLE I – SCOPE AND SERVICES AND RESPONSIBILITIES

1. **Services.** The CONSULTANT may be asked to perform any of the duties or activities described in EXHIBIT “A”, working in the capacity as an extension of staff. It is also recognized that in some cases, the CONSULTANT may have to hire a sub-consultant for certain specialized tasks if needed for a specific activity, but this will be approved by the DISTRICT as needed.

2. **Contract Term and Renewal.** The term of this AGREEMENT shall begin on the Effective Date and shall end <<1-YEAR END DATE>>. The DISTRICT has the option to renew the AGREEMENT with the same terms on a yearly basis, based on program need, in accordance with the fee schedule as stated in EXHIBIT “A”. The PARTIES agree should all Services be completed by CONSULTANT and accepted, in writing, by DISTRICT prior to the end date stated within this Paragraph, the AGREEMENT shall automatically terminate.

The DISTRICT will have the ability to renew the AGREEMENT on an annual basis for up to five (5) years maximum beginning on the Effective Date and could be extended through <<5-YEAR END DATE>>, if on an annual basis the DISTRICT elects to renew the AGREEMENT based on needs.

3. **CONSULTANT’s Certifications, Representations and Warranties.** CONSULTANT makes the following certifications, representations, and warranties for the benefit of the DISTRICT and CONSULTANT acknowledges and agrees that the DISTRICT, in deciding to engage CONSULTANT pursuant to this AGREEMENT, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this AGREEMENT and the course of CONSULTANT’s engagement hereunder:

a. CONSULTANT is qualified in all respects to provide to the DISTRICT all of the Services contemplated by this AGREEMENT and, to the extent required by any applicable laws, CONSULTANT has all such licenses and/or governmental approvals as would be required to carry out and perform for the benefit of the DISTRICT, such Services as are called for hereunder.

b. CONSULTANT, in providing the Services and in otherwise carrying out its obligations to the DISTRICT under this AGREEMENT, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including workers' compensation and equal protection and non-discrimination laws.

c. CONSULTANT will perform its Services hereunder in a professional manner, using the degree of care and skill ordinarily exercised by, and consistent with, the current professional practices and standards of a professional practicing in California. The CONSULTANT will furnish, at its expense, those Services that are set forth in this AGREEMENT and **EXHIBIT "A"** and represents that the Services set forth in said EXHIBIT are within the technical and professional areas of expertise of the CONSULTANT or any subconsultant the CONSULTANT has engaged or will engage to perform the service(s). The DISTRICT shall request in writing if the DISTRICT desires the CONSULTANT to provide Services in addition to, or different from, the Services described in **EXHIBIT "A"**. The CONSULTANT shall advise the DISTRICT in writing of any Services that, in the CONSULTANT's opinion, lie outside of the technical and professional expertise of the CONSULTANT.

4. CONSULTANT has been selected to perform the work herein because of the skills and expertise of key individuals. Services under this AGREEMENT shall be performed only by competent personnel under this supervision of and/or in the employment of the CONSULTANT. CONSULTANT shall conform to DISTRICT's reasonable requests regarding assignment of personnel. All personnel, including those assigned at DISTRICT's request, shall be supervised by CONSULTANT.

5. CONSULTANT shall not change any of the key personnel listed in **EXHIBIT "A"** without prior written approval by the DISTRICT, unless said personnel cease to be employed by CONSULTANT. In either case, DISTRICT shall be allowed to interview and approve replacement personnel. CONSULTANT agrees that reassignment of any of the listed personnel during the AGREEMENT period shall only be with other professional personnel who have equivalent experience and shall require prior consultation and written approval by the DISTRICT. Any costs associated with reassignment of personnel shall be borne exclusively by CONSULTANT and CONSULTANT shall not charge the DISTRICT for the cost of training or "bringing up to speed" replacement personnel. If any designated lead or key person fails to perform to the satisfaction of the DISTRICT, then upon written notice the CONSULTANT shall immediately remove that person from the PROJECT and provide a temporary replacement. CONSULTANT shall within ten (10) work days, provide a permanent replacement person acceptable to the DISTRICT. DISTRICT may condition its approval of replacement personnel upon a reasonable transition period wherein new personnel will learn the PROJECT and get "up to speed" at CONSULTANT's cost.

6. Approved sub-consultants shall not be changed without the prior written consent of the DISTRICT. CONSULTANT shall promptly obtain written DISTRICT approval of any replacement or new sub-consultant working on this PROJECT. Nothing in this AGREEMENT shall create any contractual relation between the DISTRICT and any sub-consultant employed by the CONSULTANT under the terms of this AGREEMENT.

7. CONSULTANT represents that the CONSULTANT has no existing interest and will not acquire any interest, direct or indirect, which would create a conflict of interest in violation of any applicable laws, and that no person having any such interest shall be employed by CONSULTANT.

8. CONSULTANT shall coordinate and perform all Services set forth in the AGREEMENT through the DISTRICT's authorized representative.

ARTICLE II – ADDITIONAL CONSULTANT SERVICES

1. CONSULTANT shall notify the DISTRICT in writing of the need for additional services required due to circumstances beyond the CONSULTANT's control. CONSULTANT shall obtain written authorization from the DISTRICT before rendering such services. The DISTRICT may require CONSULTANT to perform additional services which are, in the DISTRICT's discretion, necessary. Compensation for such services shall be negotiated and approved in writing by the DISTRICT. Such services shall include:

a. If the DISTRICT requests additional shifts to complete the Services articulated in **EXHIBIT "A"** where the requests for additional shifts does not arise from the direct or indirect negligence, errors or omissions on the part of CONSULTANT and the CONSULTANT's compensation is expressly conditioned on the lack of fault of the CONSULTANT; and

b. Providing any other services not otherwise included in this AGREEMENT or not customarily furnished in accordance with the generally accepted practice in the CONSULTANT's industry.

ARTICLE III – COMPENSATION TO THE CONSULTANT

1. The DISTRICT agrees to pay the CONSULTANT in accordance with the fee, rate and/or price schedule information, inclusive of reimbursable expenses, for performing the basic services required by this AGREEMENT subject to the limitations set forth herein this Article III and **EXHIBIT "A"**.

2. Additional Services. Compensation for Additional Services shall be dependent upon CONSULTANT's compliance with the provisions outlined in Article II and shall be calculated in accordance with the rates set forth in **EXHIBIT "A"**.

3. Reimbursable CONSULTANT Costs/Expenses. DISTRICT recognizes that certain costs and expenses associated with the Services performed are reimbursable to the CONSULTANT. Provided that the CONSULTANT obtains the DISTRICT's prior written approval, costs and expenses will be reimbursed to the CONSULTANT in accordance with this Section. The DISTRICT's prior written authorization is an express condition precedent to any reimbursement to the CONSULTANT of such costs and expenses, and no claim for any additional compensation or reimbursement shall be valid absent such prior written approval by the DISTRICT and calculated in accordance with the rates set forth in **EXHIBIT "A"**. The CONSULTANT's mileage and travel time shall not be considered as an allowable reimbursable expense. The descriptive categories of expenses that may be considered for reimbursement are as follows, and any other reimbursable expenses must be approved in writing by the DISTRICT:

a. Approved reproduction of reports and/or other documents in excess of the copies required by this AGREEMENT;

b. Fees advanced for securing approval of authorities in connection with the Services rendered pursuant to this AGREEMENT;

c. Cost of sub-consultants hired by CONSULTANT with prior approval of DISTRICT; or

d. Other DISTRICT requested items as requested in writing.

4. Invoices. CONSULTANT shall submit one (1) invoice monthly to the DISTRICT for the fees incurred during the billing period and reimbursable expenses (if any). Invoices for fees must reflect the date of the Service, identify the individual performing the Service, state the hours worked and rate charged, and describe the Service performed. Invoices requesting reimbursement for reimbursable expenses incurred during the billing period must clearly list items for which reimbursement is being requested and be accompanied by proper documentation (e.g., receipts, invoices) including a copy of the DISTRICT's written authorization notice for invoiced items. Invoices requesting payment for overtime must reflect straight time and overtime hours being charged, and must include a copy of the DISTRICT's written authorization to incur additional overtime expense. No payments will be made by the DISTRICT to the CONSULTANT for monthly invoices requesting reimbursables or overtime absent the prior written authorization of the DISTRICT. The DISTRICT shall make payment to the CONSULTANT of the approved invoiced amount within forty-five (45) days of the DISTRICT's receipt of the invoice.

5. Except as expressly provided above, CONSULTANT agrees that no other compensation, fringe benefits, or other remuneration is due to CONSULTANT by the DISTRICT for Services rendered under this AGREEMENT. CONSULTANT shall not apply for or receive statutory benefits available to employees of the DISTRICT because CONSULTANT is not an employee of the DISTRICT; rather, CONSULTANT is operating under a personal services agreement pursuant to Education Code section 88003.1(b)(2) and has only the rights defined by this AGREEMENT.

6. District's Right to Withhold. The DISTRICT may withhold, or on account of subsequently discovered evidence, nullify the whole or a part of any payment to such extent as may be necessary to protect the DISTRICT from loss, including costs and attorneys' fees, on account of: 1) defective or deficient work product not remedied; 2) failure of the CONSULTANT to make payments properly to its employees or sub-consultants; 3) failure of CONSULTANT to perform any Services in a timely manner causing delay or disruption to the PROJECT schedule; or 4) any amounts equal to the DISTRICT's costs caused by the CONSULTANT's errors or omissions, willful or reckless misconduct, or other breach of this AGREEMENT.

ARTICLE IV – TERMINATION

1. DISTRICT's Termination of the AGREEMENT for Cause/ Default. The DISTRICT may terminate this AGREEMENT upon seven (7) days' advance written notice to the CONSULTANT if there is a default by the CONSULTANT in its performance of a material obligation hereunder and such default in performance is not caused by the DISTRICT. Such termination shall be deemed effective the seventh (7th) day following the date of the written termination notice, unless during such seven (7) day period, the CONSULTANT shall commence to cure its default(s) and diligently thereafter prosecute such cure to completion to the DISTRICT's reasonable satisfaction. In addition to the DISTRICT's right to terminate this AGREEMENT pursuant to the foregoing, the DISTRICT may terminate this AGREEMENT upon written notice to CONSULTANT if: (i) CONSULTANT becomes bankrupt or insolvent, which shall include, without limitation, a general assignment for the benefit of creditors or the filing by CONSULTANT or a third party of a petition to reorganize debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for CONSULTANT or any of CONSULTANT's property on account of CONSULTANT's insolvency; or (ii) if CONSULTANT disregards applicable laws, codes, ordinances, rules or regulations. If DISTRICT exercises the right of termination hereunder, compensation due the CONSULTANT, if any, shall be based upon approved Basic Services, authorized Additional Services, and allowable expenses incurred or provided prior the effective date of the DISTRICT's termination of this AGREEMENT, reduced by the DISTRICT's prior payments of the CONSULTANT and any losses, damages, or other costs sustained by the DISTRICT arising out of the termination of this AGREEMENT or the cause(s) for termination of this AGREEMENT. Payment of the amount due the CONSULTANT, if any, shall be made by DISTRICT only after completion of all Services for the PROJECT. CONSULTANT shall remain responsible and liable to DISTRICT for all losses, damages, or other costs sustained by

DISTRICT arising out of termination pursuant to the foregoing or otherwise arising out of CONSULTANT's default hereunder, to the extent that such losses, damages, or other costs exceed any amount due CONSULTANT hereunder for approved Basic Services, authorized Additional Services, and allowable expenses. In the event termination is for a substantial failure of performance, all damages and costs associated with the termination, including increased consultant and replacement consultant costs, shall be deducted from payments due the CONSULTANT. In the event the DISTRICT's termination for default is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience in accordance with Article IV, Section 3, below, and CONSULTANT shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense, or liability may be claimed, requested, or recovered by CONSULTANT.

2. CONSULTANT's Termination of the AGREEMENT for Cause. The CONSULTANT has the right to terminate this AGREEMENT if the DISTRICT fails to make payment of approved undisputed amounts due to CONSULTANT in accordance with this AGREEMENT. Such termination shall be effective upon fourteen (14) days' advance written notice to the CONSULTANT. CONSULTANT may invoice the DISTRICT for approved Basic Services and any authorized Additional Services as of the date of termination, and DISTRICT shall pay any undisputed and approved amounts for Services performed until the date of the CONSULTANT's notice of termination in accordance with this AGREEMENT, but not to exceed the CONSULTANT's fee set forth in this AGREEMENT.

3. DISTRICT's Termination of the AGREEMENT for Convenience/ Without Cause. This AGREEMENT may be terminated without cause by the DISTRICT upon seven (7) days' written notice to the CONSULTANT. In the event of a termination for convenience/ without cause, the DISTRICT shall pay the CONSULTANT for all approved Services performed and all authorized expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records and expense reports, up until the date of notice of termination plus any sums due the CONSULTANT for authorized Additional Services. In ascertaining the Services actually rendered hereunder up to the date of termination of this AGREEMENT, consideration shall be given to both completed work and work in process of completion and to complete and incomplete reports and other documents, whether delivered to the DISTRICT or in the possession of the CONSULTANT. In addition, CONSULTANT will be reimbursed for reasonable termination costs through the payment of 3% beyond the sum due the CONSULTANT under this Section through 50% completion of the CONSULTANT's portion of the PROJECT and, if 50% completion is reached, payment of 3% of the unpaid balance of the contract to CONSULTANT as termination cost. This 3% payment is agreed to compensate the CONSULTANT for the unpaid profit CONSULTANT would have made under the PROJECT on the date of termination and is legal consideration for entry into this termination for convenience clause.

4. DISTRICT's Right to Suspend or Abandon the PROJECT. The DISTRICT may, in its sole discretion, provide written notice to the CONSULTANT of the DISTRICT's intent to abandon the PROJECT or suspend all or any part of the PROJECT or the CONSULTANT's Services under this AGREEMENT. If the DISTRICT suspends the PROJECT or CONSULTANT's Services under this AGREEMENT for a period of one-hundred and twenty (120) consecutive days or more after the date of the written notice, and such suspension is not caused by the CONSULTANT's default or the acts or omissions of CONSULTANT or its consultants, upon lifting of such suspension, the CONSULTANT's fee may be adjusted to reflect verified actual costs and expenses incurred by CONSULTANT, if any, as a direct result of the suspension and resumption of the PROJECT or CONSULTANT's Services under this AGREEMENT. If the DISTRICT decides to not resume the PROJECT or permanently abandon the PROJECT, the AGREEMENT shall be deemed terminated for suspension/ abandonment as applicable. In the event of a termination based upon abandonment or suspension by DISTRICT, the DISTRICT shall pay the CONSULTANT for all approved Services performed and all authorized expenses incurred pursuant to this AGREEMENT supported by documentary evidence, including payroll records and expense reports, up

until the date of the abandonment, plus any sums due the CONSULTANT for Board approved Additional Services. In ascertaining the Services actually rendered hereunder up to the date of termination of this AGREEMENT, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents, whether delivered to the DISTRICT or in the possession of the CONSULTANT.

5. CONSULTANT's Obligations upon Termination. Upon the DISTRICT's exercise of the right of termination under Article VIII, Section 1, 3, or 4 above, the CONSULTANT shall take action as directed by the DISTRICT relative to its ongoing Services for the PROJECT. The CONSULTANT shall, within five (5) days of the effective termination, assemble and deliver to the DISTRICT all documents, reports, work product, instruments of service, and other items of a tangible nature (whether in the form of documents, drawings, samples or electronic files) prepared by or on behalf of the CONSULTANT under this AGREEMENT and in any manner related to the PROJECT. The CONSULTANT shall, within five (5) days of the effective termination, deliver the originals of all documents described in the preceding sentence, regardless of form or medium. The CONSULTANT may, at its sole cost and expense, make reproductions of the originals delivered to the DISTRICT for its records and files.

6. The PARTIES understand and agree that Article IV of this AGREEMENT shall govern all termination rights and procedures between the PARTIES. Any termination provision that is attached to this AGREEMENT as an Exhibit shall be void and unenforceable between the PARTIES.

ARTICLE V – DISPUTES

1. Mandatory Mediation.

a. A "Claim as referred to in this Article shall mean a dispute between the PARTIES regarding performance of any work related to this AGREEMENT or PROJECT, any interpretation of this AGREEMENT, payment or nonpayment for work performed or not performed, any dispute involving the terms or requirements of the PROJECT or this AGREEMENT where one PARTY's opinion or interpretation differs from that of the other PARTY. The PARTIES hereto agree prior to commencing any legal action relating to a Claim arising from this AGREEMENT or the PROJECT to submit the Claim to a mandatory good-faith mediation process. The PARTIES' expectations are that if a Claim is made by or arises from a third party (e.g., a contractor), that the third party will be a participant in mediation. The PARTIES agree that any statute of limitations applicable to any Claim shall be tolled for the period from the date a PARTY requests mediation through fourteen (14) days after termination of the mediation, unless otherwise agreed to in writing by the PARTIES.

b. Except as set forth below, the PARTIES agree to refrain from filing, maintaining or prosecuting any action related to the Claim during the pendency of the mediation provided that the mediation must commence within thirty (30) days after a PARTY makes written demand to the other for mediation. The PARTIES may mutually agree to extend this 30-day time period. In no event shall mediation cause any delay in the progress or timely prosecution of any work on the PROJECT or any Services to be performed under this AGREEMENT.

c. The PARTIES shall participate in a minimum of one full-day mediation session before the mediation process may be declared unsuccessful and terminated by either PARTY. The mediation shall be conducted in accordance with the rules as the PARTIES agree upon, or in the absence of agreement, in accordance with the Construction Rules of JAMS ADR/Endispute. Evidence of anything said, any admissions made, and any documents prepared in the course of the mediation shall not be admissible in evidence or subject to discovery in any court action pursuant to Evidence Code sections 1152 and 1154.

d. The PARTIES shall mutually agree to the selection of a mediator who is an attorney that is experienced in public works construction claims. If the PARTIES are unable to agree upon a mediator, then the mediator shall be appointed by JAMS ADR/Endispute.

e. The mediation shall take place at a location within twenty (20) miles of the DISTRICT's administrative office. The mediator's fees and administrative fees, if any, shall be split equally between the PARTIES and each PARTY shall bear its own attorney's fees and costs.

f. If any PARTY commences a legal action without first attempting to resolve the Claim as required by this Article, that PARTY shall be in breach of this AGREEMENT and shall not be entitled to recover attorneys' fees that might have otherwise been recoverable.

2. Compliance with Government Code Section 900 et seq. The foregoing provisions relating to dispute resolution procedures notwithstanding, neither this AGREEMENT nor such provisions shall be deemed to waive, limit or modify any requirements under Government Code section 900 et seq. relating to the CONSULTANT's submission of claims to the DISTRICT.

3. Continuation of CONSULTANT Services. In the event of a claim or dispute, the PARTIES shall attempt to resolve the dispute in good faith as set forth above. Pending resolution of a claim or dispute, CONSULTANT agrees to continue the work diligently to completion. If the claim or dispute is not resolved, CONSULTANT agrees it will neither rescind the AGREEMENT nor stop the progress of the work, but CONSULTANT's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the PROJECT has been completed, and not before. The PARTIES may agree in writing to submit any dispute between the PARTIES to arbitration. The DISTRICT agrees to continue to pay the CONSULTANT any undisputed amounts pursuant to this AGREEMENT.

ARTICLE VI – ACCOUNTING RECORDS OF THE CONSULTANT

1. Records of the CONSULTANT's direct personnel and reimbursable expenses pertaining to the Services performed on this PROJECT and records of accounts between the DISTRICT and CONSULTANT shall be kept on a generally recognized accounting basis and shall be available to the DISTRICT or his authorized representative at mutually convenient times.

2. The DISTRICT (including the DISTRICT's appointed accountant or consultant, or the DISTRICT's legal counsel) retains the right to review and audit, and the reasonable right of access to CONSULTANT's and any consultants' premises to review and audit the CONSULTANT's compliance with the provisions of this AGREEMENT ("DISTRICT's Audit Right"). The DISTRICT's Audit Right includes the right to inspect, photocopy, and to retain copies, outside of the CONSULTANT's premises, of any and all PROJECT-related records, documents and other information with appropriate safeguards, if such retention is deemed necessary by the DISTRICT in its sole discretion. The DISTRICT shall keep information confidential as required by applicable law.

3. The DISTRICT's Audit Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the DISTRICT determines are necessary to discover and verify that the CONSULTANT is in compliance with the requirements of this AGREEMENT.

4. If there is a claim for additional compensation or for Additional Services, the DISTRICT's Audit Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the DISTRICT determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

5. The CONSULTANT shall maintain complete and accurate records for a minimum of seven (7) years and in accordance with generally accepted accounting practices in the industry. The CONSULTANT shall make available to the DISTRICT for review and audit, all PROJECT-related accounting records and documents, and any other financial data. Upon DISTRICT's request, the CONSULTANT shall submit exact duplicates of originals of all requested records to the DISTRICT.

6. The CONSULTANT shall include audit provisions in any and all of its subcontracts and shall ensure that this Article is binding upon all consultants.

7. The CONSULTANT shall comply with these provisions within fifteen (15) days of the DISTRICT's written request to review and audit any or all of CONSULTANT's PROJECT-related documents, records and information.

8. Pursuant to Government Code section 8546.7, if this AGREEMENT involves the expenditure of more than ten thousand dollars (\$10,000), the AGREEMENT shall be subject to the examination and audit of the State Auditor, at the request of the DISTRICT, or as part of any audit of the DISTRICT, for a period of three (3) years after final payment under the AGREEMENT.

ARTICLE VII – REPORTS AND/OR OTHER DOCUMENTS

The reports and/or other documents that are prepared, reproduced, maintained and/or managed by the CONSULTANT or CONSULTANT's consultants in accordance with this AGREEMENT (regardless of medium, format, etc.) shall be and remain the property of the DISTRICT (hereinafter "PROPERTY"). The DISTRICT may provide the CONSULTANT with a written request for the return of its PROPERTY at any time. Upon CONSULTANT's receipt of the DISTRICT's written request, CONSULTANT shall return the requested PROPERTY to the DISTRICT within five (5) calendar days. Failure to comply with any such written request shall be deemed a material breach of this AGREEMENT.

ARTICLE VIII – INDEMNITY & INSURANCE

1. For the purposes of this Article, the term, "Indemnified Parties" shall mean the DISTRICT, its agents, representatives, officers, consultants, employees, trustees and members, and the term, "Claim(s)" shall mean any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney's and consultants' fees and causes of action to property or persons, including, without any limitation whatsoever, personal injury and/or death.

2. To the fullest extent permitted by law, CONSULTANT agrees to indemnify, and hold DISTRICT entirely harmless from all liability arising out of:

a. Workers' Compensation and Employers Liability: Any and all Claims under Workers' Compensation acts and other employee benefit acts with respect to CONSULTANT's employees or CONSULTANT's subcontractor's employees arising out of CONSULTANT's work under this AGREEMENT; and

b. General Liability: Liability for damages for any Claims including: (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the CONSULTANT or the DISTRICT, or any person, firm or corporation employed by the CONSULTANT or the DISTRICT upon or in connection with the PROJECT, except for liability resulting from the sole or active negligence, or willful misconduct

of the DISTRICT, its officers, employees, agents or independent consultants who are directly employed by the DISTRICT; and

c. Professional Liability: Any Claims including loss, injury to or death of persons or damage to property caused by any act, neglect, default or omission of the CONSULTANT, or any person, firm or corporation employed by the CONSULTANT, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation including the DISTRICT, arising out of, or in any way connected with the Services performed by CONSULTANT in accordance with this AGREEMENT, including injury or damage either on or off DISTRICT property; but not for any loss, injury, death or damages caused by the sole or active negligence, or willful misconduct of the DISTRICT.

d. The CONSULTANT, at its own expense, cost, and risk, shall defend any and all Claims, actions, suits, or other proceedings, arising out of Article VIII, Sections 1 (a) and (b) above, that may be brought or instituted against the DISTRICT, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the DISTRICT, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

e. The CONSULTANT's duty to indemnify and defend under this AGREEMENT shall apply during the Term of this AGREEMENT and shall survive any expiration or termination of this AGREEMENT until any such Claim(s) are barred by the applicable statute of limitations and is in addition to any other rights or remedies that the DISTRICT may have under the law or under this AGREEMENT.

f. The CONSULTANT's duty to defend shall begin upon the DISTRICT's notification to the CONSULTANT of a Claim. At that time, the CONSULTANT shall pay for that defense at its sole cost.

g. The PARTIES understand and agree that Article VIII, Sections 1 and 2 of this AGREEMENT shall be the sole indemnity, as defined by California Civil Code § 2772, between the DISTRICT and the CONSULTANT related to the PROJECT. Any other indemnity that is attached to this AGREEMENT as part of any Exhibit shall be void and unenforceable between the PARTIES.

h. Any attempt to limit the CONSULTANT's liability to the Indemnified Parties in any of the exhibits or attachments to this AGREEMENT shall be void and unenforceable between the PARTIES

3. CONSULTANT shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to DISTRICT which will protect CONSULTANT and DISTRICT from claims which may arise out of or result from CONSULTANT's actions or inactions relating to the AGREEMENT, whether such actions or inactions be by themselves or by any subconsultant or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

a. Commercial General Liability Insurance (CGL) with a combined single limit of not less than One Million Dollars (\$1,000,000) each occurrence / Three Million Dollars (\$3,000,000) in the annual aggregate.

b. Commercial Automobile Liability Insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) each accident and Three Million Dollars

(\$3,000,000) aggregate, including:

1. Owned, non-owned and hired vehicles;
2. Blanket contractual;
3. Broad form property damage;
4. Products/completed operations; and
5. Personal injury.

c. Professional liability (Errors & Omissions) Insurance with a limit not less than One Million Dollars (\$1,000,000) each occurrence / Three Million Dollars (\$3,000,000) in the annual aggregate. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least five (5) years thereafter and/or at rates consistent with the time of execution of this AGREEMENT adjusted for inflation. In the event that ARCHITECT subcontracts any portion of ARCHITECT's duties, ARCHITECT shall require any such subcontractor to purchase and maintain insurance coverage as provided in this Section. Failure to maintain professional liability insurance is a material breach of this AGREEMENT and grounds for immediate termination.

d. Workers' Compensation Insurance as required by the state of California with a minimum of One Million Dollars (\$1,000,000) for Employer's Liability.

ARTICLE IX – MISCELLANEOUS

1. CONSULTANT, in the performance of this AGREEMENT, shall be and act as an independent contractor. CONSULTANT understands and agrees that CONSULTANT and all of CONSULTANT's employees shall not be considered officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of the DISTRICT and/or to which DISTRICT's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. CONSULTANT assumes the full responsibility for the acts and/or omissions of CONSULTANT's employees or agents as they relate to the Services to be provided under this AGREEMENT. CONSULTANT shall assume full responsibility for payment of any applicable prevailing wages and all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective CONSULTANT's employees.

2. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of any third party against either the DISTRICT or CONSULTANT.

3. The DISTRICT and CONSULTANT, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other PARTY to this AGREEMENT with respect to the terms of this AGREEMENT. CONSULTANT shall not assign this AGREEMENT.

4. This AGREEMENT shall be governed by the laws of the State of California.

5. This AGREEMENT shall not include or incorporate the terms of any general conditions, conditions, master agreement or any other boilerplate terms or form documents prepared by the CONSULTANT. The attachment of any such document to this AGREEMENT as **EXHIBIT "A"** shall not be interpreted or construed to incorporate such terms into this AGREEMENT unless the DISTRICT approves of such incorporation in a separate writing signed by the DISTRICT. Any reference to such boilerplate terms and conditions in the proposal or quote submitted by the CONSULTANT shall be null and void and have no effect upon this AGREEMENT. Proposals, quotes, statement of qualifications and other similar documents prepared by the CONSULTANT may be incorporated into this AGREEMENT as

EXHIBIT “A” but such incorporation shall be strictly limited to those portions describing the CONSULTANT’s scope of work, rate and price schedule and qualifications.

6. The PARTIES have had the opportunity to, and have to the extent each deemed appropriate, obtained legal counsel concerning the content and meaning of this AGREEMENT. Each of the PARTIES agrees and represents that no promise, inducement or agreement not herein expressed has been made to effectuate this AGREEMENT. This AGREEMENT represents the entire AGREEMENT between the DISTRICT and CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended or modified only by an agreement in writing signed by both the DISTRICT and the CONSULTANT.

7. The rule of construction that any ambiguities are to be resolved against the drafting PARTY shall not be employed in the interpretation of this AGREEMENT. It is expressly understood and agreed that the PARTIES to this AGREEMENT have participated equally, or have had equal opportunity to participate, in the drafting hereof.

8. Time is of the essence with respect to all provisions of this AGREEMENT.

9. If either PARTY becomes involved in litigation arising out of this AGREEMENT or the performance thereof, each PARTY shall bear its own litigation costs and expenses, including reasonable attorney’s fees.

10. All exhibits referenced herein and attached hereto shall be deemed incorporated into and made a part of this AGREEMENT by each reference as though fully set forth in each instance in the text hereof unless otherwise excluded by the terms of this AGREEMENT. In the event that the provisions of any Exhibit conflict with the terms of this AGREEMENT, the terms of this AGREEMENT shall control.

11. This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, all of which shall be sufficient evidence of this AGREEMENT.

12. Confidentiality. The CONSULTANT shall not disclose or permit the disclosure of any confidential information, except to its agents, employees and other consultants who need such confidential information in order to properly perform their duties relative to this AGREEMENT.

13. Severability. If any portion of this AGREEMENT is held as a matter of law to be unenforceable, the remainder of this AGREEMENT shall be enforceable without such provisions.

14. Notices. All notices or demands to be given under this AGREEMENT by either PARTY to the other shall be in writing and given either by: (a) personal service; or (b) by U.S. Mail, mailed either by registered, overnight, or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or if mailed on the fifth 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 Paragraph. At the date of this AGREEMENT, the addresses of the PARTIES are as follows:

To the DISTRICT:
North Orange County Community College District
Attn: Jenney Ho
1830 West Romneya Drive
Anaheim, CA 92801
Telephone: (714) 808-4776

To the CONSULTANT:
<<Name of Contractor>>
Attn: <<Name>>
<< Address>>,
<<City, State, Zip>>
Telephone: << >>

Email: jho@nocccd.edu

Email: [REDACTED]

15. Tobacco Prohibited. Any tobacco use (smoking, chewing, etc.) by anyone, is prohibited at all times on any DISTRICT property.

16. Profanity on any DISTRICT property is prohibited, including, but not limited to, racial, ethnic, or sexual slurs or comments which could be considered harassment.

17. Appropriate dress is mandatory. Therefore, tank tops, cut-offs and shorts are not allowed. Additionally, what is written or pictured on clothing must comply with the requirements of acceptable language as stated above in Paragraph 16.

18. Images. If applicable, the CONSULTANT is prohibited from capturing on any visual medium images of any property, logo, student, or employee of the DISTRICT, or any image that represents the DISTRICT without express written consent from the DISTRICT.

19. Prevailing Wages. If applicable and required, CONSULTANT shall pay, and shall cause all subconsultants of every tier to pay, not less than the specified prevailing wage rates, to the extent applicable, to all workers employed to perform work or Services under this AGREEMENT. CONSULTANT shall fully indemnify and defend the DISTRICT from any claims arising from CONSULTANT's failure to meet and prevailing wage requirements.

20. In accordance with California Education Code section 81655, this AGREEMENT is not a valid or enforceable obligation against the DISTRICT until approved or ratified by motion of the Governing Board of the DISTRICT duly passed and adopted.

21. This AGREEMENT may be executed in counterparts. Each of the counterparts when so executed and delivered, shall be deemed an original and, taken together, shall constitute but one and the same instrument. This AGREEMENT may be executed by facsimile or by scanning the original signature into .pdf format and communicating said signature via electronic mail ("Scanned Signature"). A facsimile signature or Scanned Signature shall be deemed to be an original signature on this AGREEMENT.

22. COVID-19. CONSULTANT shall at all times comply with all federal, state, and local directives, ordinances, laws, health orders and regulations and DISTRICT guidelines including, but not limited to, OSHA and Cal-OSHA concerning COVID-19. This may require scheduling site visits by appointment only, the ability to conduct business meetings via online or the internet, wearing required face mask protection and maintain social distancing guidelines if attendance on site is necessary to conduct essential business related to Services described herein.

The PARTIES, through their authorized representatives, have executed this AGREEMENT as of the day and year first written above.

<<NAME OF CONSULTANT>>

NORTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT

By _____

By _____

Print Name _____

Name: Jenney Ho

Title: District Director, Purchasing

Title _____

Date _____

Date _____

Address _____

Phone _____

Tax ID# _____

Email _____

EXHIBIT “A”

1. **Compensation for Services:**

The DISTRICT shall compensate the CONSULTANT for the performance of all Services required under this AGREEMENT an annual hourly not-to-exceed fee of <<AMOUNT IN WORDS>> **DOLLARS** (\$<<AMOUNT IN NUMBERS>>). The DISTRICT will have the ability to renew the contract for up to five (5) years maximum. Payments will be based on monthly invoices, payable in arrears, which will set forth the hours actually worked and expenses incurred during the billing period, in accordance with Article III, Paragraph 4 of this AGREEMENT. The billing rates indicated in **EXHIBIT “B”** will be multiplied by the actual hours for each position to arrive at the total fee for each month. The CONSULTANT shall not exceed the fee without prior written authorization of the DISTRICT. The DISTRICT shall have the authority to reallocate any unused funds from any prior years to the next year if the contract is extended or renewed on an annual basis.

A. There are no reimbursable expenses for this AGREEMENT.

2. **Fee Schedule for Yearly Renewal Options:**

The total five (5) year breakdown is estimated as follows:

Year 1 (<<Start - End Dates>>):	\$<<NTE FEE>>	
Year 2 (<<Start - End Dates>>):	\$<<NTE FEE>>	optional to renew
Year 3 (<<Start - End Dates>>):	\$<<NTE FEE>>	optional to renew
Year 4 (<<Start - End Dates>>):	\$<<NTE FEE>>	optional to renew
Year 5 (<<Start - End Dates>>):	\$<<NTE FEE>>	optional to renew
Total Not to Exceed:	\$<<TOTAL NTE FEE>>	

3. **Project Description**

The AGREEMENT provides for staff augmentation services and full-service project management services as outline in this **EXHIBIT** and AGREEMENT. CONSULTANT will provide project management services for various Capital Outlay, Scheduled Maintenance and other projects as assigned. Duties associated with planning and project management services will focus primarily on planning and pre-design services, budget and schedule development, design phase management, bid preparation, contract administration, construction management and oversight, project closeout and general project administration. Projects could include but are not limited to: door hardware access control, modular building installation, accessibility projects, Facility Master Plan projects, barrier removal projects, maintenance and repair projects, structural repairs and upgrades, projects requested by the college divisions/departments, athletic facility improvements, and grant funded projects.

4. **Scope of Services**

- A. Planning/Pre-design Phase duties may include:
- 1) Gain familiarity with project needs, budget, and timing.
 - 2) Confirm scope and program requirements, including compliance with Title V requirements.
 - 3) Conduct meetings with site staff and design team to refine detailed scope and program, including compliance with Facility Design Standards.

- 4) Review proposals received from design consultants for scope and reasonableness to provide recommendations to the District.
- 5) Review proposals received from firms for preconstruction phase for scope and reasonableness to provide recommendations to the District.
- 6) Review level of effort and associated costs for reasonableness and appropriate quantity.
- 7) Interact with design consultant as needed to obtain appropriate scope and level of effort.
- 8) Interact with construction consultant as needed to obtain appropriate scope and level of effort.
- 9) Set up a decision-making framework to ensure timely District decisions.
- 10) Ensure that project is properly set up in tracking software which will include initial project schedule and budget.
- 11) Review invoices for reasonableness, correctness, and appropriate charges.
- 12) Provide monthly status reports in prescribed format.
- 13) Attend weekly program meetings.
- 14) Participate in and maintain minutes of critical pre-design phase meetings.
- 15) Participate in the site acquisition process and/or environmental due diligence site planning as determined by the District.
- 16) Interpret and apply California Environmental Quality Act (CEQA) project requirements.
- 17) Coordinate and communicate effectively with various consultants, agencies, regulatory agencies, other District employees, and/or others as needed.
- 18) Participate in other meetings as required.
- 19) Perform additional tasks associated with successful project management.

B. Design Phase duties may include:

- 1) Monitor design phase schedule and progress throughout all phases.
- 2) Review design phase submittals and recommend approval.
- 3) Monitor project budget to ensure compliance with the District's project budget.
- 4) Monitor progress of design team to ensure submittal of required DSA documents and retrieve verification.
- 5) Provide assistance with undertaken of the prequalification process for contractors and needs assistance in management and review of the qualifications.
- 6) Ensure that project is properly maintained in tracking software.
- 7) Review invoices for reasonableness, correctness, and appropriate charges.
- 8) Provide weekly status reports in prescribed format.
- 9) Attend weekly program meetings.
- 10) Participate in and maintain minutes of critical design phase meetings.
- 11) Coordinate and communicate effectively with various consultants, agencies, regulatory agencies, other District employees, and/or others as needed
- 12) Participate in other meetings as required.
- 13) Assist in bidding and award process.
- 14) Participate in pre-bid meetings.
- 15) Facilitate the functioning of an integrated project delivery team.
- 16) Additional tasks associated with successful project management.

C. Construction Phase duties may include:

- 1) Ensure that contract is properly constructed and executed and issue notice to proceed.
- 2) Proactively manage change on the project.

- 3) Review and approve contractor's change order requests for entitlement and cost.
- 4) Manage project contingencies and allowances.
- 5) Monitor project budget to ensure compliance with the District's project budget.
- 6) Monitor construction schedule and report variances.
- 7) Monitor progress of design team to ensure submittal of required DSA documents and retrieve verification.
- 8) Ensure that project is properly maintained in tracking software.
- 9) Review invoices for reasonableness, correctness, and appropriate charges.
- 10) Provide daily status reports in prescribed format.
- 11) Attend weekly program meetings.
- 12) Participate in and maintain minutes of critical construction phase meetings.
- 13) Maintain project documentation in compliance with program standards.
- 14) Additional tasks associated with successful project management.

D. Closeout phase duties may include:

- 1) Assist with final punch list and final inspections.
- 2) Assist in review and transfer of the final warranty/guarantee.
- 3) Assist in review and turnover of project as-built documents.
- 4) Monitor progress of design team in submitting required DSA closeout documentation and retrieve verification.
- 5) Assist in review and transfer of all required maintenance and operation manuals.
- 6) Assistance with and/or coordinate moving activities and occupancy.
- 7) Coordinate and ensure that required training on systems and materials takes place.
- 8) Coordinate and monitor completion of commissioning process.
- 9) Review final invoices.
- 10) Review closeout documents.
- 11) Reconcile expenditures and budget.
- 12) Assist in the finalization of any outstanding contracts and claims.
- 13) Ensure that all contract deliverables have been completed and submitted to the District.
- 14) Additional tasks associated with successful project management.

E. Program planning duties may include:

- 1) Assist in developing standards for a systems condition index for preventative/scheduled maintenance purposes.
- 2) Preparation, distribution, tracking, reviewing and awarding of any RFQ and/or RFP needed.
- 3) Assist the District with securing funding for various projects.
- 4) Assist with the preparation of reports for various agencies and coordination of applications needed on behalf of the District or other documentation that may be needed.
- 5) Assist to resolve complaints and/or seek to resolve and mitigate issues that may arise on projects on behalf of the District with a variety of entities, consultants, contractors or others that may be needed occasionally on projects.

F. Duties throughout the project may include:

- 1) Provide administrative support as required.
- 2) Provide estimating services as required.
- 3) Provide scheduling services as required.
- 4) On-going review and/or processing of invoices to ensure timely payment as required.

- 5) Review of contracts to ensure proper execution of scope of services related to the project as required.
- 6) Provide specialized technical support as required.
- 7) Miscellaneous duties related to effective and successful project management as required.

G. Move Services Project Management:

- 1) Providing assistance in all aspects of planning, scheduling, coordinating and execution of the physical relocation of personnel, faculty, staff, including, furniture and equipment or other physical assets.
- 2) Interacting with building users, project managers, faculty, college staff, district employees, other users, and project team members involved with moves and necessary relocations to implement construction projects or related to other capital facility projects.
- 3) Development of a Move Plan for each relocation or move that is anticipated as per the District.
- 4) Coordinate the details and planning aspects of the move from original locations to the complete set-up at the destination.
- 5) Manage and oversee movers on the day of the scheduled moves as necessary.
- 6) Assemble and Manage Project Team to outline Project Requirements (Kickoff meeting).
- 7) Develop a detailed implementation schedule, project budget and communications plan.
- 8) Coordinate with the Furniture Supplier insuring space efficiency.
- 9) Make recommendations with respect to existing furnishings, relocation and installation of equipment, and move phase consolidation.
- 10) Provide inventory of said furnishings.
- 11) Assess and determine the amount of moving supplies (i.e. boxes) needed for the move.
- 12) Working with Purchasing and other personnel to coordinate asset management of furniture and equipment in keeping with the District's policies and procedures.
- 13) Coordinating and supervising all aspects of interior workshop set-up, tear down, move/relocation, equipment and furniture requests as needed.
- 14) Work and coordinate with equipment installers.
- 15) Schedule and facilitate pre-move meetings with various stakeholders.
- 16) Work and assist District Purchasing and other District personnel with the procurement process of actual moving services (i.e. supplies and transportation) to ensure proper and adequate resources are provided to ensure a smooth move.
- 17) Implementation of Move Plan.
- 18) Move administration including pre-move conferencing, approvals of vendor contractor plans, pricing and schedules, facilitation of team and project staff meetings.
- 19) Project coordination and communication (signage, Department Coordination, project notes, request tracking, etc.).
- 20) Hold meetings (with frequency to be determined with various stakeholders).
- 21) Track project expenditures against budget; review and verify contractor vendor requests for payment.

5. **Schedule of Work**

To be determined on a project by project basis.

EXHIBIT “B” – HOURLY RATES

The rates set forth in this EXHIBIT shall be valid and not increased during the life of this AGREEMENT. CONSULTANT shall not change any of the key personnel (noted with an * and listed below) without prior written notice to, and written approval by, DISTRICT, unless said personnel cease to be employed by CONSULTANT. In either case, DISTRICT shall be allowed to interview and approve replacement personnel.

Position	Name of Personnel	Hourly Rate

Any overtime, weekend, or holiday work must be pre-approved and authorized by the DISTRICT in advance prior to commencement of such work and must be provided in writing.